MIAMIBEACH

City Commission Meeting

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
September 15, 2010

Mayor Matti Herrera Bower
Vice-Mayor Jorge Exposito
Commissioner Michael Góngora
Commissioner Jerry Libbin
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

City Manager Jorge M. Gonzalez
City Attorney Jose Smith
City Clerk Robert E. Parcher

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ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

Special note: In order to ensure adequate public consideration, if necessary, the Mayor and City Commission may move any agenda item to the alternate meeting date which will only be held if needed. In addition, the Mayor and City Commission may, at their discretion, adjourn the Commission Meeting without reaching all agenda items.

Call to Order - 9:00 a.m.
Inspirational Message, Pledge of Allegiance
Requests for Additions, Withdrawals, and Deferrals

The City Commission will recess for lunch at approximately 1:00 p.m.

Presentations and Awards

PA	Presentations and Awards

Consent Agenda

C2	Competitive Bid Reports
C4	Commission Committee Assignments
C6	Commission Committee Reports
C7	Resolutions

Regular Agenda

R2	Competitive Bid Reports
R5	Ordinances
R7	Resolutions
R9	New Business and Commission
R10	City Attorney Reports

Reports and Informational Items

Presentations and Awards

PA1 Proclamation To Be Presented To Project Medishare, For Their Dedication And Assistance To The People Of Haiti And Continued Support Of The Earthquake Relief Efforts, And Present Them With A Check For Donations Collected From "Rock For Haiti" Benefit Concert. (Page 3)
(Requested by Commissioner Edward L. Tobin)
(Deferred from July 14, 2010)

PA2 Proclamations To Be Presented To Hilda Fernandez, Emanuel Mayer, And Caroline Defreze, For Their Role In Helping Organize The "Rock For Haiti" Benefit Concert.
(Requested by Commissioner Edward L. Tobin)
(Deferred from July 14, 2010)

PA3 Proclamations To Be Presented To All Participants And Volunteers In The Rock For Haiti Concert.
(Requested by Commissioner Edward L. Tobin)
(Deferred from July 14, 2010)

PA4 Certificates Of Completion To Be Presented To The City Of Miami Beach Neighborhood Leadership Academy Graduates Spring 2010 Class.
(City Manager's Office)
(Deferred from July 14, 2010)

PA5 Proclamation To Be Presented To Lieutenant George Lerra For His Years Of Service To The City Of Miami Beach As An Employee Of The Police Department And As A Longtime Resident.
(Requested by Vice-Mayor Jorge Exposito)

PA6 Presentation Of The Keep America Beautiful Award Of $5,000 To Be Presented By Waste Management To The City Of Miami Beach To Be Used To Support The City's Coastal Clean-Up Efforts On International Coastal Clean-Up Day, Saturday, September 25, 2010.
(Public Works)

PA7 Certificate Of Appreciation To Be Presented To The Rebecca Towers Artistic Group
(Requested By Commissioner Michael Góngora)

PA8 Proclamation To Be Presented To The Alzheimer's Association, For Their Dedication And Assistance To The Citizens Of Miami Beach.
(Requested by Mayor Matti Herrera Bower)

PA9 Proclamation To Be Presented To Grace Leitner For Her Many Years Of Service And Contributions In The Area Of Education.
(Requested by Commissioner Jonah Wolfson)

Presentations and Awards (Continued)

PA10 Proclamation To The Presented To The City Of Miami Beach Firefighters For Their Outstanding Dedication And Continued Support To The Muscular Dystrophy Association And "Jerry's Kids."
(Requested by Mayor Matti Herrera Bower)

PA11 Proclamation To Be Presented In Honor Of Eunice Kennedy Shriver Day.
(Requested by Commissioner Jerry Libbin)

CONSENT AGENDA

Action:
Moved:
Seconded:
Vote:

C2 - Competitive Bid Reports

C2A Request For Approval To Award A Contract To Communications International, Inc., Pursuant To Invitation To Bid (ITB) No. 44-09/10 For Reconfiguration Of The 800 MHZ Public Safety Communications System. (Page 7)
(Information Technology)

C2B Request For Approval For A Change Order To The City's Contract With SSE And Associates, Inc. Pursuant To Invitation To Bid No. 14-09/10, For The Miami Beach Convention Center Airwall Repairs, Replacement And Recovering In The Amount Of $100,945.00. (Page 13)
(Tourism & Cultural Development)

C2C Request For Approval To Award Contracts As Primary Vendors To Superior Landscaping & Lawn Service, Inc. For Section A (Beachwalk), And Section D (North Beach Recreational Corridor); To Valleycrest Landscape Maintenance, Inc. For Section B (Boardwalk); To Lukes Sawgrass Landscape For Section C (Spoil Areas Citywide); As Secondary Vendors To Valleycrest Landscape Maintenance, Inc. For Section A And Section D; To BTS Land Services For Section B; To Neighborhood Maintenance, Inc. For Section C; Pursuant To Invitation To Bid (ITB) No. 35-09/10 For Landscape Maintenance Services For The Beachwalk, Boardwalk, Street-Ends And Spoil Areas Citywide, In The Estimated Annual Amount Of $ 119,154. (Page 17)
(Parks & Recreation)

C4 - Commission Committee Assignments

C4A Referral To The Neighborhoods/Community Affairs Committee – Discussion Regarding Stalled Construction Projects And Code Violations. (Page 25)
(Requested by Commissioner Jerry Libbin)

C4B Referral To The Finance And Citywide Projects Committee A Discussion Regarding The Miami Beach Festival Of The Arts And Potentially Contracting With A Professional Art Festival Company To Produce The Festival For The City. (Page 27)
(Tourism & Cultural Development)

C4C Referral To The Sustainability Committee To Discuss Rebates For Water Saving Shower Heads And Toilets. (Page 29)
(Requested by Commissioner Jonah Wolfson)

C4D Referral To Neighborhoods/Community Affairs Committee - Consideration Of A Public Art Project By The Artist Tobias Rehberger To Be Commissioned For Placement In South Pointe Park, As Recommended By The Art In Public Places Committee. (Page 31)
(Tourism & Cultural Development)

C4E Referral To Land Use And Development Committee – Discussion Regarding The Issuance Of A Request For Proposal (RFP) To Conduct A Study For The Development Of A City-Wide Transportation And Parking Plan. (Page 43)
(Requested by Commissioner Edward L. Tobin)

C4F Referral To The Finance And Citywide Projects Committee To Discuss A Request From ECOMB, Inc. For An Amendment To Its Lease Agreement. (Page 45)
(Real Estate, Housing & Community Development)

C4G Referral To The Finance And Citywide Projects Committee To Discuss A Request From Miami Beach Film Society, Inc. For An Amendment To Its Lease Agreement. (Page 47)
(Real Estate, Housing & Community Development)

C4H Referral To The Neighborhoods/Community Affairs Committee To Discuss An Ordinance Amending Chapter 46 Of The Miami Beach City Code, Entitled "Environment," By Amending Article III Thereof, Entitled "Litter," By Amending Section 46-92 To Clarify And Provide For Additional Prohibitions And Definitions For Litter With Regard To Leaf Blowers And Yard Maintenance Debris, And Clarifying Penalties For Certain Litter Violations; Providing For Repealer; Severability; Codification; And An Effective Date. (Page 49)
(Requested by Commissioner Michael Góngora)

C4I Referral To The Land Use And Development Committee - Discussion Regarding RM3 Districts And Requiring Any Transient Rental To Comply With State And City Law, Sales Tax Being Paid And Guests Being Registered In Occupancy At A Front Desk Operation. (Page 57)
(Requested by Commissioner Deede Weithorn)

C4 - Commission Committee Assignments (Continued)

C4J Referral To The Land Use And Development Committee - Discussion Regarding A Request From The GLBT Committee To Allow Extended Hours Of Operation Of Certain Nightlife Venues During Four Major LGBT Tourism And Fundraising Weekends - Winter Party, White Party, Gay Pride And Aqua Girl. (Page 59)
(Requested by Mayor Matti Herrera Bower)

C4K Referral To The Finance And Citywide Projects Committee To Discuss A Resolution Approving The Miami Beach Sustainability Master Plan. (Page 61)
(Public Works)

C4L Referral To The Land Use And Development Committee - Discussion Regarding Strengthening The Process By Which Permanent Parking Spaces May Be Removed From City Inventory, For Instance By Limiting The Purpose And/Or By Requiring Commission Approval. (Page 63)
(Requested by Mayor Matti Herrera Bower)

C4M Referral To The Neighborhoods/Community Affairs Committee To Discuss The Placement Of A Small Plaque At The Bus Shelter Located In Front Of 3801 Collins Avenue In Memory Of Mr. Harold Tillman. (Page 65)
(Requested by Commissioner Jonah Wolfson)

C4N Referral To The Neighborhoods/Community Affairs Committee To Discuss Renaming The Hand Ball Courts At Flamingo Park To Richard Bower, Mayor Bower's Late Husband. (Page 67)
(Requested by Commissioners Michael Góngora & Jerry Libbin)

C6 - Commission Committee Reports

C6A Report Of The Capital Improvement Projects Oversight Committee Meeting On June 7, 2010: **1)** Attendance. **2)** Review And Acceptance Of Minutes. **3)** Public Comments. **4)** Commission Items: A Resolution Approving And Authorizing The Mayor And City Clerk To Execute An Agreement With McCumber Golf, Inc., For Design, Bid And Award, And Construction Management Services, In The Negotiated Lump Sum Fee $294,500.00 (Plus An Additional Not To Exceed Amount Of $92,600.00 For Approved Reimbursables); For The Par 3 Golf Course, Pursuant To Request For Qualifications (RFQ) No. 07-09/10 From Previously Approved Funding. **5)** Requested Reports: A) Public Works Report To Highlight The Waterlines Break In Bayshore Neighborhood And Proposed Replacements On The GIS Map. **6)** Discussion: A) Request For Greenspace/Tree Advocacy Group; B) South Pointe Phase II Sidewalks – Permitting – ADA Compliant; C) Report On DERM; D) Citywide Guard House Inventory. **7)** Old Business: A) CIP Project Status Report; B) Construction Update: Normandy Shores Neighborhood Improvement Project; C) Status Report: Venetian Island Neighborhood Improvement Project; D) Status Report: Sunset Islands I & II; E) Status Report: Sunset Islands III & IV; F) Status Report: Royal Palm Avenue And 44th Street Flooding Mitigation; G) Status Report: Palm & Hibiscus Island Undergrounding; H) Status Report: Flamingo/West Avenue Neighborhood ROW. (Page 71)

C6 - Commission Committee Reports (Continued)

C6B Report Of The Finance And Citywide Projects Committee Meeting On July 29, 2010: **1)** Discussion Regarding Parking Revenue Bonds. **2)** Discussion Regarding Paid Time Off For Living Wage; **3)** Discussion Regarding The Current Vending Machine Service Contract. **4)** Discussion Regarding Lease With David L. Wrubel, CPA, PA. **5)** Discussion Regarding Lease With Leonardo Salon, Inc. **6)** Discussion Regarding Lease With Massage Partners, Inc. (A/K/A Jon Krutchik). **7)** Discussion On The Possibility Of Expanding The Ameresco Lighting Project To Include All Garages For Reducing The Energy Of The Lights. **8)** Discussion Regarding Visitor Parking Stickers Available For Residential Areas. **9)** Discussion Of A Land Exchange And Development Agreement Among Miami-Dade County, The City Of Miami Beach, And South Beach Heights II; Involving The Properties At 615 Collins Avenue (P.E.T. Center), 710 Alton Road (Miami Beach Health Center) And 745 Alton Road. **10)** Request For Approval To Issue A Request For Proposals (RFP) To Provide Parking Cashiers/Attendants And Supervisors, For The City's Parking Garages: A) Criteria For Evaluations; B) Add A Labor Peace Clause. **11)** Discussion Pertaining To The Request For Proposals (RFP) No. 24-09/10, For Management And/Or Development Of The Byron Carlyle Theater Complex. (Page 77)

C6C Report Of The Neighborhoods/Community Affairs Committee Meeting On June 29, 2010: **1)** Update Regarding The Status Of Efforts Made By The Administration To Encourage FDOT To Re-stripe The Lanes In The Mid-Beach Area Along Alton Road. **2)** Follow-up Discussion Regarding Street Conditions On 6th Street Near Las Olas Café. **3)** Update Regarding Pedestrian Safety For Residents In South Of Fifth Neighborhoods. **4)** Discussion Regarding A Bottle And Can Deposit Ordinance For The City Of Miami Beach. **5)** Discussion Regarding The Placement Of A Plaque On The Boardwalk In Honor Of Norman Ciment. **6)** Review And Discuss An Amendment To The Code Of The City Of Miami Beach, Florida, Amending Chapter 2, Article VIII, Division 3 Entitled "Lobbyists." **7)** Discussion Concerning Ways To Incentivize Multi-Unit Dwellings (i.e., Apartments And Condo Buildings) To Recycle More. (Page 85)

C6 - Commission Committee Reports (Continued)

C6D Report Of The Land Use And Development Committee Meeting On July 26, 2010: **1)** Discussion Regarding A Proposed Ordinance To Require Construction Staging Plans. **2)** Discussion On The Blighted Condition Of The 300 Block Of Ocean Drive. **3)** Proposal For A Municipal Fine Ordinance For Loading Activities On Ocean Drive. **4A)** An Ordinance Amending The City's Land Development Regulations, By Amending Chapter 142, "Zoning Districts And Regulations," Article II, "District Regulations," By Creating A New Division 20, "TC North Beach Town Center Districts," Creating New Zoning Districts TC-1, Town Center Core; TC-2, Town Center Mixed Use; And TC-3, Town Center Residential Office; Providing For Purpose And Intent, Definitions, Main Permitted, Conditional, Accessory And Prohibited Uses, Development Regulations, Design Review Standards, And Parking Regulations; Amending Chapter 130, "Off-Street Parking", Article II, "Districts; Requirements," Section 130-31, "Parking Districts Established," Amending The Boundaries Of Parking District 4; Amending Article III, Section 130-68, "Commercial And Noncommercial Parking Garages," Adopting New Regulations In TC-3 And GU For Commercial And Noncommercial Parking Garages; Amending Chapter 138, "Signs," Article V, "Sign Regulations By Districts", Section 138-172, "Schedule Of Sign Regulations For Principal Use Signs"; Creating A New Section 138-174, "North Beach Town Center Signage"; Amending Chapter 142, Division 4, "Alcoholic Beverages", Sections 142-1301 And 142-1302 To Include TC Districts; Providing For Codification; Repealer; Severability; And An Effective Date. **4B)** An Ordinance Amending The Official Zoning District Map, Referenced In Section 142-72 Of The City Code, By Changing The Zoning District Classifications For The North Beach Town Center From CD-3, "Commercial, High Intensity" To TC-1, "Town Center Core"; From CD-2, "Commercial, Medium Intensity" To TC-2, "Town Center Mixed Use"; And From RM-1, "Residential Multifamily, Low Intensity" To TC-3, "Town Center Residential Office" And TC-3(C) "Town Center Conditional Neighborhood Commercial"; And Amending The Affected Portion Of The City's Official Zoning District Map To Correspond With These Changes; Providing For Repealer; Severability; And An Effective Date. **4C)** An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Part II: Goals, Objectives And Policies Of The City Of Miami Beach Comprehensive Plan, Policy 1.2 Of Objective 1: Land Development Regulations Of The Future Land Use Element, By Adding New Categories "Town Center Core" (TC-1); "Town Center Mixed Use" (TC-2); And "Town Center Residential Office" (TC-3); And Accompanying Standards For Land Development Regulations And Directing Transmittal Of This Ordinance And All Applicable Documents To Affected Agencies; Providing For Repealer; Severability; Inclusion In The Comprehensive Plan And An Effective Date. **4D)** An Ordinance Amending The Future Land Use Map Of The City's Comprehensive Plan For The North Beach Town Center From CD-3, "Commercial, High Intensity" To TC-1, "Town Center Core"; From CD-2, "Commercial, Medium Intensity" To TC-2, "Town Center Mixed Use"; And From RM-1, "Residential Multifamily, Low Intensity" To TC-3, "Town Center Residential Office"; Directing Transmittal Of This Ordinance And All Applicable Documents To Affected Agencies; Providing For Repealer, Severability, And An Effective Date. **5)** Discussion And Review Of The Current CMB Ordinance Regarding Signage Size And Neon Signage In Regards To Lincoln Road And Washington Avenue Signage District. **6)** Discussion Regarding The Placement Of Water Sub-Meters. **7)** Discussion On Cell Phone Prohibition. **8)** A Request For A Possible Amendment To The City's Land Development Regulations Amending The CPS-2 District At The Property Bounded By Alton, 5th Street, Lennox And 6th Street And To Amend By Removing The Prohibition Of Car Washing To Allow For Low Impact Car Washing And Auto Detailing Within A Parking Structure. **9)** Discussion Of A Religious Overlay District On 40th Street (Chase Ave To Pinetree Drive); And Referral To The Planning Board For A Consideration As An Amendment To The City Code. (Page 93)

C7 - Resolutions

C7A A Resolution Retroactively Approving And Authorizing The City Manager Or His Designee To Submit Grant Applications To: 1) US Environmental Protection Agency (EPA), Climate Showcase Communities Program For Funding In The Amount Of $500,000 For The City's Water Reclamation Plant Project; 2) National Endowment The Arts For Funding In The Amount Of $100,000 For Sleepless Night 2011; 3) The Children's Trust For Funding In The Amount Of $100,000 For Success University; And 4) Florida Division Of Emergency Management For Homeland Security Grant Program Funding In The Amount Of $9,000 For Emergency Management Training. (Page 101)
(Budget & Performance Improvement)

C7B A Resolution Approving And Authorizing The Mayor And City Clerk To Execute Underground Duct Bank Installation Agreement With The Florida Power And Light Company And Record An Easement To Florida Power And Light Company At Collins Park For The Installation And Maintenance Of Conduit, Underground Duct Bank And A Transformer That Will Serve The Park. (Page 109)
(Capital Improvement Projects)

C7C A Resolution Authorizing Additional Funding In The Amount Of $335,000 For Construction Contingency For Sanitary Sewer Mains Improvements Along Indian Creek Drive Between 26th And 41st Streets Construction Project; Funding For This Has Been Previously Appropriated From The Water And Sewer Gulf Breeze Fund 423. (Page 125)
(Capital Improvement Projects)

C7D A Resolution Authorizing The Mayor And City Clerk To Execute An Amendment To The Construction Services Agreement Between The City Of Miami Beach And M. Vila & Associates, Inc. (MVA), Dated June 3, 2009, For The Construction Of The Historic City Of Miami Beach Right Of Way Infrastructure Improvements Project, Neighborhood No. 9A, City Center; In The Negotiated Not To Exceed Amount Of $874,193.54, To Provide Construction Services For Right Of Way And Infrastructure Improvements Surrounding The New World Symphony Campus (NWS), Pennsylvania Avenue Garage, And Lincoln Park Projects Located Within The Adjacent City Center Commercial District Bid Package 9b Project Area; And Further Authorizing $87,419.35 As A Project Construction Contingency; With Funding Available From The Previously Appropriated Funds In The City Center Bid Package 9B RDA Construction Fund 365. (Page 133)
(Capital Improvement Projects)

C7 - Resolutions (Continued)

C7E Reappointment Of Chief Special Master (Page 139)

1. A Resolution Accepting The Recommendation Of The City Manager, Pursuant To Section 30-36 Of The Code Of The City Of Miami Beach, Concerning The Re-Appointment Of Abraham Laeser, Esquire, To Serve As Chief Special Master, For A Term Commencing On September 15, 2010, And Ending On March 14, 2011; Provided Further That Chief Special Master Laeser Shall Be Authorized To Hold Hearings And Impose Fines, Liens And Other Non-Criminal Penalties Against Violators Of The City And County Codes And Ordinances, And Shall Also Be Authorized To Appoint Such Other Special Masters As May Reasonably Be Required To Conduct The Subject Hearings; And Further Incorporating All Other Matters Set Forth Within Chapter 30 Of The City Code, Including, Without Limitation, Sections 30-37 And 30-38 Thereof, Concerning The Compensation.

2. A Resolution Approving And Re-Appointing, Pursuant To Section 102-356 Of The City Code, Abraham Laeser Esquire, (Chief Special Master Re-Appointed Pursuant To Resolution No. _____, As The City Manager's "Designee" Under Section 102-356 Of The City Code; Said Designation Commencing With Mr. Laeser's Term As Chief Special Master On September 15, 2010, And Ending On March 14, 2011.

(City Clerk's Office)
(Deferred from July 14, 2010)

C7F A Resolution Re-Appointing Mr. Warren Bittner, Esq. To Serve As Special Master For Appeals Of Decisions Of The City's Historic Preservation Board Until September 16, 2013, And Setting The Compensation At $100.00 Per Hour With A Maximum Payment Of $500.00 Per Case. (Page 149)

(City Clerk's Office)

C7G Proposed Amendments To The People's Transportation Plans (Page 153)

1. A Resolution Expressing Support For The Cities Of Miami Gardens, Doral, And Cutler Bay, And Urging Miami-Dade County Board Of County Commissioners To Provide These Three Cities With Their Rightful Share Of People's Transportation Plan Surtax Funding From The County's 80% Share Of The Surtax, As Originally Negotiated In Good Faith And Agreed To By Miami-Dade County In 2002, And As Currently Required By Miami-Dade County Ordinance 02-116.

2. A Resolution Urging The Miami-Dade County Board Of County Commissioners To Reject The County Manager's Proposal To Provide The Peoples Transportation Plan Surtax Funds To Cities Incorporated After 2002 From The Growth Of The Existing Cities' 20% Share, Also Known As The "Hold-Harmless Option," And Urging The Miami-Dade County Board Of County Commissioners To Direct The County Administration To Prepare A Plan To Fund The Newly Incorporated Cities From The County's 80% Share, As Agreed To In Miami-Dade County Ordinance No. 02-116.

3. A Resolution Initiating Conflict Resolution Procedures Provided By Section 164.1052 Of The Florida Statutes Prior To Initiating Litigation Against Miami-Dade County With Regard To Miami-Dade County's Adoption On First Reading, Of An Ordinance Implementing The "Hold-Harmless Option" To Provide Cities Incorporated After 2002 With Their Share Of The People's Transportation Plan Surtax Revenues From The Pre-Existing Cities' 20% Share Of The Surtax.

(Economic Development)

C7 - Resolutions (Continued)

C7H A Resolution Authorizing The Mayor And City Clerk To Renew The City Of Miami Beach's Current Consulting Agreement With Gallagher Benefit Services, Providing Consulting Services In Determining The City's Employee Benefit Program On A Month To Month Basis For A Period Not To Exceed Six (6) Months Beginning October 1, 2010 And Ending March 31, 2011. (Page 187)
(Human Resources)

C7I A Resolution Approving A Professional Services Agreement (PSA) With First Class Parking, LLC; Pursuant To Request For Proposals (RFP) No. 40-07/08, For The Management And Operation Of Valet Parking Services At The Miami Beach Convention Center, The Fillmore Miami Beach At The Jackie Gleason Theater, And Other City Property As May Be Required; And Authorizing The Mayor And City Clerk To Execute A Professional Services Agreement (PSA). (Page 193)
(Parking Department)

C7J A Resolution Authorizing The Mayor And City Clerk To Execute The Attached Memorandum Of Agreement (MOA) With The Florida Department Of Transportation (FDOT) For The Turf And Landscape Maintenance Services On I-395 (MacArthur Causeway), From The East Side Of Watson Island To The West Side Of The East Channel Bridge, At An Annual Cost Of $150,000 To Be Paid To The City By FDOT; Said Agreement Commencing On November 1, 2010, And Concluding On October 31, 2011, With An Option To Renew For Two Additional Years, On A Year-To-Year Basis. (Page 225)
(Parks & Recreation)

C7K A Resolution Setting A Public Hearing Pursuant To Miami Beach City Code Section 118-262 To Review A Design Review Board Decision, Filed By The EuroAmerican Group, For The Property Located At 31 Venetian Way (DRB File No. 22347). (Page 241)
(Planning Department)

C7L Amend FLUM And Zoning District Map - 1600 Lenox Avenue (Page 245)

1. A Resolution Setting A Public Hearing To Consider Amending The Future Land Use Map Of The Comprehensive Plan By Changing The Future Land Use Category For The Parcel Known As "1600 Lenox Avenue," More Particularly Described In The Legal Description Below, From The Current RM-1, "Multi-Family, Low Intensity," To The Future Land Use Category Of CD-1, "Commercial, Low Intensity;" With A Restriction Limiting The Property To No More Than 10 Residential Units Per Acre As Provided For In The Voluntary Covenant.

2. A Resolution Setting A Public Hearing To Consider Amending The Official Zoning District Map, Referenced In Section 142-72 Of The Code Of The City Of Miami Beach, Florida, By Changing The Zoning District Classification For The For The Parcel Known As "1600 Lenox Avenue," More Particularly Described In The Legal Description Below, From The Current Zoning Classification RM-1, "Residential Multifamily Low Intensity," To The Proposed Zoning Classification CD-1, "Commercial, Low Intensity," With A Restriction Limiting The Property To Commercial Uses And No More Than 10 Residential Units Per Acre As Provided For In The Voluntary Covenant.

(Planning Department)

C7 - Resolutions (Continued)

C7M A Resolution Accepting The Donation Of $12,500 From Crescent Heights, Inc. A Real Estate And Management Corporation, To Purchase A Specially Trained Dog To Be Utilized By The Miami Beach Police Department's Patrol Division Canine Squad, For The Dual Purpose Of Explosive Device Detection, Tracking And Apprehension Of Subjects Involved In Criminal Activity. (Page 257)
(Police Department)

C7N A Resolution Authorizing The City Manager And City Clerk To Execute An Agreement Between The City Of Miami Beach, On Behalf Of The Miami Beach Police Department, And The Internal Revenue Service (IRS) Criminal Investigation Division To Participate In The IRS Financial Investigative Strike Force High Intensity Drug Trafficking Area (HIDTA) Group 5 Task Force For The Purpose Of Apprehending And Prosecuting Individuals Who Are Involved In Narcotics Trafficking, Money Laundering And Other Major Crimes. (Page 261)
(Police Department)

C7O A Resolution Authorizing The City Manager, And The City Clerk To Execute The Regional Law Enforcement Exchange Memorandum Of Understanding Between The City Of Miami Beach, On Behalf Of The Miami Beach Police Department, And The Florida Department Of Law Enforcement, Which Shall Allow The Miami Beach Police Department To Access, And Share Various Criminal Justice Information That Is Contained In The Law Enforcement Records Of Participating Florida Law Enforcement Agencies Throughout The State Of Florida. (Page 265)
(Police Department)

C7P A Resolution Adopting And Appropriating The Second Amendment To The Police Confiscation Trust Fund Budget For Fiscal Year 2009/10 In The Amount Of $4,618 To Be Funded From The Proceeds Of State Confiscated Funds. (Page 279)
(Police Department)

C7Q A Resolution Authorizing The City Manager And City Clerk To Execute A Memorandum Of Understanding Between The City Of Miami Beach, On Behalf Of The Miami Beach Police Department, And The United States Marshals Service, Which Serves To Extend The Participation Of The Miami Beach Police Department For The Purpose Of Locating And Apprehending Fugitives In An Effort To Reduce Violent Crime. (Page 285)
(Police Department)

C7R A Resolution Ratifying Amendment No. 4 To The NSP1 Agreement Between The City And Miami Beach Community Development Corporation (MBCDC), Approving A One Time Only Transfer In The Ownership Of The Property Located At 530 75th Street, Miami Beach, Florida, From MBCDC To MBCDC: Lottie Apartments, LLC, A Limited Liability Corporation Whose Sole Member And Agent Is MBCDC. (Page 293)
(Real Estate, Housing & Community Development)

C7 - Resolutions (Continued)

C7S A Resolution Accepting The Recommendation Of The City Manager, Pursuant To Request For Proposals (RFP) No. 34-09/10, To Award A Concession Agreement For The Management And Operation Of A Concession Facility Within The Structure Commonly Referred To As The "Pavilion Building," Located In South Pointe Park; And Authorizing The Administration To Enter Into Negotiations With Blissberry, LLC; And Further Authorizing The Mayor And City Clerk To Execute An Agreement, Upon Conclusion Of Successful Negotiations. (Page 299)
(Real Estate, Housing & Community Development)

End of Consent Agenda

PA

1

Presentations and Awards

PA1 Proclamation To Be Presented To Project Medishare, For Their Dedication And Assistance To The People Of Haiti And Continued Support Of The Earthquake Relief Efforts, And Present Them With A Check For Donations Collected From "Rock For Haiti" Benefit Concert.
(Requested by Commissioner Edward L. Tobin)
(Deferred from July 14, 2010)

PA2 Proclamations To Be Presented To Hilda Fernandez, Emanuel Mayer, And Caroline Defreze, For Their Role In Helping Organize The "Rock For Haiti" Benefit Concert.
(Requested by Commissioner Edward L. Tobin)
(Deferred from July 14, 2010)

PA3 Proclamations To Be Presented To All Participants And Volunteers In The Rock For Haiti Concert.
(Requested by Commissioner Edward L. Tobin)
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PA4 Certificates Of Completion To Be Presented To The City Of Miami Beach Neighborhood Leadership Academy Graduates Spring 2010 Class.
(City Manager's Office)
(Deferred from July 14, 2010)

PA5 Proclamation To Be Presented To Lieutenant George Lerra For His Years Of Service To The City Of Miami Beach As An Employee Of The Police Department And As A Longtime Resident.
(Requested by Vice-Mayor Jorge Exposito)

PA6 Presentation Of The Keep America Beautiful Award Of $5,000 To Be Presented By Waste Management To The City Of Miami Beach To Be Used To Support The City's Coastal Clean-Up Efforts On International Coastal Clean-Up Day, Saturday, September 25, 2010.
(Public Works)

PA7 Certificate Of Appreciation To Be Presented To The Rebecca Towers Artistic Group
(Requested By Commissioner Michael Góngora)

PA8 Proclamation To Be Presented To The Alzheimer's Association, For Their Dedication And Assistance To The Citizens Of Miami Beach.
(Requested by Mayor Matti Herrera Bower)

AGENDA ITEM: PA1-11
DATE: 9/15/10

Presentations and Awards (Continued)

PA9 Proclamation To Be Presented To Grace Leitner For Her Many Years Of Service And Contributions In The Area Of Education.
(Requested by Commissioner Jonah Wolfson)

PA10 Proclamation To The Presented To The City Of Miami Beach Firefighters For Their Outstanding Dedication And Continued Support To The Muscular Dystrophy Association And "Jerry's Kids."
(Requested by Mayor Matti Herrera Bower)

PA11 Proclamation To Be Presented In Honor Of Eunice Kennedy Shriver Day.
(Requested by Commissioner Jerry Libbin)

C2

Condensed Title:

Request For Approval To Award A Contract To Communications International, Inc., Pursuant To Invitation To Bid (ITB) No. 44-09/10 For Reconfiguration Of The 800 MHz Public Safety Communications System

Key Intended Outcome Supported:

N/A

Issue:

Shall the City Commission Approve the Award of a Contract?

Item Summary/Recommendation:

On August 6, 2004, the FCC issued Report and Order FCC 04-168 that modified its rules governing the 800 MHz band to minimize harmful interference to public safety communications systems. On December 22, 2004, the FCC issued a Supplemental Order and Order on Reconsideration FCC 04-294.

As a result of the FCC's order, the City must reconfigure its 800 MHz Motorola SmartZone4.1 Public Safety Radio System to operate on certain replacement frequencies. Pursuant to the FCC's order, Sprint Nextel Corporation must provide the minimum funds necessary to provide the City of Miami Beach reconfigured facilities that are comparable to those presently in use.

Invitation to Bid (ITB) No. 44-09/10 for the Reconfiguration of the 800 MHz Public Safety Communications System was issued on July 1, 2010, and the Procurement Division e-mailed as well as uploaded the Bid to BidSync and Bidnet, sending notification to over 60 firms. A non-mandatory pre-bid meeting to provide information and respond to questions from prospective bidders was held on July 20, 2010. Additionally, a site visit was held on July 30, 2010. On the due date of August 10, 2010, two (2) bid responses were received from Communications International, Inc; and Televate, LLC.

The Bid requested that a detailed list of all costs and a proposed project timeline be provided to be used by the City in basing its decision to award. These documents are attached to the Commission Memo.

The lowest and best bid was received from Communications International, Inc. This vendor has been in business for 31 years as a communications and service business provider.

Approve the Award of a Contract

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
	1			
	2			
	3			
OBPI	Total	$		

Financial Impact Summary: No City funds will be expended. Sprint Nextel will provide funding.

City Clerk's Office Legislative Tracking:

Gus Lopez, Procurement Director, ext 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
GA	PDW	JMG

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MIAMIBEACH

AGENDA ITEM C2A

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REQUEST FOR APPROVAL TO AWARD A CONTRACT TO COMMUNICATIONS INTERNATIONAL, INC., PURSUANT TO INVITATION TO BID (ITB) NO. 44-09/10 FOR RECONFIGURATION OF THE 800 MHZ PUBLIC SAFETY COMMUNICATIONS SYSTEM.**

ADMINISTRATION RECOMMENDATION

Approve the award of a contract.

FUNDING

No City funds will be expended. Sprint Nextel will be responsible for payment to Contractor.

BACKGROUND AND ANALYSIS

On August 6, 2004, the FCC issued Report and Order FCC 04-168 that modified its rules governing the 800 MHz band to minimize harmful interference to public safety communications systems. On December 22, 2004, the FCC issued a Supplemental Order and Order on Reconsideration FCC 04-294.

Pursuant to the orders, certain licensees of 800 MHz channels used in public safety or other systems must relinquish their existing channels and relocate their systems to other licensed channels. Also pursuant to the orders, Nextel must relinquish some of its existing channels and must provide and pay relocation funds ("Relocation Funds") to enable affected licensees to relocate their systems onto Replacement Channels and reconfigure their systems so that they are "Comparable Facilities". The table below shows the three, out of ten, channels that will be affected by this mandate.

City Of Miami Beach Frequencies			Function	
Channel	Current	New	Primary	Alternate
1	860.9125	See IT Dept	Voice	Control
2	860.7875	See IT Dept	Voice	Control
8	851.6375	See IT Dept	Voice	None

As a result of the FCC's order, the City of Miami Beach must reconfigure its 800 MHz Motorola SmartZone4.1 Public Safety Radio System ("System") to operate on certain replacement frequencies. Pursuant to the FCC's order, Sprint Nextel Corporation ("Sprint Nextel") must provide the minimum funds necessary to provide the City of Miami Beach reconfigured facilities that are comparable to those presently in use.

The FCC has ordered the reconfiguration of the 800 MHz band to minimize increasing levels of interference to critical public safety communications systems from commercial wireless carriers. The FCC has appointed a Transition Administrator ("TA") to assure that the rebanding initiative proceeds on schedule and in a planned and coordinated manner so that disruption to a licensee's system is minimized. The TA has been authorized by the FCC to facilitate an orderly transition to the new 800 MHz band plan. The TA will oversee the administration and financial aspects of the band reconfiguration process, as well as ensure that reconfiguration is achieved with minimal disruption to licensees, particularly public safety entities.

The TA has developed a reconfiguration handbook that can be accessed at www.800TA.org. In the TA's published "Reconfiguration Handbook," the two major phases to accomplish the reconfiguration are described as the "Reconfiguration Planning Phase" and the "Reconfiguration Implementation Phase". Motorola has provided the Reconfiguration Planning Phase services, and the City is now ready to proceed with the Reconfiguration Implementation Phase. Although Motorola was initially engaged to perform both phases of the project, Motorola withdrew their Reconfiguration Implementation Phase Agreement after the City reviewed it and identified issues that needed remediation.

ITB PROCESS

Although the City will not be expending funds for this project, and Sprint Nextel will be responsible for payment to the Contractor, the City issued an Invitation to Bid as the Contactor will be performing work required to modify the City's Public Safety System.

Invitation to Bid (ITB) No. 44-09/10 for the Reconfiguration of the 800 MHz Public Safety Communications System was issued on July 1, 2010, and the Procurement Division e-mailed as well as uploaded the Bid to BidSync and Bidnet, sending notification to over 60 firms. A non-mandatory pre-bid meeting to provide information and respond to questions from prospective bidders was held on July 20, 2010. Additionally, a site visit was held on July 30, 2010. On the due date of August 10, 2010, two (2) bid responses were received from Communications International, Inc; and Televate, LLC.

The purpose of the Bid is to establish a contract, by means of sealed bids, with a qualified provider to perform reconfiguration services to modify the City's Public Safety Radio System in order to comply with the Federal Communications Commission's (FCC's) Rebanding Report and Order.

The Bid requested that a detailed list of all costs and a proposed project timeline be provided to be used by the City in basing its decision to award. Exhibit 1 shows cost summaries provided by the two bidders. Exhibit 2 shows the proposed timeline provided by both bidders.

The lowest and best bid was received from Communications International, Inc. This vendor has been in business for 31 years as a communications and service business provider.

CONCLUSION

Based on the analysis of the bids received, the Administration recommends that the City award a contract to Communication International, Inc. pursuant to ITB No. 44-09/10.

BID TABULATION

Exhibit 1
Communications International, Inc Cost Summary (excerpt from page 2 of 2)

Total Billing Lines - for Rebanding Activities

Item	Qty	Model	Description		Sale
13000	1		III: Engineering & Verification/Testing Price is for Engineering & Verification Activities Benchmark Testing - 24 hours @ $82.50 = $1,980.00 Functional Testing - 16 hours @ $82.50 = $1,320.00 Acceptance Testing - 24 hours @ $82.50 = $1,980.00 Testing Project Management - 20 hours @ $100 per hour = $2,000.00 Testing System Engineer - 24 hours @ $120 per hour = $2,880.00	$ 10,160.00	$ 10,160.00
14000	1		Va: Professional Services - PM Price is for Project/Site Management Activities Activity Launch (project coordination & mobilization) - 24 hours $ $100 per hour = $2,400.00 Infrastructure retuning activities - 114 hours @ $100 per hour = $11,400.00 Final Reports - 40 hours @ $100 per hour = $4,000.00	$ 17,800.00	$ 17,800.00
15000	1		Vb: Professional Services - SE Price is for System Engineer Activities Activity Launch - 16 @ $120 per hour = $1,920.00 hours $ $100 per hour = $2,400.00 Infrastructure retuning activities - 76 hours @ $120 per hour = $9,120.00 Final Reports - 48 hours @ $120 per hour = $5,760.00	$ 16,800.00	$ 16,800.00
16000	1		Vc: Travel Costs - PM & SE Travel Travel costs are for Project Manager & System Engineer for meetings and project support and oversite - PM=7 @ $1763 each = $12,341.00, SE=6 @ $2,001 each = $12,006.00	$ 24,347.00	$ 24,347.00
01700	1		Vd: Contingency Project Management Price is for contingency hours for Project Management Project Management - 80 hours @ $100 per hour = $8,000.00	$ 8,000.00	$ 8,000.00

Purchase Order To:	COMMUNICATIONS INTL, INC. 4450 US Highway 1 Vero Beach, FL 32967 Fax: 772-567-2292	Sub Total	$ 336,001.00
		Sales Tax	0.00%
		TOTAL	$ 336,001.00
		Deposit	$ -
		Balance Due	$ 336,001.00
Presented by:	Aaron Gunter		
Title	Project Manager/Estimator		
Prices in effect for:	30 Days		
Accepted By:			

Televate, LLC Cost Summary

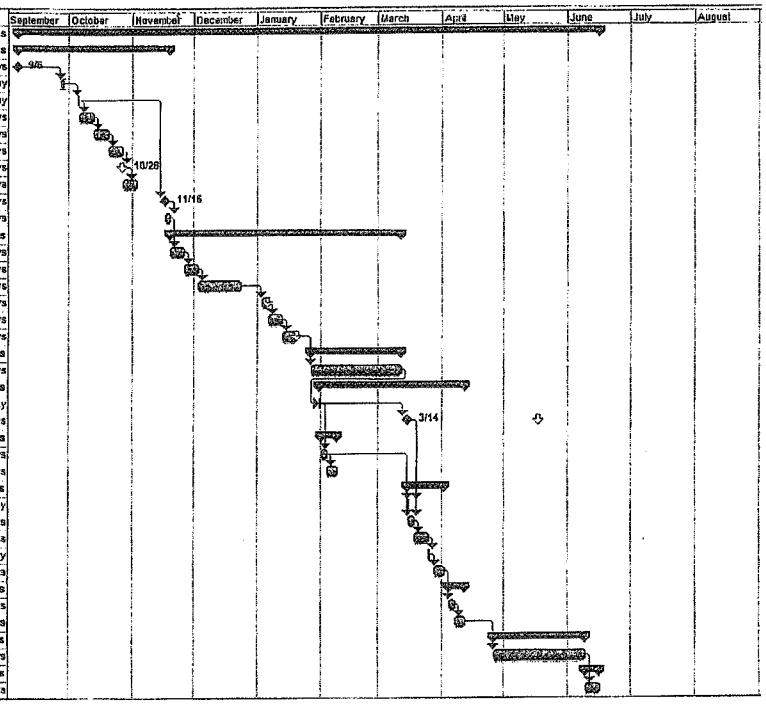
Category	Cost	M1 hrs	M2 hrs	M3 hrs	M4 hrs	M5 hrs	M6 hrs	M7 hrs	M8 hrs	M9 hrs	M10 hrs
Subscriber Reconfiguration	$282,643.20			445.75	445.75	445.75	222.87	222.87		222.87	222.87
Infrastructure Reconfiguration	$29,232.00						208.00				
Testing	13,042.00						27.00		27.00		
Project Management including travel	$66,010.00	15	15	15	15	15	20	15	10	15	15
Total Project Cost/hrs	$390,927.20	15	15	460.75	460.75	460.75	477.87	237.87	37.00	237.87	237.87

Exhibit 2
Communications International, Inc Proposed Timeline

ID		Task Name	Duration	Start	Finish	Predecessors
1		City of Miami Beach Rebanding	1 day?	Mon 8/9/10	Mon 8/9/10	
2		Project Award & Kick-off	1 day?	Mon 8/23/10	Mon 8/23/10	
3		**Execution**	**97 days?**	**Mon 8/30/10**	**Tue 1/11/11**	
4		Mobilization - Payment Milestone 25%	5 days	Mon 8/30/10	Fri 9/3/10	2
5		Template Build	5 days	Mon 9/6/10	Fri 9/10/10	4
6		Reconfiguration Subscriber Equipment (1st Touch)	30 days	Mon 9/6/10	Fri 10/15/10	4
7		Mobile Radios	5 days	Mon 9/6/10	Fri 9/10/10	4
8		Completion of 1st Touch - Payment Milestone 25%	1 day?	Mon 10/18/10	Mon 10/18/10	6,7
9		Acquire Material for Infrastructure Retune	5 days?	Mon 9/13/10	Fri 9/17/10	4
10		Infrastructure Retune	5 days	Mon 9/20/10	Fri 9/24/10	9
11		Completion of Infrastructure Retune - Payment Milestone 15%	1 day?	Mon 9/27/10	Mon 9/27/10	10
12		Remove Frequencies (2nd Touch)	30 days	Tue 9/28/10	Mon 11/8/10	11
13		Engineering & Verification Testing	10 days	Tue 11/9/10	Mon 11/22/10	12
14		Completion of 2nd Touch and Testing - Payment Milestone 25%	30 days	Tue 11/23/10	Mon 1/3/11	13
15		Final documentation and Projec closeout	5 days	Tue 1/4/11	Mon 1/10/11	14
16		Closeout Invoicing - Payment Milestone 90%	1 day?	Tue 1/11/11	Tue 1/11/11	15

Televate, LLC Proposed Timeline

ID		Task Name	Duration
1		City of Miami Beach Rebanding Program	203 days
2		Project Kickoff and Project Setup	64 days
3		Vendo contracts signature and execution	0 days
4		Project kick off meeting	1 day
5		Order repalcementsubscriber equiment and flashes	1 day
6		Conduct meetings with key agencies	5 days
7		Determine key locations for subscriber reconfiguration	5 days
8		Develop and distribute Agency Schedules	5 days
9		Agency commitment to subscriber schedule	0 days
10		Organize resources to start subscriber work	5 days
11		Replacemant equipment and flashes delivered	0 days
12		Inventory new equipment and flashes	2 days
13		Subscriber Reconfiguration 1st touch	81 days
14		Subscriber asset and Template inventory	5 days
15		Review existing tamplates	5 days
16		Develop template proposals and review with City	15 days
17		Template approvals and signature by City	3 days
18		Code Plug Development	5 days
19		Code Plug Testing and approvals	5 days
20		Agency subscriber reconfiguration	32 days
21		Subscriber reconfiguration (50 per day)	32 days
22		Infrastructure Rreconfiguration	51 days
23		Request Frequency Clearance from Sprint Nextel	1 day
24		Sprint Nextel clears frequencies	0 days
25		Pre-rebanding drive test	6 days
26		Conduct baseline drive test in the City	3 days
27		Process test data and submit report	3 days
28		Infrastructure Retune	14 days
29		Conduct Baseline equipment testing	1 day
30		Reband Zone and Site Controlers	3 days
31		Retune site equipment	5 days
32		Conduct Post-rebanding baseline test	1 day
33		Conduct functional acceptance tests	5 days
34		Post-rebanding drive test	6 days
35		Conduct post-retune drive test in the City	3 days
36		Process test data and submit report	3 days
37		Subscriber Reconfiguration 2nd touch	32 days
38		Subscriber reconfiguration (50 per day)	32 days
39		Project close out and system acceptance	6 days
40		Submit all project documents and system acceptance	5 days



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Condensed Title:

Request For Approval for a Change Order to the City's Contract with SSE & Associates, Inc. Pursuant To Invitation To Bid No. 14-09/10, For The Miami Beach Convention Center Airwall Repairs, Replacement, And Recovering In The Amount Of $100,945.00.

Key Intended Outcome Supported:

Ensure well-maintained facilities and improve the convention center facility

Supporting Data (Surveys, Environmental Scan, etc.):. The 2009 Community Satisfaction Survey reported more than two-thirds of residential respondents, 69.2%, suggested the tourism industry in Miami Beach contributes "about the right amount" to the quality of life for residents. Additionally, resident respondents said they attended events at the Miami Beach Convention Center on average 2.70 times per year.

Issue:

Shall the City Commission Approve the Change Order?

Item Summary/Recommendation:

On January 5, 2010, Invitation to Bid (the "ITB") No. 14-09/10, was issued, a Pre-Bid Conference was held on January 12, 2010, and a site inspection was conducted on January 14, 2010. Three (3) Addenda were issued, thus extending the bid opening due date from January 21, to January 24, 2010. The purpose of this bid is to establish a contract, by means of sealed bids, with a qualified contractor for the Miami Beach convention Center airwall repairs, replacement and recovering as specified in the bid documents. Bidsync and Onvia issued bid notices to 741 and 260 prospective bidders respectively. Additionally, the Procurement Division supplemented this listing and sent the bid notification to three major manufacturers of airwalls. The notices resulted in the receipt of two (2) bids from the following companies: Hufcor Florida Group and SSE and Associates, Inc.

The City Commission unanimously awarded the bid to the SSE and Associates (SSE) at the March 10, 2010 meeting. The City finalized negotiations with SSE and executed an agreement on June 8, 2010. Since that time, SSE has completed 20% of the work and is scheduled to reach 100% completion by early fall of 2011. However, upon beginning the work Global Spectrum realized that they unintentionally left a portion of work out of the original scope of work. It was an oversight on their part, but is considered an important component that should be included in this project. This change order, if approved, will provide additional flexibility to the four (4) ballrooms on the east side of the Convention Center (Halls A and B) by dividing them each down the middle and maximize the total space of the rooms. If this work is not completed, these rooms, when divided, would have a hallway down the middle that would be unsellable space. It is critical that the Convention Center has the capability to divide these rooms in half. Additionally, Global Spectrum has several pieces of booked business throughout the course of any given year that requires this functionality.
APPROVE THE AWARD OF CONTRACT.

Advisory Board Recommendation:

The CCAB recommended in favor of refurbishing the airwalls at their February 2010 meeting.

Financial Information:

		Amount	Account	Approved
Source of Funds:	1	$100,945.00	Convention Center Capital Account No. 442-2234-069357	
	4			
OBPI	Total	$100,945.00		

Financial Impact Summary: The City's budget for this project is $2,075,000. The original cost of the contract was $1,243,542.59. The additional $100,945 brings the project total to $1,344,487.59. The total new costs still result in project savings of $730,512.41 over the budget, which will stay in the Convention Center Capital Account.

City Clerk's Office Legislative Tracking:

Gus Lopez Ext. 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
GL_____ MS_____	AH_____ PBW_____	JMG_____

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MIAMIBEACH

AGENDA ITEM C2B
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REQUEST FOR APPROVAL FOR A CHANGE ORDER TO THE CITY'S CONTRACT WITH SSE & ASSOCIATES, INC. PURSUANT TO INVITATION TO BID NO. 14-09/10, FOR THE MIAMI BEACH CONVENTION CENTER AIRWALL REPAIRS, REPLACEMENT, AND RE-COVERING IN THE AMOUNT OF $100,945.00.**

ADMINISTRATION RECOMMENDATION

Approve the Award of contract.

KEY INTENDED OUTCOME

Ensure well-maintained facilities.

FUNDING

$100,945.00 - Miami Beach Convention Center Capital Account No. 442-2234-069357.

The City's budget for repair and replacement of the airwalls at the Convention Center is $2,075,000. The original cost of the contract with SSE & Associates, Inc. to repair, refurbish and partial replacement of the airwall panels was $1,243,542.59. The additional $100,945 brings the project total to $1,344,487.59. Although this increases the project costs, the total new costs still result in project savings of $730,512.41 over the budget, which will stay in the Convention Center Capital Account.

BACKGROUND

On January 5, 2010, Invitation to Bid (the "ITB") No. 14-09/10, was issued. The purpose of the project is to repair, replace and recover the airwalls at the Miami Beach Convention Center. The scope of work includes, but is not limited to, the following: replace damaged panels and drop seals; replace all pass door panels, top seals and side astragals; and modify and replace track to include intersections and trolleys for the east side to allow first and second level ballrooms the ability to keep the panels from being moved to the wrong locations.

This project also includes a full partition replacement between the North and South Halls, with remaining tracks to be inspected, cleaned and lubricated, along with damaged soffits being replaced. Meeting ballroom panels will all be recovered and all the exhibit hall panels will be repainted with ceramic paint. All work is to be performed by Factory Certified Technicians, and new and refurbished panels and suspensions will be warranted.

A Pre-Bid Conference was held on January 12, 2010, and a site inspection was conducted on January 14, 2010. Three (3) Addenda were issued to provide additional information and to respond to all questions submitted by the prospective bidders, thus extending the bid opening due date from January 21, to January 24, 2010.

Bidsync and Onvia issued bid notices to 741 and 260 prospective bidders respectively. Additionally, the Procurement Division supplemented this listing and sent the bid notification to three major manufacturers of airwalls. The notices resulted in the receipt of two (2) bids from the following companies:

- Hufcor Florida Group
- SSE and Associates, Inc.

The ITB requested pricing for the repair and re-covering of the existing system and it had an alternate option for a complete replacement of the airwalls with a new system.

ANALYSIS

The City Commission unanimously awarded the bid to the SSE and Associates (SSE) at the March 10, 2010 meeting. The City finalized negotiations with SSE and executed an agreement on June 8, 2010. Since that time, SSE has completed 20% of the work and is scheduled to reach 100% completion by early fall of 2011.

However, upon beginning the work Global Spectrum realized that they unintentionally left a portion of work out of the original scope of work. It was an oversight on their part. This change order, if approved, will provide additional flexibility to the four (4) ballrooms on the east side of the Convention Center (Halls A and B) by dividing them each down the middle, allowing them to maximize the total space of the rooms. If this work is not completed, these rooms, when divided, would have a hallway down the middle that would be unsellable space. It is critical that the Convention Center has the capability to divide these rooms in half. Additionally, Global Spectrum has several pieces of booked business throughout the course of any given year that requires this functionality.

CONCLUSION

Based on the aforementioned, the Administration recommends that the Mayor and City Commission approve a change order to SSE and Associates, Inc. for the Miami Beach Convention Center Airwall repair and recovering pursuant to ITB No. 14-09/10 in the estimated annual amount of $100,945.00. This change order will result in a new total project cost of $1,344,487.59, which still represents a $730,512.41 savings on the budgeted project amount.

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Southeastern Surfaces & Equipment, Inc.

Florida State Certified MIWBE
Florida State Certified General Contractor – CGC 012423

Headquarters • Post Office Box 602 • New Smyrna Beach • Florida • Office (800) 644-8875 • Fax (386) 428-8767

QUOTATION

TO: Miami Beach Convention Center
Attn: Angelo Grande
From: Tracie Ward
Email: tward@sseteam.com

DATE: 5/18/2010

QUOTE #: 2008- 312

PROJECT: Miami Beach Convention Center Renovations

We are pleased to quote you as follows:

All materials and labor necessary to allow each of the East Side ballrooms to have the additional flexibility of dividing the main room down the middle as requested by Miami Beach Convention Center. This change order includes the electric switches, curve assemblies, large curve assemblies, pocket doors, expandable panels, X intersections, additional track and 6-wheel trolleys.

Total, delivered and installed. . . . . $ 100,945.00

569 Canal Street • New Smyrna Beach • Florida • 32168 • Voice (386) 428-8875 • Fax (386) 428-8767
1700 Park Lane South • Unit #7 • Jupiter • Florida • 33458 • Voice (561) 748-2056 • Fax (561) 748-2058
13136 Greenview Court • Hudson • Florida • 34669 • Voice (863) 255-5050 • Fax (386) 428-8767
1222 Circle Drive • Dandridge • Tennessee • 37725 • Voice (877) 234-7662 • Fax (865) 484-0360
2650 Boulder Creek Drive • Roswell • Georgia • 30075 • Voice (678) 358-9392 • Fax (678) 352-7706

Condensed Title:

Request For Approval To Award Contracts As Primary Vendors To Superior Landscaping For Section A, And Section D, To Valleycrest Landscape For Section B, And Lukes Sawgrass Landscape For Section C; As Secondary Vendors To Valleycrest Landscape for Section A, And D, To BTS Land Services Section B, To Neighborhood Maintenance, Inc. For Section C; Pursuant To Invitation To Bid (ITB) No. 35-09/10 For Landscape Maintenance Services For The Beachwalk, Boardwalk, Street-Ends And Spoil Areas Citywide, In The Estimated Annual Amount Of $119,154.

Key Intended Outcome Supported:

Maintain Miami Beach public areas & the rights of way citywide.

Supporting Data (Surveys, Environmental Scan, etc.):

83% of residents and 81% of businesses rated landscape maintenance in rights of way and public areas as excellent or good.

Issue:

Shall the City Commission Approve the Award of Contracts?

Item Summary/Recommendation:

The purpose of Invitation to Bid No. 35-09/10 (the "Bid") is to establish a contract(s), by means of sealed bids, to provide Landscape Maintenance Services for the Beachwalk, Boardwalk, Street-ends and Spoil Areas Citywide. The Bid was issued in order to determine if any potential savings could be realized for this contracted service.

On May 28, 2010, the Bid was issued with an opening date of June 29, 2010, and notices were sent to prospective bidders resulting in the receipt of eleven bids.

On August 25, 2010, the Technical Review Panel (the "Panel") convened to review the responsive bidder's qualifications, experience, capability, and performance evaluations.

Based on the evaluation of bids conducted by the Panel, the Administration recommends that the Mayor and City Commission accept the City Manager's recommendation to award contracts as primary vendors to Superior Landscaping for section A and section D; to Valleycrest Landscape for section B; to Lukes Sawgrass Landscape for section C; and as secondary vendors, to Valleycrest Landscape for Section A and D; to BTS Land Services Section B; to Neighborhood Maintenance, Inc. for section C; Pursuant to Invitation To Bid (ITB) No. 35-09/10, For Landscape Maintenance Services for the Beachwalk, Boardwalk, Street-Ends and Spoil Areas Citywide, in the estimated annual amount of $119,154.

This contract shall remain in effect for three (3) years from date of contract execution by the Mayor and City Clerk, and by mutual agreement for two (2) one (1) year renewal options.

It should be noted that the proposed award represents a yearly savings of $331,351 as compared to the budgeted costs for these services, which were based on the previous contract costs.

APPROVE THE AWARD OF CONTRACTS.

Financial Information:

		Amount	Account	Approved
Source of Funds:	1.	$45,644	168.1985.000342	
	2.	$73,510	011.0940.000312	
OBPI	Total	$119,154		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Gus Lopez, Ext: 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
GL_____ KS_____	HF_____ PDW_____	JMG_____

T:\AGENDA\2010\September 15\Consent\ITB 35-09-10 LANDSCAPE MAINTENANCE SERVICES-SUMMARY.doc

MIAMIBEACH

AGENDA ITEM C2C
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REQUEST FOR APPROVAL TO AWARD CONTRACTS AS PRIMARY VENDORS TO SUPERIOR LANDSCAPING & LAWN SERVICE, INC. FOR SECTION A (BEACHWALK), AND SECTION D (NORTH BEACH RECREATIONAL CORRIDOR); TO VALLEYCREST LANDSCAPE MAINTENANCE, INC. FOR SECTION B (BOARDWALK); TO LUKES SAWGRASS LANDSCAPE FOR SECTION C (SPOIL AREAS CITYWIDE); AND AS SECONDARY VENDORS TO VALLEYCREST LANDSCAPE MAINTENANCE, INC. FOR SECTION A, AND SECTION D; TO BTS LAND SERVICES CORP. FOR SECTION B; TO NEIGHBORHOOD MAINTENANCE, INC. FOR SECTION C; PURSUANT TO INVITATION TO BID (ITB) NO. 35-09/10 FOR LANDSCAPE MAINTENANCE SERVICES FOR THE BEACHWALK, BOARDWALK, STREET-ENDS AND SPOIL AREAS CITYWIDE, IN THE ESTIMATED ANNUAL AMOUNT OF $119,154.**

ADMINISTRATION RECOMMENDATION

Approve the Award of Contracts.

KEY INTENDED OUTCOMES SUPPORTED

Maintain Miami Beach public areas & rights of way citywide.

FUNDING

City Center RDA - 168.1985.000342	$45,644
Greenspace Management - 011.0940.000312	$73,510

ANALYSIS

The purpose of Invitation to Bid No. 35-09/10 (the "Bid") is to establish a contract(s), by means of sealed bids, to provide Landscaping Maintenance Services for the Beachwalk, Boardwalk, Street-ends and Spoil Areas Citywide. The ITB was issued in order to determine if any potential savings could be realized for this contracted service.

The work must include, but is not limited to, litter retrieval and waste disposal, mowing, edging, landscape maintenance, herbicide/insecticide/fertilizer application, turf management, irrigation system operation maintenance/repair and replacement of plants as required (hereinafter referred to as "full service visit").

This contract will remain in effect for three (3) years from the date of contract execution by the Mayor and City Clerk and, by mutual agreement, for two (2) one (1) year renewal options.

The locations of the work referenced in the above document are located throughout the City of Miami Beach, they include the following areas:

- **Section (A) The at-grade Beachwalk:** Located along the West edge of the Dune beginning at the North Boundary of Lummus Park at 14th Street and Ocean Drive; heading in a continuous line North to the South edge of the raised Boardwalk at 23rd Street and Collins Avenue; including all street-ends (Collins Ave. to the Beachwalk) and dune crossovers adjacent to the walking surface. **30 Services Annually.**

- **Section (B) The raised Boardwalk:** Located along the West edge of the dune and including the dune from the north edge of the at grade Beachwalk at 23rd Street and Collins Avenue; running in a continuous line north to the 46th street end of the raised boardwalk; including all street-ends (Collins Ave. to the Boardwalk) from 23rd to 43rd streets landscaping, ramps/entrances and dune crossovers. **30 Services Annually.**

- **Section (C) Spoil Areas:** The Spoil Areas included in the Beachwalk areas are located adjacent to 3 St. Park (3 St & Ocean Dr.), 4th St. street-end, Lummus Park (5 St- 15 St.). The Spoil Areas adjacent to the Boardwalk are located at 20 St. Parking Lot (2000 Collins Ave.); 35th St. Parking Lot (3500 Collins Ave.) including restroom facility; 46 St. Parking Lot (4600 Collins Ave.); 64 St Parking Lot (6400 Collins Ave.); 72 St. Band Shell (7200 Collins Ave.) and 7300-7600 Ocean Terrace. **12 Services Annually.**

- **Section (D) North Beach Recreational Corridor (NBRC):** The at-grade walk along the west edge of the dune beginning on the spoil at the 64th Street Parking Lot and extending northward to the termination at 79th Street. Contract Landscape Maintenance excludes the parking lot and adjacent green space known as Ocean Terrace between 73rd and 75th St. although the NBRC irrigation system located east of the coral rock wall between 73rd and 75th is included. Contract area Landscape Maintenance includes all green space on public lands west of the walk (excluding spoil at Band Shell Park) and to the sand fence east of the walk. Irrigation system maintenance extends east of the sand fence to the toe (bottom west side) of the dunes. There are no street-ends included in Section (D). **30 Services Annually.**

Provisions included in the language of the bid are as follows:

- Award of this contract may be made to the primary and secondary lowest and best bidders, as defined in General Conditions 1.38, whose bid will be most advantageous to the City of Miami Beach. Should the primary vendor fail to comply with the Terms and Conditions of this Contract, the City reserves the right to award to the secondary vendor, if it is deemed to be in the best interest of the City.

- Each group specified in this bid could be awarded on an individual basis, so each price quoted on the bid form must be capable of standing alone and not be dependant on award of entire contract.

BID PROCESS

On May 28, 2010, the Bid was issued with an opening date of June 29, 2010. A pre-bid conference to provide information to prospective bidders was held on June 10, 2010. BidSync and Bidnet issued bid notices and as a result, a total of 49 and 53 respectively, prospective bidders viewed the documentation; the result was the receipt of eleven bids from the following vendors:

1. SFM Services, Inc.
2. Superior Landscaping & Lawn Service, Inc.
3. Neighborhood Maintenance, Inc.
4. Elan Lawn Landscaping Services, Inc.
5. Everglades Environmental Care, Inc.
6. Neighborhood Maintenance Services
7. Lukes Sawgrass Landscape

8. Valleycrest Landscape Maintenance, Inc.
9. BCLS Landscaping Group, Inc.
10. BTS Land Services, Corp.
11. TipTop Enterprises, Inc.

The responsiveness test performed by the Procurement Division resulted in the following four (4) vendors being deemed non-responsive as they failed to meet the minimum requirements as set forth in the Bid:

1. Neighborhood Maintenance Services does not meet the following minimum requirements:
   - A person on staff with an advanced degree in horticulture, agronomy, or a related field on staff or as a Consultant or be recognized as a Florida Certified Landscape Contractor through the Florida Nurseryman and Growers Association.
   - An I. S. A. Certified Arborist on staff or as a Consultant.
2. Elan Lawn & Landscape does not meet the following minimum requirements:
   - A person on staff with an advanced degree in horticulture, agronomy, or a related field on staff or as a Consultant or be recognized as a Florida Certified Landscape Contractor through the Florida Nurseryman and Growers Association.
   - A Certified Pest Control Operator on staff or as a Consultant.
3. Tip Top Enterprises does not meet the following minimum requirement:
   - A person on staff with an advanced degree in horticulture, agronomy, or a related field on staff or as a Consultant or be recognized as a Florida Certified Landscape Contractor through the Florida Nurseryman and Growers Association.
4. BCLS Landscaping does not meet the following minimum requirement:
   - A copy of license by State and/or Local government licenses, and permits (irrigation, pest control, horticultural services, etc.).
   - A person on staff with an advanced degree in horticulture, agronomy, or a related field on staff or as a Consultant or be recognized as a Florida Certified Landscape Contractor through the Florida Nurseryman and Growers Association.

TECHNICAL REVIEW PANEL

On August 25, 2010, the Technical Review Panel (the "Panel") convened to review the responsive bidders' qualifications, experience, capability, and performance evaluations. The Panel consisted of the following individuals:

- John Oldenburg, Assistant Director, Parks & Recreation Department; and
- Millie McFadden, Parks Superintendent, Contract Administrator, Parks & Recreation Department.

After the Panel's review, and based on the analysis of the seven (7) responsive bids for the Grounds Maintenance contract, it was determined to be in the best interest of the City to recommend the lowest bidder as the primary vendor, and the second lowest bidder as the secondary vendor, as follows:

Lowest Bidder	GROUP A	Annual Cost	GROUP B	Annual Cost	GROUP C	Annual Cost	GROUP D	Annual Cost
1	SUPERIOR LANDSCAPING	$38,898	VALLEYCREST LANDSCAPE	$34,359	LUKES SAWGRASS	$15,300	SUPERIOR LANDSCAPING	$30,597
2	VALLEYCREST LANDSCAPE	$49,894	BTS LAND SERVICES	$42,035	NEIGHBORHOOD MAINT. INC.	$25,200	VALLEYCREST LANDSCAPE	$35,570
3	BTS LAND SERVICES	$53,483	SUPERIOR LANDSCAPING	$57,667	VALLEYCREST LANDSCAPE	$46,569	LUKES SAWGRASS	$36,000
4	SFM	$70,404	EVERGLADES	$58,775	SFM	$49,286	NEIGHBORHOOD MAINT. INC.	$40,500
5	NEIGHBORHOOD MAINT. INC.	$75,000	LUKES SAWGRASS	$63,930	SUPERIOR LANDSCAPING	$50,788	BTS LAND SERVICES	$54,403
6	LUKES SAWGRASS	$86,640	NEIGHBORHOOD MAINT. INC.	$64,500	EVERGLADES	$58,536	EVERGLADES	$69,150
7	EVERGLADES	$102,024	SFM	$95,214	BTS LAND SERVICES	$88,239	SFM	$70,016

COST ANALYSIS

A cost analysis was conducted to compare the current contract costs to the City for grounds maintenance. The FY 09/10 Budget under the current Landscaping Maintenance Services for the Beachwalk, Boardwalk, Street-ends and Spoil Areas Citywide contract is an annual amount of $450,505.

The proposed level of services (LOS) were presented in the Bid to provide the prospective vendors with a realistic minimum LOS so they would be able to accurately estimate their cost and provide the city with the best possible bid results.

The table below shows costs for the current contract; costs from the Bid results; and the savings to the City based on the proposed award:

Contracts	Current Contract for ITB 08-04-05	BID Results	Savings
ITB 08-04-05 Landscape Maintenance Services for the Beachwalk, Boardwalk and Spoil Areas	$450,505	$119,154	$331,351

CITY MANAGER'S REVIEW

After considering the review and recommendation of City staff, the City Manager exercised his due diligence and recommends to the Mayor and City Commission award of contracts to the primary and secondary vendors identified herein.

It should be noted that the City's regular process of considering the price for projects and its standard process for bidding grounds maintenance and mowing projects has resulted in a price that is reflective of the current market. At present, it appears that the market is very competitive and that the City will continue to receive bids that are lower than those received in the past year or so. The public procurement process, which is an open, competitive and transparent process, has again served the City by providing a competitive price for this project, as it has in the past, with estimated savings of $331,351 annually on the cost for Landscaping Maintenance Services for the Beachwalk, Boardwalk, Street-ends and Spoil Areas Citywide. This equates to a total savings of $1,656,755 over the five year term of the contract.

CONCLUSION

Based on the aforementioned, the Administration recommends that the Mayor and City Commission accept the City Manager's recommendation to award contracts as primary vendors to Superior Landscaping and Lawn Service, Inc. for section A, and D; to Valleycrest Landscape Maintenance, Inc. for Section B; to Lukes Sawgrass Landscape for section C; as secondary vendors to Valleycrest Landscape Maintenance, Inc. for section A, and D; to BTS Land Services Corp. for section B; to Neighborhood Maintenance, Inc. for section C; Pursuant to Invitation To Bid (ITB) No. 35-09/10 For Landscape Maintenance Services for the Beachwalk, Boardwalk, Street-Ends And Spoil Areas Citywide, in the estimated annual amount of $119,154.

T:\AGENDA\2010\September 15\Consent\ITB 35-09-10 LANDSCAPE MAINTENANCE SERVICES-MEMO.doc

C4

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Jerry Libbin, Commissioner

DATE: August 2, 2010

SUBJECT: Consent agenda item for the September 15, 2010 Commission meeting; a referral to the Neighborhoods Committee regarding stalled construction projects and code violations

Please place on the September 15, 2010 Commission meeting agenda a referral to the Neighborhoods Committee to discuss a possible resolution or time line for completing stalled construction projects that have code violations (see attached email).

Please contact my office at ext. 7106 if you have any questions.

JL/sm

RECEIVED
2010 JUL 34 PM 1:48
CITY MANAGER'S OFFICE
BY

Meyer, Sandra

Subject: FW: 262 South Coconut Lane and also house across the street

From: "Bern M. Levine" <bern@jungleisland.com>
Date: Thu, 29 Jul 2010 08:34:17 -0400
To: <jerlib@aol.com>
Subject: NEGLECT

Commissioner, I mentioned to you a couple of houses on Palm Island that are in horrible conditions. 262 South Coconut Lane, has been under construction for more than 3 years. We now have a rat and possum, possible raccoons that are keeping us up at night. Trash is stored in the front, fence looks like a war zone. The house across the street, cannot see address, 261 South Coconut lane has been for rent numerous time, tarp on roof, shingles laying on roof, water in pond with mosquito larvae, commercial van parked there forever, this is a commercial venture going wrong!

I would appreciate any help. thanks

Bern Levine, DVM
(305) 206-3141

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE A DISCUSSION REGARDING THE MIAMI BEACH FESTIVAL OF THE ARTS AND POTENTIALLY CONTRACTING WITH A PROFESSIONAL ART FESTIVAL COMPANY TO PRODUCE THE FESTIVAL FOR THE CITY.**

ADMINISTRATION RECOMMENDATION

Refer discussion to Finance/Citywide Projects Committee as recommended by staff.

BACKGROUND

The Music and Fine Arts Board was originally created in 1962 to encourage and develop cultural programs with the objective of making our Community a recognized leader in the State of Florida in the field of fine arts. Subsequently, in 1974 the resolution was amended renaming the board the Fine Arts Board. This board's new mission was to "promote the work of contemporary visual and cultural artists, to enhance the appreciation for the arts in the community at large, and to provide economic stimulation to underserved neighborhoods." The annual Miami Beach Festival of the Arts was created to fulfill this task and was produced by the City of Miami Beach from 1975 through 2002.

Taking over production of the Festival from the Parks and Recreation Department in 1999, the Office of Arts, Culture and Entertainment relocated the 2000 Festival to Ocean Terrace in North Beach. In seeking a partnership with the North Beach Development Corporation (NBDC) for promotion and marketing, a Quality of Life grant in the amount of $15,000 was awarded in 2000 for the 2001 event. This grant was increased to $45,000 for the 2002 event. Fiduciary responsibility and production of Festival of the Arts event was transferred to the NBDC in 2004. NBDC produced the Festival of the Arts for four (4) years with the help of an annual allocation from the City of $75,000. During this time, the Fine Arts Board continued to jury the Festival with regard to the poster artist selection, the exhibiting artist applications, the local artist program, the children's art display and the City's portable collection.

In 2008 the City once again assumed all production responsibilities for the Festival of the Arts. The Tourism and Cultural Development Department (formerly Arts, Culture and Entertainment), which staffs the Fine Arts Board, managed a professional services agreement with an event coordinator for assistance in coordinating the production of the Festival of the Arts since 2004. In 2009, City funding for the Festival of the Arts was reduced to $55,000 annually. This appropriation was offset by any revenue generated from the event. Since 2008, the offset has ranged from a high of $39,026 in 2010, to a low of $10,500 in 2009.

Agenda Item C4B

Date 9-15-10

Over the years the Festival's quality, prestige, attendance and artist participation has steadily dwindled. Since 2008, the Fine Arts Board has spent countless hours looking at alternative ideas and formats to raise the caliber of the Festival of the Arts. Additionally, the Board also spent much time tweaking the entertainment, children's area and other aspects of the event. Recently the Administration met with Mr. Howard Alan, whose company, Howard Alan Events, produces art festivals all across the country including the Las Olas festivals and the Key Biscayne festival. Based on the current economic market, the festival industry and the performance of our event, it was his professional recommendation that we reposition the festival to include crafts, food, flowers and some art, but not necessarily high-end art. He also suggested moving the date to mid-April when it fits more into the calendar for arts and crafts events.

The Fine Arts Board discussed this at their July and August 2010 meetings and unanimously recommended in favor of these changes. Additionally, they recommended that the City contract with an experienced art festival producer to produce the Festival for the City. In speaking with Mr. Alan about the concept of the City contracting with an entity such as his to produce this event, he indicated that his company, like others, would require complete control of the event and would assume all risk, responsibility and reward. If the City were to decide to hire an outside producer who assumes all risk in producing the event, the City would no longer have to appropriate $55,000 annually for the Festival of the Arts.

CONCLUSION

The Administration recommends referral to the Finance and Citywide Projects Committee for further discussion and consideration of a Request for Proposals (RFP) for a company to produce the event on behalf of the City.

JMG/HMF/MAS/gf
T:\AGENDA\2010\September 15\Consent\Festival of the Arts Referral Memorandum (2).doc

C: Gomez
Beckman

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Jonah Wolfson, Commissioner

DATE: August 16th, 2010

SUBJECT: Agenda Item

Please place on September 15th, 2010 Commission Meeting Agenda a referral to the Sustainability Committee to discuss rebates for water saving shower heads and toilets.

If you have any questions, please contact Leonor Hernandez at extension 6437.

JW/lh

2010 AUG 17 PM 4:21

Agenda Item C4C
Date 9-15-10

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REFERRAL TO NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE CONSIDERATION OF A PUBLIC ART PROJECT BY THE ARTIST TOBIAS REHBERGER TO BE COMMISSIONED FOR PLACEMENT IN SOUTH POINTE PARK, AS RECOMMENDED BY THE ART IN PUBLIC PLACES COMMITTEE.**

ADMINISTRATION RECOMMENDATION

Refer discussion of a public art project, by the artist Tobias Rehberger, to Neighborhoods/ Community Affairs Committee, as recommended by the Art in Public Places Committee.

BACKGROUND

In the fall of 2005, with direction from the City Administration, the Art in Public Places (AiPP) Committee embarked on commissioning an internationally recognized artist that would create an original work of art, in conjunction with the re-design and renovation of South Pointe Park. The objective was to commission work that would be monumental in scale, within the project budget of $500,000. On November 4, 2005, the AiPP Committee met and shortlisted seven artists. Subsequently, George Hargreaves, Hargreaves Associates (the City's Architecture and Engineering consultant for the South Pointe Park Project), explained to the AiPP Committee his vision for the Park, and recommended artists from the shortlist he felt were best suited for the project.

On February 23, 2006, the committee voted in favor of awarding the South Pointe Park public art commission to Iñigo Manglano-Ovalle for the proposed work of art entitled "Drift." The "Drift" was a large-scale sculpture proposed for the West Palm Lawn at South Point Park and was a reproduction of an artic iceberg based on scientific data of an actual phenomenon, sculpted in white marble with steel interior structure. The City Commission subsequently approved (the selection) at their April 11, 2006, Commission Meeting. Following multiple discussions and meetings with the Capital Improvements Office, the Legal Department and the Artist over the course of two years and failing to reach agreement on terms and a revised budget, on June 17, 2008, the AiPP Committee met and unanimously passed a motion recommending that the Mayor, City Commission and the Administration no longer move forward with "Drift" in South Pointe Park. They further recommended that a new Call to Artists be issued. On September 24, 2008 the City Commission unanimously approved the recommendation to issue a new Call to Artists for South Pointe Park with a project budget not to exceed $500,000, inclusive of all infrastructure costs.

The AiPP committee met on a monthly basis from July to December 2008 and discussed possible artists for South Pointe Park. The public projects of forty-five (45) artists were reviewed. On September 15, 2009, AiPP met and unanimously agreed to request proposals from the following four artists; Jim Drain, Mark Handforth, Tobias Rehberger and Gary Webb. On March 26, 2010 the Committee reviewed and discussed the presentations further and unanimously agreed to request fully realized proposals from Mark Handforth, Tobias Rehberger and Gary Webb.

Agenda Item C4D

Date 9-15-10

The due date for the proposals was May 13, 2010. Finalist Mark Handforth notified staff that after considerable thought, he would not submit a proposal. On July 6, 2010, the AiPP Committee discussed the proposals from Tobias Rehberger and Gary Webb and, after a lengthy discussion, a motion was made and passed unanimously recommending the Tobias Rehberger proposal. The Committee felt it met all the criteria established by the Committee of commissioning an artwork by an internationally recognized artist; the design would be large scale and visible from the cruise ships, but also engaging to the visitors of the park; and it was designed, created and installed with forethought to the long-term costs of maintenance, while also keeping its appearance, structural integrity and not compromising the Artist's vision.

PROPOSAL

Tobias Rehberger: "Lighthouse" (Exhibit "A")
The following description of the project is taken from Tobias Rehberger's proposal. The dimension of the artwork is estimated at 55'11/16" in height and the width varies from 8' 1½" to 4' 10' ½". The project budget is within the available budget and the project timeline reflects the sculpture being installed by November 2011.

"For my art proposal within South Pointe Park / Miami Beach I would like to give this very special gateway to the City of Miami Beach a symbol that not only marks the area and greets all the visitors that pass through Government Cut every day by boat but also brings together some of the key attributes the City stands for: a vital zest for life, art, and design: a sculpture, which is designed as a modern playful interpretation of a beacon, including the moving lights at the top. However, the function of the light is not to guide the ships but to greet all the visitors to the City with cheerful, multi-colored lighting that underlines the lively spirit of Miami Beach."

Mr. Rehberger is an internationally recognized artist and some of his most important public art projects are: *Slinky Springs to Fame,* 2010, a 437 yards long pedestrian bridge, Oberhausen, Germany; *Cafeteria Project*, 2009, Venice Biennale, Venice, Italy, which was the recipient of the prestigious Golden Lion Award; *C'era un volta in America*, 2009, located at the recently opened Maxxi Contemporary Art Museum, Rome, Italy; and *Raststatt Rio Bravo,* 2008, Munich, Germany. Additionally, he has had one man shows at some of the most prestigious museums and foundations in the world: Museum Ludwig, Cologne, Germany, 2008; Prada Foundation, Milan, Italy, 2007; National Museum Queen Sofia Art Center, Madrid, Spain, 2005; Whitechapel Gallery, London, England, 2004; Serrvales Museum, Porto, Portugal, 2002; Palais de Tokyo, Paris, France, 2002; Museum of Contemporary Art, Chicago, USA, 2000; University of California Berkeley Art Museum, Berkeley, USA, 1999; Modern Museum, Stockholm, Sweden; 1998; and the Kunsthalle Basel, Basel, Switzerland, 1998.

PROJECTED TIMELINE

A projected time-line going forward on the project is as follows:

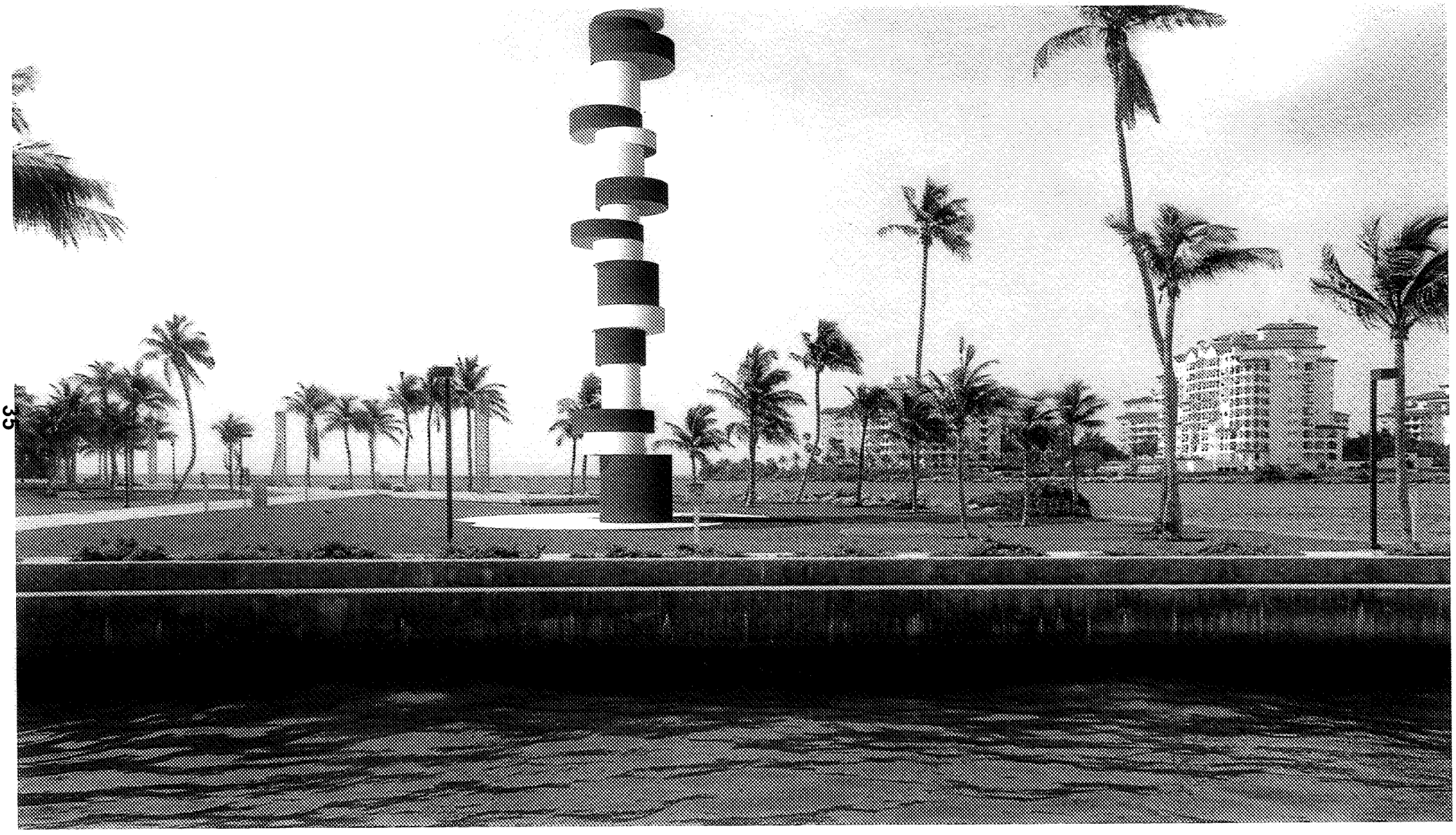
- City Commission (Referral to Neighborhoods/Community Affairs Committee) – September 15, 2010
- Neighborhoods/Community Affairs Committee – October 5, 2010
- Design Review Board – November 2, 2010
- Design Review Board – December 7, 2010
- City Commission for award – December 8, 2010
- Proposed Installation date – November 2011

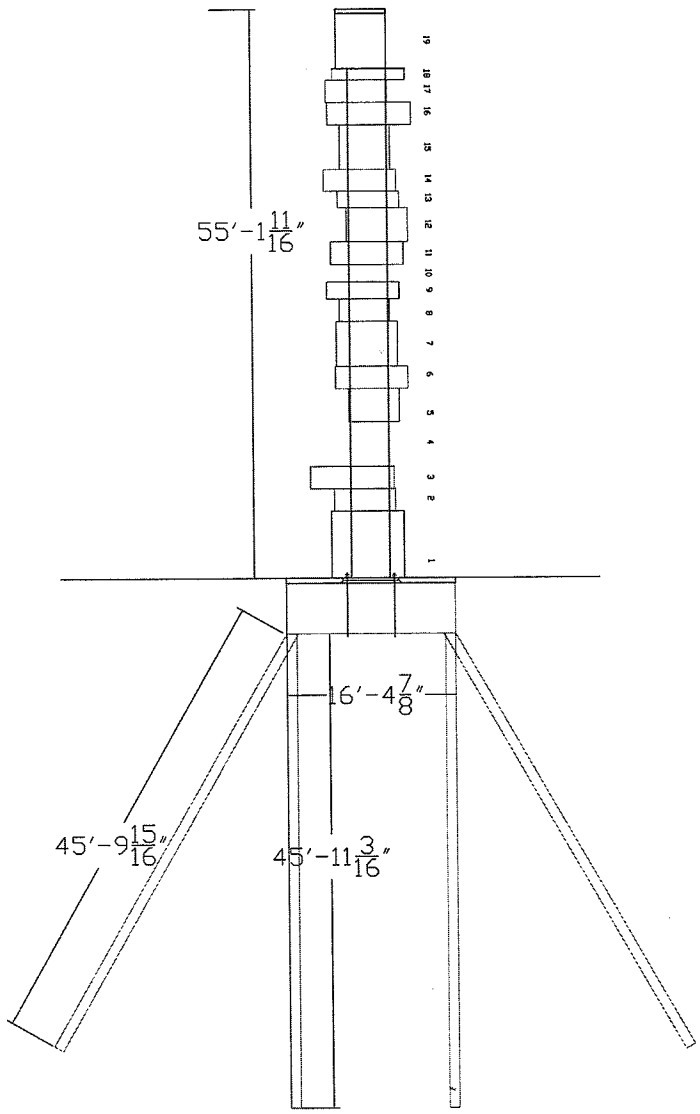
Please note the South of Fifth Street Neighborhood Association (SOFNA) was contacted to schedule a community presentation of the project and requested that the proposal be sent to them electronically for distribution to their members for comment. SOFNA requested the information be forwarded to them after the Labor Day Weekend on September 8, 2010. They will be advised of the Neighborhoods/Community Affairs Committee meeting date, should they wish to attend.

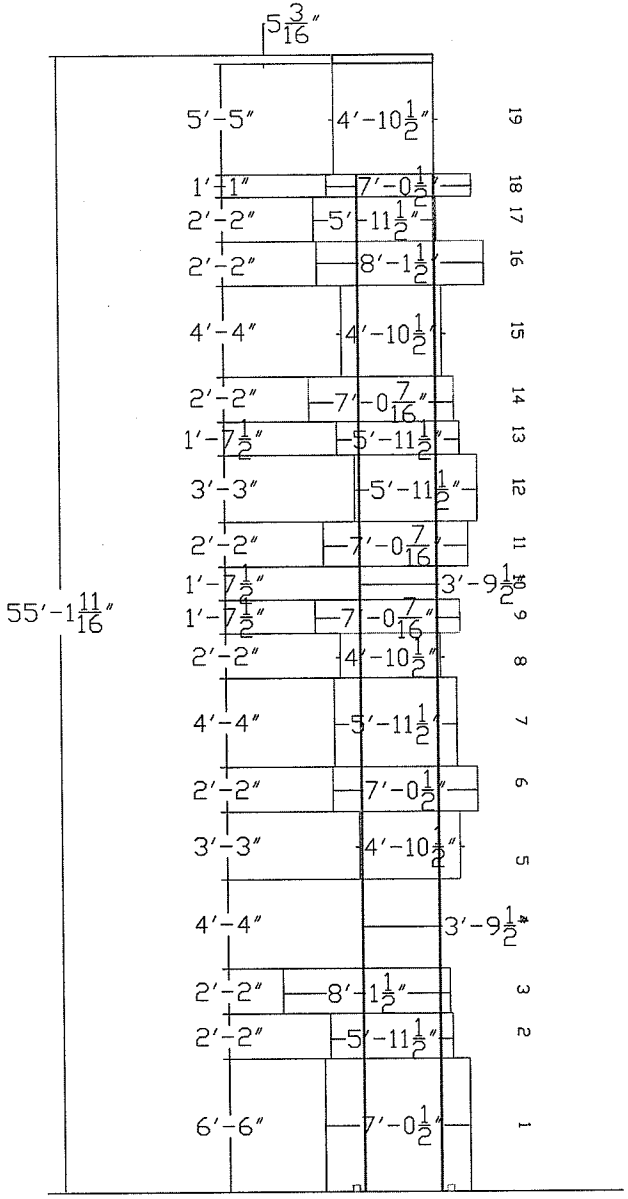
CONCLUSION

The Administration recommends referral of the "Lighthouse" design proposal (Exhibit "A") to the Neighborhoods/Community Affairs Committee for discussion. Various color renderings of the proposed sculpture will be provided to the Committee members at that time.

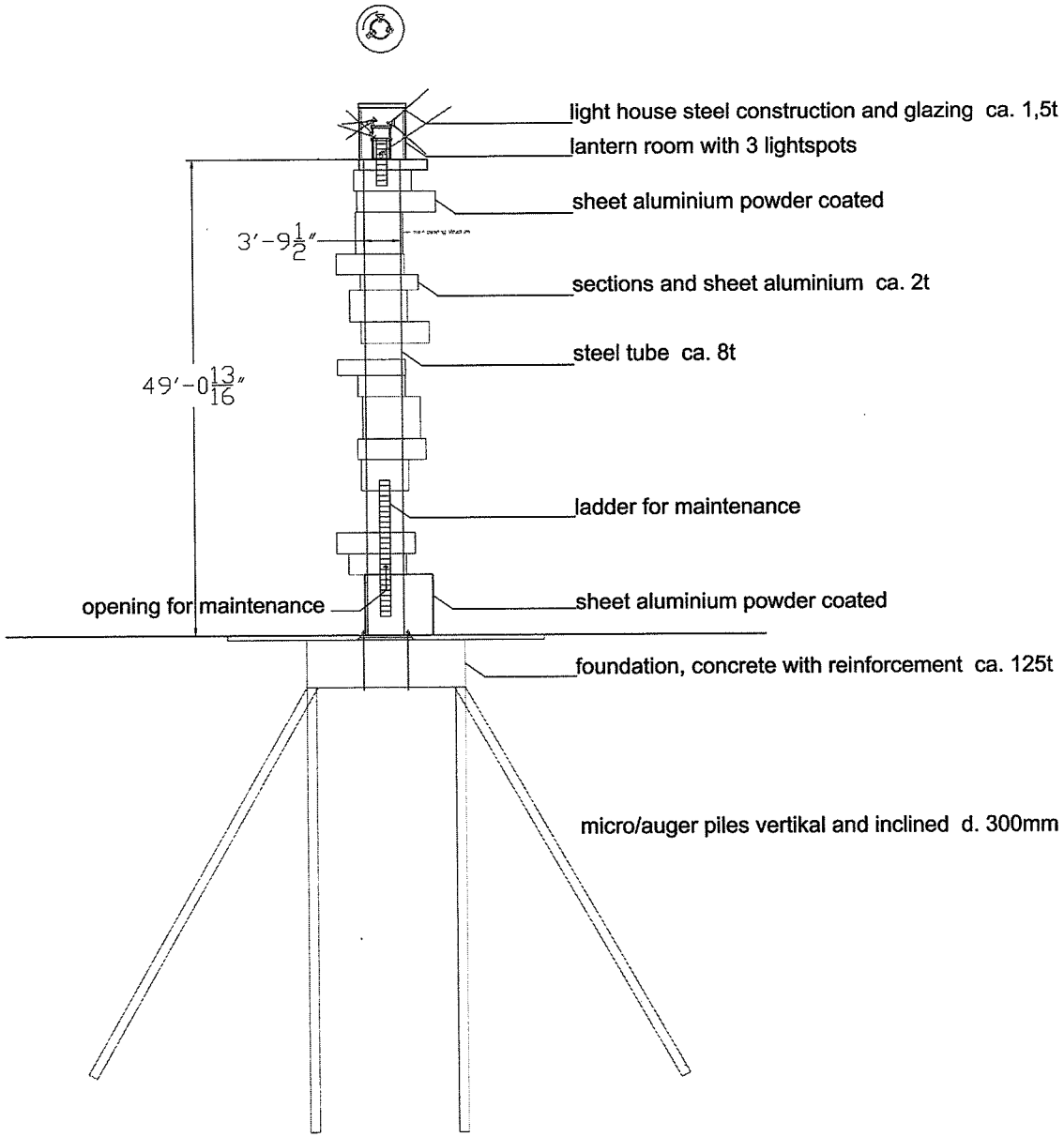
EXHIBIT A



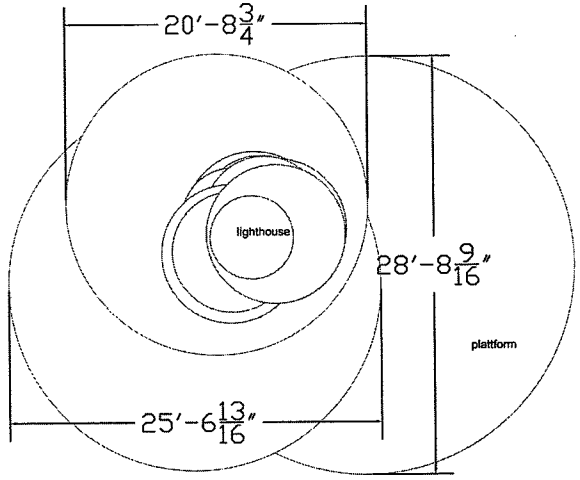




City of Miami Beach
Tobias Rehberger
South Pointe Lighthouse
Front View
20-08-2010



City of Miami Beach
Tobias Rehberger
South Pointe Lighthouse
Construction Scheme
20-08-2010



City of Miami Beach
Tobias Rehberger
South Pointe Lighthouse
Top View
20-08-2010

Tobias Rehberger
South Pointe Lighthouse

Budget Worksheet

Line Item	Amount	Description
Concrete Slab & Footings	$93.126	Foundation and Earthworks
Consultant	$15.000	Geotechnical analysis
Engineering	$35.000	Schlaich Bergermann und Partner
Installation	$50.000	Steelwork erection
Insurance	$5.000	
Legal Fees	$1.500	
Lighting & Electrical	$60.000	Lighthouse lighting and grid connection
Materials & Labour	$120.374	Powder Coated Aluminium
Permits	$5.000	
Photo Documentation	$1.000	
Shipping	$9.000	local production
Site Preparation	$15.000	
Travel	$15.000	
Total	**$425.000**	
Artist's Fee		possible difference to maximum budget
Studio Overhead		Studio Tobias Rehberger
Computer Modeling & Design		Studio Tobias Rehberger

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Ed Tobin, Commissioner

DATE: August 30, 2010

SUBJECT: Agenda item for September 15th Meeting – Referral of Item for Discussion to Land Use and Development Committee

Please refer to Land Use and Development Committee for discussion the issuance of a Request for Proposal (RFP) to conduct a study for the development of a city-wide transportation and parking plan.

Should you have any questions, please contact my aide Yanette Bravo at ext. 6274.

ET/yb

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE TO DISCUSS A REQUEST FROM ECOMB, INC. FOR AN AMENDMENT TO ITS LEASE AGREEMENT**

ADMINISTRATION RECOMMENDATION

Refer the item to Committee for discussion.

BACKGROUND

On December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27283, approving a Lease Agreement between the City of Miami Beach (City) and ECOMB, Inc. (ECOMB) for use of approximately 1,251 square feet (comprised of 209 SF of office space and 1041 SF of exterior covered space) of City-owned property (the Demised Premises), located at 210 Second Street, Miami Beach, Florida. The approved Lease Agreement was for an initial term of three years and sixteen days, commencing on December 15, 2009, with one additional three year renewal term at the City's sole discretion.

The current Lease Agreement requires ECOMB to pay Rent, in the amount of $1.20 annually, as well as requires ECOMB to reimburse the City a flat fee for water and sewer costs, in the amount $200.00 per month. ECOMB is solely responsible for the payment of electricity costs and any other utility service charges provided to the Demised Premises. The flat fee for water and sewer was calculated at the time of lease negotiation, and agreed to by ECOMB. Because the building was vacant at the time, and the Water and Sewer service for the space to be leased by ECOMB was tied to the service for the adjacent dog park, this flat fee was developed as a proportionate cost.

ECOMB recently informed the City that it believed it was paying more than its proportionate share of costs for water and sewer, and requested that City staff look into the matter. In response to ECOMB's request, the City's Public Works Department has again reviewed ECOMB's utility usage and reimbursement costs and determined that ECOMB's consumption of the aforestated services appears to be less than the utility costs previously estimated for lease negotiation purposes.

Based on its concerns, ECOMB is requesting an amendment to its current Lease Agreement to address the flat fee for water and sewer.

CONCLUSION

The Administration recommends that the City Commission refer ECOMB's request for an amendment to its Lease Agreement to the Finance and Citywide Projects Committee for discussion.

JMG/HF/AP/rr
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Agenda Item C4F
Date 9-15-10

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE TO DISCUSS A REQUEST FROM MIAMI BEACH FILM SOCIETY, INC. FOR AN AMENDMENT TO ITS LEASE AGREEMENT**

ADMINISTRATION RECOMMENDATION

Refer the item to Committee for discussion.

BACKGROUND

On September 3, 2009, the Finance and Citywide Projects Committee considered, approved and forwarded to the full Commission for consideration a proposed lease agreement between the City of Miami Beach (City) and the Miami Beach Film Society, Inc., d/b/a Miami Beach Cinematheque (Cinematheque), for use of approximately 2,523 square feet of City-owned property (the Demised Premises), located at 1130 Washington Avenue, 1st Floor South, Miami Beach, Florida. The Committee recommended a $20 per square foot rent, an amount lower than market rents, but recommended because of the non-profit nature of the organization, as well as the type of activation to the space and area that this business will provide. The Cinematheque's proposed use requires significant build-out to meet their operational needs.

After much discussion regarding the lease, the Committee members recommended a lease commencement date of March 1, 2010 to allow the Cinematheque sufficient time to prepare build-out plans to submit for permitting (at least five months from the date of lease approval at Committee). Recognizing that the Cinematheque would then require build out time, it was recommended by staff that a two-month rent abatement be provided. However, the Committee recommended an additional month of tenant improvement credit in lieu of the City assuming the costs and responsibility of certain demolition in the space; the Cinematheque was agreeable with assuming demolition in exchange for the additional month tenant improvement credit. As such, the proposed rent commencement was June 1, 2010.

On December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27282, approving the Lease Agreement. As per the Commission's approval, the Cinematheque provided half of the required security deposit subsequent to lease execution, ($4,205, equal to one months rent) and their second half on June 1, 2010; this second half was to be applied toward rent after the completion of the tenant improvements, with the expectation that those improvements would be completed by the rent commencement date of June 1st.

The Cinematheque has been paying its rent since June 1, 2010 as required pursuant to the Lease (June, July and August). However, the Cinematheque has not completed its build-out. The permit plans and application were submitted to the City's Building Department on April 23, 2010 and they have advised us that due to unforeseen permitting delays, a building permit was not obtained until August 17, 2010. The Cinematheque has advised staff that they estimate that the improvements (interior demolition and reconstruction of the Demised Premises) will cost $150,000.

Agenda Item C4G

Date 9-15-10

In light of the delay in completing the build-out, the estimated costs of the build-out (not yet confirmed by the City) and the inability to operate in the leased space to generate revenue (anticipated by the Cinematheque to have begun by August 1, 2010), the Cinematheque approached our Asset Management staff about the possibility of an additional rent abatement or tenant improvement credit. Such a consideration would require a lease amendment.

While the Finance Committee discussed the issue thoroughly and recommended lease commencement and rent commencement dates that they deemed would be sufficient to allow for the Cinematheque to obtain the necessary permits and complete construction in order to open and generate revenue (a total of eight months from Committee approval to the rent commencement date), the option of any additional relief for the tenant requires approval. As such, a referral to the Finance and Citywide Projects Committee would allow for discussion on whether to consider such an option.

CONCLUSION

The Administration recommends that the City Commission refer the Cinematheque's request for an amendment to its Lease Agreement to the Finance and Citywide Projects Committee for discussion.

JMG/HF/AP/rr

T:\AGENDA\2010\September 15\Consent\FILM SOCIETY referral.MEM.doc

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REFERRAL TO THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE TO DISCUSS AN ORDINANCE AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III THEREOF, ENTITLED "LITTER," BY AMENDING SECTION 46-92 TO CLARIFY AND PROVIDE FOR ADDITIONAL PROHIBITIONS AND DEFINITIONS FOR LITTER WITH REGARD TO LEAF BLOWERS AND YARD MAINTENANCE DEBRIS, AND CLARIFYING PENALTIES FOR CERTAIN LITTER VIOLATIONS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Refer the item for discussion.

BACKGROUND

The leaf blower ordinance amendment was sponsored by Commissioner Michael Gongora and referred by the City Commission to the Sustainability Committee. The City's Sustainability Committee endorsed the amendments to Chapter 46, Article III. entitled "Litter" on July 20, 2010. These amendments included: expanding the prohibitions on litter to include sweeping or throwing litter on public and private properties; clarifing the language of the ordinance so it is clear that it shall be unlawful for any person to use leaf blowers, or any other means, to sweep, cast or throw, or cause to be cast or thrown, into any of the gutters, drains or sewers, or public rights-of-way within the city or upon any adjacent property, any garbage, litter, paper, handbill trash, tree, plant, or grass cuttings, leaves, yard maintenance debris, or other objects or substances; and revising the definition of litter to include tree, plant, and grass cuttings, leaves or other yard maintenance debris in a gutter, drain, or sewer, or on any other public property, right-of-way.

CONCLUSION

The Administration requests this matter be referred to the Neighborhoods/Community Affairs Committee for discussion.

JMG/JGG/FHB/FV

T:\AGENDA\2010\September 15\Consent\Referral Leaf Blower Ordinance.docx

Agenda Item C4H
Date 9-15-10

ORDINANCE _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III THEREOF, ENTITLED "LITTER," BY AMENDING SECTION 46-92 TO CLARIFY AND PROVIDE FOR ADDITIONAL PROHIBITIONS AND DEFINITIONS FOR LITTER WITH REGARD TO LEAF BLOWERS AND YARD MAINTENANCE DEBRIS, AND CLARIFYING PENALTIES FOR CERTAIN LITTER VIOLATIONS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the City declares that it is in the interest of the public health, safety, and welfare to reduce pollutants on the land and those that enter into the air and waters of the City; and

WHEREAS, the discharge of yard maintenance debris into the City's storm drains and sewers by leaf blowing equipment and other similar devices diminishes the effective functioning of the City's sewer system and pollutes and damages the City's waterways and ecosystems; and

WHEREAS, the spreading of debris, dust, fecal matter, pesticides, fungi, chemicals, fertilizers, and dirt onto adjoining properties and public rights-of-way by leaf blowing equipment and other similar devices, causes litter, erodes and degrades soils, and is a health hazard; and

WHEREAS, the spreading of various airborne particles and potential pollutants from leaf blowing equipment and other similar devices also contributes to health hazards such as asthma and other respiratory diseases, and eye injuries due to the propulsion of debris and other matter from the high velocity air stream emitted from the equipment and other similar devices.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Article III, entitled "Litter," of Chapter 46 of the Miami Beach City Code, entitled "Environment," is hereby amended as follows:

CHAPTER 46

ENVIRONMENT

* * *

ARTICLE III. LITTER

Sec. 46-92. Prohibitions on Litter; possession of glass or metal containers on beaches unlawful; sweeping or throwing litter ~~in gutters~~ on public and private properties unlawful; garbage containers required for take-out restaurants; rebuttable presumptions; civil fines for violations; seizure; removal; definitions; enforcement; appeals; liens.

(a) It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare, beach, park, baywalk, beachwalk, cutwalk, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the city. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.

(b) It shall be unlawful for any person to carry onto any beach within the city a glass or metal bottle or other glass or metal container.

(c) It shall be unlawful for any person to use leaf blowers, or any other means, to sweep, cast or throw, or cause to be cast or thrown, or discarded into any of the gutters, drains, ~~or~~ sewers, or public rights-of-way within the city, or upon any adjacent public or private real or personal property, any garbage, litter, paper, handbill, trash, tree, plant, or grass cuttings, leaves, yard maintenance debris, or other objects or substances.

(d) All restaurants with take-out service shall have up to four garbage containers, as need requires, based on the determination of the city manager or his designee. The containers shall be located in front of and within 50 feet in each direction of the premises at locations approved by the city manager or his designee. These containers shall be kept in clean and sanitary condition at all times and shall be emptied daily or more frequently if necessary to prevent overflowing. The garbage containers required by this section are in addition to those required by chapter 90 of this Code.

(e) The following civil fines shall be imposed for violations of this section except as provided in subsections (f) below.

(1) First offense, $50.00 fine.

(2) Second offense, $100.00 fine.

(3) Third ~~offense~~ or subsequent offense, $500.00 fine.

In lieu of a fine, the special master may accept voluntary community service removing litter in the city equivalent to one hour of community service for each $5.00 of an imposed fine. If the community service is not completed within six months of an adjudication of guilt, the fine shall be reinstated.

(f) If a violation of this section resulted from the throwing, discarding, placing, or depositing, or causing to be thrown, discarded, placed, or deposited, of commercial handbills as litter, then the following civil fines shall be imposed. The special master shall not have discretion to alter these prescribed penalties except as to the per handbill fine of $50.00 provided in (f)(1).

(1) If the offense is the first offense, $100.00 fine plus $50.00 per handbill;

(2) If the offense is the second offense within the preceding 12 months, $500.00 fine plus $50.00 per handbill;

(3) If the offense is the third or subsequent offense within the preceding 12 months, $1,500.00 fine plus $50.00 per handbill.

(4) Notwithstanding subsections (f)(1)-(3), no person or benefactor shall receive more than one offense within any one-day period, however, the $50.00 per handbill fine shall apply to all littered handbills found during that one-day period.

(g) At any prosecution for violation of this section when the litter involved is a commercial handbill, if ten or more commercial handbills advertising the same business are found in plain view as litter under circumstances that make it more likely than not that the commercial handbills were placed there, or caused to be placed there, by an agent, employee, contractor, promoter, or other representative of the business advertised on the face of the commercial handbills, the special master shall apply a rebuttable presumption that the business advertised on the face of the handbills threw, discarded, placed or deposited the commercial handbills as litter.

(h) If a person is found littering with commercial handbills, the code compliance officer is authorized to seize, for use as evidence in the prosecution of the violator before the special master, all commercial handbills in the possession of the violator.

(i) The city may cause the removal, at the violator's expense, of all litter distributed or placed in violation of this section.

(j) Definitions:

(1) *Benefactor* means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing.

(2) *Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.

(3) *Handbill* means any handbill, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object that conveys any information, except that "handbill" shall not include a newspaper or its contents.

(4) *Commercial handbill* means any handbill that conveys any information about any good or service provided by a business.

(5) *Litter* means any paper, handbill, commercial handbill, garbage, bottle caps, chewing gum, tobacco products, including, but not limited to, used and unused cigarettes, cigars, pipe or chewing tobacco, or other waste, including but not limited to tree, plant, and grass cuttings, leaves, or other yard maintenance debris, that has been placed or deposited on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or in a gutter, drain, or sewer, or on any other public property, right-of-way, or place, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor vehicle, or on any other type of private real or personal property. Handbills and commercial handbills attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.

(6) *One day* means a 24-hour period from noon to noon.

(7) *Person, benefactor,* or *owner* include, within their respective meanings, either an individual or an entity.

(k) Enforcement by code compliance officers; notice of violation. If a code compliance officer finds a violation of this article, such code compliance officer shall issue a notice of violation to the violator as provided in chapter 30. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within 20 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to a hearing.

(l) Rights of violators; payment of fine; right to appeal; failure to pay civil fine or to appeal.

(1) A violator who has been served with a notice of violation shall elect either to:

a. Pay the civil fine in the manner indicated on the notice; or

b. Request an administrative hearing before a special master appointed by the city commission upon recommendation of the city manager to appeal the decision of the code compliance officer which resulted in the issuance of the notice of violation.

(2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 102-384 and 102-385 of the City Code.

(3) If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violators right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation and penalties may be assessed accordingly.

(4) Any party aggrieved by the decision of the special master may appeal the decision in accordance with law.

(m) Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.

(1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.

(2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.

(n) Nothing in this article shall limit or restrict any condition or limitation imposed by the planning board.

(o) Injunctive relief. As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 102 of the City Code when there are more than three offenses by the same violator within a calendar year.

SECTION 2. Codification.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 3. Severability.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. Repealer.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 5. Effective Date.

This Ordinance shall take effect the _____ day of September, 2010.

PASSED and **ADOPTED** this _____ day of September, 2010.

ATTEST:

_____
Matti Herrera Bower, Mayor

_____
Robert Parcher, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
CITY ATTORNEY 8/27/10 DATE

Underline denotes additions
~~Strike through~~ denotes deletions

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager
Jose Smith, City Attorney

FROM: Deede Weithorn, Commissioner DW/aks

DATE: August 23, 2010

SUBJECT: Agenda item for September 15 Commission meeting

Please refer a discussion to the Land Use Committee regarding RM 3 Districts and requiring any transient rental to comply with state and city law, sales tax being paid and guests being registered in occupancy at a front desk operation.

Thank you.

DW/aks

RECEIVED
2010 AUG 24 AM 11:09
CITY MANAGER'S OFFICE
BY

We are committed to providing excellent public service and safety to all who live, work, and play in our

Agenda Item C4I
Date 9-15-10

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Matti Herrera Bower, Mayor rw for MHB

DATE: August 27, 2010

SUBJECT: Consent Agenda Item: Referral to Land Use Committee

Please place on the Sept. 15, 2010 Commission meeting agenda a referral to the Land Use Committee of a discussion regarding a request from the GLBT Committee to allow extended hours of operation of certain nightlife venues during four major LGBT tourism and fundraising weekends – Winter Party, White Party, Gay Pride and Aqua Girl.

I thank you in advance for your cooperation in this matter. If you have any questions, please do not hesitate to contact Rebecca Wakefield at extension 6157.

Thank you.

MHB/rw

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE TO DISCUSS A RESOLUTION APPROVING THE MIAMI BEACH SUSTAINABILITY MASTER PLAN.**

ADMINISTRATION RECOMMENDATION

Refer the item to Committee for discussion.

BACKGROUND

Staff presented the concept of a Sustainability Plan to the Sustainability Committee in July 2009. The presentation included suggested program areas and example goals and objectives. Staff then conducted additional research into sustainability planning at the local, state, national and international levels to obtain examples and insight into the development process. A draft plan was developed based on this research and was presented to the Committee in September 2009. In the following months, Staff elicited feedback from other City Departments, local universities, the Miami-Dade County Office of Sustainability, Florida Department of Community Affairs, advisory committees and community organizations such as the Miami Beach Community Development Corporation. Throughout the planning process, the Sustainability Committee provided feedback regarding the Plan's Guiding Principles, Program Areas, Goals, Indicators and Targets. On May 25th, 2010, the Committee passed a resolution to present the final Plan to the City Commission for adoption.

The objective of the City of Miami Beach's Sustainability Master Plan is to assist the City in accomplishing its Key Intended Outcome (KIO) of enhancing environmental sustainability and to also guide the Sustainability Committee in its mission.

The Sustainability Plan will provide structure and focus to existing and future policies and initiatives in order to successfully enhance the community's environmental sustainability. The purpose of the Plan is to improve our resources, prevent harm to the natural environment, protect human health, and benefit the social, economic, and environmental well-being of the community for present and future generations.

CONCLUSION

The Administration recommends that this item be referred for further discussion to the Finance and Citywide Projects Committee.

JMG/JGG/FHB/FV/LEB

T:\AGENDA\2010\September 15\Consent\Referral Sustainability Plan.doc

Agenda Item C4K
Date 9-15-10

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Matti Herrera Bower, Mayor RW for MHB

DATE: September 3, 2010

SUBJECT: Consent Agenda Item: Referral to Land Use Committee

Please place on the Sept. 15, 2010 Commission meeting agenda a referral to the Land Use Committee of a discussion regarding strengthening the process by which permanent parking spaces may be removed from city inventory, for instance by limiting the purpose and/or by requiring Commission approval.

I thank you in advance for your cooperation in this matter. If you have any questions, please do not hesitate to contact Rebecca Wakefield at extension 6157.

Thank you.

MHB/rw

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Jonah Wolfson, Commissioner

DATE: September 3rd, 2010

SUBJECT: Agenda Item

Please place on the September 15th, 2010, Commission meeting agenda a referral to the Neighborhoods/Community Affairs Committee to discuss the placement of a small plaque at the bus shelter located in front of 3801 Collins Avenue in memory of Mr. Harold Tillman who was instrumental in the placing of the bus shelter there and recently passed away.

If you have any questions, please contact Leonor Hernandez at extension 6437.

JW/lh

Agenda Item C4M
Date 9-15-10

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

RECEIVED
2010 SEP -7 PM 1:31
CITY CLERK'S OFFICE

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Michael Góngora, Commissioner

DATE: September 7, 2010

SUBJECT: Referral Item for the September 15 Commission Meeting

I would like to refer an item to go on the consent agenda as a referral to the Neighborhoods Committee. I would like to rename the Hand Ball Courts at Flamingo Park to Richard Bower, Mayor Bower's late husband. If you have any further questions, please do not hesitate to contact my office at extension 6087.

MG/df

Agenda Item C4N
Date 9-15-10

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Jerry Libbin, Commissioner

DATE: September 7, 2010

SUBJECT: Agenda item for the September 15, 2010 Commission; a referral to the Neighborhoods committee to recommend naming the Flamingo Park handball courts after Richard Bower.

Please place on the September 15, 2010 Commission meeting agenda a referral to the Neighborhoods committee to recommend naming the Flamingo Park handball courts after Richard Bower, Mayor Bower's late husband.

Please contact our office at ext. 7106 if you have any questions.

JL/sm

2010 SEP -7 PM 3:34
BY

C6

MIAMIBEACH

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

COMMITTEE MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REPORT OF THE CAPITAL IMPROVEMENT PROJECTS OVERSIGHT COMMITTEE MEETING OF JUNE 7, 2010**

The meeting was called to order at 5:48 p.m.
Please note: These minutes are not a full transcription of the meeting.
Full audio and visual record of this meeting is available online on the City's website:
http:// www.miamibeachfl.gov/video/video.asp

ATTENDANCE
See attendance sheet, attached

REVIEW AND ACCEPTANCE OF MINUTES
MOTION: Acceptance of Minutes of the May 10, 2010 CIPOC Meeting
MOVED: (Fred Karlton) 2nd: (Erik Agazim)
PASSED: Unanimous

PUBLIC COMMENTS
No one came forward with items for Public Comments

COMMISSION ITEM
A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH MCCUMBER GOLF, INC.; FOR DESIGN, BID AND AWARD, AND CONSTRUCTION MANAGEMENT SERVICES, IN THE NEGOTIATED LUMP SUM FEE $294,500.00 (PLUS AN ADDITIONAL NOT TO EXCEED AMOUNT OF $$92,600.00 FOR APPROVED REIMBURSABLES); FOR THE PAR 3 GOLF COURSE, PURSUANT TO REQUEST FOR QUALIFICATIONS (RFQ) NO. 07-09/10. FROM PREVIOUSLY APPROPRIATED FUNDING.

MOTION: Recommend to City Commission to approve and execute an agreement with McCumber Golf, Inc; for Design, Bid and Award, and Construction Management Services.
MOVED: (Fred Karlton) 2nd: (Eleanor Carney)
PASSED: Unanimous

Agenda Item C6A
Date 9-15-10

REQUESTED REPORTS

Public Works Report on Water Line Breaks in Bayshore Neighborhood 6:05 pm

A discussion ensued on providing more detail on the GIS. The committee members requested the GIS Manager to highlight the water main breaks, breaks resulting from private construction, service main leaks, bell leaks with pipe cracks and more in the Bayshore neighborhood.

Staff Action: Public Works to return on July 12, 2010 showing everything they have in the system concerning breaks in the Bayshore Neighborhood.

Request for GreenSpace/Tree Advocacy Group

6:00 pm

Email received from Mr. Saul Gross suggested that we consider implementing on all future Basis of Design Reports a landscaping master plan showing the geographical limits of the project as well as identify the existing and proposed plant species so that residents can better understand what they are approving in the Basis of Design Report. Rick Kendle mentioned that the City can't commit to a specific type of tree, it would be based on availability. Mr. Carreño concurred.

South Pointe Phase II Sidewalks 6:25 pm

Charlie Carreño reported that the Building Department visited the project and analyzed the situation. One sidewalk was being addressed and has been corrected. The Building Department committed to providing CIP one hour every other day verify compliance.

Staff Action: Gladys Salas from the Building Department has not been able to visit South Pointe so we will keep this item on the agenda until it is resolved.

Report on DERM 6:16 pm

Mr. Charlie, Carreño reported that there is a meeting scheduled on June 17th with DERM, County Manager's Office and the DERM Director to discuss the ongoing problems that the City of Miami Beach is having with DERM. City of Miami Beach will emphasize that the decisions being made by DERM are impacting our programs.

Staff Action: Return on July 12, 2010 to discuss outcome of DERM Meeting.

Storm Water Master Plan 6:20 pm

Christina Cuervo asked about the status of the Storm Water Master Plan. Charlie Carreño explained that it is going to the next Commission Meeting, being held on June 9, 2010. Eleanor Carney asked for a report based on milestones related to the storm water master plan so that the public can be aware of what is going on as far as meetings, schedule and timeline for completion.

Staff Action: Public Works to return on July 12, 2010 with timeline.

Citywide Guard House Inventory **6:29 pm**

Charlie Carreño recommended that this report return to the next meeting because the City's records are not clear as to who owns these guardhouses. City of Miami Beach is considering a title search to determine ownership of these guard houses. Christina Cuervo asked who pays for the maintenance to these guard houses. Mr. Carreño replied by saying that the City of Miami Beach says they are not paying for the maintenance to these guard houses. Mr. Dwight Kraai asked if we know who is paying for the utilities for these guard houses. Mr. Carreño said that he does not think that the City is paying for these utilities but has not personally checked.

Staff Action: Return on July 12, 2010 to discuss further.

OLD BUSINESS **6:31 pm**

CIP Project Status Report
Construction Update: Normandy Shores Neighborhood Improvement Project
Status Report: Venetian Island Neighborhood Improvement Project
Status Report: Sunset Islands I & II
Status Report: Sunset Islands III & IV
Status Report: Royal Palm Avenue and 44th Street Flooding Mitigation
Status Report: Palm & Hibiscus Island Undergrounding
Status Report: Flamingo/West Avenue ROW

Construction Update: Normandy Shores Neighborhood Improvement Project

Charlie Carreño informed the committee that we are working on the punchlist items in regards to landscape. The contractor has storm sewer/piping to clean. Final striping will be done in the next two weeks.

Status Report: Venetian Island Neighborhood Improvement Project

Roberto Rodriguez took pictures of all right of ways and copied the City Attorney's Office as well as Public Works. City Attorney Raul Aguila disagrees with the findings from the title office. The street ends are owned by the HOA. The street themselves, with the exception of the Venetian Way and sidewalks can be claimed for ownership by the City since we are maintaining them. Mr. Aguila will forward a copy of the City Attorney's opinion packet to the Committee as well as to the HOA for the July 12, 2010 meeting. Eleanor Carney asked if residents can put a driveway on the breezeway with a permit, what is the opinion of the City Attorney if the driveway is not that owner's property. Mr. Aguila responded by saying that if there are encroachments in that breezeway then Public Works has the right to impede on the encroachments. If they are not in the way it is up to the HOA to take action. Mr. Aguila mentioned that encroachment issues should be handled from this point forward with Public Works, this is not a CIPOC issue. Eleanor Carney mentioned that her Engineers found barnacle build up in the pipes. Mrs. Carney asked if there was anything the City could do to remove these barnacles. Fred Beckman replied by saying that he does not believe that what we have been seeing lately is due to barnacle build-up over the last 20 years. Eleanor Carney asked, who maintains the outfalls? Mr. Beckman replied by saying that it depends on the size of the outfall, any pipe 18" and higher gets maintained by a contractor, and pipes 18" and lower are maintained by the City.. Christina Cuervo asked to see a schedule of outfall cleaning. Mr. Beckman said that he will have a schedule prepared for the next CIPOC meeting.

Status Report: Sunset Islands I & II
Charlie Carreño explained that we are 100% complete on the drawings, they have been distributed to the HOA as well as to the City Departments. Also, permit applications to DERM and to the South Florida Water Management District have been picked up for expediting purposes by the HOA.

Report: Sunset Islands III & IV
Keith Mizell reported that HOA is conducting a vote to determine whether residents prefer two way streets versus a one way street and how that would impact the design phase. We are waiting for FP&L to execute a final agreement for undergrounding. Once that is complete it will be handed off to the design consultant. The CH2M Hill Amendment is being reviewed by the HOA. Mr. Terry Beinstock mentioned that the HOA is reviewing all the information they have thus far and hope to be finished with their review and findings soon.

Status Report: Royal Palm Avenue and 44th Street Flooding Mitigation.
Fernando Vazquez, City Engineer reported that they are finalizing the review of the plans and are issuing their comments to the Design Engineer. Permitting to take three to four months with construction starting approximately in late September. Rick Kendle asked how much is this going to cost Mr. Vazquez answered, in the range of $700,000.

Status Report: Palm & Hibiscus Island Undergrounding
Charlie Carreño reported that on April 26 Miami Dade County Special Taxing District provided notification that the petition drive was successful. Next step was to obtain county financing. This would occur in the upcoming commission meetings, either in June or July 2010.

Status Report: Flamingo /West Avenue Neighborhood ROW
Charlie Carreño explained the Master Plan was going to commission on June 9th. Contractor to start July 7th installing water mains between Washington and Meridian along 7th Street as they are progressing in the design of the storm water elements. Mr. Carreno will have a schedule with milestones prepared for the next meeting.

The meeting was adjourned at 7:00pm.

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ATTENDANCE REPORT FOR CIP OVERSIGHT COMMITTEE
JANUARY THROUGH DECEMBER 2010

	LAST NAME	FIRST NAME	Jan	Feb	March	April	May	June	July	Sept (Aug 31)	Oct	Nov	Dec	Discipline
1	Gross	Saul	P	P	P	P	P	A						Chair
2	Agazim	Erik	P	A	P	P	P	P						Developer
3	Camargo	Elizabeth	P	P	P	P	P	P						Architect
4	Carney	Eleanor	N/A	P	P	P	P	P						Engineer
5	Cuervo	Christina	P	P	P	P	P	P						Citizen-at-Large
6	Karlton	Fred	P	P	P	P	P	P						Developer
7	Kendle	Rick	P	P	A	P	P	P						Engineer/ Citizen-at-Large
8	Kilroy	Stacy	P	P	A	P	A	P						Construction
4	Kraai	Dwight	P	P	P	P	P	P						Engineer

A: ABSENT
P: PRESENT N/A: NOT APPOINTED / * NOT SERVING

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MIAMIBEACH

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

COMMITTEE MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: City Manager Jorge M. Gonzalez

DATE: September 15, 2010

SUBJECT: **REPORT OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE MEETING OF July 29, 2010.**

OLD BUSINESS

1. **Discussion regarding Parking Revenue Bonds**

ACTION

The Committee recommended the item.

Chief Financial Officer Patricia Walker presented and gave a brief history of the item. Chairperson Deede Weithorn asked Ms. Walker if she could breakdown the $67 million. Ms. Walker discussed the following breakdown:

Sunset Harbor Garage	$19.8M
Collins Park Garage	$21.9M
	$41.7M
System wide Meter Acquisition	$1.3M
250 Pay Stations	$0.2M
Pay on Foot Machines	$0.3M
	$1.8M
Surface Lot 19B at Collins & 53rd	$1.54M
Surface Lot at Collins & 84th	$0.72M
13th St Parking Garage	$0.09M
17th St Parking Garage	$0.13M
Cultural Campus Parking Garage	$0.02M
	$2.50M
Sub-Total	$46.0M
Refunding Bonds	$20.9M
Total	$66.9M

Chairperson Weithorn asked what would happen to the Collins Park Garage portion of the issue should the parcel owned by AARE not be acquired. Ms. Walker stated that the project could always be taken out the deal which would reduce the size of the financing to approximately $45 million. Chairperson Weithorn opened the floor to public comment

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which included concern about the City taking on additional debt. The Committee authorized the bond issuance.

NEW BUSINESS

2. Discussion regarding Paid Time Off for Living Wage

ACTION

The Committee recommended setting a minimum requirement of one (1) hour of PTO per 40 hours worked and a six (6) months plus one (1) day vesting period.

Staff is to analyze the potential cost of PTO, if any, to the City.

Chief Financial Officer Patricia Walker presented the item.

The City's current Living Wage Ordinance does not have a paid time off benefit provision for employees working on City service contracts; however 76.3% of employees working for such contractors receive an average of 15 days of Paid Time Off (PTO). Ms. Walker noted that an estimated 16 employees fall into Living Wage Contracts that are for the temporary hiring of event staff, subcontractors, and seasonal employees and these contracts do not offer PTO to covered employees. Chairperson Deede Weithorn suggested that in order to qualify for PTO, the employee must work a minimum of six (6) months within a year. Discussion ensued. Commissioner Jorge Exposito suggested that a minimum requirement for PTO be added to the Request for Proposal (RFP) process. City Manager Jorge Gonzalez stated that requiring PTO may increase the price per hour and as a result reduce the total amount of hours the City is able to purchase, which could potentially reduce the service level provided. Commissioner Jonah Wolfson asked what cost to the City would be, if any. Ms Walker stated that the existing vendors except for the security contract are already covering the minimum requirements of PTO. Conversation ensued. The Committee recommended setting a minimum requirement of one (1) hour of PTO per 40 hours worked and a six (6) months plus one (1) day vesting period and that the requirement would be only for contracts where contract employees worked full time in Miami Beach. The City Manager Jorge Gonzalez identified three types of contract employees were this would be applicable: security guards, parking cashiers / attendants and meter collections.

3. Discussion regarding the current vending machine service contract

ACTION

The Committee recommended retaining Brothers Vending on a month-to-month basis for up to twelve (12) months.

Director of Real Estate, Housing, Community Development Anna Parekh presented the item.

On July 27, 2005, the Mayor and City Commission authorized the Administration to negotiate and enter into a contract with Brothers Vending, Inc., for the operation of vending and snack machines at various locations on City-owned properties and facilities. The initial contract term was for two (2) years, commencing on November 1, 2005 and expiring on October 31, 2007, with three (3) additional one (1) year renewal options, all

of which have since been exercised. The third and final renewal term is set to expire on October 30, 2010, with no further renewals remaining. On January 13, 2010, the City approved an Agreement with the Superlative Group (Consultant) to proceed with Phase 2 of a citywide marketing/corporate sponsorship program to identify top products/sponsorship opportunities including, but not limited to, developing municipal marketing materials; developing competitive processes; negotiating packages; and presentation of prospective marketing partners for the City's consideration. One of the priorities for the Municipal Marketing Program is an "official beverage sponsor" partnership. This type of sponsorship will require the City to demonstrate that, in addition to our brand presence, there are sales volume opportunities. As such, it is important that all current beverage vending contracts in public places in the City be reviewed and considered in the context of the potential "official beverage" sponsorship opportunity. In consideration of these developments involving the corporate sponsorship program, the Administration is recommending to retain Brothers Vending on a month-to-month contract, until such time that the City develops and issues a competitive process for the broader sponsorship program for an "official beverage" sponsor. The Committee recommended retaining Brothers Vending on a month-to-month basis for up to twelve (12) months.

4. Discussion regarding lease with David L. Wrubel, CPA, PA

ACTION

The Committee approved the lease agreement with David L. Wrubel, CPA, PA.

Director of Real Estate, Housing, Community Development Anna Parekh presented the item.

On May 25, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with a Letter of Intent (LOI) on behalf of David L. Wrubel, CPA, PA., a Miami Beach certified public accounting firm, who expressed interest in the 5th Floor that is currently vacant and available. Because the subject space, which is the sole remaining vacant space in the building, was never renovated by the City and requires extensive tenant improvements, the Tenant is also investing a minimum of $35,370 in tenant improvements (in exchange for a rent credit). Property Management has estimated that it would cost the City approximately $37,600 to build out the 5th Floor. Staff recommended that the build-out of the space be handled and permitted by the prospective tenant. The initial term for the proposed lease is three (3) years, with two (2) three (3) year renewal options, at the City's sole discretion. The Administration proceeded to negotiate a proposed lease agreement for City Commission approval and recommends that a lease agreement with David L. Wrubel, CPA, PA., for use of the 5th Floor be approved. The Committee approved the lease agreement with David L. Wrubel, CPA, PA.

5. Discussion regarding lease with Leonardo Salon, Inc.

ACTION

The Committee approved the lease agreement with Leonardo Salon, Inc.

Director of Real Estate, Housing, Community Development Anna Parekh presented the item.

On June 8, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with a Letter of Intent (LOI) on behalf of Leonardo Salon, Inc., who expressed an interest in the ground floor retain space located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street), formerly occupied by Steve's Hair Salon which is currently vacant and available. The Administration recommends that a lease agreement with Leonardo Salon, Inc. be approved. The Committee approved the lease agreement with Leonardo Salon, Inc.

6. Discussion regarding lease with Massage Partners, Inc. (a/k/a Jon Krutchik)

ACTION

The Committee approved the lease agreement with Massage Partners, Inc.

Director of Real Estate, Housing, Community Development Anna Parekh presented the item. On April 30, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with the first of several Letters of Intent (LOI) on behalf of John Krutchik, a potential Massage Envy Spa franchisee, who expressed an interest in the ground floor retail space located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), formerly occupied by Permit Doctor which is currently vacant and available. The average PSF rate for ground floor retail in the building is $42.00. The prospective tenant has offered to pay $40.00 PSF, which the Administration and the City's Broker are recommending due to the fact that the prospective tenant will be undertaking significant renovations to upgrade the current condition of the retail space. The Administration recommends that a one (1) year rent abatement credit ($72,115.60) be granted. The minimum projected hard construction costs are $81,000.

Since approval on first reading, the City has been working with the proposed tenant to incorporate an escrow requirement or some other mechanism to ensure that funds to cover the minimum projected hard costs are secured in favor of the City. The tenant is agreeable to such a structure, contingent on the City considering a term that is concurrent with the current Franchise Agreement. The Franchise Agreement has a term of ten (10) years. The term proposed on first reading was four (4) years and 364 days with a five (5) year renewal at our sole option. As they have proposed, the lease term would now be nor more than nine (9) years and 364 days (or the same expiration date as their Franchise Agreement); this is the same or less than the total term time previously approved on first reading, but does not provide for a renewal provision. The concept of a franchisee pursuing a lease term concurrent with their franchise term is common in the private sector. The Administration recommends that a lease agreement with Massage Partners, Inc., with the proposed terms, as delineated herein, including the proposed creation of an escrow, and the change to the lease term be approved. The Committee approved the lease agreement with Massage Partners, Inc.

7. Discussion on the possibility of expanding the Ameresco Lighting project to include all garages for reducing the energy of the lights.

ACTION

The Committee approved the item subject to Chase allowing a loan amendment.

Public Works Director Fred Beckmann presented and gave a brief history of the item. During the development of the Energy Conservation Measure for Facility Lighting and Lighting Control Upgrades (ECM 1) three existing parking garages were not evaluated.

On May 12, 2010 the City Commission asked Administration to explore the possibility of expanding ECM 1 to include all existing parking garages. The City received the proposal from Ameresco to install more efficient lighting systems with in the parking garage at 7th Street, 13th Street, and 42nd Street. The proposed capital cost for the additional scope of work is $302,650, with guaranteed annual savings of $36,792 within a ten (10) year term. As part of the City's due diligence, City staff has reviewed the cost backup sheets and the cash flow analysis. City staff considers the proposed cost and the ten (10) year guaranteed annual energy savings of $36,792 to be fair and reasonable. The Administration recommends approval to add the lighting improvements. Chairperson Deede Weithorn was concerned that the cost of negotiating a new financing deal would exceed the savings of $36,792 and asked if this would be added to the original financing or added as a separate financing piece. Chief Financial Officer Patricia Walker stated that the City would have to ask Chase if they would amend the loan agreement. The Committee approved the item subject to Chase allowing a loan amendment.

8. Discussion regarding visitor parking stickers available for residential areas

ACTION

The Committee approved the item on a trial basis and asked for a status report by Letter to Commission (LTC) in six (6) months.

Assistant Parking Director Charles Adams presented the item. Currently, daily scratch-off hang-tags may be purchased by residential parking zone participants at a cost of $1.00 per day (plus sales tax). The Parking Department also offers a Caregiver Permit Program which allows residents receiving services from licensed agencies that have been authorized by a licensed physician to purchase a caregiver parking permit at a cost of $25.00 (plus sales tax) for six (6) months. The resident may renew the permit thereafter upon resubmitting updated documentation to the Parking Department The proposed enhancements to the Caregiver Parking Permit Program would also allow the resident to obtain the permit for family members/friends that assist in the care and/or support of the resident, not only an established caregiver agency. This would address special needs particularly for the elderly. The Committee approved the item on a trial basis and asked for a status report by Letter to Commission (LTC) in six (6) months.

9. Discussion of a Land Exchange and Development Agreement among Miami-Dade County, the City of Miami Beach, and South Beach Heights II; involving the properties at 615 Collins Avenue (P.E.T. Center), 710 Alton Road (Miami Beach Health Center) and 745 Alton Road.

ACTION

The Committee recommended the item be brought to the City Commission.

Assistant City Manager Jorge Gomez presented the item.

The County owns the property at 645 Collins Avenue which is currently leased to the County Health Department (P.E.T. Center property). The City of Miami Beach has reversionary interest in this property so that in the event of the P.E.T. Center property ceases to be used as a medical clinic, title to this property automatically reverts back to the City. The County also owns the property at 710 Alton Road (West Alton property) which is leased to the Miami Beach Community Health Center (formerly the Stanley C. Meyers Clinic).

Both the County and the City have been approached by Mr. Russell Galbut, representing South Beach Heights II (Developer), to exchange properties and develop a new health center on the vacant property owned by South Beach Heights II at 745 Alton Road (East Alton property). Should the City Commission be interested in such an exchange, the City, the County and the developer would have to enter into a Land Exchange and Development Agreement. The Committee recommended the item be brought to the City Commission.

10. Request for approval to issue a Request for Proposals (RFP) to provide parking cashiers/attendants and supervisors for the City's parking garages.
a) criteria for evaluations
b) add a labor peace clause

ACTION

The Committee asked that the item be placed on the August 25, 2010 F&CWP meeting.

Chairperson Deede Weithorn asked staff to meet with her to review the RFP.

Assistant Parking Director Charles Adams presented the item. Chairperson Deede Weithorn asked staff to meet with her to review the RFP. The Committee asked that the item be placed on the August 25, 2010 F&CWP meeting.

11. Discussion pertaining to the Request for Proposals (RFP) NO. 24-09/10, for management and/or development of The Byron Carlyle Theater Complex.

ACTION

The Committee recommended negotiating a management agreement with Broward Stage Door Theatre Co, Inc. with benchmarks included.

City Manager Jorge Gonzalez presented the item and expressed concern with entering into a long-term agreement (initial term of five (5) years, with an option to renew for an additional five (5) year term) essentially rent free. The Scope of Services for this RFP sought proposals with cultural themed uses for the facility. The Administration believes that eliminating this restriction would yield additional proposals that might generate a greater economic impact for the neighborhood, which should be considered before entering into a long-term rent-free agreement.

Each fiscal year of the Byron Carlyle Theater's operation has yielded operating deficits, with the largest being $195,000 in 2006. In 2009, the last full year of operation, the operating deficit was approximately $40,000, and is projected that the Theater will have an operating loss of almost $66,000 in the current fiscal year. In May of 2008, the City Commission directed the Administration to research and propose alternatives for the privatization of the Byron Carlyle Theater. The Administrations intent has been to eliminate the City's financial obligation, which could include the privatization of the Byron Carlyle.

On February 3, 2010, the Mayor and City Commission approved the issuance of a Request for Proposal (RFP), for Management and/or Development of the Byron Carlyle Theater Complex. The RFP was issued on February 18, 2010, with an opening date of April 19, 2010. A pre-proposal conference to provide information to the proposers

submitting a response was held on March 8, 2010. Additionally, four (4) site visits were offered to potential proposers on March 8, 2010, March 23, 2010, March 30, 2010 and April 8, 2010. The City was interested in proposals for use of the existing theater portion of the building as a theater or with some similar cultural use. It was anticipated that the successful proposer would negotiate with the City for a long-term contract with and initial term of five (5) years, with an option to renew for an additional five (5) year term, at the City's sole discretion.

BidNet issued bid notices to 151 prospective proposers, BidSync (formerly known as RFP Depot) issued bid notices to 44 prospective proposers, and 175 proposers were notified via mail, e-mail, and fax circulation, which resulted in the receipt of the following three (3) proposals:

- Bollywood/Hollywood Productions, Inc.
- Broward Stage Door Theater Co., Inc.
- New Theatre

Two (2) of the organizations are non-profits with current operations in South Florida, and the third proposer is a for-profit commercial film and movie company. The Evaluation Committee recommended the Administration initiate discussions with the two non-profits: Broward Stage Door Theater Co., Inc. and New Theatre. Both non-profits proposed operating the facilities rent-free, and requested long use terms.

Chairperson Deede Weithorn was concerned whether either of the two proposers would bring activity to North Beach. Commissioner Jerry Libbin asked what type of programming the proposers would be offering. Cultural Arts & Tourism Development Director Max Sklar stated that both offered theater productions. Mr. Sklar also stated that New Theater included in their proposal that they would seek a subsidy or partnership from the City to help with day-to-day operations, whereas Broward Stage Door Theater Co., Inc. would handle day-to-day operations. Commissioner Libbin asked what the projections for ticket sales were for Broward Stage Door Theater Co., Inc. Mr. Sklar stated that this would be a new market for the company, which would need to be built up over a period of years. Commissioner Libbin suggested moving forward with negotiating a management agreement with Broward Stage Door Theater Co., Inc. and include benchmarks. Chairperson Weithorn opened the floor to public comment which included the desire to have cultural programming in the theater and moving forward with one of the two proposers. The Committee recommended negotiating a management agreement with Broward Stage Door Theatre Co, Inc. with benchmarks included.

OTHER BUSINESS

The Committee asked CIP to report the amount spent to date on 44th Street, Sunset 1 & 2, Sunset 3 & 4, Venetian Islands, and South Point 3,4,5, to be discussed at the August 25, 2010 Budget Briefing meeting.

Mr. William Goldsmith asked for the amount spent to date on the following projects: 44th Street, Sunset 1 & 2, Sunset 3 & 4, Venetian Islands, and South Point 3,4,5. Conversation ensued. The Committee asked CIP to report the amount spent to date on: 44th Street, Sunset 1 & 2, Sunset 3 & 4, Venetian Islands, and South Point 3,4,5, to be discussed at the August 25, 2010 Budget Briefing meeting.

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REPORT OF THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE (NCAC) MEETING HELD ON TUESDAY, JUNE 29, 2010.**

A meeting of the Neighborhoods/Community Affairs Committee (NCAC) was held on Tuesday, June 29, 2010 at 2:30pm in the City Manager's Large Conference Room, 4th Floor, City Hall. **Commissioners in attendance**: Vice-Mayor Libbin, Commissioners Jorge Exposito, and Jonah Wolfson (arrived at 3:30pm). Members from the Administration and the public were also in attendance. Please see the attached sign-in sheet.

THE MEETING OPENED AT 2:47 PM.

1. **UPDATE REGARDING THE STATUS OF EFFORTS MADE BY THE ADMINISTRATIONTO ENCOURAGE FDOT TO RE-STRIPE THE LANES IN THE MID BEACH AREA ALONG ALTON ROAD. (2:50PM)** *(Returning from the April 27, 2010 Neighborhoods/Community Affairs Committee meeting)*

   Mr. Chris Tavella, Assistant District Design Engineer for District 6 at FDOT reported on the proposal to have the City do milling and resurfacing where the parking lanes on Alton Road in mid-beach were deemed deficient. FDOT's criteria for parking lanes is a minimum width of seven (7) feet, measured from the face of the curb to the edge line of the outside lane. FDOT did a field survey from Michigan Avenue northward to 63rd Street. He reviewed their diagram Mr. Tavella explained that he was here to advise the Committee that FDOT is taking the responsibility to pay for the cost to rectify those locations where the parking lanes are less than seven (7) feet. In order to do so, FDOT proposes shifting the inside edge line closer to the median curb; they have been approved to go within six (6) inches of the face of the curb of the median and will enhance that stripe by adding raised pavement markings to emphasize that the stripe is closer to the curb than typical. This will allow the inside and outside lanes to be shifted over by a foot and widen the parking lanes by a foot.

   Vice-Mayor Libbin questioned whether FDOT planned to mill the surface. Mr. Tavella explained the quoted cost is based on the design and construction costs to mill an inch of asphalt from the face of the median curb to the gutter line on the outside for the entire width for the areas that are less than seven (7) feet.

   Commissioner Exposito asked for clarification of the estimated cost quoted to the City. Mr. Tavella explained that is the estimated cost for the areas that are between seven (7) feet and seven (7) feet, eleven (11) inches. Fred Beckmann, Public Works Department Director added that of the areas that fall in that range, very little is actually just seven (7) feet and most is closer to the seven (7) feet, six (6)inches width and higher.

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Mr. Beckmann, Public Works Director, added that in the areas where the parking lanes are very near to the eight (8) feet width, he does not think it would be very wise to spend the money to mill and resurface to gain only one (1) inch.

Gabrielle Redfern spoke.

Vice-Mayor Libbin stated that he spoke with Tom Rockwell of the Alton Road Homeowners Association, asking him and their board to go out and study the areas that FDOT is correcting at their expense and then look at the remaining areas and let him know if they are satisfied by the FDOT improvements. If they determine that there are some areas that still need improvements then there may be additional conversation at this committee to consider spending City funds to enlarge one or more areas.

There was some discussion regarding bike lanes and options regarding Pinetree Drive and LaGorce.

Mr. Beckmann stated that he will meet with the HOA, including Mr. Rockwell and members of FDOT and City staff. He stated that the areas being fixed by FDOT and maybe the areas that are between seven (7) feet and seven (7) feet, six (6) inches would be his recommendation to work on, and that the areas greater than seven (7) feet, six (6) inches would involve spending too much money and gaining very little, so he would not recommend.

ACTION: The committee, (Vice-Mayor Libbin and Commissioner Exposito), directed Mr. Beckmann to meet with the Homeowner Association, including Mr. Rockwell and members of FDOT and City staff, prior to the next meeting of the Neighborhoods/ Community Affairs Committee and return with their comments and suggestions on FDOT's proposal.

2. **FOLLOW-UP DISCUSSION REGARDING STREET CONDITIONS ON 6TH STREET NEAR LAS OLAS CAFÉ. (3:15PM)** *(Returning from the April 27, 2010 meeting of the Neighborhoods/Community Affairs Committee)*

Hilda M. Fernandez, Assistant City Manager reviewed the update as outlined in the committee memo included in the agenda package.

Vice-Mayor Libbin asked to get the word out and advertise to the neighborhood when there is a planned walk-around of the area to help encourage neighborhood involvement.

ACTION: The committee, (Vice-Mayor Libbin and Commissioner Exposito), made no motion, this was a follow-up report.

3. **UPDATE REGARDING PEDESTRIAN SAFETY FOR RESIDENTS IN SOUTH OF FIFTH NEIGHBORHOODS. (3:24PM)** *(Returning from the May 25, 2010 Neighborhoods/Community Affairs Committee meeting)*

Fred Beckmann, Public Works Department Director reviewed the updates and information outlined in the committee memo and included in the agenda package. He stated that if anything changes, updates will be provided by LTC.

Vice-Mayor Libbin asked for the status of traffic signals at 12th and 13th Streets on Collins Avenue. Mr. Beckmann explained that they are in the program for next year.

Commissioner Exposito asked whether once intersections are identified where a stop sign may be installed; the City can have the stop sign installed on a temporary basis as this would allow people to get used to it and start to have a safety effect on traffic. Mr. Beckmann explained that is what is being done once the intersection is identified and the County approves the location; a sign is placed in a temporary location until the work is completed and the permanent sign is installed.

ACTION: The committee, (Vice-Mayor Libbin and Commissioner Exposito), made no motion, this was a follow-up report.

4. **DISCUSSION REGARDING THE PLACEMENT OF A PLAQUE ON THE BOARDWALK IN HONOR OF NORMAN CIMENT. (3:28PM)** *(Deferred at the May 25, 2010 meeting of the Neighborhoods/Community Affairs Committee)*

Kevin Smith, Parks and Recreation Department Director explained that this referral is from Commissioner Góngora at the April 14, 2010 Commission meeting requesting a plaque that would go on the Boardwalk in a place to be determined by the Arts in Public Places Committee (AiPP) in honor of Mr. Ciment. Mr. Ciment was a Judge, Mayor, and Commissioner here in the City.

Vice-Mayor Libbin asked what the steps are after today's approval by the committee to recommend this to the Commission. Mr. Smith explained the steps as outlined in Section 82-504 regarding Monuments. Hilda M. Fernandez, Assistant City Manager clarified that once the Commission approves the plaque, it would go to AiPP for approval as to placement and aesthetics. Vice-Mayor Libbin suggested that it would make more sense for the Commission to have the final say after a design is approved by AiPP. Ms. Fernandez suggested taking this request to AiPP now, then come back to this committee for approval to go to the full Commission for a public hearing. Jose Smith, City Attorney stated that this process would be fine as the ordinance is a little ambiguous.

Commissioner Wolfson joined the meeting at 3:30pm.

Ms. Fernandez added that administration would speak with Commissioner Góngora and come back with recommended locations. Mr. Smith asked if the plan is to take down the Boardwalk at some point, do we want to put a plaque where eventually it is going to be knocked down. Ms. Fernandez stated that it could be placed at the threshold where the Beachwalk joins the Boardwalk because that will stay.

Commissioner Exposito made the motion to refer this item to AiPP for approval of placement and design and return to the NCAC for approval and recommendation to the Commission for a public hearing.

Commissioner Wolfson asked if there was any family present on behalf of Mr. Ciment. There was none. Ms. Fernandez stated that when this discussion returns from AiPP, the administration will let Commissioner Góngora know that he can notice the family if they wish to attend the meeting where you will look at the plaque.

Motion seconded by Vice-Mayor Libbin. **(Vote: 2-0, Vice-Mayor Libbin and Commissioner Exposito present)**

ACTION: The committee, (Vice-Mayor Libbin and Commissioner Exposito) moved to refer this item to AiPP for approval of placement and design and return to the NCAC for approval and recommendation to the Commission for a public hearing.

5. **DISCUSSION REGARDING A BOTTLE AND CAN DEPOSIT ORDINANCE FOR THE CITY OF MIAMI BEACH. (3:32PM)** *(Referral requested by Commissioner Edward L. Tobin, May 12, 2010 Commission item C4D)*

ACTION: The item was not discussed. Per Vice-Mayor Libbin, the item was deferred at the request of Commissioner Tobin.

6. **REVIEW AND DISCUSS AN AMENDMENT TO THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA; AMENDING CHAPTER 2, ARTICLE VIII, DIVISION 3 ENTITLED "LOBBYISTS." (2:47PM)** *(Referral – June 9, 2010 Commission Item C4B)*

Robert Parcher, City Clerk explained the request to change the disclosure requirement date in the future for lobbyists from October 1 back to January 31 for the preceding year. He added, because of the amount of work required, that for January 31, 2011 they be allowed to pick up for the years of 2009 and2010.

Commissioner Exposito made the motion to recommend to the Commission to amend the bylaws to change the lobbyist disclosure date from October 1 to January 31 for each year and for January 31, 2011 to collect for the years 2009 and 2010. The motion was seconded by Vice-Mayor Libbin. **(Vote: 2-0, Vice-Mayor Libbin and Commissioner Exposito present)**

ACTION: The committee (Vice-Mayor Libbin and Exposito) moved to recommend to the Commission to amend the bylaws to change the lobbyist disclosure date from October 1 to January 31 for each year and for January 31, 2011 to collect for the years 2009 and 2010.

7. **DISCUSSION CONCERNING WAYS TO INCENTIVIZE MULTI-UNIT DWELLINGS (i.e., APARTMENTS AND CONDO BUILDINGS) TO RECYCLE MORE. (3:33PM)** *(Referral – June 9, 2010 Commission Item C4H)*

Commissioner Wolfson stated that he has been working with staff and Raul Aguila, Deputy City Attorney, to come up with a Recycling Ordinance and suggested referring this item to the Sustainability Committee to bediscussed in concert with that effort.

Gabrielle Redfern spoke.

Fred Beckmann, Public Works Department Director, explained the County's Recycling Ordinance does not have specific guidelines, it just states that you must have a recycling program which could be anything.

Vice-Mayor Libbin stated that the City now requires the waste haulers to sign a contract with the condo that shows them the offers of a recycling element. Mr. Beckmann clarified that there is a requirement now for the franchise haulers to offer recycling services to the condo associations. Once they offer, they have to receive something that states whether the condo association accepts the offer. By the end of the year, the City should have full inventory of who has accepted and who has not. Mr. Beckmann stated that he has a list of who has been offered as of now and their responses. He estimates that about 80% of the condos do not have recycling.

Commissioner Exposito made the motion to refer this discussion to the Sustainability Committee for further consideration. Seconded by Vice-Mayor Libbin. **(Vote: 2-0, Vice-Mayor Libbin and Commissioner Exposito present)**

ACTION: The committee, (Vice-Mayor Libbin and Commissioner Exposito), referred this item to the Sustainability Committee for further consideration.

THE MEETING ADJOURNED AT 3:41PM

Note: The next meetings of the Neighborhoods/Community Affairs Committee is scheduled for Tuesday, July 27, August 31 and October 5, 2010.

JMG/HMF/rfm

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MIAMIBEACH

NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE

June 29, 2010

SIGN-IN SHEET

PLEASE PRINT LEGIBLY

NAME	ORGANIZATION / DEPT.	PHONE NO.	EMAIL
Gabrielle	BASIC	305 790 5461	Gabriellepadma@gmail.com
Randi MacBride	CODE	6169	
Barbara Hawayek	Building / Code	6977	b.hawayek@miamibeachfl.gov
Fernando Vazquez	CMB	6399	Fvazquez@ " "
Greg Tindle	CODE	6749	Gregtindle@miamibeachfl.gov
George S. Castell	Code Compliance	6776	georgecastell@miamibeachfl.gov.
Xavier Falconi	CMB	305-673-7080	XFALCONI@MIAMIBEACHFL.GOV
Debora Turner	CMB	X6441	deboraturner@miamibeachfl.gov
Robert Parchor	CMB	X7411	RPARCHOR@MIAMIBEACHFL.GOV
Kevin Smith	CMB / P&R	X7730	KEVINSMITH@MIAMIBEACHFL.ORG

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

Wolfson Joined Mtg 3:30pm
Libbin & Exposito Quorum

MIAMIBEACH

NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE

June 29, 2010

SIGN-IN SHEET

PLEASE PRINT LEGIBLY

NAME	ORGANIZATION / DEPT.	PHONE NO.	EMAIL
David Smiley	Herald	954-294-6749	dsmiley@MiamiHerald.com
Yanette Bravo	Comm. Tobin's office	305-673-7107	Yanettebravo@miamibeachfl.gov.
Ramon Sierra	Florida Dept of Transportation	305-470-5336	ramon.sierra@dot.state.fl.us
Chris Tavella	FDOT	305-470-5551	chris.tavella@dot.state.fl.us
Moshe Libbin		786-512-2982	Moshelibbin@aol.com

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **REPORT OF THE JULY 26, 2010 LAND USE AND DEVELOPMENT COMMITTEE MEETING**

A meeting of the Land Use and Development Committee was held on July 26, 2010. Commissioners Gongora, Wolfson and Weithorn were in attendance. Members from the Administration and the public were also in attendance. Please see the attached sign-in sheet. The meeting was called to order at 4:15 pm.

OLD BUSINESS:

1. **REFERRAL TO THE LAND USE AND DEVELOPMENT COMMITTEE – DISCUSSION REGARDING A PROPOSED ORDINANCE TO REQUIRE CONSTRUCTION STAGING PLANS.**

AFTER-ACTION:
Building Director Alex Rey introduced the issue and discussed a similar ordinance from the City of Coral Gables. Commissioner Weithorn expressed the desire to have the ordinance modified to include a radius of 100 to 200 feet from the site. Commissioner Góngora requested timeframes added to the ordinance, and further definition of complete renovation.

MOTION: Weithorn/Wolfson (vote 3-0)
Move forward to the Commission with the proposed ordinance with a 200 foot radius.

2. **DISCUSSION ON THE BLIGHTED CONDITION OF THE 300 BLOCK OF OCEAN DRIVE.**

AFTER-ACTION: Richard Lorber introduced the item. Commissioner Weithorn asked if the ordinance could be applied to single-family homes in blighted conditions. William Cary explained that this ordinance could apply citywide to all properties that fall under the major projects category, including single-family homes. Daniel Veitia spoke. Commissioner Góngora discussed the matter. Staff indicated that they needed to finalize the bond amounts, and the item would be brought back to the Land Use Committee in the near future after it has been refined.

3. **PROPOSAL FOR A MUNICIPAL FINE ORDINANCE FOR LOADING ACTIVITIES ON OCEAN DRIVE.**

AFTER-ACTION: Chuck Adams of the Parking Department introduced the item and discussed deliveries. Shaun Hauver from the Loews Hotel also spoke about the

Agenda Item C6D
Date 9-15-10

matter. Commissioner Weithorn recommended that the hours be set to allow deliveries between 7 a.m. and 6 p.m.

MOTION: Weithorn/Wolfson (vote 3-0)
Move forward to the Commission with the proposed ordinance with hours to be set permitting deliveries between 7 a.m. and 6 p.m.

4a.
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS", BY CREATING A NEW DIVISION 20, "TC NORTH BEACH TOWN CENTER DISTRICTS", CREATING NEW ZONING DISTRICTS TC-1, TOWN CENTER CORE; TC-2, TOWN CENTER MIXED USE; AND TC-3, TOWN CENTER RESIDENTIAL OFFICE; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, MAIN PERMITTED, CONDITIONAL, ACCESSORY AND PROHIBITED USES, DEVELOPMENT REGULATIONS, DESIGN REVIEW STANDARDS, AND PARKING REGULATIONS; AMENDING CHAPTER 130, "OFF-STREET PARKING", ARTICLE II, "DISTRICTS; REQUIREMENTS", SECTION 130-31, "PARKING DISTRICTS ESTABLISHED", AMENDING THE BOUNDARIES OF PARKING DISTRICT 4; AMENDING ARTICLE III, SECTION 130-68, "COMMERCIAL AND NONCOMMERCIAL PARKING GARAGES", ADOPTING NEW REGULATIONS IN TC-3 AND GU FOR COMMERICAL AND NONCOMMERICAL PARKING GARAGES; AMENDING CHAPTER 138, "SIGNS", ARTICLE V, "SIGN REGULATIONS BY DISTRICTS", SECTION 138-172, "SCHEDULE OF SIGN REGULATIONS FOR PRINCIPAL USE SIGNS"; CREATING A NEW SECTION 138-174, "NORTH BEACH TOWN CENTER SIGNAGE"; AMENDING CHAPTER 142, DIVISION 4, "ALCOHOLIC BEVERAGES", SECTIONS 142-1301 AND 142-1302 TO INCLUDE TC DISTRICTS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

4b.
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CITY CODE, BY CHANGING THE ZONING DISTRICT CLASSIFICATIONS FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE" AND TC-3(C) "TOWN CENTER CONDITIONAL NEIGHBORHOOD COMMERCIAL"; AND AMENDING THE AFFECTED PORTION OF THE CITY'S OFFICIAL ZONING DISTRICT MAP TO CORRESPOND WITH THESE CHANGES; PROVIDING FOR REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

4c.
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PART II: GOALS, OBJECTIVES AND POLICIES OF THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN, POLICY 1.2 OF OBJECTIVE 1: LAND DEVELOPMENT REGULATIONS OF THE

FUTURE LAND USE ELEMENT, BY ADDING NEW CATEGORIES "TOWN CENTER CORE" (TC-1); "TOWN CENTER MIXED USE" (TC-2); AND "TOWN CENTER RESIDENTIAL OFFICE" (TC-3); AND ACCOMPANYING STANDARDS FOR LAND DEVELOPMENT REGULATIONS AND DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER; SEVERABILITY; INCLUSION IN THE COMPREHENSIVE PLAN AND AN EFFECTIVE DATE.

4d.

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE"; DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

AFTER-ACTION: Richard Lorber introduced the matter, followed by Daniel Veitia, who spoke in favor from the standpoint of the North Beach Business Community. Staff explained that a small change was made to the setbacks in the ordinance to reflect the latest discussions regarding the RFLI for the North Beach Parking Garage.

MOTION: Weithorn/Wolfson (vote 3-0)
The Committee referred the matter to the Planning Board.

5. DISCUSSION AND REVIEW OF THE CURRENT CMB ORDINANCE REGARDING SIGNAGE SIZE AND NEON SIGNAGE IN REGARDS TO LINCOLN ROAD AND WASHINGTON AVENUE SIGNAGE DISTRICT.

AFTER-ACTION: Shawn Hauver of the VCA discussed the matter with the Committee. Richard Lorber and William Cary of the Planning Department explained the genesis of the existing ordinance and what ways could be found to improve the ordinance.

MOTION: Wolfson/Weithorn (vote 3-0)
The Committee referred the matter to the Planning Board.

6. DISCUSSION REGARDING THE PLACEMENT OF WATER SUB-METERS.

AFTER-ACTION: Commissioner Wolfson opened the discussion and asked Mr. Michael Lefkowitz to explain the matter he brought to the Commission's attention. He spoke about the history of this issue and asked the City to permit these meters. Mike Alvarez of the Public Works Department discussed the City's concerns.

MOTION: Wolfson/Gongora (vote2-0) Mike Alvarez to meet with Mr. Lefkowitz, and the item to come back to the LUDC in September.

7. DISCUSSION ON CELL PHONE PROHIBITION.

AFTER-ACTION: Mr. Stanley Shapiro spoke about this matter. Staff informed the Committee that the issue is being included in a Countywide ordinance being supported by the Miami-Dade League of Cities.

8. A REQUEST FOR A POSSIBLE AMENDMENT TO THE CITY'S LAND DEVELOPMENT REGULATIONS AMENDING THE CPS-2 DISTRICT AT THE PROPERTY BOUNDED BY ALTON, 5TH STREET, LENNOX AND 6TH STREET AND TO AMEND BY REMOVING THE PROHIBITION OF CAR WASHING TO ALLOW FOR LOW IMPACT CAR WASHING AND AUTO DETAILING WITHIN A PARKING STRUCTURE.

AFTER-ACTION:
Richard Lorber, Acting Planning Director, introduced the item, and explained the City's current zoning regulations with respect to Car Wash services. It was explained that the zoning for 5th Street contained an outright prohibition on car wash services which carried forward from the days of the redevelopment area, and that a slight modification to the Land Development Regulations could enable car wash services to be located within parking structures, completely enclosed and not visible from the street.

MOTION: Weithorn/Gongora (vote 2-0)
The Committee referred the matter to the Planning Board.

9. DISCUSSION OF A RELIGIOUS OVERLAY DISTRICT ON 40TH STREET (CHASE AVE TO PINETREE DRIVE); AND REFERRAL TO THE PLANNING BOARD FOR A CONSIDERATION AS AN AMENDMENT TO THE CITY CODE.

AFTER-ACTION:
Attorney Michael Larkin introduced the item, and discussed the need for the creation of an overlay district on 40th Street to accommodate the existing religious institutions on that street. There are at least two major religious institutions on that street, as well as a number of unlicensed but longstanding religious institutions located there. Former North Bay Village Commissioner Tvi Bogomilsky spoke of the need for these types of institutions in the 41st Street area. First Assistant City Attorney Gary Held spoke about the latest Federal legislation in the area of freedom of worship (RLUIPA) and advised that the City should try to accommodate this request as much as possible.

MOTION: Wolfson/Weithorn (vote 3-0)
The Committee referred the matter to the Planning Board.

Attachment

JMG/JGG/RGL
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LAND USE AND DEVELOPMENT COMMITTEE MEETING
July 26, 2010 @ 4:00 pm
City Manager's Large Conference Room

Attendance Sheet

NAME	E-MAIL ADDRESS	I WISH TO RECEIVE THE LINK TO THE ELECTRONIC AGENDA	CONTACT NUMBERS
1. Jorge Gomez	jgomez @miamibeachfl.gov		
2. Richard Lorber	rlorber @miamibeachfl.gov		
3. Joyce Meyers	jmeyers @miamibeachfl.gov		
4. Stanley K Shapiro	Stanley KShapiro @ Hotmail.com		
5. Shawn Hauver	Shauver @ loewshotels.com		
6. Daniel Veitia	daniel @ northbeachnews.com		
7. Carmen Lazabal	colazabal @ miamibeachfl.gov.		
8. Alex Rey	Alexrey @ "		
9. Robert Rahman	erimarc @ earthlink.net		
10. MICHAEL LEFKOWITZ	MICHAEL @ ECSSAVES.COM	✓	786 220 9250
11. Izvi Bogomilsky	SBOGOMILSKY @ earthlink.net		305-401-7901
12. Chuck Adams	CMB PARKING CADAMS @ MIAMIBEACHFL.GOV		305-673-7000 x 6868
13. ROBERT JENKINS	ROBERTJENKINS @ MIAMIBEACHFL.GOV		305-673-7000 - 2315
14 Yanette Bravo	Yanette Bravo @ miamibeachfl.gov		305-673-6274
15. Steven Schylander	schylanders @ bellsouth.net		786 316 2380
16. Zalman Rudd	Zalman Rudd @ gmail.com		
17. SAMUEL BOGOMILSKY	SPB1800 @ YAHOO.com		305-467-3084
18. JOHN HEFFERNAN	" " @ miamibeachfl.gov		x 7030
19. Rebecca Wakefield	@		X6157
20 RAMIRO INGUANZO	@ MIAMIBEACHFL.GOV		X. 6697

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LAND USE AND DEVELOPMENT COMMITTEE MEETING
July 26, 2010 @ 4:00 pm
City Manager's Large Conference Room

Attendance Sheet

NAME	E-MAIL ADDRESS	I WISH TO RECEIVE THE LINK TO THE ELECTRONIC AGENDA	CONTACT NUMBERS
21. G Held	@		x6532
22.	@		
23.	@		
24.	@		
25.	@		
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27.	@		
28.	@		
29.	@		
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C7

Condensed Title:

A Resolution authorizing the City Manager to apply for and accept four (4) grants.

Key Intended Outcome Supported:

1) Enhance the environmental sustainability of the community; 2) Maximize Miami Beach as a destination brand; 3) Enhance learning opportunities for youth; 4) Maintain crime rates at or below national trends.

Supporting Data:

2009 Community Satisfaction Survey: 1) 2.6 percent of respondents listed Environmental in response to 'What one thing has a positive impact on the quality of life in Miami Beach?'; 2) 24% of residents rated the availability of cultural activities as 'too few', 69% of resident believe that the tourism industry contributes 'about the right amount' to their quality of life, 24% of residents rated Arts and Culture as one of the services the City should strive not to reduce; 3) 75% of youth in Success University experienced a reduction in school absences compared to prior school year; 2007 Community Satisfaction Survey: 24% of residents were dissatisfied or very dissatisfied with local schools on Miami Beach; safety across the City (preventing crime, drugs, gangs) appeared as one of the most important areas affecting resident's quality of life, The Children's Trust grant provides funding to reduce truancy, crime and gangs; and 4) 'Improving fire-fighting services' was listed by 3.6 percent of respondents for public safety improvement.

Issue:

Shall the City support the following funding requests and execute the related agreements?

Item Summary/Recommendation:

Retroactive approval to submit grant applications to: 1) US Environmental Protection Agency (EPA), Climate Showcase Communities Program for funding in the amount of $500,000 for the City's Water Reclamation Plant Project; 2) The National Endowment for the Arts for funding in the amount of $100,000 for Sleepless Night 2011; 3) The Children's Trust for additional funding in the amount of $100,000 for Success University; and, 4) Florida Division of Emergency Management for Homeland Security Grant Program funding in the amount of $9,000 for Emergency Management training.

Advisory Board Recommendation: N/A

Financial Information:

Source of funds	#	Grant Name/Project	Grant Not to Exceed Amount	Match Amount/Source
—	1	EPA Climate Communities/ Water Reclamation Plant	$500,000	Matching funds to be determined on award
	2	NEA Access to Artistic Excellence/Sleepless Night 2011	$100,000	$100,000/ Corporate Support
	3	The Children's Trust/ Success University	$100,000	N/A
	4	State Dept of Financial Services/ Domestic Security Training	$9,000	N/A

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Judy Hoanshelt, Grants Manager, Office of Budget and Performance Improvement

Sign-Offs:

Department Director	Assistant City Manager	City Manager
	—	

MIAMIBEACH

AGENDA ITEM C7A

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION RETROACTIVELY APPROVING AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO SUBMIT GRANT APPLICATIONS TO: 1) US ENVIRONMENTAL PROTECTION AGENCY (EPA), CLIMATE SHOWCASE COMMUNITIES PROGRAM FOR FUNDING IN THE AMOUNT OF $500,000 FOR THE CITY'S WATER RECLAMATION PLANT PROJECT; 2) THE NATIONAL ENDOWMENT FOR THE ARTS FOR FUNDING IN THE AMOUNT OF $100,000 FOR SLEEPLESS NIGHT 2011; 3) THE CHILDREN'S TRUST FOR ADDITIONAL FUNDING IN THE AMOUNT OF $100,000 FOR SUCCESS UNIVERSITY; AND, 4) FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR HOMELAND SECURITY GRANT PROGRAM FUNDING IN THE AMOUNT OF $9,000 FOR EMERGENCY MANAGEMENT TRAINING; APPROPRIATING THE ABOVE GRANTS, IF APPROVED AND ACCEPTED BY THE CITY, AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS RELATED TO THESE APPLICATIONS**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

1. Retroactive approval to submit an application to the US Environmental Protection Agency (EPA) Climate showcase Communities Grant Program for funding in the amount of $500,000 for a Water Reclamation Plant

The overall goal of the EPA's Climate Showcase Communities program is to create replicable models of sustainable community action that generate cost-effective and persistent greenhouse gas reductions while improving the environmental, economic, public health or social conditions in communities. The program extends EPA's capacity to share with the public best practices by funding projects that can serve as living models of innovation and education. Funds are provided for planning, demonstration and/or implementation of projects designed to address climate change initiatives.

The City of Miami Beach currently irrigates the golf course at Miami Beach Golf Club with potable water combined with brackish water from a golf course pond system. In an effort to eliminate this use of potable water for irrigation, the city is proposing to install a membrane bioreactor wastewater plant to treat wastewater to a public access reuse standard and utilize the treated water to irrigate the golf course. This project was included by Ameresco in the Preliminary Energy Assessment Summary Report provided to the City on June 2, 2009.

This grant requires matching funds in the amount of $500,000. The total project cost is $6,760,000 which will be funded through energy savings. The cost share and/or match can be in the form of cash or in-kind contributions. Matching funds to be determined on award.

This project supports the key intended outcome enhance the environmental sustainability of the community.

2. Retroactive approval to submit an application to the National Endowment for the Arts for funding in the amount of $100,000 for Sleepless Night 2011

The National Endowment for the Arts 'Access to Artistic Excellence' program encourages and supports artistic creativity, preserves the nation's diverse cultural heritage, and makes the arts more widely available in communities throughout the country. Support is available to organizations for projects that enable arts organizations and artists to expand and diversify their audiences and that provide opportunities for individuals to experience and participate in a wide range of art forms and activities.

The goals of Sleepless Night 2011 are to strengthen South Florida's reputation as a top cultural tourism destination by becoming a major annual signature event, on par with Art Basel Miami Beach and the South Beach Wine and Food Festival; to build arts audiences, increase public awareness of the arts and educate the local arts practitioners; to create community through the shared experience of diverse audiences; to forge dynamic partnerships of artists, arts organizations and public and private industry; and to enliven both culturally and economically the previously depressed final month of hurricane season.

Sleepless Night 2011 will present over 150 free arts and entertainment offerings at 80 different locations spread throughout the city and the 13-hour night that marks the end of Daylight Savings Time. Included in the event are free museum admissions, indoor and outdoor art installations and performances, architectural tours, dance and dancing, theater, music, slam poetry, film, fashion, acrobatics, comedy and other cultural offerings. Outdoor stages will be erected at 5 locations.

This grant requires a $1:$1 match which will be funded through corporate support for the event. This project supports the key intended outcome maximize Miami Beach as a destination brand.

3. Retroactive approval for the City to apply for and receive additional funding in the amount of $100,000 from The Children's Trust for Success University

The Children's Trust Service Partnership program provides funding to address targeted geographic areas and to reach at-risk populations in Miami-Dade County. The purpose of the program is to target resources to meet the more complex needs of vulnerable children and families in the area.

The City was awarded an initial planning grant for Success University in 2007, and has been operating the program successfully since then. Success University is an integrated service program that partners with community agencies to provide Miami Beach youth at risk for truancy with personal and academic supports, while providing their families with holistic, comprehensive services to ensure family stability and youth success.

The City, through the Miami Beach Service Partnership, seeks to continue and expand its service to eligible youth and families through Success University. Participants predominantly have indicators showing them to be at-risk, such as school absences. Students are referred to the program when they have unexcused absences from school. Parents, primary caregivers and extended family, teachers etc. will also receive services. Service components include: tutoring, family assessments, care plan coordination, family group conferencing, employment services, and referrals to community-based services.

The City has recently submitted an application for funding for the current school year. The previous Children's Trust grant for Success University was awarded on September 10, 2009. The effective term of the contract was from August 1, 2009 through July 31, 2010. The City has applied for funding for the next fiscal year to continue the program; however there is a gap in funding from August 1, 2010 through October 31, 2010 after which the new funding will commence, and this is a critical time for start-up and referrals into the program. As such, the Children's Trust has provided extension funding in the amount of $100,000 to cover this unfunded period of time until the new agreement commences. Funds will cover salaries and benefits as well as Professional Services during this period of time.

This program supports the key intended outcome enhance learning opportunities for youth. This grant does not require matching funds.

4. Retroactive approval to submit an application to the State Homeland Security Grant Program for funding in the amount of $9,000 for Training purposes

The State Homeland Security grant program provides funds to build capabilities at the state and local levels and to implement the goals and objectives included in state homeland security strategies. At least 25 percent of these funds must be dedicated towards law enforcement terrorism prevention-oriented planning, organization, training, exercise, and equipment activities. The State of Florida is a subgrantee of the Homeland Security Grant program through the Division of Emergency Management.

The City has applied for funding for specialized training, including Urban Search and Rescue training and Hazardous Materials training in the amount of $9,000. Matching funds are not required for this grant. This program supports the key intended outcome: maintain crime rates at or below national trends.

CONCLUSION

The Administration requests retroactive approval to authorize the City Manager or his designee to submit applications to: 1) US Environmental Protection Agency (EPA), Climate Showcase Communities Program for funding in the amount of $500,000 for the City's Water Reclamation Plant Project; 2) The National Endowment for the Arts for funding in the amount of $100,000 for Sleepless Night 2011; 3) The Children's Trust for additional funding in the amount of $100,000 for Success University; and, 4) Florida Division of Emergency Management for Homeland Security Grant Program funding in the amount of $9,000 for emergency management training; appropriating the above grant and matching funds, if approved and accepted by the City, and authorizing the execution of all necessary documents related to these applications.

JMG/KGB/JMH
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RESOLUTION NO. _____

A RESOLUTION RETROACTIVELY APPROVING AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO SUBMIT GRANT APPLICATIONS TO: 1) US ENVIRONMENTAL PROTECTION AGENCY (EPA), CLIMATE SHOWCASE COMMUNITIES PROGRAM FOR FUNDING IN THE AMOUNT OF $500,000 FOR THE CITY'S WATER RECLAMATION PLANT PROJECT; 2) THE NATIONAL ENDOWMENT FOR THE ARTS FOR FUNDING IN THE AMOUNT OF $100,000 FOR SLEEPLESS NIGHT 2011; 3) THE CHILDREN'S TRUST FOR ADDITIONAL FUNDING IN THE AMOUNT OF $100,000 FOR SUCCESS UNIVERSITY; AND, 4) FLORIDA DIVISION OF EMERGENCY MANAGEMENT FOR HOMELAND SECURITY GRANT PROGRAM FUNDING IN THE AMOUNT OF $9,000 FOR EMERGENCY MANAGEMENT TRAINING; APPROPRIATING THE ABOVE GRANTS, IF APPROVED AND ACCEPTED BY THE CITY, AND AUTHORIZING THE EXECUTION OF ALL NECESSARY DOCUMENTS RELATED TO THESE APPLICATIONS

WHEREAS, the overall goal of the EPA's Climate Showcase Communities program is to create replicable models of sustainable community action that generate cost-effective and persistent greenhouse gas reductions while improving the environmental, economic, public health or social conditions in communities; and

WHEREAS, funds are provided for planning, demonstration and/or implementation of projects designed to address climate change initiatives; and

WHEREAS, in an effort to eliminate the use of potable water for irrigation at the Miami Beach Golf Club, the city is proposing to install a membrane bioreactor wastewater plant to treat wastewater to a public access reuse standard and utilize the treated water to irrigate the golf course; and

WHEREAS, this project was included by Ameresco in the Preliminary Energy Assessment Summary Report provided to the City on June 2, 2009; and

WHEREAS, the total project cost for this Energy Conservation Measure is $6,760,000 which will be funded through energy savings; and

WHEREAS, the grant requires matching funds in the amount of $500,000 and if awarded, the match could come out of operating costs utilizing energy savings; and

WHEREAS, this project supports the key intended outcome enhance the environmental sustainability of the community; and

WHEREAS, retroactive approval to submit this application to the US Environmental Protection Agency (EPA) Climate showcase Communities Grant Program for funding in the amount of $500,000 for a Water Reclamation Plant is requested; and

WHEREAS, the National Endowment for the Arts 'Access to Artistic Excellence' program encourages and supports artistic creativity, preserves the nation's diverse cultural heritage, and makes the arts more widely available in communities throughout the country; and

WHEREAS, support is available to organizations for projects that enable arts organizations and artists to expand and diversify their audiences and that provide opportunities for individuals to experience and participate in a wide range of art forms and activities; and

WHEREAS, the goals of Sleepless Night 2011 are to strengthen South Florida's reputation as a top cultural tourism destination by becoming a major annual signature event, on par with Art Basel Miami Beach and the South Beach Wine and Food Festival; to build arts audiences, increase public awareness of the arts and educate the local arts practitioners; to create community through the shared experience of diverse audiences; to forge dynamic partnerships of artists, arts organizations and public and private industry; and to enliven both culturally and economically the previously depressed final month of hurricane season; and

WHEREAS, Sleepless Night 2011 will present over 150 free arts and entertainment offerings at 80 different locations spread throughout the city and the 13-hour night that marks the end of Daylight Savings Time; and

WHEREAS, this grant requires a $1:$1 match which will be funded through corporate support for the event and this project supports the key intended outcome maximize Miami Beach as a destination brand; and

WHEREAS, retroactive approval is requested to submit an application to the National Endowment for the Arts for funding in the amount of $100,000 for Sleepless Night 2011; and

WHEREAS, the Children's Trust Service Partnership program provides funding to address targeted geographic areas and to reach at-risk populations in Miami-Dade County and the purpose of the program is to target resources to meet the more complex needs of vulnerable children and families in the area; and

WHEREAS, the City was awarded an initial planning grant for Success University in 2007, and has been operating the program successfully since then; and

WHEREAS, Success University is an integrated service program that partners with community agencies to provide Miami Beach youth at risk for truancy with personal and academic supports, while providing their families with holistic, comprehensive services to ensure family stability and youth success; and

WHEREAS, the City, through the Miami Beach Service Partnership, seeks to continue and expand its service to eligible youth and families through Success University; and

WHEREAS, the City has recently submitted an application for funding for the current school year, however there is a gap in funding from August 1, 2010 through October 31, 2010 after which the new funding will commence; and

WHEREAS, the period of time from August 1, 2010 through October 31, 2010 is a critical time for start-up and referrals into the program, as such, the Children's Trust

has provided extension funding in the amount of $100,000 to cover this unfunded period of time until the new agreement commences; and

WHEREAS, this program supports the key intended outcome enhance learning opportunities for youth and the grant does not require matching funds; and

WHEREAS, retroactive approval is requested for the City to apply for and receive additional funding in the amount of $100,000 from The Children's Trust for Success University; and

WHEREAS, the State of Florida is a subgrantee of the Homeland Security Grant program through the Division of Emergency Management; and

WHEREAS, the State Homeland Security grant program provides funds to build capabilities at the state and local levels and to implement the goals and objectives included in state homeland security strategies; and

WHEREAS, at least 25 percent of these funds must be dedicated towards law enforcement terrorism prevention-oriented planning, organization, training, exercise, and equipment activities; and

WHEREAS, the City has applied for funding for specialized training, including Urban Search and Rescue training and Hazardous Materials training in the amount of $9,000 and matching funds are not required for this grant; and

WHEREAS, this program supports the key intended outcome: maintain crime rates at or below national trends; and

WHEREAS, retroactive approval is requested to submit an application to the State Homeland Security Grant Program for funding in the amount of $9,000 for Training purposes; and

NOW THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH hereby retroactively approve and authorize the City Manager or his designee to submit the following application: 1) US Environmental Protection Agency (EPA), Climate Showcase Communities Program for funding in the amount of $500,000 for the City's Water Reclamation Plant Project; 2) The National Endowment for the Arts for funding in the amount of $100,000 for Sleepless Night 2011; 3) The Children's Trust for additional funding in the amount of $100,000 for Success University; and, 4) Florida Division of Emergency Management for Homeland Security Grant Program funding in the amount of $9,000 for emergency management training ; appropriating the above grants, if approved and accepted by the City, and authorizing the execution of all necessary documents related to these applications.

PASSED and ADOPTED this _____ day of _____, 2010

ATTEST:

_____
MAYOR

_____
CITY CLERK

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 9/7/10 Date

JMG/KGB/JMH
T:\AGENDA\2010\September 15\Consent\Grants Reso.doc

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Condensed Title:

A Resolution authorizing the Mayor and City Clerk to execute an Underground Duct Bank Installation Agreement with Florida Power & Light Company and record an easement to Florida Power & Light at Collins Park for the installation and maintenance of conduit, underground duct bank and a transformer that will serve the Park.

Key Intended Outcome Supported:

Ensure Well-Designed, Quality Capital Projects.

Supporting Data (Surveys, Environmental Scan, etc.):
82.4% of Mid Beach residents surveyed rated the Maintenance of Parks as Excellent & Good compared to 85.4% of residents in the city overall. This is an increase of 5.7% overall from year 2007 to 2009. 84.1% of Mid Beach residents surveyed rated Overall Quality of Life within the City of Miami Beach as Excellent & Good compared to 84.8 of residents in the city overall. This is an increase of 0.1% overall from year 2007 to 2009.

Issue:

Shall the City Commission adopt the Resolution?

Item Summary/Recommendation:

In order to service the project, FPL requires the siting of its facilities within the Park property. These facilities will provide utility service to the Park and the adjacent area. The Underground Duct Bank Installation Agreement provides for certain work to be performed by the City of Miami Beach and FPL in order to provide utility service. Work elements that are to be performed by the City of Miami Beach will be performed via the Collins park contractor. In order for the utility service providers to maintain their facilities they require an easement over public lands to service their facilities.

The Administration recommends that the City execute the Underground Duct Bank Installation Agreement and record the easement for FPL in order to provide the necessary utility services to the Collins Park project.

Advisory Board Recommendation:

CIPOC

Financial Information: Not applicable, no funding required.

Source of Funds:		Amount	Account	Approved
	1			
	2			
	3			
	4			
OBPI	Total			

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Maria Hernandez x2584

Sign-Offs:

Department Director	Assistant City Manager	City Manager
COC	JGG	JMG

T:\AGENDA\2010\September 15\Consent\Collins Park FPL Easement - SUMMARY.doc

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE UNDERGROUND DUCT BANK INSTALLATION AGREEMENT WITH THE FLORIDA POWER AND LIGHT COMPANY AND RECORD AN EASEMENT TO FLORIDA POWER AND LIGHT COMPANY AT COLLINS PARK FOR THE INSTALLATION AND MAINTENANCE OF CONDUIT, UNDERGROUND DUCT BANK AND A TRANSFORMER THAT WILL SERVE THE PARK.**

ADMINISTRATION RECOMMENDATION

Execute the Agreement and record the easement.

FUNDING

No funding is required in order to execute the Agreement and record the easement.

ANALYSIS

On July 28, 2004, MC Harry Associates was commissioned by the City of Miami Beach to provide design services for Collins Park, parking lot, streetscape and the Rotunda renovation under the master plan originally prepared by Robert A.M. Stern Architects.

The project scope included renovations to Collins Park, the parking lot to the east of the park, and adjacent streetscape improvements. A more detailed explanation of the three areas is provided below:

- Collins Park
  Renovation of the existing park which includes landscaping, irrigation, pedestrian lighting, drainage, hardscape including but not limited to curbs, sidewalk, and ADA ramps, renovation of the Rotunda building, and street furniture as described in the Master Plan.

- 21st Street Parking Lot (East of Collins Avenue)
  Renovation of the existing parking lot, including new landscaping, irrigation, lighting, drainage and proposed hardscape improvements, including curbs, sidewalks, and ADA ramps.

- Streetscape
  Renovation of existing streetscape along 21st Street and 22nd Street including replacement of existing sidewalks, lighting, irrigation, landscaping, street paving, street furniture, drainage and waterline improvements.

On August 15, 2008, a Job Order Contracting contract was awarded to Metro Express, Inc. The project was implemented in two phases in order to accommodate work to the east and west of Collins Avenue. The work to the east of Collins Avenue was completed last summer and the second phase of work (west of Collins Avenue) is currently under construction.

In order to service the project, FPL requires the siting of its facilities within the Park property. These facilities will provide utility service to the Park and the adjacent area. The Underground Duct Bank Installation Agreement provides for certain work to be performed by the City of Miami Beach and FPL in order to provide utility service. Work elements that are to be performed by the City of Miami Beach will be performed via the Collins park contractor. In order for the utility service providers to maintain their facilities they require an easement over public lands to service their facilities.

Attached please find an Attachment A entitled Underground Duct Bank Installation Agreement dated February 16, 2010 which describes the agreement between FPL and the City of Miami Beach and Attachment B which describes the sketch and legal description for the utility easement.

CONCLUSION

The Administration recommends that the City execute the Underground Duct Bank Installation Agreement and record the easement in order to provide the necessary utility services to the Collins Park project.

Attachment A – Underground Duct Bank Installation Agreement

Attachment B - Easement

JMG/JGG/COC/MH

FPL

FPL Work Request No. 3571450

Project Name: Collins Park Relocation of FPL Facilities

UNDERGROUND DUCT BANK INSTALLATION AGREEMENT

This Agreement, made this 16th day of February 2010 by and between City of Miami Beach (hereinafter called the Customer) and Florida Power and Light Company, a corporation organized and existing under the laws of the State of Florida (hereinafter called FPL).

WHEREAS; the Customer has requested the pre-approval of the location and installation of underground distribution facilities to be located within the City of Miami Beach Right-of-Way.

WITNESSETH

That, for and in consideration of the covenants and agreements herein set forth, the parties hereto covenant and agree as follows:

1. The customer shall:

   a) furnish all necessary labor, equipment, material including concrete (except materials listed herein) and AS-BUILT Survey, to install approx. 238 feet of 2-5", 150 feet of 4-5" concrete encased, 20 feet of 2-5", and 80 feet of 3-5" concrete encased PVC conduits with a minimum of 36" cover, conduit spacers, electronic markers and associated materials provided by FPL in accordance with the instructions and specifications shown on FPL drawings: **Exhibit "A" WR# 3571450, UN-2.0.0 fig. 1, 2, 3 & 4, UN-21.0.0, UX-114.0.1, UX-122.0.0, UN-6.0.0, C-32.0.2 and AS-BUILT SURVEY REQUIREMENTS** attached to this Agreement;

   b) be solely responsible for the installation of concrete encased PVC conduits at the correct location and the correct depth pursuant to the FPL construction drawing and specifications;

   c) provide concrete for encasement of PVC conduits;

   d) correct any discrepancies found in the installation that are inconsistent with the instructions and specifications attached to this agreement or FPL will not proceed with remainder of relocation work per associated/related Work Requests #3573471 & # 3572096;

   e) provide crew to core drill into existing FPL sidewalk vault (below grade);

   f) notify FPL when the conduit is placed prior to pouring concrete for inspection;

   g) provide "AS-BUILT" prints and provide "AS-BUILT SURVEY" by a Florida registered surveyor within two (2) weeks of final installation (see attachment "AS-BUILT SURVEY REQUIREMENTS");

   h) provide for pick-up of materials not delivered to job site. i.e. 4/0 copper insulated neutral wire

   i) assume liability for materials lost, stolen or damaged once the customer receives material;

   j) assume liability for any delays and/or additional costs to FPL caused by a conduit installation that is not consistent with the instructions and specifications attached to this agreement.

   k) be responsible for and shall perform any/all demolition/restoration work complying with all temporary and final restoration requirements set by City of Miami Beach Public Works Department within City Right-of-Way.

   l) be responsible for obtaining all construction permits required for installation within property

2. FPL shall:

   a) provide written instructions and specifications for the installation of FPL provided PVC conduit;

b) provide 5" PVC conduit, conduit spacers, 4/0 copper insulated neutral wire, and electronic marker to the Customer for the installation of underground facilities within the specified duct bank route;

c) deliver transformer pad and concrete foundation for padmounted switch cabinet; for customer to install

d) assume no liability for materials lost, stolen or damaged once received by the customer;

e) furnish any additional material at the current cost plus applicable loading and delivery charges;

f) assume no liability for delays caused by material delivery deficiency, including insufficient, lost, stolen or damaged material;

g) assume no liability for delays because of misunderstanding of installation drawings or specifications;

h) assume no liability for delays or additional cost caused by an inadequacy of the conduit system installation;

i) assume no liability for special incidental or consequential damages of any nature;

j) obtain design permit from City of Miami Beach Public Works Department for facilities installed within right-of-way;

k) provide crew to standby for customer to core drill into sidewalk vault and for customer to install conduits into existing padmounted transformer and sidewalk vault.

3. This agreement is subject to FPL's General Rules and Tariff and the Rules of the Florida Public Service Commission.

4. Customer agrees to protect, defend, indemnify and hold FPL, its officers, directors, employees, and agents (FPL Entities) free and unharmed from and against any and all claims, liabilities, loss, costs, or damages whatsoever, related to any claim made by tenants, invites, licensees, quests, any other or third parties, including court costs and attorney's fees, whether or not due to or caused in whole or part by the negligence of FPL Entities, resulting from or in connection with the performance of this Agreement by either party hereto.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed to be effective as of the day and year written above.

Accepted: 2/17/10

for FPL (date)
Engineer
FPL – Central Service Center

Accepted: 2/19/10

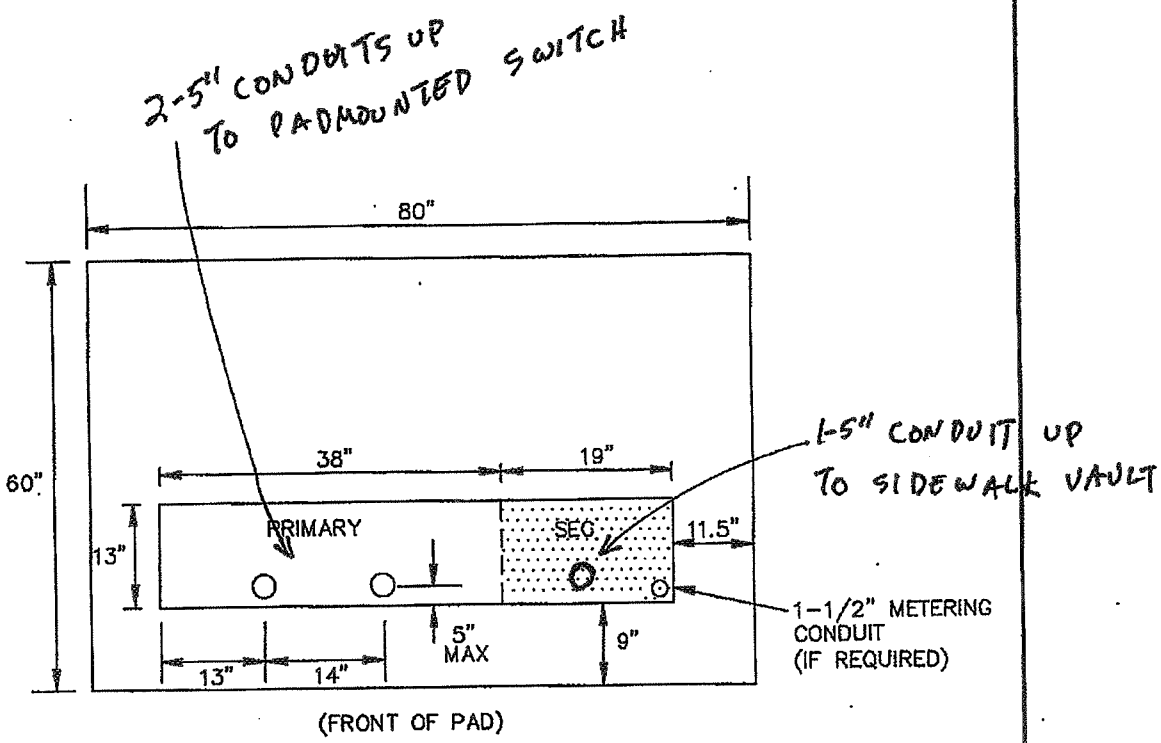
for Customer (date)

Witness (date)

Witness (date)

Form 804C (Non-Stocked)

UX-114.0.1	CONDUIT LOCATIONS FOR 3 PHASE DEAD FRONT PAD MOUNTED TRANSFORMERS WITH SECTIONALIZING (CABLE THRU) UP TO 500KVA USING 2-5" DUCTS FOR PRIMARY CABLES	UX-114.0.1



NOTES:
1. REFERNECE I-70.0.1 OF THE DCS
2. PAD M&S 162-246-800
3. ALL CONDUITS TO EXTEND 3" MAX ABOVE GROUND LEVEL.
4. ALL SECONDARY / CUSTOMER CONDUITS MUST FIT WITHIN THE 19"X13" SHADED AREA INDICATED. WILL HOLD 8-4" CONDUIT MAX.
5. ALL CONDUIT RELATED DIMENSIONS ARE TO BE CENTER OF THE DUCT
6. MAINTAIN 8' CLEARANCE FROM FRONT AND 3' CLEARANCE FROM SIDES AND BACK OF TRANSFORMER PAD.

F P L
OH & UG DISTRIBUTION SYSTEM STANDARDS

ORIGINATOR: SMS DRAWN BY: BILL

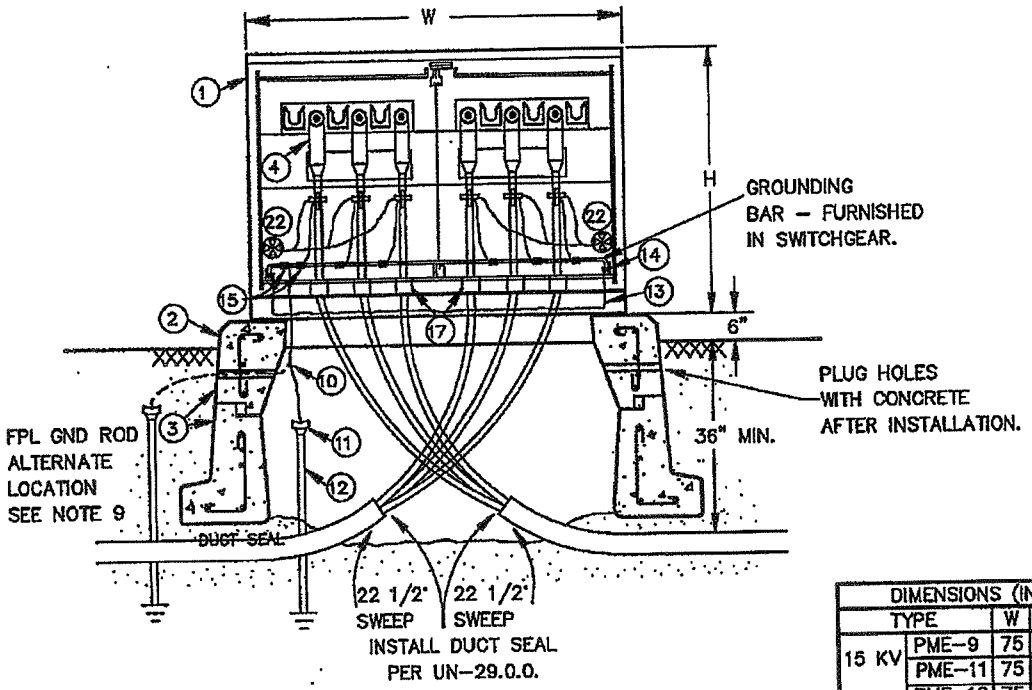
NO.	DATE	REVISION	ORIG.	DRAWN	APPR.
2	9/2/09	UPDATE DRAWING NOTE	GAP	ELS	AEL
1	05/29/02	UPDATE DRAWING (NOTE 4)	RAP	JES	JJM

DATE: APPROVED: J.J. MCEVOY
SUPERVISOR, OH/UG PRODUCT SUPPORT SERVICES

NO SCALE

C-32.0.2	TYPICAL INSTALLATION OF 15 OR 25 KV S & C TYPE PME DEAD FRONT THREE PHASE PAD MOUNTED SWITCHGEAR	C-32.0.2

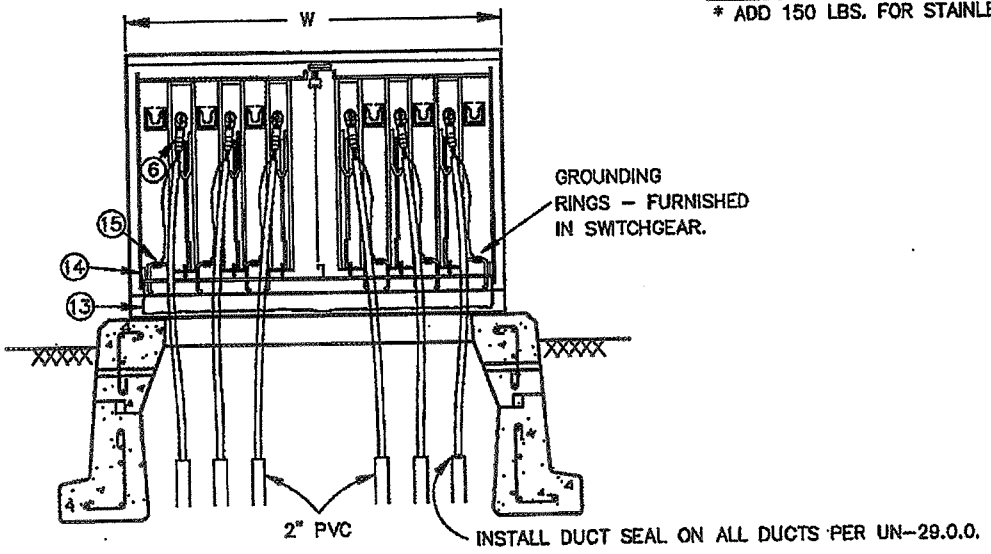
C



600 AMP FEEDER SIDE
SECTION A–A

DIMENSIONS (INCHES)					WEIGHT IN LBS.*
TYPE		W	D	H	
15 KV	PME-9	75	67	50	2300
	PME-11	75	73	50	2350
	PME-10	75	73	50	2400
25 KV	PME-9	84	82	56	2900
	PME-11	84	88 1/2	56	2950
	PME-10	84	88 1/2	56	3000

* ADD 150 LBS. FOR STAINLESS STEEL.



FUSE SIDE (PME-9 SHOWN)
SECTION B–B

F P L
OH & UG DISTRIBUTION SYSTEM STANDARDS

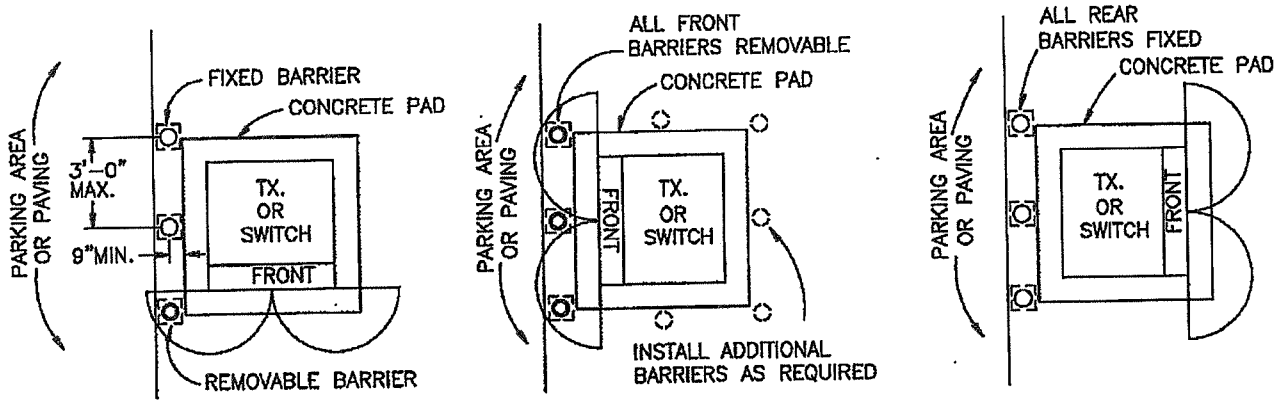
NO.	DATE	REVISION	ORIG.	DRAWN	APPR.
2	7/21/01	UPDATE DRAWING ADDED PME-10 AND CHANGED SOME TEXT	RAP	JES	JJM
1	9/30/94	ADDED ARROW TO INCLUDE TOP CHAMBER SECTION ③	RJO	BAQ	RJS

ORIGINATOR: RWS
DRAWN BY: JRG
DATE: 6/30/93
APPROVED: R.J. SALESKY
DIRECTOR, DISTRIBUTION ENGINEERING AND OPERATIONS SERVICES
NO SCALE

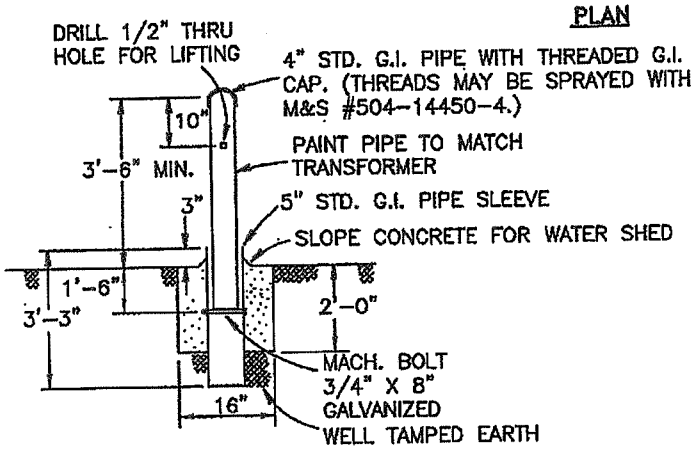
UN-21.0.0

PROTECTIVE BARRIER AND PLANTING CLEARANCES FOR PAD MOUNT TRANSFORMERS AND SWITCHES

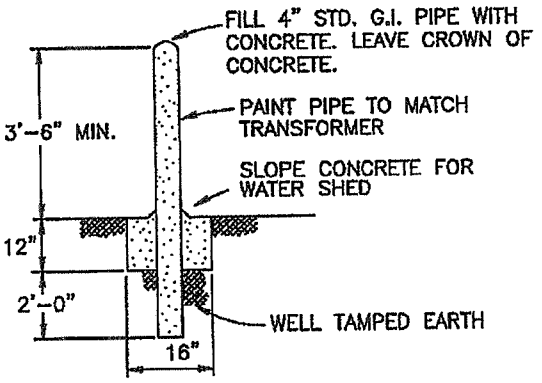
UN-21.0.0



PLAN

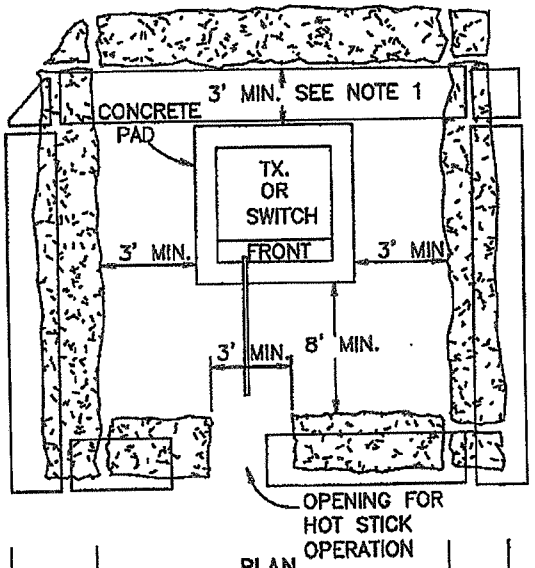


REMOVABLE BARRIER



FIXED BARRIER

SECTION



PLAN

NOTE

1 – PADMOUNTED SWITCHES REQUIRE 8' MIN. CLEARANCE FRONT AND REAR.

2. "ELECTRIC EQUIPMENT–KEEP OUT" DECAL THAT SHOWS THE MINIMUM SEPARATION DISTANCES FOR BUSHES FROM TRANSFORMERS IS M & S #548-56010-4.

F P L

OH & UG DISTRIBUTION SYSTEM STANDARDS

UN

NO.	DATE	REVISION	ORIG.	DRAWN	APPR.
2	7/16/01	UPDATE DRAWING (NOTES)	RAP	JES	JJM
1	8/27/99	UPDATE DRAWING (NOTES)	RAP	JES	JJM
0	9/30/94	ORIGINAL DRAWING	CJM	PMG	RJS

ORIGINATOR: CJM

DRAWN BY: PTH

DATE: 9/30/94

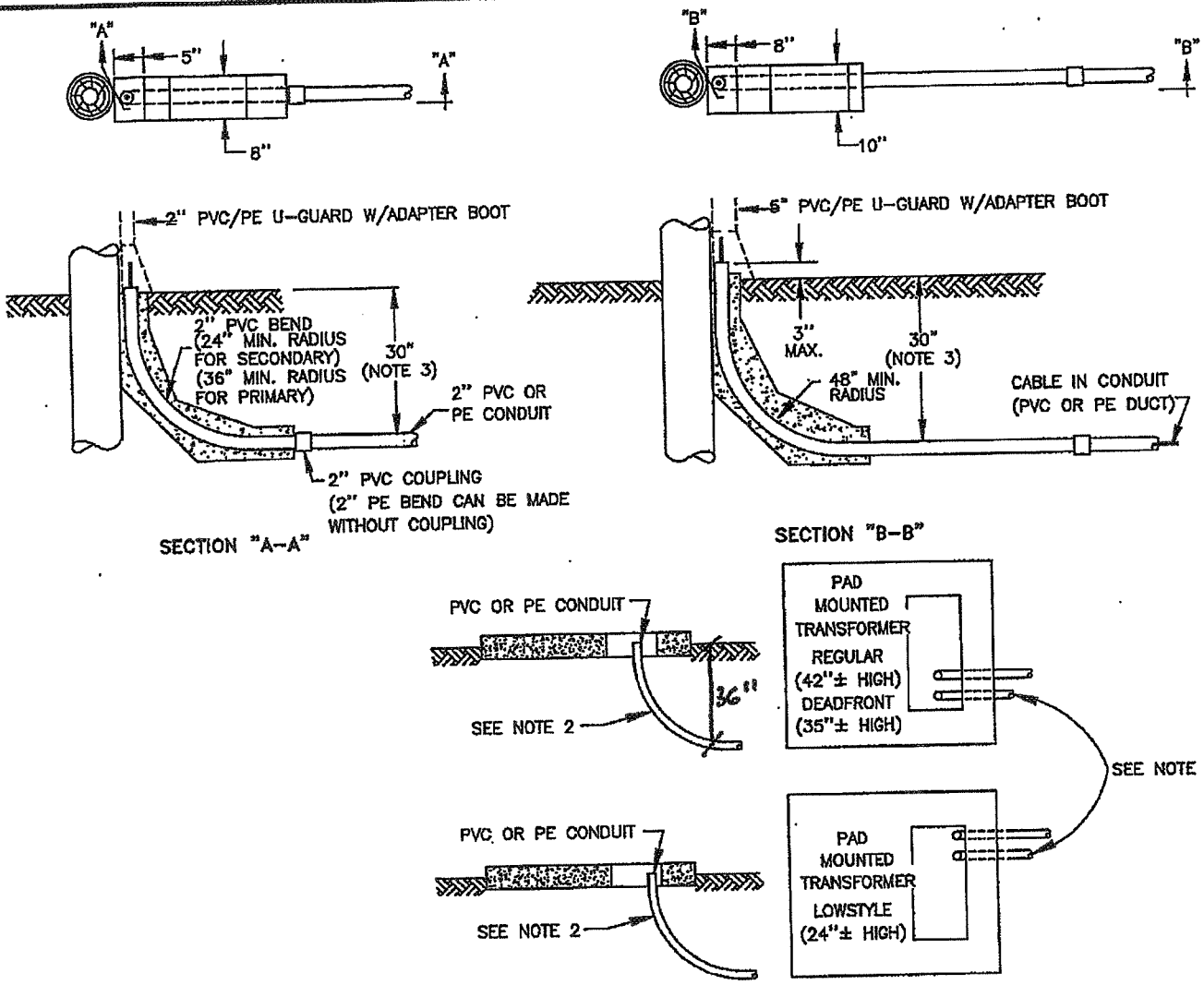
APPROVED: R.J. SALESKY
DIRECTOR, DISTRIBUTION ENGINEERING AND OPERATIONS SERVICES

NO SCALE

UN-6.0.0

TYPICAL INSTALLATION OF CONDUIT ELLS AT RISER POLES AND PAD MOUNTED TRANSFORMERS

UN-6.0.0



NOTES:

1. BENDS AT RISER POLE CAN BE ENCASED IN CONCRETE (3-80LB. BAGS FOR 2" RISER CONDUIT AND 4-80LB. BAGS FOR 5" RISER, SAKRETE M&S #503-10700-1). IF PULL TENSIONS WARRANT, FORM CONCRETE ADJACENT TO POLE AND AT SURFACE.
2. RADIUS VARIES. FOR 2" PVC CONSTRUCTION USE 24" OR 36" RADIUS, M&S #164-23800-6 OR M & S #164-23901-1. PE CONDUIT MAY BE FIELD BENT.
3. NESC RULES REQUIRE MIN. 30" DEPTH FOR PRIMARY VOLTAGE CABLE. WHERE CONCRETE ENCASED, LESSER DEPTHS ARE PERMITTED.

SUPERSEDES UN-6.0.0 LAST REVISED ON 6-30-93

FPL

OH & UG DISTRIBUTION SYSTEM STANDARDS

UN

NO.	DATE	REVISION	ORIG.	DRAWN	APPR.
2	7/13/01	UPDATE DRAWING (NOTES & TEXT)	RAP	JES	JJM
1	8/26/99	UPDATE DRAWING (NOTES & TEXT)	RAP	JES	JJM
0	8/09/96	ORIGINAL DRAWING	BLM	RAS	JJM

ORIGINATOR: BLM DRAWN BY: RAS

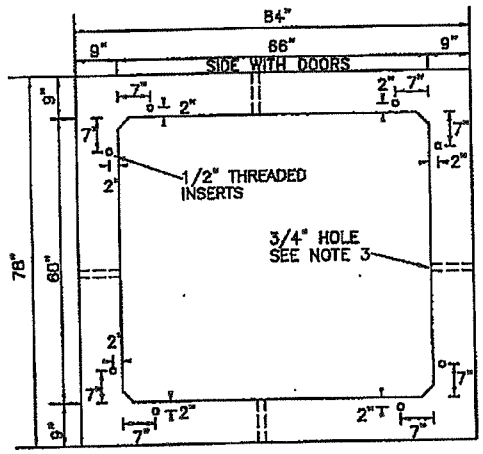
DATE: 8/09/96 APPROVED: J.J. MCEVOY NO SCALE

SUPERVISOR, OH/UG PRODUCT SUPPORT SERVICES

UX-122.0.0

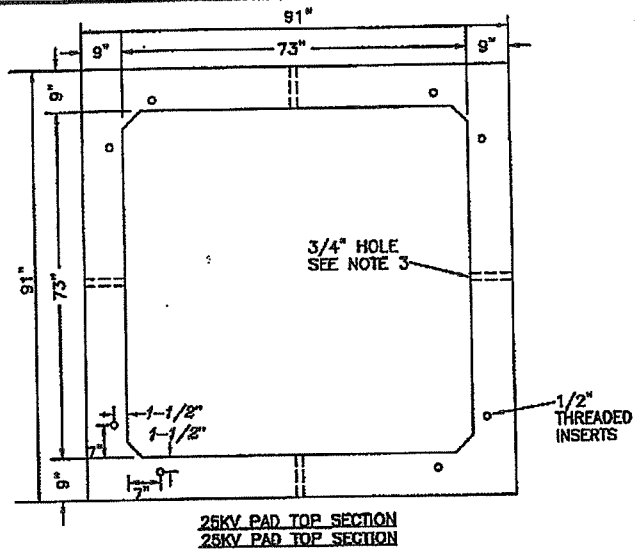
CONCRETE FOUNDATION FOR DEADFRONT THREE PHASE PAD MOUNTED SWITCHES 15 AND 25KV

UX-122.0.0



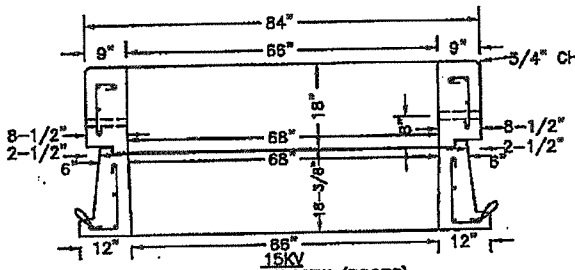
SIDE WITH DOORS

15KV PAD TOP SECTION



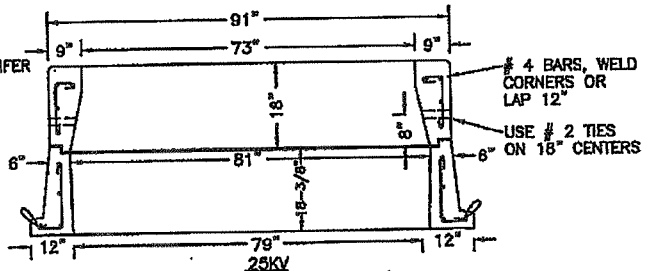
25KV PAD TOP SECTION

25KV PAD TOP SECTION



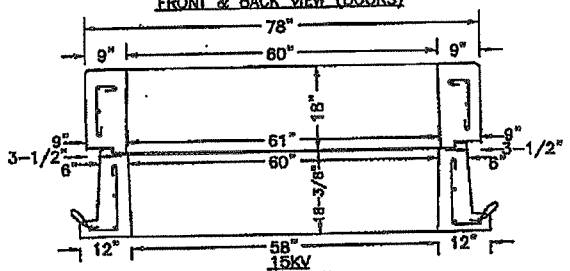
15KV

FRONT & BACK VIEW (DOORS)



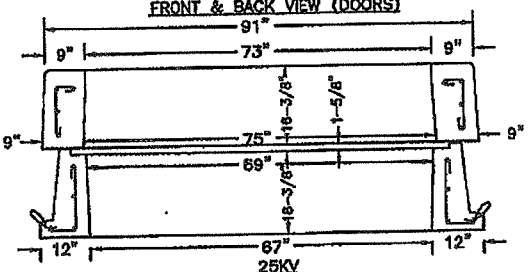
25KV

FRONT & BACK VIEW (DOORS)



15KV

SIDE VIEW



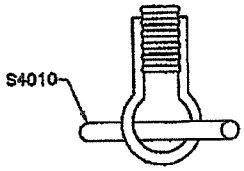
25KV

SIDE VIEW

NOTES
1. INSIDE EDGE OF INSERT TO BE MINIMUM OF 2" FROM EDGE OF CONCRETE.
2. LIFTING RINGS TO BE GALV. WIRE ATTACHED TO #4 REINFORCING ROD AND HAVE ADEQUATE LIFTING STRENGTH. (TOTAL 4)
3. 3/4" ø HOLE FOR LIFTING BOLT TO EXTEND THROUGH THE WALL. SUPPLIED WITH SEALING CAP PLUG. (TOTAL 4)
4. TOP SURFACE SHALL BE SMOOTH PLANE. THE MAXIMUM ALLOWABLE VARIATION IN HEIGHT BETWEEN ANY TWO POINTS ON THIS SURFACE IS 0.125 INCHES.
5. SUPERIOR THREADED INSERTS, 1/2" WITH PLUG, ELECTRO-GALV., 8 REQUIRED. (SEE DETAIL A).
6. #2 AND #4 REINFORCING RODS.
7. 4000 LBS. TEST CONCRETE.
8. MANUFACTURERS IDENTIFICATION, YEAR OF MANUFACTURE, AND FPL CO. M&S NUMBER TO BE CAST IN TOP SURFACE OF PAD NEAR CENTER OF PAD AND IN FOOTING OF CHAMBER NEAR CENTER OF FOOTING. (THIS REQUIRED WHEN PRECAST).

APPROXIMATE WEIGHT (POUNDS)	
15KV PAD	3500
15KV CHAMBER	3250
25KV PAD	3900
25KV CHAMBER	4140

DEADFRONT PAD AND CABLE CHAMBER	
DESCRIPTION	M&S NUMBER
15KV TOP PAD ONLY	162-12203-5
15KV TOP PAD AND BOTTOM CHAMBER	162-12201-9
25KV TOP PAD ONLY	162-12205-1
25KV TOP PAD AND BOTTOM CHAMBER	162-12202-7



DETAIL "A"

FPL

OH & UG DISTRIBUTION SYSTEM STANDARDS

NO.	DATE	REVISION	ORIG.	DRAWN	APPR.
3	10/19/00	*UPDATE DIMENSIONS*	RAP	JES	JJM
2	10/10/96	UPDATE FOUNDATION	BS	BILL	BS

ORIGINATOR: SMS

DRAWN BY: BILL

DATE:

APPROVED: J.J. MCEVOY
SUPERVISOR, OH/UG PRODUCT SUPPORT SERVICES

NO SCALE

DUCT BANK CONSTRUCTION

UN-2.0.0

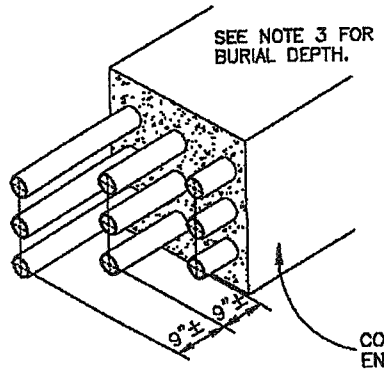


FIGURE 1

HORIZONTAL STAGGERING OF ROWS

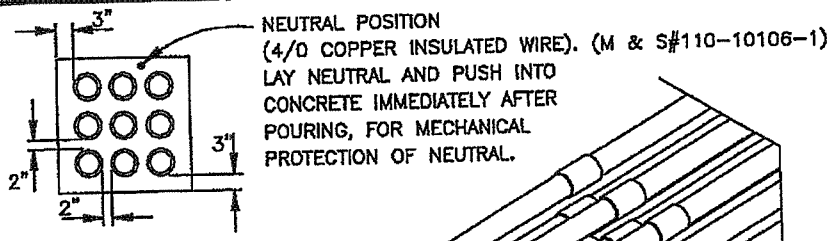


FIGURE 2

CONCRETE ENVELOPE DETAILS

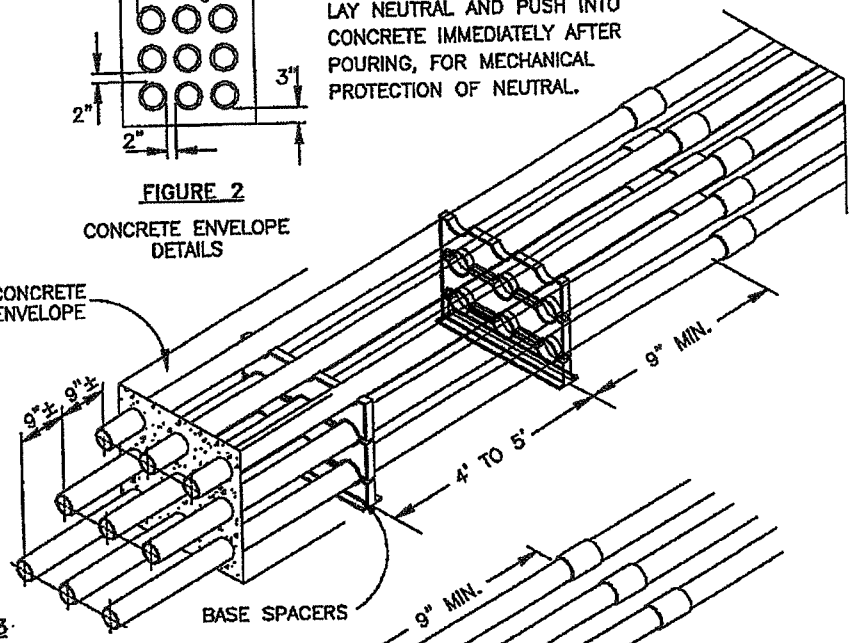


FIGURE 3

VERTICAL STAGGERING OF TIERS

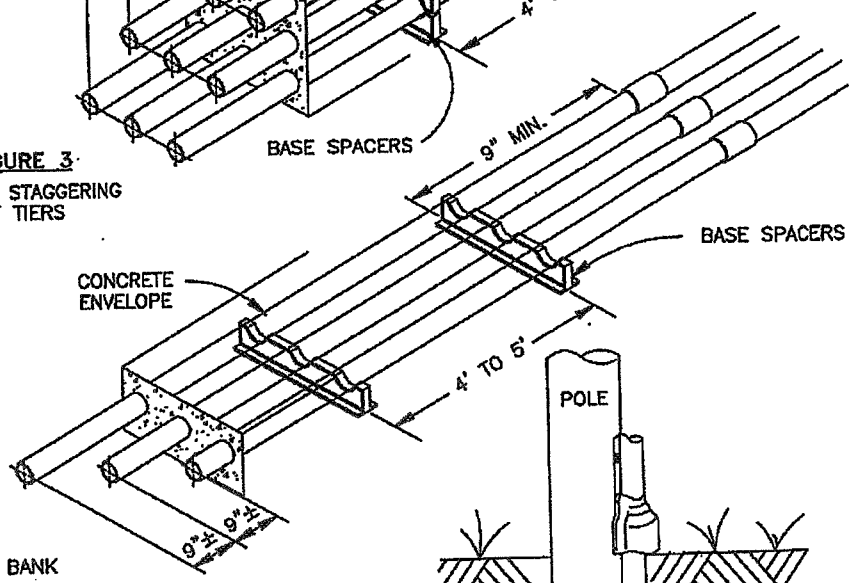


FIGURE 4

SINGLE TIER DUCT BANK

CONCRETE SPECIFICATIONS

AMOUNT OF CEMENT IN MIX SHALL NOT BE LESS THAN 6 BAGS PER CU. YD. AND SHALL DEVELOP 3000 LBS. PER SQ. IN. AFTER 28 DAYS. COARSE AGGREGATE SHALL HAVE A MAXIMUM SIZE OF 1/2".

NOTES:

1. DUCTS MUST BE SECURELY BOUND IN POSITION BEFORE CONCRETE IS POURED.
2. THE JOINTS IN MULTIPLE TIER DUCT BANKS MUST BE STAGGERED EITHER HORIZONTALLY OR VERTICALLY AS SHOWN BUT NEED NOT BE STAGGERED IN BOTH PLANES.

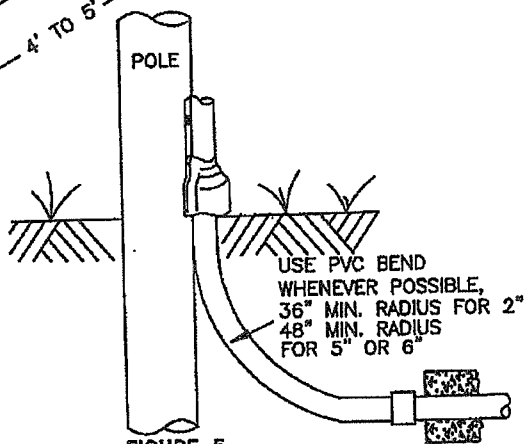


FIGURE 5

PVC U-GUARD ENTRANCE DETAIL

SUPERSEDES UN-2.0.0 LAST REVISED ON 6-30-93

FPL

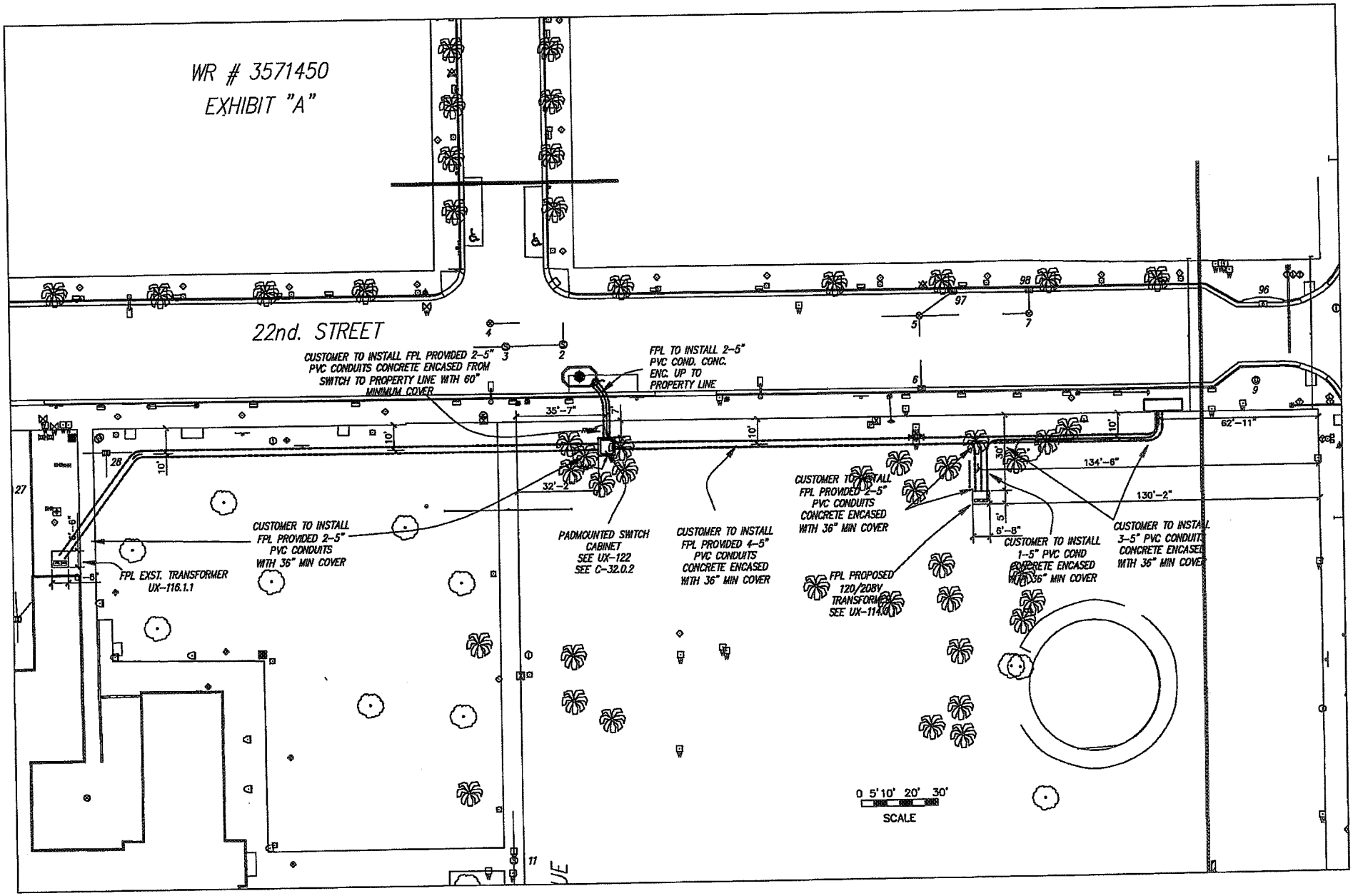
OH & UG DISTRIBUTION SYSTEM STANDARDS

UN

NO.	DATE	REVISION	ORIG.	DRAWN	APPR.
1	7/13/01	UPDATE DRAWING (TEXT)	RAP	JES	JJM
0	8/09/96	REVISED CONCRETE SPECIFICATIONS & ADDED COVER REQUIREMENTS	BLM	RAS	JJM

ORIGINATOR: BLM DRAWN BY: RAS

DATE: 8-9-96 APPROVED: J.J. MCEVOY SUPERVISOR, OH/UG PRODUCT SUPPORT SERVICES NO SCALE


WR # 3571450
EXHIBIT "A"
22nd. STREET
CUSTOMER TO INSTALL FPL PROVIDED 2-5" PVC CONDUITS CONCRETE ENCASED FROM SWITCH TO PROPERTY LINE WITH 60" MINIMUM COVER
FPL TO INSTALL 2-5" PVC COND. CONC. ENC. UP TO PROPERTY LINE
CUSTOMER TO INSTALL FPL PROVIDED 2-5" PVC CONDUITS WITH 36" MIN COVER
FPL EXST. TRANSFORMER UX-116.1.1
PADMOUNTED SWITCH CABINET SEE UX-122 SEE C-32.0.2
CUSTOMER TO INSTALL FPL PROVIDED 4-5" PVC CONDUITS CONCRETE ENCASED WITH 36" MIN COVER
CUSTOMER TO INSTALL FPL PROVIDED 2-5" PVC CONDUITS CONCRETE ENCASED WITH 36" MIN COVER
FPL PROPOSED 120/208V TRANSFORMER SEE UX-114.0
CUSTOMER TO INSTALL 1-5" PVC COND CONCRETE ENCASED WITH 36" MIN COVER
CUSTOMER TO INSTALL 3-5" PVC CONDUITS CONCRETE ENCASED WITH 36" MIN COVER
35'-7"
32'-2"
62'-11"
134'-6"
130'-2"
6'-8"
0 5' 10' 20' 30'
SCALE

Work Request No. 3571450

Sec.23, Twp 53 S, Rge 42 E

Parcel I.D.02-3226-001-0370
(Maintained by County Appraiser)

Form 3722 (Stocked) Rev. 7/94

EASEMENT

This Instrument Prepared By

Name: Maria Hernandez, CIP Department
Co. Name: City of Miami Beach
Address: 1700 Convention Center Drive
Miami Beach, FL 33139

Reserved for Circuit Court

The undersigned, in consideration of the payment of $1.00 and other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, grant and give to Florida Power & Light Company, its licensees, agents, successors, and assigns, an easement forever for the construction, operation and maintenance of underground electric utility facilities (including transformers, cables, conduits and appurtenant equipment) to be installed from time to time; with the right to reconstruct, improve, add to, enlarge, change the voltage, as well as, the size of and remove such facilities or any of them within an easement 10 feet in width described as follows:

A STRIP OF LAND 10-FEET IN WIDTH, LOCATED IN THE MIAMI BEACH IMPROVEMENT COMPANY SUBDIVISION, SECTION 23-26-27-34, TOWNSHIP 53 S, RANGE 42 E, CITY OF MIAMI BEACH, FLORIDA, AS RECORDED IN PLAT BOOK 5, PAGE 7, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; BEING 5.0 FEET WIDE ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE: COMMENCE AT THE INTERSECTION OF COLLINS AVENUE AND 22ND STREET, THIS POINT DESIGNATED AS POINT OF COMMNCEMENT P.O.C.; THENCE ON AN ASSUMED N89°59'38"W BEARING ALONG THE CENTERLINE OF 22ND STREET THEREOF A DISTANCE OF 96.48 FEET TO A POINT ON SAID CENTERLINE; THENCE RUN S00°00'52"W FOR A DISTANCE OF 30.00 FEET TO A POINT TO BE DESIGNATED THE POINT OF BEGINNING P.O.B. OF THIS EASEMENT;
THENCE RUN S00°00'52"W FOR A DISTANCE OF 7.52 FEET TO A POINT;
THENCE RUN N88°46'04"W FOR A DISTANCE OF 38.40 FEET TO A POINT;
THENCE RUN S83°52'03"W FOR A DISTANCE OF 93.50 FEET TO A POINT;
THENCE RUN N89°57'03"W FOR A DISTANCE OF 39.76 FEET TO A POINT;
THENCE RUN N78°48'05"W FOR A DISTANCE OF 47.94 FEET TO A POINT;
THENCE RUN S09°01'41"W FOR A DISTANCE OF 73.56 FEET TO A POINT;
THENCE RUN S84°37'23"W FOR A DISTANCE OF 87.84 FEET TO A POINT;
THENCE RUN S70°31'43"W FOR A DISTANCE OF 17.37 FEET TO A POINT;
THENCE RUN S56°34'30"W FOR A DISTANCE OF 59.10 FEET TO THE POINT OF TERMINATION P.O.T. OF THE EASEMENT, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

THE CENTERLINE OF THE 10 FEET WIDE EASEMENT DESCRIBED ABOVE IS APPROXIMATELY COINCIDENT WITH THE CENTERLINE OF THE FPL ELECTRICAL DUCT BANK AS SHOWN ON THE AS-BUILT DRAWING PREPARED BY MPG TECHNICAL GROUP CORP. ARTURO MENDIGUTIA, PROFESSIONAL LAND SURVEYOR & MAPPER LICENSE NO. 5844, STATE OF FLORIDA, DATED 06/24/2010, FOR THE MIAMI BEACH COLLINS PARK CULTURAL CAMPUS PROJECT, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

Together with the right to permit any other person, firm or corporation to attach wires to any facilities hereunder and lay cable and conduit within the easement and to operate the same for communications purposes; the right of ingress and egress to said premises at all times; and further grants, to the fullest extent the undersigned has the power to grant, if at all, the rights hereinabove granted on the land heretofore described, over, along, under and across the roads, streets or highways adjoining or through said property.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument on _____, 20_____.

Signed, sealed and delivered in the presence of:

_____
(Witness' Signature)

Print Name: _____
(Witness)

_____
(Witness' Signature)

Print Name: _____
(Witness)

_____
(Corporate name)

By: _____
(President's signature)

Print Name: _____

Print Address: _____

_____

Attest: _____
(Secretary's signature)

Print Name: _____

Print Address: _____

STATE OF _____ AND COUNTY OF _____. The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, and _____ respectively the _____ President and _____ Secretary of _____, a _____ corporation, on behalf of said corporation, who are personally known to me or have produced _____ as identification, and who did (did not) take an oath.
(Type of Identification)

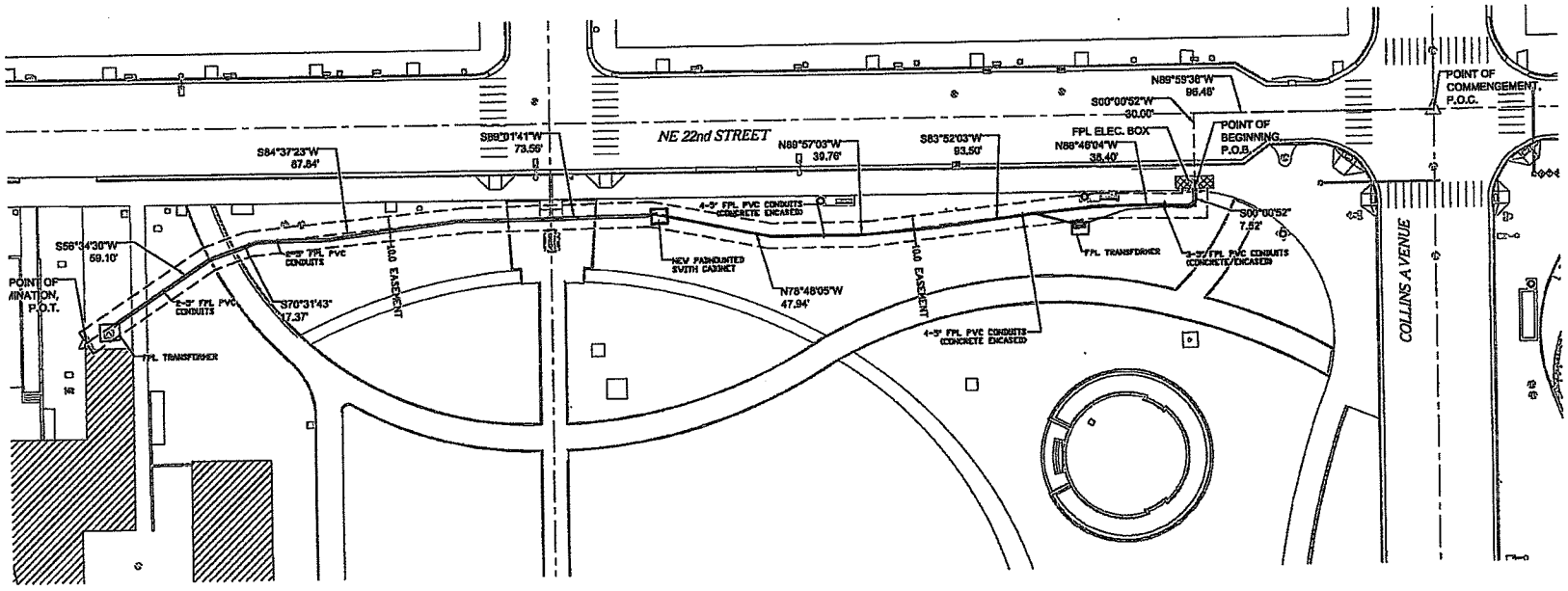
My Commission Expires:

_____
Notary Public, Signature
Print Name _____

SKETCH TO ACCOMPANY ATTACHMENT "B" - FPL EASEMENT

MIAMI BEACH COLLINS PARK CULTURAL CAMPUS PROJECT
WEST SIDE - PARK + ROTUNDA

SCALE: N.T.S.



REVISIONS		
DATE	BY	DESCRIPTION

MPG TECHNICAL GROUP CORP.
CERTIFICATE OF AUTH. # LB-6932

908 S.W. 141st Avenue,
Miami, Florida 33184
Ph. (305) 559-9043 Fax. (305)559-8914

	NAME	DATE
DRAWN BY	E.F./V.C.	9/24/10
CHECKED BY		
FIELD DATE: 6/22/2010		

SHEET 2 OF 3

ATTACHMENT "B" – LEGAL DESCRIPTION

LEGAL DESCRIPTION OF AN EASEMENT TO BE GRANTED TO THE FLORIDA POWER AND LIGHT COMPANY.

A STRIP OF LAND 10-FEET IN WIDTH, LOCATED IN THE MIAMI BEACH IMPROVEMENT COMPANY SUBDIVISION, SECTION 23-26-27-34, TOWNSHIP 53 S, RANGE 42 E, CITY OF MIAMI BEACH, FLORIDA, AS RECORDED IN PLAT BOOK 5, PAGE 7, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; BEING 5.0 FEET WIDE ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCE AT THE INTERSECTION OF COLLINS AVENUE AND 22ND STREET, THIS POINT DESIGNATED AS POINT OF COMMNCEMENT P.O.C.; THENCE ON AN ASSUMED N89°59'38"W BEARING ALONG THE CENTERLINE OF 22ND STREET THEREOF A DISTANCE OF 96.48 FEET TO A POINT ON SAID CENTERLINE; THENCE RUN S00°00'52"W FOR A DISTANCE OF 30.00 FEET TO A POINT TO BE DESIGNATED THE POINT OF BEGINNING P.O.B. OF THIS EASEMENT;
THENCE RUN S00°00'52"W FOR A DISTANCE OF 7.52 FEET TO A POINT;
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THENCE RUN S70°31'43"W FOR A DISTANCE OF 17.37 FEET TO A POINT;
THENCE RUN S56°34'30"W FOR A DISTANCE OF 59.10 FEET TO THE POINT OF TERMINATION P.O.T. OF THE EASEMENT, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

THE CENTERLINE OF THE 10 FEET WIDE EASEMENT DESCRIBED ABOVE IS APPROXIMATELY COINCIDENT WITH THE CENTERLINE OF THE FPL ELECTRICAL DUCT BANK AS SHOWN ON THE AS-BUILT DRAWING PREPARED BY MPG TECHNICAL GROUP CORP. ARTURO MENDIGUTIA, PROFESSIONAL LAND SURVEYOR & MAPPER LICENSE NO. 5844, STATE OF FLORIDA, DATED 06/24/2010, FOR THE MIAMI BEACH COLLINS PARK CULTURAL CAMPUS PROJECT, CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA.

BY:

_____

ARTURO MENDIGUTIA, P.L.S. #5844

MPG Technical Group, Corp.
908 SW 141 Avenue
Miami, Florida 33184
Ph. (305) 559-9043, Fax. (305) 559-8914

DATE: 08/31/2010

RESOLUTION TO BE SUBMITTED

Condensed Title:

A resolution of the Mayor and City Commission of the City of Miami Beach, Florida, authorizing additional funding in the amount of $335,000 for Construction Contingency for Sanitary Sewer Main Improvements along Indian Creek Drive between 26th and 41st Street Construction Project.

Key Intended Outcome Supported:

Ensure well-maintained infrastructure and ensure well-designed quality capital projects

Supporting Data (Surveys, Environmental Scan, etc.):

According to the City's 2007 Community Satisfaction Survey, 48% and 37% of City residents and businesses respectively believe that the City's road conditions are is either "good" or "excellent."

Issue:

Shall the City Commission approve the Resolution?

Item Summary/Recommendation:

On October 31, 2007, the City entered into a joint partnership agreement with the Florida Department of Transportation (FDOT) for the construction of roadway improvements along Indian Creek Drive between 26th and 41st Streets. The work consists of the construction of a new sanitary sewer system, construction of a new watermain, and rehabilitation of the pavement along Indian Creek Drive between 26th and 41st Streets. FDOT provided construction plans prepared by the Corradino Group to the City as well as agreed to contribute total project funding in the amount of $1,501,000. Exhibit "B" entitled Financial Summary of the October 31, 2007 JPA identifies the following:

Project Construction	$1,365,000
Project Construction Engineering and Inspection Services	$ 136,000
Total project estimate	$1,501,000

Below are the three capital budgets and funding sources for this project:

Capital Construction Budgets		Funding sources	
Upsizing Water Lines (WO# 2580)	$2,159,994	PW 423-2580-065357	$1,822,732.93
Upsizing wastewater (WO# 2580)	$2,112,612	PW 303-2521-069357	$1,501,000.00
JPA FDOT 28-41	$1,864,411	PW 423-2941-069357	$ 895,554.06
		PW 424-2521-069357	$ 499,411.00

On March 18, 2009, the City Commission awarded the contract to Horizons Contractors, Inc, pursuant to Invitation to Bid 28-07/09, for Construction Services for water mains, sanitary sewer mains, milling, and resurfacing improvements in the amount of $4,289,725.40. Ten percent (10%) of the contract value was allocated as a contingency to address any equitable adjustments in the contract resulting from any unforeseen field changes or additional warranted work incurred to successfully complete the contract. The total budget amount including the 10% contingency approved by City Commission was $4,718,698.00.

To date, the City has reviewed and recommended the approval of approximately fourteen (14) change orders totaling approximately $621,126. The available construction contingency is exceeded by approximately $335,000. This contingency will not be sufficient to cover the number of errors / omissions and unforeseen required change orders which resulted in a shortfall of $335,000 to the project.

Therefore, staff proposes to provide additional funding in the amount of $335,000 to fund the work required, where, even with the contingency and additional funding, the cost of the project is still less than originally anticipated.

Advisory Board Recommendation:

Financial Information:

Source of Funds:		Amount	Account	Approved
	1	$295,622	423-2580-065357 for Construction	
	2	$39,378	423-2580-000356 for Contingency	
OBPI	Total	$335,000		

City Clerk's Office Legislative Tracking:

Aurelio Carmenates ext. 6343

Sign-Offs:

Department Director	Assistant City Manager	City Manager
COC FHB	JGG EM	JMG

T:\AGENDA\2010\September 15\Consent\Indian Creek Drive Improvements - SUMMARYrev.doc

MIAMIBEACH

AGENDA ITEM C7C

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING ADDITIONAL FUNDING IN THE AMOUNT OF $335,000 FOR CONSTRUCTION CONTINGENCY FOR SANITARY SEWER MAINS IMPROVEMENTS ALONG INDIAN CREEK DRIVE BETWEEN 26TH AND 41st STREETS CONSTRUCTION PROJECT; FUNDING FOR THIS HAS BEEN PREVIOUSLY APPROPRIATED FROM THE WATER AND SEWER GULF BREEZE FUND 423.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

FUNDING

Funding for this additional work is available and has been previously appropriated in the Capital project no. 2580 - Upsizing Wastewater Lines Indian Creek Project. The accounts are as follows:

$295,622	423-2580-065357 for Construction
$39,378	423-2580-000356 for Contingency
$335,000	**Total**

BACKGROUND

The State of Florida Department of Transportation (FDOT) identified the need to perform roadway milling and resurfacing along Indian Creek Drive from 26th to 41st Street as part of its five (5) year transportation plan. The proposed FDOT work consists of roadway milling and resurfacing, guardrail replacements, sidewalk replacement and bump-out construction at certain intersections. The City had two (2) capital project elements which consist of the installation of a new 12-inch diameter water transmission main from 26th to 41st Street along Indian Creek Drive. Also, the City had previously identified the need to replace the existing 15-inch diameter wastewater interceptor along Indian Creek Drive between 28th and 41st Street. Three separate capital projects were developed and included in the Capital Improvement Plan as follows:

TABLE 1 – Indian Creek Water/Wastewater Capital Project

Capital Project No.	Title	Total Construction Funding
WO# 2580	Upsizing Water Lines Indian Creek	$2,159,994
WO# 2580	Upsizing Wastewater Lines Indian Creek	$2,112,612
WO# 2521	Indian Creek 28-41	$1,864,411
	Total Construction Funding	**$6,137,017**

These projects were originally introduced into the Capital Improvement Plan during FY08/09.

On October 31, 2007, the City entered into a Joint Partnership Agreement (JPA) with the Florida Department of Transportation (FDOT) for the construction of roadway improvements along Indian Creek Drive between 26th and 41st Street. FDOT provided construction plans prepared by the Corradino Group to the City as well as agreed to contribute total project funding in the amount of $1,501,000. Exhibit "B" entitled Financial Summary of the October 31, 2007 JPA identifies the following:

▪ Project Construction	$1,365,000
▪ Project Construction Engineering and Inspection (CEI) Services	$136,000
▪ Total Project Estimate	$1,501,000

During the preparation of the project schedule of values, FDOT requested ten (10%) percent of the project construction be allocated for FDOT construction related contingency. The amount of $136,500 was allocated to FDOT construction contingency, thereby leaving a balance of $1,228,500 for the FDOT roadway and hardscape construction.

The City of Miami Beach Public Works Department prepared construction documents for the water transmission main installation, wastewater interceptor replacement; while the FDOT's Consultant Corradino, prepared the plans and specifications for the roadway reconstruction and sidewalk / hardscape work. This approach allowed the City to incorporate all of the capital project elements into one capital construction project to be managed by the City.

On February 25, 2010, the City and FDOT amended its JPA via Amendment Nos. 1 and 2. Amendment No. 1 identified a change in the Project scope to include a high friction surface treatment to the curve at Indian Creek and 26th Street and Amendment No. 2 extended the JPA Agreement date from June 30, 2010 to April 28, 2011. Costs associated with Amendment No. 1 are to be borne by FDOT. The City is in receipt of Change Order No. 290-18 for the application of high friction surface treatment to the curve at Indian Creek and 26th Street in the appropriate amount of $55,000. This cost will be funded by FDOT from the FDOT construction contingency amount of $136,500. Additionally, the City is in the process of negotiating other Request for Change Order (RCO) for FDOT requested changes.

Scope of Proposed Work

The work under this Project includes, but is not limited to the following:

Water Transmission Main

Installation of approximately 246 linear feet of 16-inch diameter 4,558 linear feet of 12-inch diameter, 1,600 linear feet of 8-inch diameter, 208 linear feet of 6-inch, and 80 linear feet of 4-inch ductile iron water main pipe and fittings.

Sanitary Sewer Interceptor

Removal and replacement of the existing wastewater interceptor with approximately 3,160 linear feet of 30-inch diameter and 260 linear feet of 24-inch diameter gravity sewer PVC pipe and fittings and the installation of pre-cast concrete manholes with frames and covers.

Roadway and Hardscape

Milling and resurfacing of Indian Creek Drive from 26th to 41st Street including approximately

20,494 square yards of asphalt, 1,213 square yards of sidewalk replacement, 412.5 linear feet of guardrail; introduction of bulbs-outs and trench drains to facilitate the construction of pedestrian ramps which comply with ADA standards; upgrade existing pedestrian features at the signalized intersections with count-down pedestrian signal heads; and upgrade the existing signage and pavement markings.

On March 18, 2009, the City Commission awarded a construction contract to Horizon Contractors, Inc, pursuant to Invitation to Bid 28-07/09, for Construction Services for water mains, sanitary sewer mains, milling, and resurfacing improvements in the amount of $4,289,725.40. An additional ten percent (10%) of the contract value was allocated as a contingency to address any equitable adjustments in the contract resulting from any unforeseen field changes or warranted additional work incurred to successfully complete the project. The total budget amount including the 10% contingency approved by the City Commission was $4,718,698.00.

ANALYSIS

The JPA requires the City to retain an engineering firm to provide CEI services. The City originally selected Parsons Engineering and the City had to discontinue negotiations since it could not reach terms with Parsons Engineering. In particular, the City's mandate to cap its expenses at $136,000 as it relates to construction engineering and inspection services was a point of contention that the consultant was not willing to assume unless the City agreed to reduce its scope of services. Therefore, the City proceeded with negotiations with the second ranked firm of Bermello Ajamil and they agreed to provide services limited only to the roadway and hardscape scope of work. At the time of construction contract award, a clerical error inadvertently included the full FDOT contribution of $1,501,000 for construction funding which included also the funding which was required to be set aside for the FDOT CEI services. This resulted in a shortfall which was compensated with available project funds and did not account for the value of the FDOT required CEI services during construction. Therefore, staff reimbursed the required FDOT CEI services from the construction contingency thereby leaving an available project construction contingency of $292,973. Project implementation was pursued with the smaller project construction contingency than typically allocated.

A summary is as follows:

Construction Contract Value	$4,289,725
Typical Construction Contingency (10%)	$428,973
FDOT Required CEI Services	$136,000
Available Project Construction Contingency (6.8%)	$292,973

To date, the City has reviewed and recommended the approval of approximately fourteen (14) change orders totaling approximately $621,126 (does not include FDOT RCOs). The available construction contingency is exceeded by approximately $335,000. The following is a summary of the change orders that have exceeded the available construction contingency.

TABLE 2 – Change Order Exceeding Contingency

No.	Description	Amount	Classification
2	Incorporation of Sanitary Sewer Connections	$191,422	Errors / Omissions
5	Installation of a new Sanitary Sewer Lateral	$10,203	Errors / Omissions
8	Storm Sewer Manhole Conflict Structure	$20,615	Unforeseen
10	Sanitary Sewer Concrete Encasement	$111,700	Unforeseen
	Cost Overrun	$333,940	

A more detailed description of the change orders is provided below:

Change Order No. 2 – The construction documents identified the replacement of an existing 15-inch diameter sanitary sewer line which had 21 sanitary sewer services. The construction documents did not specifically identify the replacement these 21 sanitary sewer services, although the intent of the plans was to identify complete in-situ connections by showing the installation of new wye fittings at all 21 locations. Therefore, a change order was submitted to provide the installation of 21 new sanitary sewer laterals including a new clean out box to the property line and service reinstatement. This change order proposal was reviewed and approved by the Engineer of Record, Special Assistant to the City Manager and the Office of Capital Improvement Projects and the cost was found to be fair and reasonable.

Change Order No. 5 – The construction document did not identity a 12-inch diameter sanitary pipe lateral. Therefore, the change order is for the installation of a new sanitary sewer lateral including a new clean out box to the property line. This differs from change order number two due to the size of the lateral (12"diameter) and material costs were different. The installation of the 12" lateral ties into a Sanitary Sewer manhole. This change order proposal was reviewed and approved by the Engineer of Record, Special Assistant to the City Manager and the Office of Capital Improvement Projects and the cost was found to be fair and reasonable.

Change Order No. 8 –The construction documents did not identify an 18-inch diameter storm sewer pipe at 29th Street and Indian Creek Drive. This existing storm sewer pipe was in direct conflict with the proposed sanitary sewer interceptor replacement and required that a storm sewer manhole conflict structure be incorporated in order to maintain the proposed design alignment. Therefore, this change order is for the furnishing and installation of 2 additional storm sewer manholes and associated piping and concrete collars in order to resolve a conflict encountered in the intersection of 29th Street and Indian Creek Drive. The proposed solution was 2 offset manholes in order to resolve the conflict. This change order proposal was reviewed and approved by the Engineer of Record, Special Assistant to the City Manager and the Office of Capital Improvement Projects and the cost was found to be fair and reasonable.

Change Order No. 10 – An unforeseen field condition revealed, during excavation the presence of concrete encased sewer pipe. This change order is for the removal and disposal of the concrete encasement material and the furnishing and installation of additional suitable fill material. Additional suitable fill material was also required due to the volume displaced by the existing concrete encasement. This change order proposal is currently under review by the Engineer of Record and Special Assistant to the City Manager. Therefore, staff proposes to provide additional funding in the amount of $335,000 to fund the additional work identified in the change orders presented herein.

Future Issues:

FDOT Change Orders
The FDOT has approached the City with additional scope requests such as additional sidewalk removal and replacement at 39th Street, relocation of a pedestrian signal pole, additional curb and gutter replacement throughout the project. Additional change order requests for this additional work will be requested from the Contractor and presented to the FDOT for review / approval and funding contribution.

FPL Conflict
The Contractor encountered a 36 inch wide concrete duct bank at 41st Street and Indian Creek Drive on May 12, 2010. The City has taken the position that this conflict is not the responsibility of the City and is the responsibility of FPL. The Contractor is working with FPL to resolve this issue but FPL has been slow to react to the situation. The City is assisting the Contractor in stressing the urgency of the work and how it is delaying the final completion to the project.

Water Service Replacement;
The City and Contractor have had ongoing discussions with regard to an existing water distribution main. At this time, the Contractor is proceeding with the transfer of water services from the existing water distribution main to the newly installed water transmission main.

Timing:
The original project final completion date was August 23, 2010. Contractually the Contractor is due another one hundred and fifty (150) day extension to the initial project final completion date. Additionally, the water service transfer and service connections will extend the final completion and then asphalt can be placed. The water services need to be reinstated prior to the second lift of asphalt placement. It is estimated that the asphalt shall be placed by February 2011, although the City is pursuing other alternatives to get the second lift of asphalt placed from 26th to 39th Streets and return at a later date to address the 41st Street and Indian Creek Drive intersection.

CONCLUSION

It is important to note that the City contemplated an expenditure of approximately $6.1 million in its Capital Improvement Plan. Current project costs are estimated to approach $5.7 million, thereby, leaving a capital construction budget balance of approximately $400,000. The Administration recommends approval of the attached Resolution, authorizing the Mayor and City Clerk to appropriate additional funding in the amount of $335,000 to the project. Even with the contingency and additional funding, the cost of the project is still less than originally anticipated.

JMG/JGG/COC/MER/AJC

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING ADDITIONAL FUNDING, IN THE AMOUNT OF $335,000, FOR CONSTRUCTION CONTINGENCY FOR SANITARY SEWER MAINS IMPROVEMENTS ALONG INDIAN CREEK DRIVE BETWEEN 26TH AND 41ST STREET CONSTRUCTION PROJECT; FUNDING FOR THIS HAS BEEN PREVIOUSLY APPROPRIATED FROM THE WATER AND SEWER GULF BREEZE FUND 423.

WHEREAS, on October 31, 2007, the City entered into a Joint Partnership Agreement (JPA) with the Florida Department of Transportation (FDOT) for the construction of roadway improvements along Indian Creek Drive between 26th and 41st Streets; and

WHEREAS, FDOT is providing $1,501,000 towards project costs; and

WHEREAS, on March 18, 2009, the City Commission awarded a construction contract to Horizon Contractors, Inc, pursuant to Invitation to Bid No. 28-07/09, for construction services for water mains, sanitary sewer mains, milling, and resurfacing improvements, in the amount of $4,289,725.40; and

WHEREAS, ten percent (10%) of the contract value or ($428,972) was allocated as a contingency to address any equitable adjustments in the contract resulting from any unforeseen field changes or additional warranted work incurred to successfully complete the contract; and

WHEREAS, the total budget amount, including the 10% contingency, approved by City Commission on March 18, 2009, was $4,718,698.00; and

WHEREAS, the project contingency will not be sufficient to cover the errors and omissions encountered on this project; and

WHEREAS, additional funding, in the amount of $335,000, is available, since the project cost is significantly under budget.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission of the City of Miami Beach, Florida, authorizing additional funding in the amount of $335,000 for construction contingency for sanitary sewer mains improvements along Indian Creek Drive between 26th and 41st street construction project; funding for this has been previously appropriated from the water and sewer gulf breeze fund 23.

PASSED AND ADOPTED this _____ day of ____ 2010.

ATTEST:

_____ _____

CITY CLERK **MAYOR**

T:\AGENDA\2010\September 15\Consent\Indian Creek Drive Improvements - RESOrev.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

9-8-10

City Attorney Date

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Condensed Title:

A resolution authorizing the Mayor and City Clerk to execute an Amendment to the agreement with M. Vila & Associates, Inc.(MVA), for construction services of the City Center Bid Package 9A infrastructure improvements project; in the negotiated not to exceed amount of $874,193.54; to provide construction services for right of way and infrastructure improvements surrounding the new World Symphony Campus, Pennsylvania Avenue Garage, and Lincoln Park projects,, located within the adjacent City Center Bid Package 9B project area; and further authorizing $87,419.35 as a project construction contingency; with funding available from previously appropriated funds in the City Center Bid Package 9B RDA Construction Fund 365.

Key Intended Outcome Supported:

Ensure well-designed quality capital projects.

Supporting Data (Surveys, Environmental Scan, etc.):

44% of residents rated storm drainage as excellent or good; 28% rated it as poor. Completing this Project will add to the needed upgrades in this area and improve overall rating.

Issue:

Shall the City Commission approve the Resolution and the corresponding funding allocation?

Item Summary/Recommendation:

As part of the City's objective to open the New World Symphony, Pennsylvania Avenue garage and Lincoln Park projects, prior to the end of the calendar year, all adjacent infrastructure, streetscape and right of way improvements need to be completed. The specific items that must be added are as follows: beautification and enhancements along Pennsylvania Avenue, from 17th Street to Lincoln Lane North; Lincoln Lane North reconstruction, between Pennsylvania and Washington Avenues; and 17th Street improvements, from Pennsylvania Avenue to Washington Avenue. On August 4th, 2010, the CIP Office reached out to a Job Order Contractor to price the additional requested work. After the initial meeting, the contractor raised concerns about their ability to submit a timely estimate based upon the plans issued to them, as well as the possible impact of discovering unforeseen conditions within a utility intensive street such as Lincoln Lane North. Given these conditions, and since time was of the essence to complete the right of way work under the New World Symphony project schedule, a decision to seek another alternative was pursued. As a result, the CIP Office requested MVA to provide a proposal for the required work. MVA is the contractor for the adjacent BP-9A Project, currently at approximately 50% completion. MVA had also been subcontracted by the Lincoln Park contractor, Valley Crest Landscape Development, to construct the Park's underground drainage and utilities. At the BP-9A Project, M. Vila has demonstrated an excellent ability to resolve conflicts with complex underground utility work such as what has been recently uncovered at Lincoln Lane North. M. Vila has also secured a Class V dewatering permit, and has an excellent Public Information Officer on staff to ensure prompt and proper communication with the Lincoln Road businesses, particularly the restaurants. In order to expedite completion of the work, it is recommended that the required improvements be added to the MVA contract for the City Center BP-9A project. The negotiated prices submitted by MVA for the above scope of work have been reviewed by the project team and found to be fair and reasonable.

Advisory Board Recommendation:

CIP Oversight Committee

Financial Information:

Source of Funds: OBPI

	Amount	Account	Approved
1	$874,193.54	365-2327-069357 Construction	
2	$87,419.35	365-2327-000356 Contingency	
Total	$961,612.89		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Maria Hernandez Ext. 2584

Sign-Offs:

Department Director	Assistant City Manager	City Manager
COC	JGG	JMG

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MIAMIBEACH

AGENDA ITEM C7D

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AMENDMENT TO THE CONSTRUCTION SERVICES AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND M. VILA & ASSOCIATES, INC. (MVA), DATED JUNE 3, 2009, FOR THE CONSTRUCTION OF THE HISTORIC CITY OF MIAMI BEACH RIGHT OF WAY INFRASTRUCTURE IMPROVEMENTS PROJECT, NEIGHBORHOOD NO. 9A, CITY CENTER; IN THE NEGOTIATED NOT TO EXCEED AMOUNT OF $874,193.54, TO PROVIDE CONSTRUCTION SERVICES FOR RIGHT OF WAY AND INFRASTRUCTURE IMPROVEMENTS SURROUNDING THE NEW WORLD SYMPHONY CAMPUS (NWS), PENNSYLVANIA AVENUE GARAGE, AND LINCOLN PARK PROJECTS LOCATED WITHIN THE ADJACENT CITY CENTER COMMERCIAL DISTRICT BID PACKAGE 9B PROJECT AREA; AND FURTHER AUTHORIZING $87,419.35 AS A PROJECT CONSTRUCTION CONTINGENCY; WITH FUNDING AVAILABLE FROM THE PREVIOUSLY APPROPRIATED FUNDS IN THE CITY CENTER BID PACKAGE 9B RDA CONSTRUCTION FUND 365.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

FUNDING

Project funding in the amount of $874,193.54 is available from the previously appropriated funds for construction in the City Center Bid Package 9B (BP-9B), of which the work is a component allocated in Account No. 365-2327-069357. Funding in the amount of $87,419.35 is also available from the previously appropriated funds for contingency in the City Center Bid Package 9B (BP-9B) in Account No. 365-2327-000356.

ANALYSIS

On April 22, 2009, the City Commission approved the award of a construction contract to M. Vila & Associates, Inc. (MVA) in the amount of $7,589,825.00 for the construction of the Infrastructure Improvement Project City Center Historic District Bid Package 9A (BP-9A). Project contingency in the amount of $758,983.00 was also made available for the Project contingency fund.

The scope of the Project in BP-9A is limited to the City right-of-way along Washington Avenue and east of Washington Avenue in the City Center Historical District. The scope of improvements includes storm water collection and disposal systems, water distribution system, roadway milling and resurfacing, streetscape enhancements, landscaping, irrigation, traffic calming installations such as bump-outs and pedestrian crosswalks, traffic signage, pavement markings, additional pedestrian lighting, and enhanced pedestrian linkages. Construction of the project is currently underway and is approximately 50% complete.

The Project limits for the BP-9A Project include the area bounded to the north by Dade Boulevard, to the south by Lincoln Road, to the west by Washington Avenue and to the east by Collins Avenue.

The New World Symphony campus consists of the Pennsylvania Avenue Garage, New World Symphony building and Lincoln Park. These facilities are intended to be opened prior to end of the calendar year and the City is responsible for completing the streetscape, right of way improvements, and drainage work adjacent to the New World Symphony campus. The scope of the improvements adjacent to the New World Symphony campus is included in the City Center Commercial District Bid Package 9B project.

On August 4th, 2010, the CIP Office reached out to a Job Order Contractor to price the additional requested work. After the initial meeting, the contractor raised concerns about their ability to submit a timely estimate based upon the plans issued to them, as well as the possible impact of discovering unforeseen conditions within a utility intensive street such as Lincoln Lane North. Given these conditions, and since time was of the essence to complete the right of way work under the New World Symphony project schedule, a decision to seek another alternative was pursued.

As a result, the CIP Office requested MVA to provide a proposal for the required work. MVA is the contractor for the adjacent BP-9A Project, currently at approximately 50% completion. MVA had also been subcontracted by the Lincoln Park contractor, Valley Crest Landscape Development, to construct the Park's underground drainage and utilities.

At the BP-9A Project, M. Vila has demonstrated an ability to resolve conflicts with complex underground utility work such as what has been recently uncovered at Lincoln Lane North. M. Vila has also secured a Class V dewatering permit, and has an excellent Public Information Officer on staff to ensure prompt and proper communication with the Lincoln Road businesses, particularly the restaurants.

The scope of work to be added to the BP-9A contract includes the rights of way surrounding the Pennsylvania Avenue Garage, New World Symphony Building, and the Lincoln Park projects. This includes Pennsylvania Avenue from 17th Street to Lincoln Lane North, Lincoln North from Pennsylvania Avenue to Washington Avenue and along 17th Street from Washington Avenue to Pennsylvania Avenue. The specific items that must be added are as follows:

Beautification and Enhancement along Pennsylvania Avenue from 17th Street to Lincoln Lane North

This scope of work includes the construction and installation of hardscape to the west of Pennsylvania Avenue between 17th Street and Lincoln Lane North in order to complement the east side of Pennsylvania Avenue. Work consists of demolition of existing curbs, sidewalk and asphalt roadway, new Type "D" curb along the west side, adjustment of

existing storm water inlets, new ADA accessible ramps, pavement markings, landscaping and irrigation on the west side of Pennsylvania Avenue to match the east side. Lighting improvements along the west side of Pennsylvania Avenue also include six (6) landscaping uplights, six (6) Poulsen pedestrian light poles and relocation of a Cobra luminaire.

The work also includes the installation of new brick pavers set over an 8" reinforced concrete slab in lieu of asphalt paving along Pennsylvania Avenue, sealing of the pavers and installation of paver crosswalks at the intersection of 17th Street and Lincoln Lane North. The vehicular ingress / egress to the 17th Street Garage will also be improved with this work. The total cost of this scope of work is $287,619.93.

Lincoln Lane North Reconstruction between Pennsylvania and Washington Avenues

This scope of work includes the construction and installation of hardscape, drainage collection and conveyance, and asphalt paving of Lincoln Lane North from Pennsylvania Avenue to Washington Avenue. The work also includes two (2) new paver intersections at the intersections of Lincoln Lane North and Drexel Avenue and at Washington Avenue, electrical improvements to add eight (8) Poulsen pedestrian light fixtures and five (5) Cobra luminaries. In addition, the scope includes the installation of two empty (2") conduits from the Pennsylvania Avenue Garage to the 17th Street Garage to interconnect parking operations as requested by the Parking Department. Hardscape improvements along Drexel Avenue from Lincoln Lane North to Lincoln Road are also included, as well as irrigation along the Lincoln Lane pedestrian areas. Pedestrian areas will be landscaped with sixteen (16) new Sabal Palms, turf grass and eight (8) Pink Tabebuia trees will be relocated. The total cost of this scope of work is $440,570.48.

17th Street Improvements from Pennsylvania Avenue to Washington Avenue

On January 14th, 2009, the City requested that MVA submit a cost proposal for the installation of approximately 735 linear feet of 8" water main and 33 LF of 6" water main and 1 Fire Hydrant assembly. This work was required to be installed and placed into service to support the New World Symphony Campus construction activities. The work included roadway restoration associated with the water main construction, maintenance of traffic, construction survey and as-built drawings.

On June 25th, 2010, the City requested that MVA remove an existing traffic signal mast arm located at the southwest corner of the 17th Street & Washington Avenue intersection and deliver same to the Miami Dade County Public Works Department. This work was done at the request of the NWS as it was interfering with their concrete plaza construction and was required as part of the new crosswalk design. Removal of all foundations was also included in the scope.

In addition to the work already completed along 17th Street, the scope of this request will include the construction of hardscape and drainage improvements along 17th Street from Washington Avenue to Drexel Avenue. The work will only be performed along the south side of 17th Street. Pedestrian signalization at the Drexel Avenue crosswalk will also be included. The total cost of this scope of work is $146,003.13.

The negotiated prices submitted by MVA for the above scope of work have been reviewed by the project team and found to be fair and reasonable.

Contingency

A construction contingency of 10% has been allocated for unforeseen conditions which may arise during construction. The total contingency cost is $87,419.35.

A summary of the additional funding request is as follows:

Pennsylvania Avenue improvements:	$287,619.93
Lincoln Lane North improvements:	$440,570.48
17th Street improvement:	$146,003.13
Contingency:	$ 87,419.35
Additional project funding requested:	**$961,612.89**

CONCLUSION:

The Administration recommends that the Mayor and City Commission authorize the City to execute an Amendment to the existing construction services agreement between the City of Miami Beach and M. Vila & Associates, Inc., for the construction of the City Center Historic District PB-9A Project infrastructure improvements, to provide construction services for right of way and infrastructure improvements surrounding the New World Symphony Campus, Pennsylvania Avenue Garage, and Lincoln Park projects, in a negotiated not to exceed amount of $874,193.54; and further authorizing $87,419.35, as a project construction contingency; with funding available from previously appropriated funds from the adjacent City Center BP-9B Project.

JMG/JMG/CCC/GME/MH/EAI

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RESOLUTION TO BE SUBMITTED

Condensed Title:

Re-appointment of Abraham Laeser, Esquire, as Chief Special Master.

Key Intended Outcome Supported:

Increase resident satisfaction with level of code enforcement.

Issue:

Shall Abraham Laeser be re-appointed to serve as Chief Special Master for a term commencing on September 15, 2010, and ending on March 14, 2011?

Item Summary/Recommendation:

At the July 14, 2010 Commission meeting, there was a discussion regarding the re-appointment of the Chief Special Master and the matter was referred to the City Attorney's Oversight Committee (minutes attached as Exhibit 1). The attached two Resolutions provide for the re-appointment by the City Commission of Abraham Laeser, Esquire, as Chief Special Master. One Resolution re-appoints Mr. Laeser as Chief Special Master for Code Enforcement violations under Chapter 30 of the City Code; the other Resolution re-appoints Mr. Laeser to hear appeals from citations and violations or denials, suspensions, and revocations of occupational licenses and certificates of use pursuant to Chapter 102 of the Miami Beach City Code.

Mr. Laeser brings to the City of Miami Beach and the Special Master Program 36 years of experience as an Assistant State Attorney, where he served as Senior Trial Counsel until he retired in April 2009.

Mr. Laeser is a long time resident of Miami Beach and is active in the community. He served the City with distinction as a member of the Miami Beach Charter Review Committee.

The Administration recommends approving the Resolutions.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:

OBPI

	Amount	Account	Approved
1			
2			
3			
4			
Total			

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Bob Parcher, City Clerk

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

AGENDA ITEM C7E

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

Jose Smith, City Attorney

DATE: SEPTEMBER 15, 2010

SUBJECT: **RE-APPOINTMENT OF CHIEF SPECIAL MASTER**

1. **A RESOLUTION ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO SECTION 30-36 OF THE CODE OF THE CITY OF MIAMI BEACH, CONCERNING THE RE-APPOINTMENT OF ABRAHAM LAESER, ESQ., TO SERVE AS CHIEF SPECIAL MASTER, FOR A TERM COMMENCING ON SEPTEMBER 15, 2010, AND ENDING ON MARCH 14, 2011; PROVIDED FURTHER THAT CHIEF SPECIAL MASTER LAESER SHALL BE AUTHORIZED TO HOLD HEARINGS AND IMPOSE FINES, LIENS AND OTHER NON-CRIMINAL PENALTIES AGAINST VIOLATORS OF THE CITY AND COUNTY CODES AND ORDINANCES, AND SHALL ALSO BE AUTHORIZED TO APPOINT SUCH OTHER SPECIAL MASTERS AS MAY REASONABLY BE REQUIRED TO CONDUCT THE SUBJECT HEARINGS; AND FURTHER INCORPORATING ALL OTHER MATTERS SET FORTH WITHIN CHAPTER 30 OF THE CITY CODE, INCLUDING, WITHOUT LIMITATION, SECTIONS 30-37 AND 30-38 THEREOF, CONCERNING THE COMPENSATION AND DUTIES OF THE CHIEF SPECIAL MASTER.**

2. **A RESOLUTION APPROVING AND RE-APPOINTING, PURSUANT TO SECTION 102-356 OF THE CITY CODE, ABRAHAM LAESER ESQ., (CHIEF SPECIAL MASTER RE-APPOINTED PURSUANT TO RESOLUTION NO. _____, AS THE CITY MANAGER'S "DESIGNEE" UNDER SECTION 102-356 OF THE CITY CODE; SAID DESIGNATION COMMENCING WITH MR. LAESER'S TERM AS CHIEF SPECIAL MASTER ON SEPTEMBER 15, 2010, AND ENDING ON MARCH 14, 2011.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolutions.

ANALYSIS

At the July 14, 2010 Commission meeting, there was a discussion regarding the re-appointment of the Chief Special Master. The matter was referred to the City Attorney's Oversight Committee.

The City Attorney's Oversight Committee met on August 24, 2010 (minutes attached as Exhibit 1).

The attached two Resolutions provide for the re-appointment by the City Commission of Abraham Laeser, Esquire. One Resolution re-appoints Mr. Laeser as Chief Special Master for Code Enforcement violations under Chapter 30 of the City Code; the other Resolution re-appoints Mr. Laeser to hear appeals from citations and violations or denials, suspensions, and revocations of occupational licenses and certificates of use pursuant to Chapter 102 of the Miami Beach City Code. Language has been added to one of the Resolutions prohibiting the Chief Special Master and each Special Master from engaging in practice where he/she represents a client in a manner adverse to the interests of the City of Miami Beach, and from lobbying the City during his/her service with the City.

Mr. Laeser brings to the City of Miami Beach and the Special Master Program 36 years of experience as an Assistant State Attorney, where he served as Senior Trial Counsel until he retired in April 2009.

Mr. Laeser is a long time resident of Miami Beach and is active in the community. He served the City with distinction as a member of the Miami Beach Charter Review Committee.

In 1999 he received the William S. Scurr Award for career dedication to prosecution. In 1996 he received the Eugene Berry Award for Exemplary Career Service, and in 1996 and 2003 he received the Distinguished Faculty Award.

Since 1997, Mr. Laeser has been an Adjunct Professor in Trial Advocacy at the University of Miami.

Mr. Laeser has the knowledge, demeanor, skills and abilities, to perform as Chief Special Master. He will to serve this City with honor and distinction, and his appointment will best serve the interests of the City. As such, the subject Resolutions should be adopted.

JMG/REP/LRM/lm

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"Exhibit 1"

City Attorney Oversight Committee
Minutes of the Meeting held on Tuesday, August 24, 2010

Commission Members Present:
Commissioner Libbin
Commissioner Tobin
Commissioner Wolfson

Administration Members Present:
Jorge Gonzalez, City Manager
Robert Parcher, City Clerk
Lisa Martinez, Clerk for the Special Master
Cindy Neves, Clerk for the Special Master
Hilda Fernandez, Assistant City Manager, entered the meeting towards the end of the meeting

Legal Department Members Present:
Jose Smith, City Attorney
Rhonda Hasan, First Assistant City Attorney
Steven Rothstein, First Assistant City Attorney
Aleksandr Boksner, Senior Assistant City Attorney

Special Masters Present:
Abraham Laeser
Joe Kaplan
Enrique Zamora
Babak Movahedi

The meeting was called to order at approximately 3:45 p.m.

Jose Smith, City Attorney, explained the purpose of the meeting and reviewed the Agenda.

Item 1:
Jose Smith, City Attorney, stated that the City is providing legal violation noticing by follow Florida Statute 162 and the City Code.

Discussion held regarding violation noticing. Motion made by Commissioner Wolfson to provide notice via Florida Statute 162 and the City Code supplemented by serving via registered mail the registered agent list in Sunbiz or by the City's address listed on the Business Tax Receipt (BTR). No second was offer.

Commissioner Tobin recommended following the Administrative Guidelines approved by the City Commission. The Administrative Guidelines state: "All initial violations issued by Code, Building, and Fire Departments should be sent to the property owner/responsible agent in the manner required pursuant to

applicable Florida law, with a copy to the property owner or responsible agent at the address shown on file on www.sunbiz.org." If it is determined that the Administrative Guidelines are not being followed then the City Commission will look into enacting by ordinance. Commissioner Tobin clarified that the letter to the registered agent is a certified letter.

Item 2:
Chief Special Master Laeser spoke about the independence of the special master process and having the ability to communicate with the City Commission directly if a difference of opinion should arise between either the Legal Department and/or the Administration. The Committee gave clear direction that the process will be first to try to resolve the issue with the City Manager and if a resolution can not be reached to bring the item before the City Attorney Oversight Committee. It was also stated that all official communications regarding the special master process must be through the Chief Special Master.

Item 3:
The term of the Chief Special Master, who appoints special masters is six (6) months. There was a discussion regarding extending the term to one (1) year. A motion was made by Commissioner Wolfson to change the term from a six (6) month appointment to a one (1) year appointment; no second was offered. Commissioner Tobin indicated that he would like the term to stay as it is for now.

Item 4:
There was a discussion regarding increasing the rate of compensation for the for the special masters. The special masters, pursuant to City Code are compensated at a base rate of $100 per hour with a maximum payment of $500 per session. A session is presently defined as session 1 morning and afternoons and session 2, evenings. Chief Special Master Laeser recommended the following sessions:
Session 1: 9 am to 12 noon with a maximum payment of 3 hours
Session 2: 2 pm to 6 pm with a maximum payment of 4 hours
Session 3: 6 pm to 10 pm with a maximum payment of 4 hours

Jorge Gonzalez, City Manager, recommended that the Chief Special Master and the City Clerk work out the schedule.

There was a discussion regarding some of the special master hearings going late into the evening or early morning. Jorge Gonzalez, City Manager, indicated that late hour meetings cost the city in overtime and have a negative impact on the employees who have to report to work the following day.

Item 5:
There was a discussion regarding the elimination of the CAP provision.

Note added to provide background information:
Effective September 19, 2009, pursuant to City Ordinance 2009-3647, "The special master shall, at the time of the imposition of a fine, may impose a cap on the total amount of a fine that may accrue and, at a subsequent hearing, the special master shall reduce the fine cap to reflect partial compliance. The cap

provision set forth in this section shall not apply to the fines imposed pursuant to other chapters in this Code that do not impose per diem fines." The cap provisions shall automatically sunset and shall be repealed on September 19, 2011.

Chief Special Master Laeser indicated that the cap eliminates the incentive to come into compliance. No formal action was taken.

Item 6:
The Committee asked if Ms. Lisa Martinez and Ms. Cindy Neves, Code Violation Clerks, would like to add to the discussion. Ms. Neves brought up the issue of the affidavit of non-compliance issued by the inspectors. She stated that when special master orders the violator to be in compliance by a certain date if they do not and the inspector submits an affidavit of non-compliance the fine should start to run as of the date of the affidavit. Presently this is not the case. The Administration is requesting the Chief Special Master make this clear in the Order Amending Procedure Before City Special Masters. Ms. Martinez indicated that special masters have indicated they would like all of the information available about the case in front of them at the initial hearing. It is recommended that when the inspectors submit a case that they make a copy of the entire file.

Item 7:
A question was raised regarding inspector training. The Chief Special Master indicated that he would be happy to do a training program with the inspectors.

Item 8:
Jorge Gonzalez, City Manager, asked if there is any advantage to having special masters assigned to specific types of cases. It was determined that this would not be helpful.

Item 9:
The "Mitigation Guidelines" were discussed. The Legal Department stated that they would like to review the mitigation guidelines with the Chief Special Master.

Regarding mitigations, Hilda Fernandez, Assistant City Manager, recommended that the Administration present to the special master during a mitigation hearing the actual costs associated with case along with any additional information pertaining to the case. The information will give the special masters more information to base their final recommendation. On certain circumstances the Legal Department may also wish to provide their input.

The meeting adjourned at approximately 5:55 p.m.

Minutes prepared by Robert Parcher, City Clerk

RESOLUTION NO. _____

A RESOLUTION ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO SECTION 30-36 OF THE CODE OF THE CITY OF MIAMI BEACH, CONCERNING THE RE-APPOINTMENT OF ABRAHAM LAESER, ESQUIRE, TO SERVE AS CHIEF SPECIAL MASTER, FOR A TERM COMMENCING ON SEPTEMBER 15, 2010, AND ENDING ON MARCH 14, 2011; PROVIDED FURTHER THAT CHIEF SPECIAL MASTER LAESER SHALL BE AUTHORIZED TO HOLD HEARINGS AND IMPOSE FINES, LIENS AND OTHER NON-CRIMINAL PENALTIES AGAINST VIOLATORS OF THE CITY AND COUNTY CODES AND ORDINANCES, AND SHALL ALSO BE AUTHORIZED TO APPOINT SUCH OTHER SPECIAL MASTERS AS MAY REASONABLY BE REQUIRED TO CONDUCT THE SUBJECT HEARINGS; AND FURTHER INCORPORATING ALL OTHER MATTERS SET FORTH WITHIN CHAPTER 30 OF THE CITY CODE, INCLUDING, WITHOUT LIMITATION, SECTIONS 30-37 AND 30-38 THEREOF, CONCERNING THE COMPENSATION AND DUTIES OF THE CHIEF SPECIAL MASTER

WHEREAS, Section 30-2 of the Code of the City of Miami Beach provides for an alternative code enforcement system wherein Special Masters are authorized to hold hearings and impose fines, liens and other non-criminal penalties against violators of City and County Codes and Ordinances; and

WHEREAS, Section 30-36 of the City Code, entitled "Appointment of Chief Special Master," provides for the appointment of a Chief Special Master to fulfill the above referenced duties; and

WHEREAS, pursuant to Section 30-36 of the City Code, appointment of the Chief Special Master is established upon the City Commission's acceptance, by a majority vote, of the recommendation for appointment by the City Manager; and

WHEREAS, the City Manager hereby recommends re-appointment of Abraham Laeser, Esquire, as Chief Special Master for the City of Miami Beach, for a term commencing on September 15, 2010, and ending on March 14, 2011; and

WHEREAS, all other matters set forth within Chapter 30 of the City Code, including, without limitation, Sections 30-37 and 30-38 regarding compensation and duties of the Chief Special Master, shall continue to apply and remain in full force and effect; and

WHEREAS, the Chief Special Master and each Special Master, shall be prohibited from engaging in practice where he/she presents a client in a manner adverse to the interests of the City

of Miami Beach, and shall further be prohibited from lobbying the City during his/her service with the City.

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 accept the recommendation of the City Manager, pursuant to Section 30-36 of the Code of the City of Miami Beach, concerning the re-appointment of Abraham Laeser, Esquire, to serve as Chief Special Master, for a term commencing on September 15, 2010, and ending on March 14, 2011; provided further that, as Chief Special Master, Mr. Laeser shall be authorized to hold hearings and impose fines, liens and other non-criminal penalties against violators of City and County Codes and Ordinances, and shall also be authorized to appoint such other Special Masters as may reasonably be required to conduct the subject hearings; and further incorporating all other matters set forth within Chapter 30 of the City Code including, without limitation, Sections 30-37 and 30-38 thereof, concerning the compensation of the Chief Special Master.

PASSED and ADOPTED this 15th day of September, 2010.

ATTEST:

MAYOR
Matti Herrera Bower

CITY CLERK
Robert Parcher

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 8/31/10 Date

RESOLUTION NO. _____

A RESOLUTION APPROVING AND RE-APPOINTING, PURSUANT TO SECTION 102-356 OF THE CITY CODE, ABRAHAM LAESER ESQUIRE, (CHIEF SPECIAL MASTER RE-APPOINTED PURSUANT TO RESOLUTION NO. _____, AS THE CITY MANAGER'S "DESIGNEE" UNDER SECTION 102-356 OF THE CITY CODE; SAID DESIGNATION COMMENCING WITH MR. LAESER'S TERM AS CHIEF SPECIAL MASTER ON SEPTEMBER 15, 2010, AND ENDING ON MARCH 14, 2011.

WHEREAS, pursuant to the Section 30-36 of the Code of the City of Miami Beach, upon prior recommendation of the City Manager, the City Commission, by a majority vote, may appoint a Chief Special Master, who shall be authorized to hold hearings and impose fines, liens, and other non-criminal penalties against violations of City Ordinances; and

WHEREAS, at its regular meeting on September 15, 2010, the Mayor and City Commission adopted Resolution No. _____, re-appointing Abraham Laeser, Esquire, as Chief Special Master, for a term commencing on September 15, 2010, and ending on March 14, 2011; and

WHEREAS, pursuant to Section 102-356, the City Manager may also approve a "designee," who shall be authorized to hear appeals from citations for violations of City and County Codes and Ordinances and to conduct hearings regarding denials, suspensions and revocations of occupational licenses, certificates of use and permits, as provided by the City Code, and who shall also be authorized to appoint such other Special Masters as may reasonably be required to conduct such hearings pursuant to City Ordinances; and

WHEREAS, accordingly, the City Manager hereby recommends Judge Goderich, to serve as the City Manager's "designee," for a six (6) month term commencing on September 15, 2010, and ending on March 14, 2011; and

WHEREAS, the Chief Special Master (including, as in the instant Resolution, where the Chief Special Master is acting in his capacity as the City Manager's "designee" under Section 102-356 of the City Code), shall be prohibited from engaging in practice where he/she represents a client in a manner adverse to the interests of the City of Miami Beach, and shall further be prohibited from lobbying the City during his/her service with the City.

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 approve and re-appoint, pursuant to Section 102-356 of the City Code, Abraham Laeser, Esquire, (Chief Special Master appointed pursuant to Resolution No. _____), as the City Manager's "designee" under Section 102-356 of the City Code; said designation commencing with Mr. Laeser's term as Chief Special Master on September 15, 2010, and ending on March 14, 2011.

PASSED and ADOPTED this 15th day of September, 2010.

ATTEST:

_____
MAYOR
Matti Herrera Bower

_____
CITY CLERK
Robert Parcher

T:\AGENDA\2010\September 15\Consent\Abe Laeser Reappointment Chapter 102.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 8/31/10 Date

Condensed Title:

A resolution re-appointing Mr. Warren Bittner, Esq. to serve as Special Master for the City's Historic Preservation Board.

Key Intended Outcome Supported:

Ensure all historically significant structures, sites, and districts are considered for local designation by the Commission.

Supporting Data (Surveys, Environmental Scan, etc.): in 2009, the City has an inventory of 1,515 contributing properties within existing Local Historic Districts and a total number of 1,861 properties located within the existing Local Historic Districts.

Issue:

Shall Mr. Warren Bittner, Esq. be re-appointed to serve as a Special Master for the City's Historic Preservation Board until September 16, 2013?

Item Summary/Recommendation:

Mr. Bittner has ample experience in historic preservation, as he was legal counsel to the City of Miami Historic Preservation Board and was the Chair of the Miami Shores Historic Preservation Board. Furthermore, Mr. Bittner is an attorney for a government entity and he is not expected to have conflicts of interest which would prevent him from hearing cases. Mr. Bittner has served the City of Miami Beach with distinction for the past nine years in his capacity as Special Master. He has proven to be objective and thoughtful in his review of cases and his orders outlining his conclusions have been well written and on point as to the issues involved.

The Administration recommends approving the resolution. It should be noted that the last time an Appeal was heard was prior to FY 2009-2010.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Bob Parcher, City Clerk

Sign-Offs:

Department Director	Assistant City Manager	City Manager
RAP		

MIAMIBEACH

AGENDA ITEM C7F
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager
Jose Smith, City Attorney

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RE-APPOINTING MR. WARREN BITTNER, ESQ. TO SERVE AS SPECIAL MASTER FOR APPEALS OF DECISIONS OF THE CITY'S HISTORIC PRESERVATION BOARD UNTIL SEPTEMBER 16, 2013, AND SETTING THE COMPENSATION AT $100.00 PER HOUR WITH A MAXIMUM PAYMENT OF $500.00 PER CASE.**

ADMINISTRATIVE RECOMMENDATION

Adopt the Resolution.

BACKGROUND

On September 17, 2007, the City Commission passed Resolution No. 2007-26642, re-appointing Mr. Warren Bittner, Esq. as Special Master for appeals of decisions of the City's Historic Preservation Board, for a three year period expiring September 16, 2010, and setting Mr. Bittner's compensation at $100.00 per hour with a maximum payment of $500 per case.

City of Miami Beach City Code, Section 118-537 (b) (1) provides that "the applicant, the owner(s) of the subject property, the city manager, Miami Design Preservation League, Dade Heritage Trust, or an affected person may appeal the board's decision to a special master appointed by the city commission."

Pursuant to Miami Beach City Code, Section 118-537 (b) (3), "Special Masters appointed to hear appeals pursuant to this subsection (b) shall be attorneys who are members in good standing with the Florida Bar and have expertise in the area of historic preservation. Special Masters shall serve terms of three years, provided however, that they may be removed without cause upon a majority vote of the city commission." Mr. Bittner has ample experience in historic preservation, as he was legal counsel to the City of Miami Historic Preservation Board and was the Chair of the Miami Shores Historic Preservation Board. Furthermore, Mr. Bittner is an attorney with a government entity; he is not expected to have conflicts of interest which would prevent him from hearing cases.

Mr. Bittner has served the City of Miami Beach with distinction for the past nine years in his capacity as Special Master. He has proven to be objective and thoughtful in his review of cases and his orders outlining his conclusions have been well written and on point as to the issues involved.

Richard Lorber, Planning Director, William Cary, Assistant Planning Director, and Thomas Mooney, Preservation and Design Manager, support the re-appointment of Mr. Warren Bittner as Special Master for the Historic Preservation Board appeals.

The Administration recommends that Mr. Bittner be re-appointed for a three (3) year term expiring on September 16, 2013. It should be noted that the last time an Appeal was heard was prior to FY 2009-2010.

JMG/REP

RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RE-APPOINTING MR. WARREN BITTNER, ESQ. TO SERVE AS SPECIAL MASTER FOR APPEALS OF DECISIONS OF THE CITY'S HISTORIC PRESERVATION BOARD UNTIL SEPTEMBER 16, 2013, AND SETTING THE COMPENSATION AT $100.00 PER HOUR WITH A MAXIMUM PAYMENT OF $500.00 PER CASE.

WHEREAS, the Mayor and City Commission of the City of Miami Beach recognize that a process for the review of decisions rendered by the Historic Preservation Board has been established under City of Miami Beach City Code, Section 118-537 (b)(3); and

WHEREAS, affected parties have the right to seek a review by a Special Master appointed by the City Commission of projects approved by the Historic Preservation Board; and

WHEREAS, Mr. Warren Bittner, Esq., is a uniquely qualified individual, based upon his experience in the field of historic preservation and as a practicing attorney, to review decisions rendered by the Historic Preservation Board; and

WHEREAS, in City of Miami Beach Resolution No. 2007-26642, the Mayor and City Commission re-appointed Mr. Warren Bittner, Esq. to serve as Special Master for appeals of decisions of the City's Historic Preservation Board through September 16, 2010; and

WHEREAS, Resolution No. 2004-25710 established the compensation at the rate of $100.00 per hour with a maximum payment of $500.00 per case.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that Mr. Warren Bittner, Esq., is hereby re-appointed to serve as a Special Master for appeals of decisions of the City's Historic Preservation Board for a period of three (3) years expiring on September 16, 2013, and to set his compensation at the base rate of $100.00 per hour with a maximum payment of $500.00 per case.

PASSED and **ADOPTED** this _____ day of _____, 2010.

ATTEST:

_____
MAYOR

_____
CITY CLERK

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/31/10 Date

Condensed Title:

1. A Resolution expressing support for Miami Gardens, Doral, and Cutler Bay, urging Miami-Dade County to fund these three cities from the County's 80% share of People's Transportation Plan surtax funding.
2. A Resolution urging the Board of County Commissioners to reject the County Manager's "hold-harmless" option for funding the new cities from the existing cities 20% share.
3. A Resolution formally initiating conflict resolution procedures pursuant to Chapter 164 should the County adopt the "hold-harmless" option.

Key Intended Outcome Supported:

Enhance Mobility Throughout the City

Supporting Data (Surveys, Environmental Scan, etc.): Transportation remains one of the most significant areas to address from the survey results (often mentioned as a key quality of life issue). 24% of residents rated traffic flow as excellent or good, and 37% as poor. 35% of residents rated the availability of pedestrian trails and bicycle paths/lanes as excellent or good, and 30% as poor.

Issue:

Shall the City support funding for Miami Gardens, Doral, and Cutler Bay from the County's 80% share of PTP Funds; and, oppose the County Manager's proposal to amend the PTP Ordinance; and, initiate conflict resolution procedures with Miami-Dade County regarding this issue?

Item Summary/Recommendation:

The County Manager has proposed to the County Commission an amendment of the Ordinance to split 20% of the PTP revenue known as the "municipal share" among three "new cities" as well as an increased number of cities. In addition to forcing cities to share a smaller pool while the County receives a greater share with fewer residents, this proposal has not received support from the municipalities that would be impacted. The legislation approving the PTP sets forth the manner by which new municipalities can receive PTP funds (through the County's 80% share), and the City maintains that this remains the appropriate mechanism, consistent with the promises made to municipalities in 2002 to obtain their support for the PTP.

The PTP, as approved by the voters and adopted via Ordinance No. 02-116 sets forth the mechanism by which municipalities – those existing at the time of passage of the tax and those created after passage – will receive PTP funds.

The Administration recommends that the Mayor and City Commission adopt the attached Resolutions, expressing support of the three new cities of Miami Gardens, Doral and Cutler Bay and urging Miami-Dade County to fund these three new cities from the County's 80% share, as agreed to by Miami-Dade County and as currently required by Ordinance No. 02-116, and further express opposition to the "hold-harmless" option proposed by the County Manager, and authorize the initiation of conflict resolution procedures provided by Chapter 164, Florida Statutes, should the Board of County Commissioners adopt on first reading, an ordinance implementing the "hold-harmless" option.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
N/A	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary: Preliminary estimates are that the county's proposal could cost the City between $800,000 and $1.1 million in transportation funding over a five-year period.

City Clerk's Office Legislative Tracking:

Kevin Crowder, City Manager' Office

Sign-Offs:

Department Director	Assistant City Manager	City Manager
KC	HF	JMG

MIAMIBEACH

AGENDA ITEM C7G

DATE 9-15-10

MIAMIBEACH

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

MEMO #

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING THE MIAMI-DADE BOARD OF COUNTY COMMISSIONERS TO REJECT THE COUNTY MANAGER'S PROPOSAL TO FUND THE PEOPLE'S TRANSPORTATION PLAN SURTAX TO CITIES INCORPORATED AFTER 2002 FROM THE GROWTH OF THE EXISTING CITIES' 20% SHARE, ALSO KNOWN AS THE "HOLD-HARMLESS OPTION" AND URGING THE MIAMI-DADE BOARD OF COUNTY COMMISSIONERS TO DIRECT THE COUNTY ADMINISTRATION TO PREPARE A PLAN TO FUND THE NEWLY INCORPORATED CITIES FROM THE COUNTY'S 80% SHARE, AS AGREED TO IN MIAMI-DADE COUNTY ORDINANCE NO. 02-116.**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, EXPRESSING SUPPORT FOR THE CITIES OF MIAMI GARDENS, DORAL, AND CUTLER BAY, AND URGING THE MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS TO PROVIDE THESE THREE CITIES WITH THEIR RIGHTFUL SHARE OF PEOPLE'S TRANSPORTATION PLAN SURTAX FUNDING FROM THE COUNTY'S 80% SHARE OF THE SURTAX, AS ORIGINALLY NEGOTIATED IN GOOD FAITH AND AGREED TO BY MIAMI-DADE COUNTY IN 2002, AND AS CURRENTLY REQUIRED BY MIAMI-DADE COUNTY ORDINANCE NO. 02-116.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, INITIATING CONFLICT RESOLUTION PROCEDURES PROVIDED BY SECTION 164.1052 OF THE FLORIDA STATUTES, PRIOR TO INITIATING LITIGATION AGAINST MIAMI-DADE COUNTY WITH REGARD TO MIAMI-DADE COUNTY'S ADOPTION ON FIRST READING, OF AN ORDINANCE IMPLEMENTING THE "HOLD-HARMLESS OPTION" TO PROVIDE CITIES INCORPORATED AFTER 2002 THEIR SHARE OF THE PEOPLE'S TRANSPORTATION PLAN SURTAX FROM THE PRE-EXISTING CITIES 20% SHARE OF THE SURTAX.

ADMINISTRATION RECOMMENDATION

Adopt the Resolutions.

BACKGROUND

In 2002, Miami-Dade County voters approved the PTP and a half-cent sales tax surtax to be used for the enhancement of transit and transportation in Miami-Dade County. Previous efforts to implement such a tax had been defeated by the voters, and then-Mayor Alex Penelas worked in good faith with municipal leaders to develop a revenue-sharing concept that could be supported by the cities in Miami-Dade County. It is common knowledge that, without support from the municipal leadership in Miami-Dade County, the ballot question most likely would have failed. The agreed-upon proposal provided that 20% of the revenue generated by the half penny sales tax would be distributed to the cities in existence at the time the tax was approved.

On July 9, 2002, the Board of County Commissioners (BCC) adopted Ordinance 02-116, which expressly states that 20% of the proceeds must be distributed solely among the existing cities. The Ordinance specifically states that newly incorporated municipalities will have the right to negotiate with the County for their pro rata share of the sales surtax from the County's 80% portion, and that providing funding to new cities would not affect the 20% share provided to municipalities that existed at the time the question was approved by the voters. The record from that meeting of the BCC is clear: it was the intent of the Board that new cities be funded from the County's 80% share of Surtax funds since, in addition to countywide projects and services, that share also funds projects in the unincorporated areas. Clarification on this issue was provided prior to ordinance approval.

According to the Citizen's Independent Transportation Trust (CITT), Surtax proceeds for Fiscal Year 2010 are $169.7 million, with a 20% municipal allocation of $33.94 million. Miami Beach's share of this amount is $2,656,451. This funding has been used to fund an array of projects to enhance transportation in our City, including funding for our South Beach Local. As you may know, Miami Beach is a heavy transit user, and the city's voting precincts in 2002 reflected wide support for the Surtax. Since 2002, three incorporations have been permitted in Miami-Dade County: Miami Gardens, Doral, and Cutler Bay. These three cities, understandably, are anxious to claim their fair share of the half penny tax, which totals $5.377 million combined for these three cities. Municipalities currently receiving the surtax have consistently expressed support for these three cities to receive funding as provided for by the County's own legislation. Further, there has been concern with efforts that appear to attempt to create a rift between cities on this issue.

In response to Miami-Dade County's failure to enter into interlocal agreements to provide funding to new municipalities, as required by the PTP Ordinance, House Bill 1205 was approved during the 2009 legislative session, requiring the County to renegotiate the interlocal agreements for distribution of the Surtax proceeds every five years to include any new municipalities. House Bill 1205 does not specify whether or not new municipalities should be funded from the 20% share; it is silent on the issue. For the most part this legislation essentially required the County to do what the PTP ordinance already required. However, the County is interpreting this legislation differently.

In response to continuing concerns, a working group was convened earlier this year by Miami-Dade County with representatives of municipalities and the County to discuss this issue. This group met on at least three occasions and discussed options proffered by the County. There was no agreement by the cities on any one option proffered, only that

further discussion should continue.

CURRENT PROPOSAL

On July 19, 2010, County Manager George Burgess issued a memorandum to the Board of County Commissioners (BCC) informing the Board that he had directed staff to prepare legislation for their consideration that "embraces a hold-harmless model." This memo also states that the hold-harmless solution is likely to emerge as the only one that has reasonable consensus both within County government and among the municipalities. The County Manager's impression that this solution will have reasonable municipal consensus is incorrect, as demonstrated by the letters (attached) in opposition to the hold-harmless plan from the cities of Miami, Hialeah and Coral Gables, as well as the attached letter from Mayor Bower.

In summary, the hold-harmless plan would fund the new cities with the growth in PTP revenue that is expected in the coming years as the economy recovers. If that growth is not sufficient in the early years to fully fund the new municipalities, the difference would come entirely out of the County's share. After that point, all municipalities would begin receiving funding from the new growth, but at a reduced share due to the inclusion of the new cities. Although a moratorium on incorporations is currently in effect in Miami-Dade County, the plan does not address how to address more cities should incorporations begin again.

The name "hold-harmless plan" is misleading, since it only means that revenues to each city will not go down. However, the 5-year impact to the City of Miami Beach could be between $800,000 and $1.1 million from lost opportunity to access growth in revenue. This is a very initial estimate; the Administration has initially reviewed the estimates provided by the CITT, but is conducting a more thorough analysis.

Although the County Manager's memorandum alleges that the hold-harmless plan has municipal consensus (which to our knowledge it does not), it also presents one final option to the BCC, which is to exercise the BCC's power to reduce the 20 percent municipal share effective upon the expiration of the existing interlocal agreements in 2012, and provide funding from the 20% municipal share to new municipalities.

On July 29, 2010, the CITT approved two resolutions (attached). The first expresses support of an amendment to Ordinance 02-116 to provide for the funding of new municipalities through the implementation of the hold-harmless option and the easing of the municipal maintenance of effort requirement. The second urges the BCC to fund the new municipalities from a county source other than the 20% municipal share until new funding sources are identified or Ordinance 02-116 is amended. These CITT resolutions are recommendations to the BCC.

On August 24, 2010, the City Commissions of the cities of Coral Gables and Hialeah approved resolutions to initiate the conflict resolution procedure against Miami-Dade County regarding this issue.

TIMELINE

Amendments to Ordinance 02-116 requires a 2/3 majority and must go through a number of steps. The First Reading of the ordinance at the BCC implementing the hold-harmless proposal can be scheduled for as early as September 10, consistent with a

tentative timeline presented by the CITT. If approved, the proposal would be scheduled for Public Hearing before the BCC's Transit, Infrastructure and Roads Committee with a Second and Final Reading before the BCC thereafter.

CONCLUSION

The County Manager's proposal seeks to split 20% of the PTP revenue among an increased number of cities which will be forced to share a smaller pool, while the County will receive a greater share with fewer residents. This will be especially true if more areas incorporate. The legislation approving the PTP sets forth the manner by which new municipalities can receive PTP funds (through the County's 80% share), and the City maintains that this remains the appropriate mechanism, consistent with the promises made to municipalities in 2002 to obtain support for the PTP.

Subsequent correspondence between the County Mayor and attorneys for the three newer municipalities indicates that the proposal is likely to move forward and references the lack of formal action by the other municipalities.

The Administration recommends that the Mayor and City Commission adopt the attached Resolutions, expressing support of the three new cities of Miami Gardens, Doral and Cutler Bay and urging Miami-Dade County to fund these three new cities from the County's 80% share, as agreed to by Miami-Dade County and as currently required by Ordinance No. 02-116, and further express opposition to the "hold-harmless" option proposed by the County Manager, and authorize the initiation of conflict resolution procedures provided by Chapter 164, Florida Statutes, should the Board of County Commissioners adopt on first reading, an ordinance implementing the "hold-harmless" option.

JMG/HF/kc

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, EXPRESSING SUPPORT FOR THE CITIES OF MIAMI GARDENS, DORAL, AND CUTLER BAY, AND URGING THE MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS TO PROVIDE THESE THREE CITIES WITH THEIR RIGHTFUL SHARE OF PEOPLE'S TRANSPORTATION PLAN SURTAX FUNDING FROM THE COUNTY'S 80% SHARE OF THE SURTAX, AS ORIGINALLY NEGOTIATED IN GOOD FAITH AND AGREED TO BY MIAMI-DADE COUNTY IN 2002, AND AS CURRENTLY REQUIRED BY MIAMI-DADE COUNTY ORDINANCE NO. 02-116.

WHEREAS, in 2002, Miami-Dade County voters approved the People's Transportation Plan ("PTP") and a half-cent sales tax surtax to be used for the enhancement of transit and transportation in Miami-Dade County; and

WHEREAS, because previous efforts to implement such a tax had been defeated by the voters, then-Mayor Alex Penelas worked in good faith with municipal leaders to develop a revenue-sharing concept that could be supported by the existing cities in Miami-Dade County; and

WHEREAS, without support from the municipal leadership in Miami-Dade County, the ballot question most likely would have failed; and

WHEREAS, the agreed-upon proposal provided that 20% of the revenue generated by the half-cent sales tax would be distributed to the cities in existence at the time the tax was approved; and

WHEREAS, on July 9, 2002, the Miami-Dade County Board of County Commissioners (BCC) adopted Ordinance No. 02-116, which expressly states that 20% of the half-cent sales tax proceeds must be distributed solely among the existing cities; and

WHEREAS, Ordinance No. 02-116 specifically states that newly incorporated municipalities will have the right to negotiate with the County for their pro rata share of the sales surtax from the County's 80% portion, and that providing funding to new cities would not affect the 20% share provided to municipalities that existed at the time the question was approved by the voters; and

WHEREAS, since 2002, three incorporations have been permitted in Miami-Dade County: Miami Gardens, Doral, and Cutler Bay; and

WHEREAS, municipalities currently receiving the surtax have consistently expressed support for these three new cities to receive funding as provided for by Miami-Dade County in Ordinance No. 02-116; and

WHEREAS, House Bill 1205 was approved during the 2009 Florida legislative session, requiring Miami-Dade County to renegotiate the interlocal agreements for distribution of the surtax proceeds every five years to include any new municipalities; and

WHEREAS, House Bill 1205 does not specify how the surtax revenues for new municipalities are to be funded; and

WHEREAS, a working group was convened earlier this year by Miami-Dade County with representatives of municipalities and the County to discuss this issue, which group met on at least three occasions and discussed options proffered by the County; and

WHEREAS, the working group did not agree on a solution, only that further discussion should continue; and

WHEREAS, on July 19, 2010, County Manager George Burgess issued a memorandum to the Board of County Commissioners (BCC) informing the BCC that he had directed staff to prepare legislation for their consideration that "embraces a hold-harmless model" (the "hold-harmless option"); and

WHEREAS, the hold-harmless option proposes to provide PTP revenues to the new cities with the growth in PTP revenue that is expected in the coming years as the economy recovers; and

WHEREAS, the 5-year impact to the City of Miami Beach is estimated by the Citizen's Independent Transportation Trust to be between $800,000 and $1.1 million under the hold-harmless option; and

WHEREAS, on July 29, 2010, the Citizen's Independent Transportation Trust ("CITT") approved two resolutions, the first supporting an amendment to Ordinance No. 02-116 to provide for the funding of new municipalities through the implementation of the hold-harmless option and the easing of the municipal maintenance of effort requirement, and second urging the BCC to fund the new municipalities from a county source other than the 20% municipal share until new funding sources are identified or Ordinance No. 02-116 is amended; and

WHEREAS, on August 24, 2010, the City Commissions of the cities of Coral Gables and Hialeah approved resolutions to initiate a conflict resolution procedure against Miami-Dade County pursuant to Section 164.1052 of the Florida Statutes regarding this "hold-harmless option"; and

WHEREAS, the Mayor and City Commission of the City of Miami Beach support a plan whereby the new cities of Miami Gardens, Doral, and Cutler Bay are provided their rightful share of PTP surtax funding as provided in Miami-Dade County Ordinance No. 02-116.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City

Commission express support for the cities of Miami Gardens, Doral, and Cutler Bay to receive their rightful share of PTP surtax funds as provided in Miami-Dade County Ordinance No. 02-116, and urge Miami-Dade County to provide these three cities with their rightful share of PTP surtax funding from the County's 80% share of the surtax, as originally negotiated in good faith and agreed to by Miami-Dade County in 2002, and as currently required by Miami-Dade County Ordinance No. 02-116.

PASSED AND ADOPTED this _____ day of ____ 2010.

ATTEST:

CITY CLERK	**MAYOR**

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY DATE

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, URGING THE MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS TO REJECT THE COUNTY MANAGER'S PROPOSAL TO PROVIDE THE PEOPLE'S TRANSPORTATION PLAN SURTAX FUNDS TO CITIES INCORPORATED AFTER 2002 FROM THE GROWTH OF THE EXISTING CITIES' 20% SHARE, ALSO KNOWN AS THE "HOLD-HARMLESS OPTION," AND URGING THE MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS TO DIRECT THE COUNTY ADMINISTRATION TO PREPARE A PLAN TO FUND THE NEWLY INCORPORATED CITIES FROM THE COUNTY'S 80% SHARE, AS AGREED TO IN MIAMI-DADE COUNTY ORDINANCE NO. 02-116.

WHEREAS, in 2002, Miami-Dade County voters approved the People's Transportation Plan ("PTP") and a half-cent sales tax surtax to be used for the enhancement of transit and transportation in Miami-Dade County; and

WHEREAS, because previous efforts to implement such a tax had been defeated by the voters, then-Mayor Alex Penelas worked in good faith with municipal leaders to develop a revenue-sharing concept that could be supported by the existing cities in Miami-Dade County; and

WHEREAS, without support from the municipal leadership in Miami-Dade County, the ballot question most likely would have failed; and

WHEREAS, the agreed-upon proposal provided that 20% of the revenue generated by the half-cent sales tax would be distributed to the cities in existence at the time the tax was approved; and

WHEREAS, on July 9, 2002, the Miami-Dade County Board of County Commissioners (BCC) adopted Ordinance No. 02-116, which expressly states that 20% of the half-cent sales tax proceeds must be distributed solely among the existing cities; and

WHEREAS, the Ordinance specifically states that newly incorporated municipalities will have the right to negotiate with the County for their pro rata share of the sales surtax from the County's 80% portion, and that providing funding to new cities would not affect the 20% share provided to municipalities that existed at the time the question was approved by the voters; and

WHEREAS, since 2002, three incorporations have been permitted in Miami-Dade County: Miami Gardens, Doral, and Cutler Bay; and

WHEREAS, municipalities currently receiving the surtax have consistently expressed support for these three new cities to receive funding as provided for by Miami-Dade County in Ordinance No. 02-116; and

WHEREAS, House Bill 1205 was approved during the 2009 Florida legislative session, requiring Miami-Dade County to renegotiate the interlocal agreements for distribution of the Surtax proceeds every five years to include any new municipalities; and

WHEREAS, House Bill 1205 does not specify how the surtax revenues for new municipalities are to be funded; and

WHEREAS, a working group was convened earlier this year by Miami-Dade County with representatives of municipalities and the County to discuss this issue, which group met on at least three occasions and discussed options proffered by the County; and

WHEREAS, the working group did not agree on a solution, only that further discussion should continue; and

WHEREAS, on July 19, 2010, County Manager George Burgess issued a memorandum to the Board of County Commissioners (BCC) informing the BCC that he had directed staff to prepare legislation for their consideration that "embraces a hold-harmless model" (the "hold-harmless option"); and

WHEREAS, the hold-harmless option proposes to provide PTP revenues to the new cities with the growth in PTP revenue that is expected in the coming years as the economy recovers; and

WHEREAS, the 5-year impact to the City of Miami Beach is estimated by the Citizen's Independent Transportation Trust to be between $800,000 and $1.1 million under the hold-harmless option; and

WHEREAS, on July 29, 2010, the Citizen's Independent Transportation Trust ("CITT") approved two resolutions, the first supporting an amendment to Ordinance No. 02-116 to provide for the funding of new municipalities through the implementation of the hold-harmless option and the easing of the municipal maintenance of effort requirement, and second urging the BCC to fund the new municipalities from a county source other than the 20% municipal share until new funding sources are identified or Ordinance No. 02-116 is amended; and

WHEREAS, on August 24, 2010, the City Commissions of the cities of Coral Gables and Hialeah approved resolutions to initiate a conflict resolution procedure against Miami-Dade County pursuant to Section 164.1052 of the Florida Statutes regarding this "hold-harmless option"; and

WHEREAS, the Mayor and City Commission of the City of Miami Beach support a plan whereby the new cities of Miami Gardens, Doral, and Cutler Bay are provided their rightful share of PTP surtax funding as provided in Miami-Dade County Ordinance No. 02-116.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the Miami-Dade

County Board of County Commissioners is hereby urged to reject the County Manager's proposal, also known as the "hold-harmless option," to fund cities incorporated after 2002 from the growth of the existing cities' 20% share of PTP revenues, and urging the Board of County Commissioners to direct the County Administration to prepare a plan to fund the newly incorporated cities from the County's 80% share, as agreed to in Miami-Dade County Ordinance No. 02-116.

PASSED AND ADOPTED this _____ day of ____ 2010.

ATTEST:

CITY CLERK	**MAYOR**

T:\AGENDA\2010\September 15\Consent\PTP Reso 2.docx

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY DATE 9/11/10

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, INITIATING CONFLICT RESOLUTION PROCEDURES PROVIDED BY SECTION 164.1052 OF THE FLORIDA STATUTES PRIOR TO INITIATING LITIGATION AGAINST MIAMI-DADE COUNTY WITH REGARD TO MIAMI-DADE COUNTY'S ADOPTION ON FIRST READING, OF AN ORDINANCE IMPLEMENTING THE "HOLD-HARMLESS OPTION" TO PROVIDE CITIES INCORPORATED AFTER 2002 WITH THEIR SHARE OF THE PEOPLE'S TRANSPORTATION PLAN SURTAX REVENUES FROM THE PRE-EXISTING CITIES' 20% SHARE OF THE SURTAX.

WHEREAS, in 2002, Miami-Dade County voters approved the People's Transportation Plan ("PTP") and a half-cent sales tax surtax to be used for the enhancement of transit and transportation in Miami-Dade County; and

WHEREAS, because previous efforts to implement such a tax had been defeated by the voters, then-Mayor Alex Penelas worked in good faith with municipal leaders to develop a revenue-sharing concept that could be supported by the existing cities in Miami-Dade County; and

WHEREAS, without support from the municipal leadership in Miami-Dade County, the ballot question most likely would have failed; and

WHEREAS, the agreed-upon proposal provided that 20% of the revenue generated by the half-cent sales tax would be distributed to the cities in existence at the time the tax was approved; and

WHEREAS, on July 9, 2002, the Miami-Dade County Board of County Commissioners (BCC) adopted Ordinance No. 02-116, which expressly states that 20% of the proceeds must be distributed solely among the existing cities; and

WHEREAS, Ordinance No. 02-116 specifically states that newly incorporated municipalities will have the right to negotiate with the County for their pro rata share of the sales surtax from the County's 80% portion, and that providing funding to new cities would not affect the 20% share provided to municipalities that existed at the time the question was approved by the voters; and

WHEREAS, since 2002, three incorporations have been permitted in Miami-Dade County: Miami Gardens, Doral, and Cutler Bay; and

WHEREAS, municipalities currently receiving the surtax have consistently expressed support for these three new cities to receive funding as provided for by Miami-Dade County in Ordinance No. 02-116; and

WHEREAS, House Bill 1205 was approved during the 2009 Florida legislative session, requiring Miami-Dade County to renegotiate the interlocal agreements for

distribution of the surtax proceeds every five years to include any new municipalities; and

WHEREAS, House Bill 1205 does not specify how the surtax revenues for new municipalities are to be funded; and

WHEREAS, a working group was convened earlier this year by Miami-Dade County with representatives of municipalities and the County to discuss this issue, which group met on at least three occasions and discussed options proffered by the County; and

WHEREAS. the working group did not agree on a solution, only that further discussion should continue; and

WHEREAS, on July 19, 2010, County Manager George Burgess issued a memorandum to the Board of County Commissioners (BCC) informing the BCC that he had directed staff to prepare legislation for their consideration that "embraces a hold-harmless model" (the "hold-harmless option"); and

WHEREAS, the hold-harmless option proposes to provide PTP revenues to the new cities with the growth in PTP revenue that is expected in the coming years as the economy recovers; and

WHEREAS, the 5-year impact to the City of Miami Beach is estimated by the Citizen's Independent Transportation Trust to be between $800,000 and $1.1 million under the hold-harmless option; and

WHEREAS, on July 29, 2010, the Citizen's Independent Transportation Trust ("CITT") approved two resolutions, the first supporting an amendment to Ordinance No. 02-116 to provide for the funding of new municipalities through the implementation of the hold-harmless option and the easing of the municipal maintenance of effort requirement, and second urging the BCC to fund the new municipalities from a county source other than the 20% municipal share until new funding sources are identified or Ordinance No. 02-116 is amended; and

WHEREAS, on August 24, 2010, the City Commissions of the cities of Coral Gables and Hialeah approved resolutions to initiate a conflict resolution procedure against Miami-Dade County pursuant to Section 164.1052 of the Florida Statutes regarding this "hold-harmless option"; and

WHEREAS, the Mayor and City Commission of the City of Miami Beach support a plan whereby the new cities of Miami Gardens, Doral, and Cutler Bay are provided their rightful share of PTP surtax funding as provided in Miami-Dade County Ordinance No. 02-116;

WHEREAS, Miami-Dade County has adopted an ordinance on first reading that would implement the "hold-harmless option", which the City of Miami Beach strongly opposes and, therefore the City of Miami Beach has a conflict with Miami-Dade County that necessitates the initiation of conflict resolution procedures under Section 164.1052 of the Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that conflict resolution procedures provided by Section 164.1052 of the Florida Statutes, are hereby initiated against Miami-Dade County due to the conflict created by the County's adoption, on first reading, of an ordinance implementing the "hold-harmless" option.

PASSED AND ADOPTED this _____ day of ____ 2010.

ATTEST:

CITY CLERK	**MAYOR**

T:\AGENDA\2010\September 15\Consent\PTP Reso 3.docx

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY 9/1/10 DATE

Memorandum

MIAMI-DADE COUNTY

Date: July 19, 2010

To: Honorable Dennis C. Moss, Chairman
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: People's Transportation Plan Municipal Revenue Sharing

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Voters' approval of the People's Transportation Plan (PTP) in 2002 was a bellwether moment for transit and transportation in Miami-Dade County. Revenues from the half-penny surtax immediately transformed the use of mass transit by eliminating fares for the Metromover and creating the Golden Passport to fully subsidize bus and train transportation for senior citizens. Over the ensuing years, PTP funds have resurfaced roads, improved intersections and laid the financial foundation for the ongoing construction of the first Metrorail expansion in a generation with the connection between Earlington Heights and the Miami Intermodal Center. In the future, those funds will continue to improve both mass transit and roadway travel for residents and visitors. Aside from the well-documented and unfortunate ways that the plan was oversold by leaders who are no longer a part of this administration, the PTP has been a powerful success story for the modernization of transportation.

One element of the original PTP was the decision to share revenues with municipalities. On most taxable sales in Miami-Dade, every $200 of purchase price generates 80 cents for the County and 20 cents to be divided among the 31 municipalities that were operating when the PTP was approved in 2002. This 80-20 split is defined in Ordinance 02-116, which codified the PTP, and is operationalized in 31 separate interlocal agreements. Ordinance 02-116 also provided the right for municipalities incorporated after November 5, 2002, to negotiate with the County for a pro rata share of the surtax, taking into consideration the County funded projects within the applicable municipality. The Ordinance also provided that any surtax proceeds distributed to subsequently incorporated municipalities shall not affect the twenty percent share provided for those municipalities in existence as of November 5, 2002. Since November 5, 2002, Miami Gardens, Doral, and Cutler Bay incorporated.

During the 2009 legislative session, House Bill 1205 was approved and subsequently signed into law, requiring the County to renegotiate those interlocal agreements in order to include municipalities that were subsequently created.[1] The three municipalities created since 2002 – Miami Gardens, Doral and Cutler Bay – are eager to claim their pro rata share, which totals $5.337 million. It now falls to the Board of County Commissioners to determine how that funding should be allocated, both now and going forward.

The consequences of this decision must not be underestimated; in addition to possible legal fallout, there are potential implications to service levels in the countywide bus network, funding for municipal transportation projects, coverage for existing bonds backed by PTP revenues and government's ability to sell future debt backed with these funds.

The County Attorney's Office (CAO) has reviewed the language of the law, the written legislative intent and the staff analyses that accompanied HB 1205 as it traveled through the process. The counsel received by

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[1] The law specifically requires that, "Any charter county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every five years in order to include any municipalities that have been created since the prior interlocal agreements were executed."

the administration was that the law contemplates funding the newly incorporated municipalities from the same 20 percent municipal share to be divided among the larger number of cities that now exist.

Earlier this year, I considered preparing Board legislation to that effect. However, the administration is keenly aware of the impact this could have on municipal budgets during difficult economic times; each municipality's revenue from PTP would be reduced about 13.5 percent. Moreover, both the administration and the Board have been consistent in their desire to work with our municipalities as partners, not adversaries.

To that end, I asked to meet with representatives of all 34 municipalities that would be impacted. That meeting, held March 18, was frank and at times heated. A great deal of passion surrounds this issue, as well as an unfortunate level of misunderstanding about the PTP itself and the extensive actions taken by this Board and administration to increase efficiency at Miami-Dade Transit (MDT). Some of the cities that already have interlocal agreements are adamant that the new cities be funded from the County's share. Regardless of the funding source, the three new municipalities are unwavering in their position that they must receive their pro-rata share of surtax funds. Despite the vigorous debate that afternoon, we remained committed to finding intelligent and creative solutions that satisfy the new municipalities' legitimate claim for PTP funding without imposing an unreasonable burden on either the County or the cities already receiving PTP funds.

Controversy over the 80-20 split is not new; it has been discussed many times over the last eight years. The County's share is by no means limited to the Unincorporated Municipal Service Area (UMSA) – to the contrary, it has been used primarily for the creation and evolution of an integrated and effective regional system that equally benefits residents of UMSA and municipalities. In effect, municipal residents benefit from both the 80 share and the 20 share, while UMSA residents would only encounter the results of the 20 percent share while traveling within a municipality.

Moreover, the County has never hesitated to use funds from its share to finance road projects within both existing and new municipalities, especially when they contributed to improved traffic flow on major corridors. This is consistent with our vision of using the PTP to enhance transportation in the most effective ways, regardless of political lines or parochial considerations.

Understanding those facts and the concerns of our municipal leaders, we worked with the Miami-Dade League of Cities and the Citizens' Independent Transportation Trust (CITT) to convene a series of informal brainstorming and discussion sessions. While we initially planned on a small working group with members chosen by the League, we ultimately opted for optimal transparency and allowed all stakeholders to participate.

Senior members of the administration participated directly in these meetings, including Assistant County Manager Ysela Llort, who oversees MDT and other transportation departments, and Jennifer Glazer-Moon, Special Assistant and Director of the Office of Strategic Business Management. The meetings were facilitated by CITT Executive Director Charles Scurr. Despite my inclination to protect the regional transit system above all, I directed them to explore and consider any compromise proposals, and I was pleased with some of the ideas that developed.

Many of those ideas will require some months or years to implement; they do not address the short-term needs to do right by Miami Gardens, Doral and Cutler Bay, but they present important and intriguing opportunities.

One idea was to more tightly integrate municipally-funded circulators – which are often excellent examples of hyper-local government addressing the needs of a geographically tight area – with our regional Metrobus service. If we can tweak our routes to minimize duplication with circulators without impacting service beyond municipal boundaries, we can reduce costs at MDT in a way that will be nearly invisible to

riders. Coupled with route realignments and administrative cuts that have saved MDT more than $57.5 million over the last two years, these added efficiencies could identify new savings while enhancing our service partnerships with municipal governments. Early estimates indicate the County could reduce spending by approximately $900,000, with the potential for more savings if smaller municipalities band together to fund and operate circulators.

Another idea addresses the revenue side of the equation rather than the expense side. Both the PTP half-penny surtax and the half-penny sales tax that funds Jackson Health Systems have a significant limitation: they only apply to the first $5,000 of a transaction. If the County and our municipalities could successfully lobby the Florida Legislature to remove that restriction, each of those funds would receive an additional $12 million. Considering the fact that transportation and health care are two of this Board's highest priorities – indeed, two of our community's highest priorities – I would strongly recommend including this in our next legislative package.

Neither of those ideas, however, will address the demands of Miami Gardens, Doral and Cutler Bay. At first blush, there would appear to be only four solutions to that issue. None are attractive:

1. Fund the new municipalities entirely out of the County's share of the 80-20 split. The negative implications to our government, our transit system and our riders would be severe. Additional service cuts of 1.2 to 1.6 million service miles would be absolutely necessary in order to balance the budget, bringing the County perilously close to levels that existed before the PTP was created. Even more troubling, it would have a direct impact on our bonding ability and set a poor precedent that could further degrade our ability to issue debt. Funding new cities from the County's share would lower that share below 80 percent, changing the funding stream that guarantees hundreds of millions in PTP-backed bonds. A change of .25 percent – which is a reasonable guess of the impact – would increase the per-year interest cost on $100 million in debt by $180,000. Multiplied out by the large amount of PTP-backed debt anticipated by our capital plans, that annual impact becomes severe. Moreover, because the new law requires renegotiating these agreements every five years, rating agencies and bond buyers could be reluctant to buy the 30-year bonds we traditionally sell and might limit us to five-year bonds, substantially adding to issuance costs and making major capital project financing unrealistic. It could also impact our existing debt, which would suddenly have a degraded funding source. The administration could never recommend an option that created such vulnerabilities. Attempting to fund the new cities from County funds outside the PTP is also problematic, in that those cities might be unable to sell debt in the absence of a dedicated funding stream to back it.

2. Fund the new municipalities entirely out of the 20 percent share. While this would have no direct impact on the County, it would have a notable impact on the PTP revenues granted to existing municipalities. In isolated cases, it could have similar impacts to smaller, municipal-backed debt issuances. Moreover, it would likely be seen by municipal governments and our shared constituents as an aggressive action, impairing our ability to work together in partnership on numerous other issues.

3. Fund the new municipalities with some combination of funds from both the 80 percent and 20 percent shares. While this mitigates the severity of the challenges described above, it nonetheless sets the same precedent and could have the same broad impact on debt issuance and, to whatever degree the County's share is tapped, a proportionate impact on MDT service.

4. Refuse to fund the new cities. This certainly violates the spirit of the law and likely its letter, as well.

The working group also discussed the imposition of the two-cent local-option gas tax, which would generate $16.7 million. Under the existing distribution formula – which is different than the 80-20 split – municipalities would receive $4.3 million and the County would receive $12.4 million. Prior studies suggest

that such gas taxes are not directly responsible for increase prices at the pump – largely because their repeal rarely leads to price drops – but the notion was still considered a difficult proposition during such dire economic times.

Fortunately, discussions in the working group and among County staff have yielded an option that, while still difficult, may be more palatable. Known as the hold-harmless plan, the idea is to fund the new cities with the growth in PTP revenue that is expected in the coming years as the economy recovers. If that growth is not sufficient in the early years to fully fund the new municipalities, the difference would come entirely out of the County's share. After that point, the current 80-20 split would be retained at the new, higher funding level.

This presents numerous advantages. New municipalities would be funded, rendering moot any question of a costly and time-consuming legal action. Municipalities, while forgoing surtax growth in the short term, would not have funding reductions that would contribute to budget gaps. The importance of that cannot be overstated. The impact to the County – potentially as high as $17.5 million over five years, and therefore not insignificant – would be limited to a finite amount and time period, which should prevent any negative effect on our existing bond agreements or ability to sell future debt.

While a few vocal municipal leaders have expressed complete opposition to this idea – insisting that the only acceptable solution is to fund new municipalities entirely from the County's share – we believe the majority of cities consider the above option a fair and honorable compromise that addresses everyone's needs within today's difficult budget situations. We believe that few municipalities develop budgets that predict growth in PTP funds, so they would be content to continue receiving the same funding level. The administration also expressed its willingness to discuss lowering the cities' maintenance-of-effort requirements. While this would not add new dollars to the ledger, it would allow cities to reprogram some existing non-PTP transportation funding for other badly-needed services; in that way, it was a show of good faith by the County toward the broader goal of finding a solution that met every party's global goals.

For some municipalities, that MOE has become increasingly onerous; their budgets have become tighter with the declining tax base, and their transit and transportation needs have abated as early years of PTP funding allowed them to address capital needs. Allowing municipalities to continue receiving PTP funding with less matching funding would not free up money for the new municipalities, but would make it easier for existing ones to manage their ongoing operations.

The hold-harmless solution is likely to emerge as the only one that has reasonable consensus both within County government and among our partners. I would be professionally remiss, however, if I did not raise one final alternative that this Board must consider, despite the fact that it is not our recommended course of action.

It is within the Board's power to reduce the 20 percent municipal share effective upon the expiration of the existing interlocal agreements in 2012. For some cities, the purpose originally served by this share has long since been addressed. At some point, those cities will reach – or perhaps have already reached – a state of diminishing returns in which there are no more major roads to be resurfaced, no more bus shelters to be built, no more traffic circles to be installed. The County would receive an additional $34.279 million in PTP revenue. In order to honor the legal obligations of the cities that sold debt based upon PTP agreements, the County could assume $227 million in municipal debt with an annual debt-service payment of $19.148 million. The net benefit to the County would be $15.131 million.

Certainly this would be seen as hostile to municipal governments, regardless of whether it better serves the regional transit system and the broader Miami-Dade community.

In summary, the question of how to fund Miami-Dade's three newest municipalities is a difficult conundrum that has been too long delayed. Whenever a new funding obligation is imposed upon a finite funding

source, there will be impacts. I have directed staff to prepare legislation for the Board's consideration that embraces the hold-harmless model discussed in our dozens of hours of meetings with municipal staff. Nonetheless, I wanted the Board to be aware of the numerous short- and long-term alternatives that exist, and I look forward to receiving your input and direction as we move forward.

If you have any questions, please contact me directly.

c: Honorable Carlos Alvarez, Mayor
Robert A. Cuevas, Jr., County Attorney
Ysela Llort, Assistant County Manager
Jennifer Glazer-Moon, Special Assistant and Director, Office of Strategic Business Management
Harpal Kapoor, Director, Miami-Dade Transit
Charles Scurr, Executive Director, Citizens' Independent Transportation Trust
Ryan Elliot, Budget Manager, OSBM
Charles Anderson, Commission Auditor
Richard Kuper, Executive Director, Miami-Dade League of Cities

City of Miami, Florida

CARLOS A. MIGOYA
CITY MANAGER

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July 29, 2010

Honorable Chairperson Linda Zilber
Citizens' Independent Transportation Trust
Miami-Dade County Stephen P. Clark Center
111 NW 1st Street, Suite 1010
Miami, FL 33128-1994

RE: Resolution amending Miami Dade County Ordinance 02-116, Charter County Transit System Surtax, to provide for the funding of new municipalities

Dear Chairperson Zilber:

The purpose of this letter is to express the City of Miami's (the "City") strong objection to the proposed resolution amending the Charter County Transit System Surtax Ordinance 02-116 (the "Ordinance") to provide for the funding of new municipalities through the Hold Harmless option. This item is to be heard on July 29, 2010 at the Citizens' Independent Transportation Trust ("the CITT") and the Community Outreach and Municipal Coordination Committee meetings.

The City recognizes that the three new municipalities are entitled to the Surtax proceeds. However, the enabling Ordinance clearly establishes the process for distribution of the Surtax to new municipalities incorporated after the passage of the Surtax in November 2002. Section 29-124(h) of the Ordinance notes "Newly incorporated municipalities shall have the right to negotiate with the County for a pro rata share of the sales surtax.... The preceding sentence shall not affect the twenty (20) percent share provided herein for municipalities existing on November 5, 2002."

The resolution is recommending the Hold Harmless option. The economic impact to the City for next five years could be approximately $1,804,490 or $360,898 per year. This amount is an actual funding loss to the City.

Numerous City commitments to constituents will be severely impacted by any future loss of the growth in Surtax receipts. The City has currently allocated Surtax proceeds to approximately 40 transportation projects consisting of street reconstruction and resurfacing and traffic calming improvements. In addition, the proposed trolley projects are pivotal in the City's efforts to provide public transit as a viable transportation option in some of the most dense and heavily congested areas in both the City and County.

The passage of the resolution will also have negative implications for the City's future ability to pledge the Surtax proceeds in bonds.

Please do not hesitate to contact me on this item or have the appropriate staff contact Johnny Martinez, Assistant City Manager at (305) 416-1025.

Sincerely,

Carlos A. Migoya
City Manager, City of Miami

c: Hon. Dennis C. Moss, Chairman, BCC
Hon. Mayor Carlos Alvarez
George M. Burgess, County Manager
Hon. Linda Zilber, CITT Chairperson
Charles D. Scurr, CITT Executive Director
Johnny Martinez, P.E., City Assistant City Manager
Alice Bravo, P.E., City CIP Director

Julio Robaina
Mayor

Carlos Hernandez
Council President

Jose Yedra
Council Vice President

City of Hialeah

Council Members

Jose F. Caragol
Vivian Casals-Muñoz
Katharine E. Cue
Isis Garcia-Martinez
Luis Gonzalez

July 29, 2010

Honorable Linda Zilber, Chairperson, and Members
Citizens' Independent Transportation Trust (CITT)
Stephen P. Clark Building
111 N.W. 1st Street, Suite 1010
Miami, Florida 33128

Re: *People's Transportation Plan Municipal Revenue Sharing*

Dear Committee Members:

The City of Coral Gables and the City of Hialeah write jointly to respond to Miami-Dade County (MDC or the County) Manager George Burgess's July 19, 2010 memorandum, recommending that the Board of County Commissioners (BCC) approve the cleverly coined hold-harmless plan. As the CITT is aware, the hold-harmless plan purports to freeze the existing cities' funding at the 2009-2010 amount and to fund the new cities with the growth in surtax revenue that is expected in the coming years. After the new cities have been fully funded, they then would be included in the pro rata distribution of the 20% share currently allotted to the existing cities.

While artfully drafted to create the impression that MDC worked hand-in-hand with the municipalities to develop this purportedly reasonable plan, Mr. Burgess's memorandum misrepresents the municipalities' positions, ignores MDC's commitment to the existing municipalities, and glosses over the impact the plan would have on the cities.

To start, Mr. Burgess erroneously reports that the majority of existing cities considers the hold-harmless plan a fair and honorable compromise that addresses everyone's needs. Mr. Burgess is mistaken. In fact, after participating in several working group sessions to try to develop a solution to fund the new cities, none of the existing cities backed the hold-harmless plan. While it is true that some cities vocalized their opinions about the plan more forcefully, no existing city opined that it would be willing to forego monies that rightfully belong to it and its constituents. The County must not mistake silence for acquiescence.

Raul L. Martinez Government Center
501 Palm Avenue, Hialeah, Florida · 33010-4719
www.hialeahfl.gov

Indeed, the existing cities cannot agree to this proposal because it utterly defies the agreement reached between the cities and MDC. In order to properly grasp the significance of that agreement, we find it necessary to remind everyone of the events surrounding the enactment of Ordinance 02-116.

In June 2002, then-County Mayor Alex Penelas announced his intention to place the County's "People's Transportation Plan" (PTP), which called for a half-penny sales tax increase, on the November 2002 ballot. MDC voters had voted unequivocally against similar tax increases twice in the not-so-distant past. Mayor Penelas understood that voters likely would vote against the tax increase a third time unless he obtained the municipalities' support. Accordingly, Mayor Penelas approached then-Hialeah Mayor, Raul Martinez, to secure his and other municipal mayors' assistance. Importantly, Mayor Penelas, not the municipal leaders, proposed the 20% share to the existing cities to induce the cities to help the County.

On July 8, 2002, various county and municipal officials, including then-Assistant County Attorney Robert Cuevas and League of Cities President-elect and Mayor Jose "Pepe" Diaz, met to negotiate the arrangement. Of utmost importance to the municipal leaders was a guarantee from MDC that the 20% share to the existing cities would continue so long as the half-penny surtax was collected. The leaders were assured that it would. The very next day, July 9, 2002, the BCC passed and adopted Ordinance No. 02-116, which expressly provides that 20% of the surtax proceeds must be distributed solely among the existing cities.

At the BCC meeting and prior to adopting the ordinance, several commissioners expressed concerns about the exclusion of future cities. After considering this issue, the BCC added that future municipalities would have the right to negotiate with MDC to obtain a share of the surtax revenue, but expressly ruled that those negotiations would not affect the existing cities' share. These events leave no doubt that it was the intent of MDC to limit the 20% share to existing cities and to fund any future cities from its own 80% share.

Over the next four months, the municipalities performed their part of the bargain – they promoted the PTP, they informed their residents that the tax revenues would benefit them directly, and they encouraged the voters to approve the tax increase. As a direct result, the half-penny surtax passed with overwhelming voter support.

Since then, MDC has reaped substantial rewards from surtax revenue – over $800 million. But for the cities' cooperation, these monies would have remained unavailable to MDC. The County, nonetheless, now seeks to renege on its part of the deal. How can any city (existing or new) ever trust MDC again after this bait-and-switch?

We do not complain merely because MDC is going back on its word. Rather, the Cities of Coral Gables and Hialeah cannot accept the hold-harmless plan because it poses serious financial difficulties. Indeed, in addition to forcing the existing cities to forego any growth revenue in the near future, the hold-harmless plan includes the current new cities (and purportedly any additional future new cities) in the 20% share. Mr. Burgess, however, provides no statistical information explaining the projected impact this revised distribution would have on the existing cities. In addition, Mr. Burgess ignores that all new cities stem from MDC's unincorporated areas (its population center). Accordingly, an increasing amount of cities would be forced to share from a smaller pool, while MDC would enjoy a greater share with fewer residents. This unfair result was the outcome the existing cities sought to avoid when it agreed to assist the County.

The County's dereliction of its duties to the new cities also cannot be overlooked. Indeed, MDC accepted the burden of negotiating with these cities when it adopted the ordinance and incorporated the appropriate mechanism for including the cities in MDC's 80% share. Over the last seven years, however, the County has continually violated the ordinance when it failed to fund the new cities (Miami Gardens, Doral and later Cutler Bay) after repeated requests. No doubt exists that these cities should have received funding years ago. The existing cities, however, should not be forced to pay for the County's failure to act in good-faith toward the new cities. Indeed, if MDC had behaved appropriately, it would have avoided the unnecessary conflict between the new and existing cities that this situation now creates.

Mr. Burgess appears to suggest that despite any prior arrangement with the cities, the hold-harmless plan is a proper solution because municipal residents benefit from county services while county residents only encounter the results of municipal services when traveling through a particular municipality. While this is arguably correct, this concept was considered when the 80-20% split was decided. Indeed, it is, in part, for this reason that MDC collects the lion's share of surtax revenues although approximately 50% of its residents live within a municipality.

Mr. Burgess also implies that the existing cities no longer need surtax revenues because the original purposes served by their share have already been addressed. He ignores that the municipalities rely on these funds and falsely assumes that they never intend to implement any further improvements.

We recognize that MDC, like all of the cities, is facing difficult economic times. We have all had to lay-off personnel, reduce services, and employ other cost-effective measures. We cannot, however, allow MDC to break its promise to the cities (to the cities' detriment) so that it may resolve its own finances. The County bargained for an 80% share of the surtax. If internal inefficiencies render this amount insufficient, MDC should address those inefficiencies rather than attempt to take from the cities' rightful share.

Mr. Burgess's memorandum includes a poorly veiled threat suggesting that if the existing cities fail to agree to the hold-harmless plan, the BCC need only wait two years (for the current interlocal agreements to expire) to amend the ordinance to reduce the 20% share. Strong-arming the cities to agree to the hold-harmless plan will not work.

Despite this threat, the cities cannot agree to the hold-harmless plan. Further, we will not wait two years so that MDC unilaterally resolves this dilemma in its favor. We are not suggesting that we are on the verge of litigation, but we are asking that the CITT demand further statistical data about the impact of the plan and consider alternative resolutions before rendering its recommendation.

Finally, while we greatly appreciate the opportunity to voice our opinion about this matter, we take issue with today's meeting being scheduled on the day on which the Florida Municipal Attorneys Association meeting was scheduled, rendering it impossible for our city attorneys to attend.

Thank you for your consideration.

Very truly yours,

Mayor Julio Robaina
City of Hialeah

cc: Board of County Commissioners

THE CITY OF CORAL GABLES

The City Beautiful

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July 29, 2010

Honorable Linda Zilber, Chairperson, and Members
Citizens' Independent Transportation Trust (CITT)
Stephen P. Clark Building
111 N.W. 1st Street, Suite 1010
Miami, Florida 33128

Re: ***People's Transportation Plan Municipal Revenue Sharing***

Dear Committee Members:

The City of Coral Gables and the City of Hialeah write jointly to respond to Miami-Dade County (MDC or the County) Manager George Burgess's July 19, 2010 memorandum, recommending that the Board of County Commissioners (BCC) approve the cleverly coined hold-harmless plan. As the CITT is aware, the hold-harmless plan purports to freeze the existing cities' funding at the 2009-2010 amount and to fund the new cities with the growth in surtax revenue that is expected in the coming years. After the new cities have been fully funded, they then would be included in the pro rata distribution of the 20% share currently allotted to the existing cities.

While artfully drafted to create the impression that MDC worked hand-in-hand with the municipalities to develop this purportedly reasonable plan, Mr. Burgess's memorandum misrepresents the municipalities' positions, ignores MDC's commitment to the existing municipalities, and glosses over the impact the plan would have on the cities.

P.O. BOX 141549 CORAL GABLES, FLORIDA 33134-1549 (305) 460-5219

To start, Mr. Burgess erroneously reports that the majority of existing cities considers the hold-harmless plan a fair and honorable compromise that addresses everyone's needs. Mr. Burgess is mistaken. In fact, after participating in several working group sessions to try to develop a solution to fund the new cities, none of the existing cities backed the hold-harmless plan. While it is true that some cities vocalized their opinions about the plan more forcefully, no existing city opined that it would be willing to forego monies that rightfully belong to it and its constituents. The County must not mistake silence for acquiescence.

Indeed, the existing cities cannot agree to this proposal because it utterly defies the agreement reached between the cities and MDC. In order to properly grasp the significance of that agreement, we find it necessary to remind everyone of the events surrounding the enactment of Ordinance 02-116.

In June 2002, then-County Mayor Alex Penelas announced his intention to place the County's "People's Transportation Plan" (PTP), which called for a half-penny sales tax increase, on the November 2002 ballot. MDC voters had voted unequivocally against similar tax increases twice in the not-so-distant past. Mayor Penelas understood that voters likely would vote against the tax increase a third time unless he obtained the municipalities' support. Accordingly, Mayor Penelas approached then-Hialeah Mayor, Raul Martinez, to secure his and other municipal mayors' assistance. Importantly, Mayor Penelas, not the municipal leaders, proposed the 20% share to the existing cities to induce the cities to help the County.

On July 8, 2002, various county and municipal officials, including then-Assistant County Attorney Robert Cuevas and League of Cities President-elect and Mayor Jose "Pepe" Diaz, met to negotiate the arrangement. Of utmost importance to the municipal leaders was a guarantee from MDC that the 20% share to the existing cities would continue so long as the half-penny surtax was collected. The leaders were assured that it would. The very next day, July 9, 2002, the BCC passed and adopted Ordinance No. 02-116, which expressly provides that 20% of the surtax proceeds must be distributed solely among the existing cities.

At the BCC meeting and prior to adopting the ordinance, several commissioners expressed concerns about the exclusion of future cities. After considering this issue, the BCC added that future municipalities would have the right to negotiate with MDC to obtain a share of the surtax revenue, but expressly ruled that those negotiations would not affect the existing cities' share. These events leave no

doubt that it was the intent of MDC to limit the 20% share to existing cities and to fund any future cities from its own 80% share.

Over the next four months, the municipalities performed their part of the bargain – they promoted the PTP, they informed their residents that the tax revenues would benefit them directly, and they encouraged the voters to approve the tax increase. As a direct result, the half-penny surtax passed with overwhelming voter support.

Since then, MDC has reaped substantial rewards from surtax revenue – over $800 million. But for the cities' cooperation, these monies would have remained unavailable to MDC. The County, nonetheless, now seeks to renege on its part of the deal. How can any city (existing or new) ever trust MDC again after this bait-and-switch?

We do not complain merely because MDC is going back on its word. Rather, the Cities of Coral Gables and Hialeah cannot accept the hold-harmless plan because it poses serious financial difficulties. Indeed, in addition to forcing the existing cities to forego any growth revenue in the near future, the hold-harmless plan includes the current new cities (and purportedly any additional future new cities) in the 20% share. Mr. Burgess, however, provides no statistical information explaining the projected impact this revised distribution would have on the existing cities. In addition, Mr. Burgess ignores that all new cities stem from MDC's unincorporated areas (its population center). Accordingly, an increasing amount of cities would be forced to share from a smaller pool, while MDC would enjoy a greater share with fewer residents. This unfair result was the outcome the existing cities sought to avoid when it agreed to assist the County.

The County's dereliction of its duties to the new cities also cannot be overlooked. Indeed, MDC accepted the burden of negotiating with these cities when it adopted the ordinance and incorporated the appropriate mechanism for including the cities in MDC's 80% share. Over the last seven years, however, the County has continually violated the ordinance when it failed to fund the new cities (Miami Gardens, Doral and later Cutler Bay) after repeated requests. No doubt exists that these cities should have received funding years ago. The existing cities, however, should not be forced to pay for the County's failure to act in good-faith toward the new cities. Indeed, if MDC had behaved appropriately, it would have avoided the unnecessary conflict between the new and existing cities that this situation now creates.

Mr. Burgess appears to suggest that despite any prior arrangement with the cities, the hold-harmless plan is a proper solution because municipal residents benefit from county services while county residents only encounter the results of municipal services when traveling through a particular municipality. While this is arguably correct, this concept was considered when the 80-20% split was decided. Indeed, it is, in part, for this reason that MDC collects the lion's share of surtax revenues although approximately 50% of its residents live within a municipality.

Mr. Burgess also implies that the existing cities no longer need surtax revenues because the original purposes served by their share have already been addressed. He ignores that the municipalities rely on these funds and falsely assumes that they never intend to implement any further improvements.

We recognize that MDC, like all of the cities, is facing difficult economic times. We have all had to lay-off personnel, reduce services, and employ other cost-effective measures. We cannot, however, allow MDC to break its promise to the cities (to the cities' detriment) so that it may resolve its own finances. The County bargained for an 80% share of the surtax. If internal inefficiencies render this amount insufficient, MDC should address those inefficiencies rather than attempt to take from the cities' rightful share.

Mr. Burgess's memorandum includes a poorly veiled threat suggesting that if the existing cities fail to agree to the hold-harmless plan, the BCC need only wait two years (for the current interlocal agreements to expire) to amend the ordinance to reduce the 20% share. Strong-arming the cities to agree to the hold-harmless plan will not work.

Despite this threat, the cities cannot agree to the hold-harmless plan. Further, we will not wait two years so that MDC unilaterally resolves this dilemma in its favor. We are not suggesting that we are on the verge of litigation, but we are asking that the CITT demand further statistical data about the impact of the plan and consider alternative resolutions before rendering its recommendation.

Finally, while we greatly appreciate the opportunity to voice our opinion about this matter, we take issue with today's meeting being scheduled on the day on which the Florida Municipal Attorneys Association meeting was scheduled, rendering it impossible for our city attorneys to attend.

Thank you for your consideration.

Sincerely,

Don Slesnick
Mayor
City of Coral Gables

cc: Board of County Commissioners

CITY OF MIAMI BEACH
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139

MATTI H. BOWER
MAYOR

August 19, 2010

Honorable Carlos Alvarez, Mayor
Miami-Dade County
Stephen P. Clark Building
111 N.W. 1st Street
Miami, Florida 33128

Re: People's Transportation Plan Municipal Revenue Sharing

Dear Committee Members:

The City of Miami Beach joins with the cities of Coral Gables, Hialeah, and Miami to express our strong objection to the proposal to amend the Charter County Transit System Surtax Ordinance to freeze the existing cities' funding at the 2009-10 level for an undefined period of time (the so-called "hold-harmless" plan).

The City of Miami Beach is in full agreement with the history and legislative intent explained by Mayors Robaina and Slesnick in their July 29, 2010 letters to CITT Chair Zilber (attached for your reference), reminding all involved of the commitments made to the municipalities by Miami-Dade in exchange for municipal support of the People's Transportation Plan (PTP) and half-penny tax increase. We feel strongly that without the partnership with the cities, the half-penny sales tax, and the PTP would not exist. Certainly, the election results from precincts in our City attest to support for the tax. Funding challenges and a reluctance to recommend difficult choices on how to prioritize use of the County's share is not enough reason to destroy the partnership that created the funding source in the first place.

More specifically (and as recorded in the County Commission's meeting minutes), on July 9, 2002, the Board of County Commissioners adopted Ordinance 02-116 which codified the PTP and defined the 20% municipal share with full disclosure and discussion of the proposed language:

> "Discussion ensued regarding Commissioner Ferguson's concern relating to the exclusion of future municipalities from the surtax proceeds. Commissioner Cancio requested assurances that future cities would receive a portion of the surtax revenues. Following further discussion, County Attorney Ginsburg proffered the following language to address Commissioner Ferguson's concern regarding future municipalities: 'newly incorporated municipalities shall have the right to negotiate with the County for a pro rata share of the sales surtax, taking into consideration the neighborhood and municipal projects identified in Exhibit I [to the resolution], as amended, within the boundaries of the new municipalities. ***The preceding sentence shall not affect the twenty percent share provided herein for municipalities existing on November 5, 2002.***"

The legislative intent of the 20% municipal share, and the intent of the BCC that new municipalities be funded from the 80% allocated to UMSA and the County, could not be clearer.

Of particular concern is information shared with the Chairman and Board in the County Manager's memorandum dated July 19, 2010 (also attached for your reference), which requires clarification.

- While the three new municipalities may be "unwavering in their position that they must receive their pro-rata share of surtax funds," Mr. Burgess fails to clarify that their first choice for full funding of their entitled share portion is from the 80%, as provided for by County Ordinance.

- Although Mr. Burgess asserts in the memo that one of the consequences of the decision on this matter is "coverage for existing bonds backed by PTP revenues and government's ability to sell future debt backed with these bonds," the same July 9, 2002 meeting minutes reflect that in response to a question regarding the County's bonding capacity by Commissioner Barreiro, the County Attorney advised the BCC that he felt that the language regarding new municipalities "would not undercut its own bonds or cause itself financial harm in negotiations with new municipalities."

- The County Manager states that he believes that "the majority of cities" consider the "hold-harmless option" a "fair and honorable compromise" and implies a reasonable consensus. He further refers to "a few vocal municipal leaders" that oppose this option. We can only assume he is referring to the cities of Miami, Hialeah, Coral Gables, and now, Miami Beach. As you know, these four cities alone represent 56% of the incorporated area of the county (31% of the county's entire population), and many constituents that are heavy users of public transportation. In conjunction with many other municipalities that have been actively expanding their infrastructure and transportation services, I believe that a proposal that in the long term would result in a re-distribution of the 20%, would be a detriment to most cities, and not just a few vocal ones that find it necessary to lead the charge against potential efforts by the county to renege on prior commitments. Further, participation at a meeting and discussion of options should not be misconstrued as consensus, let alone support.

- Perhaps as disturbing, the County Manager's memo proceeds with a thinly veiled threat of perhaps merely waiting until the current interlocal agreements expire in two years for unilateral county action. This approach should be of serious concern to all parties involved in this matter. The real threat is to the partnership between the cities and the county that made all of this possible, and has provided hundreds of millions of dollars of PTP benefit to the residents of Miami-Dade County.

The Cities of Coral Gables, Hialeah and Miami have done a very good job at outlining the problems with the so-called hold-harmless plan and the serious financial difficulties it creates. The plan also does not address how the County would propose providing PTP funds to any more new cities that may be created in the future, assuming incorporations begin again in Miami-Dade County.

Currently funded municipalities have consistently supported the new municipalities in their efforts to access PTP funds, as was provided for in the legislation that made this tax possible.

On behalf of the City of Miami Beach, I urge you to reconsider this new approach and reject the County Manager's proposal, and direct him to fund the new cities from the County's portion, as originally approved and intended. Please, do not allow the 20% municipal share to become another of the broken PTP promises.

Please do not hesitate to contact me at 305-673-7030 if you would like to discuss this matter further.

Sincerely,

Matti H. Bower

Matti Herrera Bower
Mayor

c: Honorable Miami Beach City Commissioners
Honorable Board of County Commissioners
Honorable Chairperson and Members, CITT
Jorge M. Gonzalez, City Manager
Jose Smith, City Attorney
Executive Staff, City of Miami Beach
Cities of Miami, Hialeah, and Coral Gables
Miami-Dade League of Cities

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Condensed Title:

A Resolution to renew the City's current consulting agreement with Gallagher Benefit Services which provides consulting services regarding the City's employee benefit programs, on a month-to-month basis, for a period not to exceed six (6) months beginning October 1, 2010 and ending March 31, 2011.

Key Intended Outcome Supported:

- Attract and maintain a quality workforce.
- Ensure expenditure trends are sustainable over the long term.

Supporting Data (Surveys, Environmental Scan, etc.):

I. 2007 Internal Support Functions Survey
   - Overall satisfaction of benefits administration was rated 75.6% as excellent or good.

Issue:

Should the current benefit consulting agreement with Gallagher Benefit Services be renewed on a month-to-month basis, pending the results of the Evaluation Committee and subsequent contract negotiations pursuant to RFP No. 49-09-10?

Item Summary/Recommendation:

The City's current agreement with Gallagher Benefit Services to provide consulting services for the City's benefit programs for employees and retirees expires on September 30, 2010. Responses to the City's RFP No. 49-09-10 for benefit consulting services were received August 13, 2010. The Administration is working with the Procurement Division on recommendations for the Evaluation Committee to review these proposals. The Administration will begin negotiations for a new agreement, once the Evaluation Committee provides its recommendation. At this time, these recommendations will not be received prior to the expiration of the current agreement with Gallagher Benefit Services on September 30, 2010. The Administration recommends renewal of the current agreement on a month-to-month basis until the competitive bidding process is complete, resulting in the City's award of an agreement.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1	N/A	
	2		
	3		
OBPI	Total		

Financial Impact Summary:
The City's benefit consultant is paid through the commission payments from the City's medical carrier agreement.

City Clerk's Office Legislative Tracking:

Sue Radig, Human Resources Administrator I

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Ramiro Inguanzo	Hilda M. Fernandez	Jorge M. Gonzalez
R. Inguanzo	Hilda M. Fernandez	

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK TO RENEW THE CITY'S CURRENT CONSULTING AGREEMENT WITH GALLAGHER BENEFIT SERVICES PROVIDING CONSULTING SERVICES IN DETERMINING THE CITY'S EMPLOYEE BENEFIT PROGRAM, ON A MONTH TO MONTH BASIS FOR A PERIOD NOT TO EXCEED SIX (6) MONTHS BEGINNING OCTOBER 1, 2010 AND ENDING MARCH 31, 2011.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

FUNDING

Funding for the City's Benefit Consultant is provided through commission payments built into the fees paid by the City to the medical plan carrier.

ANALYSIS

The City's current benefit consultant, Gallagher Benefit Services (Gallagher), provides assistance to the City Administration indetermining the City's benefits programs including actuarial support and analysis of the City's self-funded medical and dental plans; assist with negotiations upon direction of the Administration with benefit carriers to obtain the best prices, terms and conditions available; annual reporting summarizing the benefit programs in place, anticipated market conditions, plan recommendations and strategies; provide assistance in the interpretation of benefit related regulations and compliance; provide support and guidance in the implementation and impact of the Federal Patient Protection and Affordable Care Act; provide/conduct actuarial analysis and reporting as required for the City's GASB 45 filings; and make recommendations to the City to guarantee continued, affordable coverage for the employees and retirees.

This agreement was last awarded on July 6, 2005 and became effective onSeptember 1, 2005 for a period one (1) year with an option of four (4) one (1) year renewals. This agreement expires on September 30, 2010.

On July 14, 2010 the Mayor and City Commission approved the issuance of RFP No. 49-09-10 for Benefit Consultant Services to Provide Assistance in Determining the City's Employee Benefits Program. On August 13, 2010, the City received proposals from six (6) consulting firms.

The Administration is currently working with the Procurement Division on recommendations for the Evaluation Committee to review these proposals. As soon as the Evaluation Committee's recommendations are received, the Manager will bring forth a recommendation to the City Commission for award of an agreement. If approved, the Administration will begin negotiations for benefit consulting services for a two (2) year agreement with three (3) annual renewals.

CONCLUSION

In order to maintain existing service levels, it is recommended that the Mayor and City Commission extend the current agreement with Gallagher Benefit Services, which will expire on September 30, 2010, on a month-to-month basis, terminable at the discretion of the City Manager, until such time that the competitive bidding process results in the award of an agreement. This process may take from two (2) to six (6) months pending the review by the Evaluation Committee, the City Manager's recommendation relative to ranking of firms, the City Commission's review and approval and subsequent negotiations.

JMG/RI/sr

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK TO RENEW THE CITY OF MIAMI BEACH'S CURRENT CONSULTING AGREEMENT WITH GALLAGHER BENEFIT SERVICES, PROVIDING CONSULTING SERVICES IN DETERMINING THE CITY'S EMPLOYEE BENEFIT PROGRAM ON A MONTH-TO-MONTH BASIS FOR A PERIOD NOT TO EXCEED SIX (6) MONTHS BEGINNING OCTOBER 1, 2010 AND ENDING MARCH 31, 2011.

WHEREAS, the City of Miami Beach (City) maintains a current agreement with Gallagher Benefit Services, which provides consulting services for the City's benefit programs for its employees and retirees, and is scheduled to expire on September 30, 2010; and

WHEREAS, the City issued RFP No. 49-09-10 for benefit consulting services, and responses were received on August 13, 2010; and

WHEREAS, the Procurement Division will be convening and providing the Evaluation Committee with those responses to the RFP, as provided by each vendor in their respective proposals, for their evaluation and ranking; and

WHEREAS, the City Manager will then review the ranking and recommendation of the Evaluation Committee, and present the results to the City Commission for their approval and recommendation for an agreement; and

WHEREAS, the expiration of the current agreement with Gallagher Benefit Services is September 30, 2010, which prohibits the City from completing the procurement process for a new benefit consulting service agreement; and

WHEREAS, the Administration recommends renewal of the current agreement on a month-to-month basis, for a period not to exceed six (6) months until the competitive bidding process is complete, resulting in the City's award of an agreement.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, authorizing the Mayor and City Clerk to renew the City of Miami Beach's current consulting agreement with Gallagher Benefit Services, providing consulting services in determining the city's employee benefit programs on a month-to-month basis for a period no to exceed six (6) months beginning October 1, 2010 and ending March 31, 2011.

PASSED and ADOPTED this _____day of _____, 2010.

_____
MAYOR
Matti Herrera Bower

ATTEST:

_____
CITY CLERK
Robert Parcher

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____ 9/9/10
City Attorney AB Date
Jose Smith

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Condensed Title:

A Resolution approving a Professional Services Agreement (PSA) with First Class Parking, LLC; pursuant to Request for Proposals (RFP) No. 40-07/08, for the Management and Operation of Valet Parking Services at the Miami Beach Convention Center; the Fillmore Miami Beach at the Jackie Gleason Theater, and other City Property as may be required; and authorizing the Mayor and City Clerk to execute a professional services agreement.

Key Intended Outcome Supported:

Maintain or improve traffic flow and improve parking availability.

Supporting Data (Surveys, Environmental Scan, etc.): There had been an overall increase of 9.57% in total vehicle entries in City garages between 2004 and 2007, thus maintaining the need for ancillary parking services such as valet parking.

Issue:

Shall the Commission Adopt the Resolution?

Item Summary/Recommendation:

The City Commission directed the Administration to negotiate a Professional Service Agreement with First Class Parking, LLC, pursuant to RFP 40-07/08; and subsequently submit to the Mayor and City Commission for their approval and authorization for the Mayor and City Clerk to execute the Agreement. The following are the key points negotiated into the PSA which have been agreed to by First Class Parking, LLC. The City has relocated the one hundred (100) parking spaces required for storage from Municipal Parking Lot No. 29, located on 17th Street and Convention Center Drive to the seventh (rooftop) level of the City Hall Garage. This translates into enhanced customer convenience by providing one hundred (100) additional parking spaces at street level as well as removal of the unsightly view of stacked vehicles in an open parking lot, where tens of thousands of visitors walk from the Convention Center to Lincoln Road, annually; the City has included language that upon written notification to the Concessionaire, from either the City, Global (for MBCC); or Live Nation (for the Fillmore), that the Concessionaire shall not provide services for a specified event. Additionally, the Concessionaire may provide service at events; however, if the Concessionaire does not park more than ten (10) vehicles, the Concessionaire shall not be required to provide service for the remainder of the event; the City has negotiated free valet parking services for four events annually, one of which is the Cleveland Clinic's Annual Charitable Event at the MBCC. This has equates to an added value of $6,000, annually; the Concessionaire has agreed to submit a performance bond in the amount of $13,500.00 which equates to one (1) monthly payment of the annual contract value; the fee schedule for valet parking services is set by the Mayor and Commission and is described in the provision below; and the Concessionaire has agreed to provide the City with a monetary donation for a public benefit for the City's residents. The attached PSA reflects a consensus document and provides the highest and best return to the City. First Class Parking, LLC has agreed to all of the terms and conditions set forth in the attached agreement. - **Adopt the Resolution.**

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:

OBPI

	Amount	Account	Approved
1		This is a revenue generating contract. No account number is required	
2			
3			
4			
Total			

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Gus Lopez, Procurement

Sign-Offs:

Department Director	Assistant City Manager	City Manager
SF	JGG	JMG

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MIAMIBEACH

AGENDA ITEM C7I
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A PROFESSIONAL SERVICES AGREEMENT (PSA) WITH FIRST CLASS PARKING, LLC; PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 40-07/08, FOR THE MANAGEMENT AND OPERATION OF VALET PARKING SERVICES AT THE MIAMI BEACH CONVENTION CENTER, THE FILLMORE MIAMI BEACH AT THE JACKIE GLEASON THEATER, AND OTHER CITY PROPERTY AS MAY BE REQUIRED; AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT (PSA).**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution

KEY INTENDED OUTCOMES SUPPORTED

Maintain or improve traffic flow and improve parking availability

ANALYSIS

On February 25, 2009, the Mayor and City Commission directed the Administration to negotiate a Professional Services Agreement (PSA) with First Class Parking, LLC, pursuant to RFP 40-07/08 for operation and management of valet parking services at the Miami Beach Convention Center; Fillmore Miami Beach at the Jackie Gleason Theater; and other City property as may be required; and subsequently submit to the Mayor and City Commission for their approval and authorization for the Mayor and City Clerk to execute the Agreement.

KEY POINTS

The following are the key points negotiated into the Professional Service Agreement which have been agreed to by, the Concessionaire, First Class Parking, LLC.

- The City has relocated the one hundred (100) parking spaces required for storage from Municipal Parking Lot No. 29, located on 17th Street and Convention Center Drive to the seventh (rooftop) level of the City Hall Garage. This translates into enhanced customer convenience by providing one hundred (100) additional parking spaces at street level as well as removal of the unsightly view of stacked vehicles in an open parking lot, where tens of thousands of visitors walk from the Convention Center to Lincoln Road, annually.

Section 2.2 In operating the valet parking concession for the Venues, the Concessionaire shall be entitled to use up to one hundred (100) parking spaces in the City Hall_Garage (CHG), located at 1755 Meridian Avenue, immediately west of City Hall on the northeast corner of Meridian Avenue and 17th Street. Concessionaire shall park vehicles only within those designated spaces in the CHG, which spaces shall be located on the rooftop parking level (seventh parking level) of the CHG. The Concessionaire shall park vehicles consistent with the designated traffic circulation pattern within the CHG. Notwithstanding the preceding Concessionaire shall have the option of parking vehicles in a backed-in position. If unauthorized vehicles are parked in spaces made available for the Concessionaire's use, the Concessionaire shall immediately contact the City for resolution. Under no circumstances shall the Concessionaire use parking spaces outside of the designated locations.

- The City has included language that upon written notification to the Concessionaire, from either the City, Global (for MBCC); or Live Nation (for the Fillmore), that the Concessionaire shall not provide services for a specified event. Additionally, the Concessionaire may provide service at events; however, if the Concessionaire does not park more than ten (10) vehicles, the Concessionaire shall not be required to provide service for the remainder of the event

  Section 2.7 - Concessionaire shall provide valet parking services at a Venue whenever there is an event where people including, without limitation, members of the public, are expected to be in attendance. The Concessionaire shall not be required to provide valet parking services at a Venue where: (i) prior to commencement of the event, the Concessionaire is expressly directed, in writing, by either the City (for any Venue); or by Global (for MBCC); or by Live Nation (for the Fillmore), that its services will not be required; or (ii) following commencement of an event, where the Concessionaire parks no more than ten (10) cars in any day for such event, in which case Concessionaire shall not be required to provide valet parking services for the remainder of that event.

- The City has negotiated free valet parking services for four events annually, one of which is the Cleveland Clinic's Annual Charitable Event at the MBCC. This has equates to an added value of $6,000, annually.

  Section 2.9 - Special Events – During the Term herein, the Concessionaire shall provide free valet parking services for at least four (4) events per contract year, at such Venues as shall be determined by the City Manager, at his/her sole judgment and discretion. City acknowledges that the Concessionaire currently provides free valet parking services for the Cleveland Clinic's Annual Charitable Event at MBCC; accordingly this event shall count as one of the four (4) required events per year, so long as the event continues to be held annually at MBCC.

- The Concessionaire shall make equal monthly payments in the amount of $13,416.66 for an annual total payment of $161,000.00.

  Section 3.1 – Commencing on October 1st, 2010, and thereafter at the beginning of each month during the Term, The Concessionaire shall pay to the City a fixed monthly minimum payment, in the amount of $13,416.66 (equating to $161,000 annually). The monthly minimum payment shall be submitted to the attention of the City's Parking Director, and must be received no later than the fifteen (15th) day of each month.

- The existing agreement between the City and Live Nation requires the City's valet parking concessionaire to indemnify Live Nation. The Concessionaire has agreed to the language below.

  Section 10.3 - In consideration of a separate and specific consideration of Ten ($10.00)Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Concessionaire shall also indemnify, hold harmless and defend Live Nation Worldwide, Inc. (Live Nation), its officers, employees, and agents, from any and all claims, liability, losses, and causes of action which may arise out of the Concessionaire's negligent acts or omissions under this Agreement and shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits, in the name of the Live Nation when applicable, and shall pay all cost (including attorney's fees) and judgments which may issue thereon. This indemnification shall not be limited in any way by the type or amount of insurance carried by the Concessionaire.

- The Force Majeure provision below establishes that if/when a Force Majeure event takes place causing damage or destruction which closes any of the facilities referenced in the PSA that the City Manager, in his sole and reasonable discretion and determination shall invoke the Force Majeure provision and proceed to come to a mutually agreed upon prorated/adjusted monthly payment with the Concessionaire.

  Section 10.6 - Force Majeure - Whenever a period of time is herein prescribed for the taking of any action by the City or Concessionaire (as applicable), the City or Concessionaire (as applicable), shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of City or Concessionaire (as applicable). The foregoing shall not apply to any payments of money due under this Agreement.

  Notwithstanding the preceding paragraph, in the event that damage to or destruction of (i) a Venue or Venues; or (ii) to Concessionaire's Equipment; or (iii) to the City Hall Garage (CHG) or Municipal Parking Lot No. 29 ((i) and (iii) shall hereinafter be referred to as a "Facility" or the "Facilities"), due to a Force Majeure event (as defined herein) results in the closure of said Facility or Facilities, or in material damage to the majority of Concessionaire's Equipment, to the extent that (in the City Manager's sole and reasonable discretion and determination) Concessionaire's provision/performance of the services is either rendered impossible, unnecessary, or economically impracticable, then Concessionaire and the City shall mutually agree upon a proportionate (prorated) adjustment of the monthly minimum payment during the pendency of the event of Force Majeure but, in any event, not to exceed 180 days from the occurrence thereof, whichever is less. If the event of Force Majeure continues for a period in excess of 180 days, then either party may terminate this Agreement upon sixty (60) days written notice to the other. In the event of a termination pursuant to this subsection, the City shall not be liable to Concessionaire; nor have any further obligation (financial or otherwise) to Concessionaire under this Agreement; nor shall the City be liable to concessionaire for any indirect, incidental, or special costs, lost profits, or consequential damages. If an event of Force Majeure causes the City to close or limit the Concessionaire's use of the CHG or Municipal Parking Lot No. 29, the City Manager shall use commercially reasonable efforts to provide the Concessionaire with the use of parking spaces in another municipal parking facility or lot in a location equally convenient as the parking facility affected by the Force Majeure.

- The Concessionaire has agreed to submit a performance bond in the amount of $13,500.00 which equates to one (1) monthly payment of the annual contract value.

  Section 12 - Performance Bond or Alternate Security - Concessionaire shall, on or before the Commencement Date of this Agreement, furnish to the City Manager a Performance Bond in the penal sum as stated below for the payment of which Concessionaire shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Performance Bond, in the amount of Thirteen Thousand Five Hundred ($13,500.00) Dollars, shall be required and be in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager, in his sole and reasonable discretion. The form of the Performance Bond or letter of credit shall be as required by the City Manager. In the event that a Certificate of Deposit is approved, it shall be a Thirteen Thousand Five Hundred ($13,500.00) Dollars one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by the City's Chief Financial Officer.

  Concessionaire shall be so required to maintain said Performance Bond or alternate security (as accepted by the City Manager), in full force and effect throughout the Term of this Agreement. Concessionaire shall have an affirmative duty to notify the City Manager, in writing, in the event said Performance Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Concessionaire, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

- The fee schedule for valet parking services is set by the Mayor and Commission and is described in the provision below.

  Section 15 – Price Schedules - Concessionaire agrees that prices and fees charged for valet parking services (the "Valet Fee") shall not exceed those established by the Mayor and City Commission. The parties acknowledge that the Concession Fee, as set forth in Section 3 hereto, is based upon the Valet Fee in effect as of the Commencement Date, which is $15.00 per vehicle, and $20.00 per vehicles during the following events: Antique Show; Jewelry Show; NMMA International Boat Show; Graphics of the Americas; Home Design Show (March); Home Design Show (September); Sea Trade Cruise Shipping; and Art Basel Miami Beach.

  Notwithstanding the preceding, the City Commission reserves the right, at its sole discretion and judgment, at any time during the Term hereof, to review the Valet Fee, and to amend said Fee, as (and if) deemed in the best interest of the City.

  The Concessionaire may also request that the City increase the Valet Fee (the "Fee Increase") which Fee Increase shall be considered and granted (if at all) by the City Commission, in its sole and absolute discretion. Prior to the Concessionaire's request for a Fee Increase, the Concessionaire and the City Manager, or his/her authorized designee, shall meet and shall use their best efforts to mutually agree on a recommendation (for the Commission) for a Fee Increase and corresponding increase adjustment in the Concession Fee.

- The Concessionaire has agreed to provide the City with a monetary donation for a public benefit for the City's residents.

  Section 26 – Public Benefit - The Concessionaire agrees to continue its past practice to donate toys, or make a monetary donation, in support of the City Parking Department's annual holiday toy drive benefitting Miami Beach residents.

CONCLUSION

The attached PSA reflects a consensus document and provides the highest and best return to the City. First Class Parking, LLC has agreed to all of the terms and conditions set forth in the attached agreement. Therefore, the Administration recommends that the Mayor and City Commission approve the attached resolution and professional services agreement; and authorize the Mayor and City Clerk to execute said agreement.

JMG/JGG/SF
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FIRST CLASS PARKING, LLC
Concession Agreement

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CONCESSION AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH
AND
FIRST CLASS PARKING, LLC.
TO PROVIDE VALET PARKING SERVICES
AT THE FILLMORE AT THE JACKIE GLEASON THEATER OF THE PERFORMING ARTS, MIAMI BEACH CONVENTION CENTER, AND OTHER CITY PROPERTIES, AS MAY BE REQUIRED, PURSUANT TO REQUEST FOR PROPOSALS NO. 40-07/08

THIS AGREEMENT made this ___ day of _____, 2010, between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (City), and **FIRST CLASS PARKING, LLC**, a Florida limited liability company, with offices at 12550 Biscayne Boulevard, Suite 207, Miami, Florida, 33181 (Concessionaire).

WITNESSETH

WHEREAS, on July 16, 2008, the Mayor and City Commission authorized the issuance of Request for Proposals (RFP) No. 40-07/08 for Valet Parking Services on City-owned Property (the RFP); and

WHEREAS, pursuant to Resolution No. 2009-27017, on February 25, 2009, the Mayor and City Commission authorized the Administration to enter into negotiations with Concessionaire, as the successful proposer pursuant to the RFP; accordingly, City and Concessionaire have negotiated the following agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained, it is agreed by the parties hereto as follows:

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the right to maintain, manage and operate a valet parking concession for the City properties set forth in Section 2 hereof, for the term stated herein and subject to all terms and conditions herein contained:

SECTION 1. TERM.

1.1 This Agreement shall have an initial term of three (3) years, commencing on the 1st day of October, 2010 (Commencement Date), and ending on the 30th day of September, 2013.

The City may, at its sole discretion, extend the Agreement, under the same terms and conditions contained herein (except that the City reserves its right to re-negotiate the concession fee, as provided in Section 3.5 of the Agreement), for one (1) additional two-year term, upon written notice to Concessionaire, which notice shall be provided not less than sixty (60) days prior to the end of the initial term.

SECTION 2. USES.

2.1 The City hereby grants to Concessionaire the right, during the Term herein, to maintain, manage and operate, at its sole cost and responsibility, a valet parking concession(s) for the following City properties (hereinafter, the properties in this Section 2.1 (a) – (c) may also be referred to as the "Venues"):

(a) The Fillmore at the Jackie Gleason Theater of the Performing Arts (the Fillmore), located at 1700 Washington Avenue, Miami Beach, Florida, 33139;

(b) Miami Beach Convention Center (MBCC), located at 1901 Convention Center Drive, Miami Beach, Florida, 33139; and

(c) such other City properties, as may be authorized, in writing, by the City Manager, in his sole discretion.

2.2 In operating the valet parking concession for the Venues, the Concessionaire shall be entitled to use up to one hundred (100) parking spaces in the City Hall_Garage (CHG), located at 1755 Meridian Avenue, immediately west of City Hall on the northeast corner of Meridian Avenue and 17th Street.

Concessionaire shall park vehicles only within those designated spaces in the CHG, which spaces shall be located on the rooftop parking level (seventh parking level) of the CHG. The Concessionaire shall park vehicles consistent with the designated traffic circulation pattern within the CHG. Notwithstanding the preceding, Concessionaire shall have the option of parking vehicles in a backed-in position. If unauthorized vehicles are parked in spaces made available for the Concessionaire's use, the Concessionaire shall immediately contact the City for resolution. **Under no circumstances shall the Concessionaire use parking spaces outside of the designated locations.**

2.3 At his/her sole discretion, the City Manager may make additional spaces available for use by Concessionaire at Municipal Parking Lot No. 29, located on the northeast corner of Convention Center Drive and 17th Street for (i) high-volume events where the capacity is expected to exceed the assigned capacity available in the CHG; or (ii) where the anticipated high volume will create an unacceptable diminution of valet service levels for such events.

2.4 With regard to the provision of valet parking services at MBCC, Concessionaire shall set-up, operate, and provide passenger loading and unloading at one of two (2) mutually agreed upon areas. Individuals and/or firms who contract to use all or a portion of MBCC (an MBCC User) for a convention, trade show, or other event (an MBCC Event) shall have the option of selecting either of the two (2) aforestated passenger locations.

When providing valet parking for an MBCC Event, no valet stand shall be set up in a location which will interfere with bus service provided for the Event.

2.5 Upon request by an MBCC User, and subject to the prior written approval of the City

Manager, Concessionaire may provide pre-paid group valet parking. The Concessionaire, City and the MBCC User shall mutually agree upon a predetermined number of valet parking coupons. The MBCC User shall pre-pay all coupons seven (7) days in advance of the first "show" day of the MBCC Event. The MBCC User shall forfeit the value of any non-redeemed coupons and shall not be entitled to a refund. The MBCC User may purchase additional coupons (referred to hereinafter as a subsequent purchase) if needed. The MBCC User shall be entitled to refunds of unused coupons of subsequent purchases. Concessionaire shall refund the amount for unused coupons derived from subsequent purchases within seven (7) days of the last "show" day of the MBCC Event.

Notwithstanding anything in this subsection 2.5 or the Agreement, valet parking coupon payment, creation, control, accountability, and verification shall be the sole responsibility of the Concessionaire.

2.6 The Concessionaire shall attend any and all planning meetings for any event at the Venues where valet parking services are to be provided. Concessionaire acknowledges that such meetings may be scheduled by the City; or, for MBCC Events, by Global Spectrum LLP (the City's manager for MBCC); or, for events at The Fillmore, by Live Nation Worldwide, Inc. (the City's manager for The Fillmore).

Said meetings shall be held in order for Concessionaire to become aware of the user's needs, requests, and requirements for the event, and for Concessionaire's input and recommendations. While the City (or Global or Live Nation, as the case may be) may solicit input and recommendations from Concessionaire, all final operational decisions shall ultimately rest with, and be within the exclusive purview of, the City. Concessionaire's failure to have representation and/or participate at any pre-event planning meetings shall be deemed a waiver by Concessionaire to challenge any and all operational decisions made with regard to the event.

2.7 Concessionaire shall provide valet parking services at a Venue whenever there is an event where people including, without limitation, members of the public, are expected to be in attendance. The Concessionaire shall **not** be required to provide valet parking services at a Venue where: (i) prior to commencement of the event, the Concessionaire is expressly directed, in writing, by either the City (for any Venue); or by Global (for MBCC); or by Live Nation (for the Fillmore), that its services will not be required; or (ii) following commencement of an event, where the Concessionaire parks no more than ten (10) cars in any day for such event, in which case Concessionaire shall not be required to provide valet parking services for the remainder of that event.

2.8 Lincoln Road - Should the City elect, at any time during the Term, to have Concessionaire provide valet parking services for all or any portion of Lincoln Road Mall, the City will provide the Concessionaire with not less than two (2) ramp locations on Lincoln Road (from where such services can be provided), as well as reasonable trailblazing signage in areas approaching Lincoln Road notifying the public of valet parking (with the manner and locations of all signage to be determined solely by the City Manager, in his/her discretion).

2.9 Special Events – During the Term herein, the Concessionaire shall provide free valet parking services for at least four (4) events per contract year, at such Venues as shall be determined by the City Manager, at his/her sole judgment and discretion. City acknowledges that the Concessionaire currently provides free valet parking services for the Cleveland Clinic's Annual Charitable Event at MBCC; accordingly this event shall count as one of the four (4) required events per year, so long as the event continues to be held annually at MBCC.

SECTION 3. CONCESSION FEE.

3.1 Commencing on October 1st, 2010, and thereafter at the beginning of each month during the Term, The Concessionaire shall pay to the City a fixed monthly minimum payment, in the amount of $13,416.66 (equating to $161,000 annually). The monthly minimum payment shall be submitted to the attention of the City's Parking Director, and must be received no later than the fifteen (15th) day of each month.

3.2 Interest for Late Payment.
Any payment which Concessionaire is required to make to the City which is not paid on or before the due date provided for in this Agreement shall be subject to interest at the rate of eighteen (18%) percent per annum, or the maximum amount allowable under Florida law, whichever is greater, from the due date of payment until such time as payment is actually received by the City.

3.3 Sales and Use Tax.
It is also understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive the monthly minimum payment due from Concessionaire as net of such Florida State Sales and Use Tax.

3.4 City Business Tax Receipts.
Concessionaire shall obtain, at its sole expense and responsibility, any business tax receipts required by the City for the proposed use(s) contemplated herein. To the extent required by the applicable sections of the City Code (as same may be amended from time to time), business tax receipts shall be obtained for each Venue serviced by Concessionaire pursuant to this Agreement.

3.5 **NOTWITHSTANDING THE ABOVE, OR ANY OTHER TERM OR CONDITION OF THIS AGREEMENT, THE CITY RESERVES THE RIGHT, AT ITS SOLE JUDGMENT AND DISCRETION, TO RENEGOTIATE THE CONCESSION FEE (i.e. THE MINIMUM MONTHLY PAYMENT) AT ANY TIME DURING THE TERM HEREIN; PROVIDED, HOWEVER, THAT, EXCEPT IN CASES WHERE A RENEGOTIATION OF THE FEE IS RELATED TO A VALET PARKING RATE INCREASE BY THE CITY COMMISSION, THE CITY SHALL NOT OTHERWISE INCREASE THE CONCESSION FEE MORE THAN ONCE DURING EACH CONTRACT YEAR THROUGHOUT THE TERM HEREIN. IN THE EVENT THE PARTIES ARE UNABLE TO SUCCESSFULLY NEGOTIATE AN INCREASE IN THE CONCESSION FEE, THEN THE CITY, AT ITS SOLE OPTION AND DISCRETION, AND THROUGH ITS CITY MANAGER, MAY ELECT TO TERMINATE THIS AGREEMENT, FOR CONVENIENCE AND WITHOUT CAUSE,**

IN ACCORDANCE WITH SUBSECTION 13.6.

SECTION 4. MAINTENANCE AND EXAMINATION OF RECORDS.

Concessionaire shall maintain current, accurate, and complete financial records, on an accrual basis, related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls. All accounting records shall be maintained in accordance with generally accepted accounting principles, during customary business hours, and shall be open to inspection, copying, and audit by the City Manager or his/her designee, upon reasonable verbal or written notice. Concessionaire shall maintain all such records at its principal office, currently located at 12550 Biscayne Boulevard, Suite 207, Miami, Florida, 33181; or, if moved to another location, all such records shall be relocated, at Concessionaire's sole expense, to a location in Miami Beach, within five (5) days from notice of request for inspection by the City. Financial records and accounts shall include, at a minimum, a breakdown of gross receipts, expenses, and profit and loss statements. Concessionaire shall maintain accurate receipt-printing cash registers (or a like alternative) for each Venue, which will record and show the payment for every sale made or service provided at said Venue. Other financial records shall be maintained, as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles. Concessionaire's records shall be maintained for a period of three (3) years following expiration (or other termination) of this Agreement (regardless of whether such termination results from the expiration of the Term or for any other reason).

A monthly report of activities shall be submitted to the City's Parking Director by the 15th of each month, for the preceding month. At a minimum, this report shall contain a chronological listing of events serviced, including the event name, date, time, exact location(s), number of transactions (vehicles), gross receipts per location, and gross receipts totals.

Concessionaire shall submit to the City's Parking Director, within sixty (60) days of the end of each contract year, an annual statement of gross receipts, in a form consistent with generally accepted accounting principles. Such statement shall be accompanied by a report from an independent CPA firm certifying the report.

For purposes of this Agreement, the term "gross receipts" is understood to mean all income collected or accrued, derived by the Concessionaire under the privileges granted by this Agreement, excluding amounts of any Federal, State, or City sales tax (or other tax) collected by the Concessionaire and required by law to be remitted to the taxing authority.

SECTION 5. INSPECTION AND AUDIT.

During the Term, the City Manager or his designee shall be entitled to audit any and all of Concessionaire's records (financial or otherwise) pertaining to its operations pursuant to this Agreement, as often as he/she deems necessary ;and three (3) times within the three (3) year period following expiration (or other termination) of this Agreement. The City shall be responsible for paying all costs associated with such audit(s), unless the audit(s) reveals a deficiency of five (5%) percent or more in Concessionaire's statement of gross receipts for any year or years audited, in which case Concessionaire shall pay to the City, within thirty (30) days of demand from the City deeming, the cost of the audit and a sum equal to

the amount of the deficiency revealed by the audit, plus interest. The aforestated audits are in addition to periodic City audits of Resort Tax collections and payments (which are performed separately). Nothing contained within this Section shall preclude the City's audit rights for Resort Tax collection purposes.

It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after the end of each contract year, Concessionaire and the City's Parking Director may meet to review Concessionaire's performance under the Agreement for the previous contract year. At the meeting, Concessionaire and the City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.

SECTION 6. TAXES, ASSESSMENTS, AND UTILITIES.

Concessionaire agrees and shall pay, before delinquency, all taxes and assessments of any kind (including, without limitation, ad valorem taxes [if assessed] and/or Resort Taxes) levied or assessed upon Concessionaire, and/or upon any City property, or portion thereof, used by Concessionaire for the purpose of providing the valet parking services required under this Agreement, or by reason of any other business, operations, and/or activities of Concessionaire upon or in connection with the servicing of the Venues.

Concessionaire shall have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings, which Concessionaire shall conduct diligently and continuously, in good faith. Concessionaire may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax (if so ordered).

Concessionaire shall be solely responsible for, and shall promptly pay when due, all charges for any utilities (including, without limitation, (and as applicable), charges for gas, electricity, water, sewer, cable, telephone, trash collection, and any other utility service, as well as any hook-up fees and impact fees related thereto) used by Concessionaire in connection with the provision valet parking services and operations at the Venues. In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Concessionaire to pay for any utility services when due, the City may elect to pay same, in which case Concessionaire shall promptly reimburse the City upon demand.

In no event shall the City be liable, whether to Concessionaire or to third parties, for an interruption or failure in the supply of any utilities services to any City property (including, without limitation, any City property located at, on , or within a Venue, and/or any City garages and/or lots to which Concessionaire is granted the use of in order to conduct its operations pursuant to this Agreement).

SECTION 7. EMPLOYEES AND INDEPENDENT CONTRACTORS.

7.1 Concessionaire shall select, train, employ (or otherwise hire or retain) such number of employees and/or independent contractors as is necessary and appropriate for Concessionaire to satisfy its responsibilities under this Agreement, and as necessary to maintain the same levels of service as exist in similar first class valet parking concession facilities and operations. Concessionaire's employees and/or

independent contractors shall be employees and/or independent contractors of Concessionaire and not of the City, and Concessionaire shall be solely responsible for their supervision, daily direction and control. Concessionaire shall be solely responsible for, and have the sole authority to hire, terminate and discipline any and all employees and/or contractors employed or retained by Concessionaire.

7.2 Concessionaire and its employees and/or independent contractors shall wear identification badges and uniforms approved by the City. All employees and/or independent contractors shall observe all the graces of personal grooming. Concessionaire shall hire/retain people to work in its operation who are neat, clean, well groomed, and comport themselves in a professional and courteous manner. Concessionaire and any persons hired and/or retained by Concessionaire shall never have been convicted of a felony.

7.3 Concessionaire shall have an experienced manager or managers overseeing the concession operations at all times.

7.4 The Concessionaire and its employees and/or contractors are considered "ambassadors" of the City and, shall (at a minimum) comport themselves as follows in the discharge of their duties: greet patrons upon arrival and departure; make every attempt to quickly and courteously expedite the transfer of the patron's vehicle; and attempt to accommodate any reasonable request of patrons in connection with the provision of the valet parking services. Employees shall not smoke, drink and/or eat while actively serving patrons; shall speak English; and shall not solicit tips, or solicit the use of curbside parking for a fee higher than the approved City valet parking rate.

7.5 The Concessionaire shall be responsive to all persons (whether patrons or otherwise) who believe that they or their vehicle were injured or damaged (or personal items taken) by the Concessionaire ("Claimant"). In the event a Claimant advises the Concessionaire (or any staff of the Concessionaire) of any such damage, injury or loss (a "Claim"), the Concessionaire shall, within twenty four (24) hours of such notice, fill out a Claim form and submit same to the City's Parking Director. The Concessionaire shall immediately investigate each Claim; shall respond to the Claimant by telephone or in writing within forty eight (48) hours of the Claim; and shall provide the City's Parking Director with a written summary as to the resolution or other disposition of the Claim. Notwithstanding anything in this subsection 7.5, the Concessionaire shall not be required to pay or satisfy any Claim that Concessionaire, after good faith reasonable investigation, determines not to be its responsibility.

SECTION 8. IMPROVEMENTS, MAINTENANCE, REPAIR and OPERATION.

Concessionaire accepts the use of any and all City property to which it is granted the use of to carry out the stated purpose(s) of this Agreement (including, without limitation, any City property located at, on, or within the Venues and/or any City garages and/or lots used by Concessionaire), in its **"AS IS" "WHERE IS"** condition.

Concessionaire assumes sole responsibility and expense for the day to day maintenance of any such City property while being used by Concessionaire (including any furnishings,

fixtures, equipment and any other improvements thereon). This shall include, without limitation, removal of litter, garbage and debris. Concessionaire shall also be responsible for all garbage disposal generated by its operations.

8.1 Equipment.

8.1.1. The Concessionaire shall provide and maintain, at its sole cost and expense, valet parking stand(s), kiosk(s), booth(s), and any other related furnishings, fixtures and equipment (collectively the Equipment), as necessary, to provide and maintain the valet parking services contemplated herein, consistent with the same levels of service that exist in similar valet parking facilities and operations in first class facilities. All Equipment shall be new and in excellent condition. The height and the color of the Equipment (including stands, kiosks, and booths) shall be the same at each valet parking location for all Venues. Uniforms and badges shall also be standardized for all Venues. All Equipment must be approved, in writing, by the City's Parking Director prior to being put into use. Storage of all Equipment shall be the sole responsibility of Concessionaire.

8.2 Garbage Receptacles.

With respect to litter, garbage and debris removal, Concessionaire shall provide, at its sole expense, a sufficient number of trash receptacles for its operations and for the use of patrons. Determination of the "number" of receptacles shall at all times be within the sole and reasonable judgment and discretion of the City Parking Director. Dumping of receptacles, and removal of trash, rubbish and garbage in connection with Concessionaire's operations, shall be the sole responsibility of the Concessionaire, but shall be coordinated with the respective managers at MBCC, the Fillmore, and/or any other Venues. Any costs for removal of the contents of said trash receptacles by the City, because of the Concessionaire's failure to do so, will be charged to Concessionaire, and payment shall immediately be due upon demand by City.

8.3 Maintenance/Repair.

Concessionaire shall maintain, at its sole expense and responsibility, all Equipment required to operate the concessions. In the event any Equipment is lost, stolen, or damaged, it shall be replaced or repaired promptly, at Concessionaire's sole expense. If Concessionaire fails to make any repairs, restoration and/or replacement, the City may elect to do so, and all sums spent and expenses incurred by the City shall be paid by Concessionaire within ten (10) days after receipt of a bill or statement thereof. Notwithstanding that the City may elect to make such repairs, restoration, and/or replacement, the City shall have no obligation and/or affirmative duty to do so.

8.4 No Dangerous Materials.

Concessionaire agrees not to use or permit the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found on Concessionaire's operations,

whether at a Venue or on any City property being utilized by Concessionaire, shall be immediately removed.

In consideration of a separate and specific consideration of Ten ($10.00) Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Concessionaire of any "hazardous substance" or "petroleum products" on, under, in or upon any property (whether City-owned or otherwise being utilized by Concessionaire for its operations hereunder, as those terms are defined by applicable Federal and State statutes, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this subsection 10.4 shall survive the termination or earlier expiration of this Agreement.

8.5 Security.
The Concessionaire shall be solely responsible for providing any security measures, if and as it deems necessary, in its reasonable business judgment, to protect the concession areas from loss or theft including, without limitation, any of the Equipment thereon.

8.6 Inspection.
Concessionaire agrees that its operations at any or all of the Venues may be inspected at any time by the City Manager or his designee, or by any other municipal, County or State officer, or other agency having responsibility and/or jurisdiction for inspection of such operations. Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference with the concession operations, whether by the City or by any public agency or official, in enforcing their respective duties, or enforcing compliance with any applicable laws, or ordinances, or regulations.

SECTION 9. INSURANCE.
Concessionaire shall maintain, at all times throughout the Term, at its sole expense and responsibility, the following types of insurance coverage:

a. Commercial General Liability or Garage Liability insurance in the minimum amount of one million dollars ($1,000,000) per occurrence and per location covering bodily injury and property damage resulting from valet parking operations (including Concessionaire's activities connected with the handling of vehicles on public property).

b. Garage Keepers Legal Liability insurance to provide Collision and Comprehensive coverage for vehicles under control of the valet parking operation, with minimum limits of $300,000 per location, with a maximum Self-Insured Retention (SIR) or deductible of $1,000.

c. Worker's Compensation and Employers' Liability as required to meet the statutory requirements of the State of Florida.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, Concessionaire shall provide the City with a Certificate of Insurance for each such policy. **ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED**. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager.

Should Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by the City in obtaining said insurance, shall be repaid by Concessionaire to the City, plus ten (10%) percent of the amount of premiums paid to compensate the City for its administrative costs. If Concessionaire fails to repay the City's expenditures following written demand from the City (and within the time specified in the City's demand notice), such failure shall be deemed an event of default hereunder and the total sum owed shall accrue interest at the rate of eighteen (18%) percent or the highest rate allowable by law, whichever is greater, until paid.

SECTION 10. INDEMNITY.

10.1 In consideration of a separate and specific consideration of Ten ($10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, its officers, employees, contractors, agents or servants in connection with its operations and/or the performance of the services contemplated under this Agreement (including, without limitation, its use of any City property at, on, or within the Venues and/or any City garage and/or parking lot used herein).

10.2 In addition, and in consideration of a separate and specific consideration of Ten ($10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its officers, employees, contractors, agents or servants from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, its officers, employees, contractors, agents or servants not included in Subsection 12.1 herein and for which the City, its officers, employees, contractors, agents or servants are alleged to be liable.

10.3 In consideration of a separate and specific consideration of Ten ($10.00)Dollars, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Concessionaire shall also indemnify, hold harmless and defend Live Nation Worldwide, Inc. (Live Nation), its officers, employees, and

agents, from any and all claims, liability, losses, and causes of action which may arise out of the Concessionaire's negligent acts or omissions under this Agreement and shall pay all claims and losses of any nature whatsoever in connection therewith and shall defend all suits, in the name of the Live Nation when applicable, and shall pay all cost (including attorney's fees) and judgments which may issue thereon. This indemnification shall not be limited in any way by the type or amount of insurance carried by the Concessionaire.

10.4 Subsections 10.1, 10.2, and 10.3 shall survive the termination or expiration of this Agreement. Subsections 10.1, 10.2, and 10.3 shall not apply, however, to any such liability, that arises as a result of the willful misconduct or gross negligence of the City, its officers, employees, contractors, agents or servants, and (as to 10.3) of Live Nation, its officers, employees, and agents.

10.5 Subrogation.
The terms of insurance policies referred to in Section 9 shall preclude subrogation claims against Concessionaire, the City and their respective officers, employees, contractors, agents or servants.

10.6 Force Majeure.
Whenever a period of time is herein prescribed for the taking of any action by the City or Concessionaire (as applicable), the City or Concessionaire (as applicable), shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, or governmental laws, regulations, or restrictions in the nature of a prohibition or moratorium, or any bona fide delay beyond the reasonable control of City or Concessionaire (as applicable). The foregoing shall not apply to any payments of money due under this Agreement.

Notwithstanding the preceding paragraph, in the event that damage to or destruction of (i) a Venue or Venues; or (ii) to Concessionaire's Equipment; or (iii) to the City Hall Garage (CHG) or Municipal Parking Lot No. 29 ((i) and (iii) shall hereinafter be referred to as a "Facility" or the "Facilities"), due to a Force Majeure event (as defined herein) results in the closure of said Facility or Facilities, or in material damage to the majority of Concessionaire's Equipment, to the extent that (in the City Manager's sole and reasonable discretion and determination) Concessionaire's provision/performance of the services is either rendered impossible, unnecessary, or economically impracticable, then Concessionaire and the City shall mutually agree upon a proportionate (prorated) adjustment of the monthly minimum payment during the pendency of the event of Force Majeure but, in any event, not to exceed 180 days from the occurrence thereof, whichever is less. If the event of Force Majeure continues for a period in excess of 180 days, then either party may terminate this Agreement upon sixty (60) days written notice to the other. In the event of a termination pursuant to this subsection, the City shall not be liable to Concessionaire; nor have any further obligation (financial or otherwise) to Concessionaire under this Agreement; nor shall the City be liable to concessionaire for any indirect, incidental, or special costs, lost profits, or consequential damages. If an event of Force Majeure causes the City to close or limit the Concessionaire's use of the CHG or Municipal Parking Lot No. 29, the City

Manager shall use commercially reasonable efforts to provide the Concessionaire with the use of parking spaces in another municipal parking facility or lot in a location equally convenient as the parking facility affected by the Force Majeure.

10.7 Waiver of Loss from Hazards.
Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from an event of Force Majeure (as defined herein), and the Concessionaire hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 11. DEFAULT AND TERMINATION.
Subsections 11.1 through 11.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle the City to exercise any and all remedies described as the City's remedies under this Agreement, including but not limited to those set forth in Subsection 11.4 and Section 12 hereof. An event of default by the City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 11.5.

11.1 Bankruptcy.
If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

11.2 Default in Payment.
In the event Concessionaire fails to submit any payment and accumulated penalties within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract, and may begin procedures to collect the Performance Bond required in Section 12 herein.

11.3 Non-Monetary Default.
In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues fifteen (15) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further

demand or notice, terminate this Agreement. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed sixty (60) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this subsection, it shall promptly provide the City with written notice of same.

11.4 City's Remedies for Concessionaire's Default.
If any of the events of default, as set forth in this Section, shall occur, the City may, after notice (if required) and the expiration of cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such default(s) and to compensate the City for damages resulting from such default(s), including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the Term of this Agreement shall terminate upon the date specified in such notice from the City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender any and all City property pursuant to the provisions of subsection 11.8. Upon the termination of this Agreement by the City, all rights and interest of Concessionaire in and to this Agreement (and including, Concessionaire's right to remain on any City property used by Concessionaire to provide the services under the Agreement) shall cease and terminate and the City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement, including but not limited to, beginning procedures to collect the Performance Bond in Section 12 herein.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and/or

b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

11.5 Concessionaire's Remedies for City's Default.
If an event of default, as set forth in this Section, by the City shall occur, Concessionaire may, after the expiration of the cure period, terminate this Agreement upon written notice to the City. Said termination shall become effective upon receipt of the written notice of termination by the City. On the date specified in the notice, Concessionaire shall quit and surrender any and all City property pursuant to the provisions of subsection 11.8.

11.6 Termination for Convenience.

11.6.1 **NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION 11 OR OF THE AGREEMENT, THIS AGREEMENT MAY BE TERMINATED, IN**

WHOLE OR IN PART, BY THE CITY, FOR CONVENIENCE AND WITHOUT CAUSE, UPON THE FURNISHING OF THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO CONCESSIONAIRE.

11.6.2 In the event of termination by the City pursuant to this subsection 11.6, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for any start-up costs, interference in business or damages for interruption of services, or interference in its concession operations). In no event shall the City be liable to Concessionaire for any indirect, incidental, special, lost profits or consequential damages.

11.7 Habitual Default.

In the event that Concessionaire has defaulted in the performance of, or breached any of the terms, covenants and conditions required herein to be kept and performed by Concessionaire, a total of four (4) times during any contract year throughout the Term, at the City's sole option and discretion, and regardless of whether Concessionaire has cured each individual condition of breach or default, the Concessionaire may be determined by the City to be a "habitual violator". At the time such determination is made, the City shall issue to Concessionaire a written notice advising of such determination and citing the circumstances therefore. Such notice shall also advise the Concessionaire that there shall be no further notice or grace periods to correct a fifth (5th) breach or default, and that such breach or default, of whatever nature, taken with the previous four (4) breaches and defaults, shall be considered cumulative and, collectively, shall constitute a condition of non-curable default and grounds for termination of this Agreement. In the event of any such fifth (5th) breach or default within a contract year, this Agreement shall terminate, upon written notice of termination to the Concessionaire, such termination to be effective upon the tenth (10th) day following the date of receipt thereof; all payments due hereunder shall be payable to said date; and Concessionaire shall have no further rights hereunder. In such case, the City may also avail itself of the remedies set forth in subsection 11.4 hereof.

11.8 Surrender of City Property/Venues.

Upon (or earlier termination) of this Agreement, Concessionaire shall surrender any and all City property(ies) utilized be Concessionaire in the performance of the valet parking operations hereunder, in the same condition as such property(ies) was/were prior to the Commencement Date, reasonable wear and tear excepted. Concessionaire shall remove all its Equipment, and any other personal property, upon forty-eight (48) hours written notice from the City Manager or his designee unless a longer time period is agreed to by the City. Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of any City property after termination of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City One Thousand ($1,000.00) Dollars per day as liquidated damages for such trespass and holding over.

SECTION 12. PERFORMANCE BOND OR ALTERNATE SECURITY.

Concessionaire shall, on or before the Commencement Date of this Agreement, furnish to the City Manager a Performance Bond in the penal sum as stated below for the payment of which Concessionaire shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Performance Bond, in the amount of Thirteen Thousand Five Hundred ($13,500.00) Dollars, shall be required and be in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager, in his sole and reasonable discretion. The form of the Performance Bond or letter of credit shall be as required by the City Manager. In the event that a Certificate of Deposit is approved, it shall be a Thirteen Thousand Five Hundred ($13,500.00) Dollars one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by the City's Chief Financial Officer. Concessionaire shall be so required to maintain said Performance Bond or alternate security (as accepted by the City Manager), in full force and effect throughout the Term of this Agreement. Concessionaire shall have an affirmative duty to notify the City Manager, in writing, in the event said Performance Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Concessionaire, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

SECTION 13. ASSIGNMENT.

The Concessionaire may not sublet or assign this Agreement, or any part thereof, under any circumstances, without the prior written consent of the City which consent, if given at all, shall be in the City's sole judgment and discretion.

SECTION 14. NO IMPROPER USE.

Concessionaire will not use, nor suffer or permit any person to use, in any manner whatsoever, any City property(ies) or portion thereof granted to Concessionaire for the uses set forth in this Agreement, for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Concessionaire will protect, indemnify, and forever save and keep harmless the City, its officers, employees, contractors, agents or servants, from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of Concessionaire, or any of its officers, employees, contractors, agents or servants. In the event of any violation by Concessionaire, or if the City shall deem any conduct on the part of Concessionaire to be objectionable or improper, the City Manager shall have the right to suspend the concession operations should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager, within twenty-four (24) hours after receiving written or verbal notice of the nature and extent of such violation, conduct, or practice; such suspension to continue until the violation is cured. Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the satisfaction of the City Manager.

SECTION 15. PRICE SCHEDULES.

Concessionaire agrees that prices and fees charged for valet parking services (the "Valet Fee") shall not exceed those established by the Mayor and City Commission. The parties acknowledge that the Concession Fee, as set forth in Section 3 hereto, is based upon the Valet Fee in effect as of the Commencement Date, which is $15.00 per vehicle, and $20.00 per vehicles during the following events: Antique Show; Jewelry Show; NMMA International Boat Show; Graphics of the Americas; Home Design Show (March); Home Design Show (September); Sea Trade Cruise Shipping; and Art Basel Miami Beach.

Notwithstanding the preceding, the City Commission reserves the right, at its sole discretion and judgment, at any time during the Term hereof, to review the Valet Fee, and to amend said Fee, as (and if) deemed in the best interest of the City.

The Concessionaire may also request that the City increase the Valet Fee (the "Fee Increase") which Fee Increase shall be considered and granted (if at all) by the City Commission, in its sole and absolute discretion. Prior to the Concessionaire's request for a Fee Increase, the Concessionaire and the City Manager, or his/her authorized designee, shall meet and shall use their best efforts to mutually agree on a recommendation (for the Commission) for a Fee Increase and corresponding increase adjustment in the Concession Fee.

SECTION 16. NOTICES.

All notices from the City to Concessionaire shall be deemed duly served upon receipt, if mailed by registered or certified mail with a return receipt to Concessionaire at the following addresses:

First Class Parking, LLC
12550 Biscayne Boulevard, Suite 207
Miami, Florida 33181
Attn: Jorge Zuluaga, Director

All notices from Concessionaire to the City shall be deemed duly served upon receipt, if mailed by registered or certified mail return receipt requested to the City of Miami Beach at the following addresses:

Office of the City Manager
1700 Convention Center Drive
Miami Beach, FL. 33139
Attn: City Manager

and

City of Miami Beach Parking Department
1755 Meridian Ave., Suite 200
Miami Beach, FL. 33139
Attn: Parking Director

Concessionaire and the City may change the above mailing addresses at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

SECTION 17. LAWS.

17.1 Compliance.

Concessionaire shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations (including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations, as same may be amended from time to time.

17.2 Equal Employment Opportunity.

Neither Concessionaire nor any affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity, color, creed, national origin, familial status, religion or handicap. Concessionaire will take affirmative steps to utilize minorities and females in the work force and in correlative business enterprises.

17.3 No Discrimination.

Concessionaire agrees that there shall be no discrimination as to race, sex, sexual orientation, gender identity, color, creed, national origin, familial status, religion or handicap, in its employment practice or in the operations referred to by this Agreement. All facilities and services offered shall be made available to the public.

SECTION 18. MISCELLANEOUS.

18.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.

18.2 Modifications.

This Agreement cannot be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager.

18.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.

18.4 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

18.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto

and their respective successors and permitted assigns.

18.6 Clauses.
The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

18.7 Severability.
If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement shall be so modified.

18.8 Right of Entry.
The City, at the direction of the City Manager, shall at all times during hours of operation, have the right to enter into and upon any and all parts of the Concession Area for the purpose of examining the same for any reason relating to the obligations of parties to this Agreement.

18.9 Not a Lease.
It is expressly understood and agreed that no part, parcel, building, structure, equipment or space is leased to Concessionaire; that this Agreement is a concession agreement and not a lease, and that Concessionaire's right to operate, manage, and maintain the concession shall continue only so long as Concessionaire complies with the undertakings, provisions, agreements, stipulations and conditions of this Agreement.

Accordingly, Concessionaire hereby agrees and acknowledges that in the event of termination of this Agreement, whether due to a default by Concessionaire or otherwise, Concessionaire shall surrender and yield unto the City any City property then being used by Concessionaire for the provision of services herein, in accordance with subsection 11.8 hereof, and the City shall in no way be required to evict and/or otherwise remove Concessionaire from any such area as if this were a tenancy under Chapter 83, Florida Statutes, nor shall Concessionaire be afforded any other rights afforded to nonresidential tenants pursuant to said Chapter (the parties having herein expressly acknowledged that this Agreement is intended to be a concession agreement and is in no way intended to be a lease).

18.10 Signage.
Concessionaire shall provide, at its sole expense and responsibility, any required signs at its concession locations. All advertising, signage and postings shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by

Concessionaire shall be subject to the prior approval of the City Manager or his designee as to size, shape and placement of same.

18.11 Conflict of Interest.
Concessionaire shall perform its services under this Agreement and conduct the concession operation(s) contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire.

18.12 No Waiver.

18.12.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

18.12.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

18.12.3 The receipt of any sum paid by Concessionaire to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation (and not as rent), unless such breach be expressly waived in writing by the City.

18.13 No Third Party Beneficiary.
Nothing in this Agreement shall confer upon any person or entity, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

SECTION 19. LIMITATION OF LIABILITY.
The City desires to enter into this Agreement only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand ($10,000.00) Dollars. Concessionaire hereby expresses its willingness to enter into this Agreement with a Ten Thousand ($10,000.00) Dollar limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of Ten Thousand ($10,000.00) Dollars, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of Ten Thousand ($10,000.00) Dollars, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this

Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

SECTION 20. VENUE.
This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **THE CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

SECTION 21. CITY LIEN.
It is expressly agreed that the City shall have a continuing lien on all personal property of the Concessionaire, for all sums which may from time to time become due and unpaid to the City under this Agreement, and upon default of payment by the Concessionaire and failure to cure after the expiration of the applicable grace period, the City shall have the right to take possession of and retain the same until the full amount due shall be paid, or to sell the same at public auction and, after deducting the expense of such sale, apply the balance of the proceeds to such payment and if there should be any deficiency, to resort to any other legal remedy available to it.

SECTION 22. NO LIENS.
Concessionaire agrees that it will not suffer or through its actions or anyone under its control or supervision, cause to be filed upon the property any lien or encumbrance of any kind. In the event any lien is filed, Concessionaire agrees to cause such lien to be discharged within ten (10) days of said filing and in accordance with the applicable law and policy.

SECTION 23. STORAGE.
Concessionaire agrees that there will be no on-site or on-premises storage of any kind, of Concessionaire's Equipment.

SECTION 24. CITY WITHDRAWAL OF CITY PROPERTY.
The City retains the right to withdraw all or any portion of the City property/Venues set forth herein from the terms and conditions of the Agreement. The City shall give the Concessionaire thirty (30) days written notice in the event of such withdrawal. In the event the City withdraws all of the City property and/or Venues, the Agreement shall automatically terminate, without liability to either party herein. In the event the City withdraws less than all of the City property and/Venues, then the remaining property/Venues shall continue within the scope of the Agreement, and the City agrees to make a proportionate adjustment in the Concession Fee amount due.

SECTION 25. RFP INCORPORATED.
Request for Proposals No. 40-07/08, together with any and all amendments thereto, and the Concessionaire's proposal in response thereto, are hereby incorporated by reference

into this Agreement, to the extent that they are not inconsistent with any terms herein. In the event of any inconsistency, this Agreement shall prevail.

SECTION 26. PUBLIC BENEFIT.

The Concessionaire agrees to continue its past practice to donate toys, or make a monetary donation, in support of the City Parking Department's annual holiday toy drive benefitting Miami Beach residents.

SECTION 27. AUTOMATED VALET SYSTEM IMPLEMENTATION.

The Concessionaire agrees to implement an automated valet system in accordance with the following schedule:

i. Vendor Selection – Within thirty (30) days of the Commencement Date, Concessionaire will finalize selection of vendor for the provision of an automated valet system. The Concessionaire will provide the City Manager with notice of its selection, in writing.

ii. Vendor Meeting – Within sixty (60) days of the Commencement Date, the Concessionaire will hold a meeting with the City Manager, the City Parking Director, and the automated valet system vendor to discuss system implementation and identify and agree upon any necessary on-site facility modifications to City property. The Concessionaire will bear all costs related to the automated valet system implementation, with the exception of on-site facility modifications needed for system deployment on City-owned property, which shall be a City cost.

iii. Final Implementation – Within one hundred and eighty (180) days of the Commencement Date, implementation of the automated valet system will be completed and the system shall be operational. Final implementation shall be conditioned on the completion of the agreed upon on-site modifications to City-owned property. The Concessionaire shall not be responsible in the event implementation delays result from the City's failure to timely complete permitting and/or construction of the agreed upon facility modifications to City-owned property.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

Attest:

FIRST CLASS PARKING, LLC

Signature/Secretary

Jorge Zuluaga, PRESIDENT

(Print Name)

CORPORATE SEAL
(affix seal here)

RESOLUTION TO BE SUBMITTED

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Condensed Title:

A Resolution authorizing The Mayor And City Clerk to execute the attached memorandum of agreement (MOA), with the Florida Department Of Transportation (FDOT) for the turf and landscape maintenance services on I-395 (MacArthur Causeway) at the annual cost of $150,000 to be paid to the City Of Miami Beach by the FDOT; said agreement commencing on November 1, 2010, and concluding On October 31, 2011, with an option to renew for two additional years, on a year-to-year basis.

Key Intended Outcome Supported:

To improve and maintain the cleanliness of Miami Beach rights of way

Supporting Data (Surveys, Environmental Scan, etc.): Miami Beach Customer survey indicates 83% of residents and 81% of businesses rated the overall quality of the landscape maintenance in rights of way and public areas as excellent or good.

Issue:

Shall the Mayor and Commission approve the Resolution?

Item Summary/Recommendation:

In July of 1994 the City Commission approved the initial Memorandum of Agreement with the Florida Department of Transportation (FDOT) to provide for maintenance of landscaping along the MacArthur Causeway, specifically from the east end of Watson Island to the western edge of Alton Road. This agreement has been renewed annually since that time. The current agreement for the MacArthur Causeway expires on October 31, 2010. The FDOT has expressed a desire to enter into a new Memorandum of Agreement (MOA) for a one year period, commencing on November 1, 2010, and concluding on October 31, 2011, with an option for renewal for two years, on a year to year basis. Under the terms of this agreement, the City of Miami Beach will receive the sum of $150,000 a year payable in the amount of $37,500 quarterly.

For the past several years, the City has utilized the services of a private landscape maintenance company to provide the required work within the scope of services included in this agreement. The annual compensation from FDOT of $ 150,000 pays for the total cost of the agreement with the private contractor and plant material replacement as well as the time required for supervision of the project.

The Parks and Recreation Department employs a Contract Manager who is responsible to monitor the work of the contractor on a regular basis to ensure specifications are complied with and the landscape materials are properly maintained. Any deviations from the contract are noted in writing to the contractor and followed until resolved.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:

	Amount	Account	Approved
1	$150,000 revenues	Greenspace Revenue account # 011-8000-369404 to receive the funds quarterly.	
2			
3			
4			
Total	$150,000		

OBPI

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Kevin Smith, Director of Parks & Recreation

Sign-Offs:

Department Director	Assistant City Manager	City Manager
KS	HMF	JMG

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MIAMIBEACH

AGENDA ITEM C7J

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE ATTACHED MEMORANDIUM OF AGREEMENT (MOA) WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR THE TURF AND LANDSCAPE MAINTENANCE SERVICES ON I-395 (MACARTHUR CAUSEWAY), FROM THE EAST SIDE OF WATSON ISLAND TO THE WEST SIDE OF THE EAST CHANNEL BRIDGE, AT AN ANNUAL COST OF $150,000 TO BE PAID TO THE CITY BY FDOT; SAID AGREEMENT COMMENCING ON NOVEMBER 1, 2010, AND CONCLUDING ON OCTOBER 31, 2011, WITH AN OPTION TO RENEW FOR TWO ADDITIONAL YEARS, ON A YEAR-TO-YEAR BASIS.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

KEY INTENDED OUTCOME SUPPORTED

To Improve and maintain the cleanliness of Miami Beach rights of way.

FUNDING

Funding for the landscape maintenance of the MacArthur Causeway is included in the annual budget development process.

BACKGROUND

In July of 1994 the City Commission approved the initial Memorandum of Agreement with the Florida Department of Transportation (FDOT) to provide for maintenance of landscaping along the MacArthur Causeway, specifically from the east end of Watson Island to the western edge of Alton Road. This agreement has been renewed annually since that time. The current agreement for the MacArthur Causeway expires on October 31, 2010. The FDOT has expressed a desire to enter into a new Memorandum of Agreement (MOA) for a one year period, commencing on November 1, 2010, and concluding on October 31, 2011, with an option for renewal for two additional years, on a year to year basis.

Under the terms of this agreement, the City of Miami Beach will receive the sum of $150,000 a year payable in the amount of $37,500 quarterly.

For the past several years, the City has utilized the services of a private landscape maintenance company to provide the required work within the scope of services included in this agreement. The annual compensation from FDOT of $ 150,000 pays for the total cost of the agreement with the private contractor and plant material replacement as well as the time required for supervision of the project.

The Parks and Recreation Department employs a Contract Manager who is responsible to monitor the work of the contractor on a regular basis to ensure specifications are complied with and the landscape materials are properly maintained. Any deviations from the contract are noted in writing to the contractor and followed until resolved.

Conclusion

To ensure the MacArthur Causeway landscaping continues to be maintained at the high standards set by the City of Miami Beach, and to receive the annual funding of $150,000 from the Florida Department of Transportation that is necessary to support these maintenance standards, the Administration recommends the approval of the attached resolution and the 2010/2011 Memorandum of Agreement which commences on November 1, 2010, and concludes on October 31, 2011, with an option for renewal for two additional years, on a year to year basis.

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RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE ATTACHED MEMORANDIUM OF AGREEMENT (MOA) WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) FOR THE TURF AND LANDSCAPE MAINTENANCE SERVICES ON I-395 (MACARTHUR CAUSEWAY), FROM THE EAST SIDE OF WATSON ISLAND TO THE WEST SIDE OF THE EAST CHANNEL BRIDGE, AT AN ANNUAL COST OF $150,000 TO BE PAID TO THE CITY BY FDOT; SAID AGREEMENT COMMENCING ON NOVEMBER 1, 2010, AND CONCLUDING ON OCTOBER 31, 2011, WITH AN OPTION TO RENEW FOR TWO ADDITIONAL YEARS, ON A YEAR-TO-YEAR BASIS.

WHEREAS, in July of 1994, the Mayor and City Commission approved a Memorandum of Agreement with the Florida Department of Transportation (FDOT) to provide for maintenance of landscaping along the MacArthur Causeway; specifically, from the east end of Watson Island to the westernmost edge of Alton Road; and

WHEREAS, this Agreement has been renewed annually since that time; and

WHEREAS, the current Agreement for the MacArthur Causeway expires on October 31, 2010; and

WHEREAS, the FDOT has expressed a desire to enter into a new Memorandum of Agreement (MOA) for a one year period, commencing on November 1, 2010, and concluding on October 31, 2011: and

WHEREAS, the MOA may be renewed for two additional years, on a year to year basis, if mutually agreed upon in writing by FDOT and the City; and

WHEREAS, under the terms of the MOA, the City will receive the sum of $150,000 a year, payable in the amount of $37,500 quarterly; and

WHEREAS, the annual compensation from FDOT of $ 150,000 pays for the total cost of the MOA, labor and plant material replacement, as well as the time required for supervision of the project; and

WHEREAS, the Parks and Recreation Department employs a Contract Manager who is responsible to monitor the work of the contractor on a regular basis to ensure specifications are complied with, and the landscape materials are properly maintained.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission here by approve and authorize the Mayor and City Clerk to execute the attached Memorandum of Agreement (MOA) with the Florida Department of Transportation (FDOT), for the turf and landscape maintenance services on I-395 (MacArthur Causeway), from the east side of Watson Island to the western edge of Alton Road, at an annual cost of $150,000, to be paid to the City by FDOT; said Agreement commencing on November 01, 2010, and concluding on October 31, 2011, with an option to renew for two years, on a year to year basis.

PASSED and **ADOPTED** this 15th day of September, 2010.

MAYOR

ATTEST:

CITY CLERK

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/2/10 Date

Florida Department of Transportation

CHARLIE CRIST
GOVERNOR

1000 NW 111 Avenue
Miami, Florida 33172

STEPHANIE C. KOPELOUSOS
SECRETARY

August 12, 2010

Mr. Jorge M. Gonzalez, City Manager
Attn: Mr. John Oldenburg, Assistant Director
CITY OF MIAMI BEACH
2100 Washington Avenue
Miami Beach, FL 33139

RE: Landscape Maintenance Joint Project Agreement
Contract No.: **AQ 105**
Financial No.: **25308727801**

Dear Mr. Gonzalez:

The existing "Turf and Landscape Joint Project Agreement" (AOU88), between the City of Miami Beach and the Department will expire October 31, 2010. The Department desires to enter into a new agreement for a period of one year beginning November 1, 2010 and ending October 31, 2011. The expected appropriation for one year will be $150,000.00 in accordance with Section 287.0582, F.S.

If the City also desires to enter into a new agreement, please execute the two (2) enclosed agreements and return them before September 15, 2010 (Please leave the date blank on the top of the form).

Should you have any questions concerning this agreement, please contact me at telephone number (305) 470-5436.

Sincerely,

Shany Ianotti
Assistant Project Manager

cc: Keith Jimmerson, Khaled Al-Said, file.

CONTRACT # AQ 105

JOINT PROJECT AGREEMENT
BETWEEN
THE FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF MIAMI BEACH
TURF AND LANDSCAPE MAINTENANCE

This Agreement is made and entered into this _____day of _____, 2010, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT,** and the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, existing under the Laws of the State of Florida, hereinafter called the **CITY**.

WITNESSETH:

WHEREAS, as a part of the continual updating of the State of Florida Highway System, the **DEPARTMENT,** for the purpose of safety, has created roadside areas and median strips on that part of the State Highway System described by Attachment "A", which by reference hereto shall become a part hereof, within the corporate limits of the **CITY**; and

WHEREAS, the hereto is of the opinion that said median strips and roadside areas shall be attractively landscaped with various flora; and

WHEREAS, the parties hereto mutually recognize the need for entering into an agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the **CITY,** by Resolution No._____ dated_____, attached hereto as Attachment "B", which by reference hereto shall become a part hereof, desires to enter into this Agreement and authorizes its officers to do so.

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

1. CITY'S MAINTENANCE RESPONSIBILITIES

The **CITY** shall be responsible for the maintenance of all landscaped and/or turfed areas within the **DEPARTMENT'S** right-of-way having the limits described by Attachment "A". The **CITY** shall be responsible for performing the work described below with a minimum frequency of twelve (12) times per year:

1.1. Mow, cut, and/or trim and edge the grass or turf in accordance with the latest edition of the State of Florida "Guide for Roadside Mowing" and the latest edition of the "Maintenance Rating Program".

1.2. Properly prune all plants which include plant and tree trimmings in accordance with the latest edition of the "Maintenance Rating Program". Pruning such parts thereof which may present a visual or other safety hazard for those using or intending to use the right-of-way.

1.3. Remove and dispose of dead, diseased or otherwise deteriorated plants.

1.4. Keep litter removed from roadside areas and median strips.

1.5. Remove and dispose of all trimmings, roots, branches, litter, etc., resulting from the activities described by (1.1) through (1.4) inclusively as described above.

1.6 All work by the **CITY** pursuant to (1.1) through (1.5) above on the Department's right of way (having the limits described by Attachment "A") shall be executed on the roadway under a traffic control plan in accordance with **DEPARTMENT'S** latest edition of the "FDOT Design Standards".

2. WORK SCHEDULE

The **CITY** shall submit a schedule to the **DEPARTMENT** containing the dates when the **CITY** is planning to perform the mowing work. In addition, before the **CITY** starts the work, the **DEPARTMENT** shall be notified via fax of the state road(s) and day(s) in which the **CITY** will be working. The fax shall be sent to the attention of the "South Dade Maintenance Engineer", at FAX # (305) 256-6304

3. NATURAL DISASTERS

The **CITY** shall not be responsible for the clean-up, removal and disposal of debris from the **DEPARTMENT'S** right of way having limits described by Attachment "A", following a natural disaster (i.e. hurricane, tornados, etc.). However, the cost of any cycle or part thereof that could be impaired by any such event may be deducted from the **DEPARTMENT'S** affected quarterly payment to the **CITY**.

4. MAINTENANCE DEFICIENCIES

If, at any time while the terms of this Agreement are in effect, it shall come to the attention of the **DISTRICT MAINTENANCE ENGINEER** that the **CITY'S** responsibilities, as established herein or a part thereof, are not being properly accomplished pursuant to the terms of this Agreement, said **DISTRICT**

MAINTENANCE ENGINEER may, at his option, issue a written notice in care of the **CITY MANAGER**, to place said **CITY** on notice thereof. Thereafter, the **CITY** shall have a period of thirty (30) calendar days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within this time period the **DEPARTMENT** may, at its option, proceed as follows:

4.1. Maintain the median or roadside area(s) declared deficient with **DEPARTMENT** and/or a Contractor's material, equipment and personnel. The actual cost for such work will be deducted from the **DEPARTMENT'S** affected quarterly payment to the **CITY;** or

4.2. Terminate this Agreement.

5. NOTICES

All notices, requests, demands, consents, approvals, and other communication which are required to be served or given hereunder, shall be in writing and shall be sent by registered mail or certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To DEPARTMENT: Florida Department of Transportation
1000 Northwest 111th Avenue, Room 6205-B
Miami, Florida 33172-5800
Attention: District Maintenance Engineer

To CITY: CITY OF MIAMI BEACH
2100 Washington Avenue
Miami Beach, Florida 33139
Attn: CITY MANAGER

6. LANDSCAPE MODIFICATION

It is understood between the parties hereto that the landscaping covered by this Agreement may be removed, relocated or adjusted at any time in the future as found necessary by the **DEPARTMENT** in order that the adjacent state road be widened, altered or otherwise changed and maintained to meet with future criteria or planning of the **DEPARTMENT**.

7. FINANCIAL PROVISIONS

7.1 The total maximum appropriation of this Agreement is ONE HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS ($150,000.00) per year. Eligible project costs may not exceed this amount. The **CITY** shall submit quarterly invoices for **DEPARTMENT** review, approval, and payment in accordance with the terms of this Agreement. Quarterly lump sum payments will be made upon invoice approval in

the total amount of THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (37, 500.00).This Agreement is a reimbursement contract. No advance funding payments are authorized herein.

7.2 The **DEPARTMENT** agrees to pay the **CITY** for the herein described services at a compensation as detailed in this Agreement.

7.3 Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

7.4 Travel costs will not be reimbursed.

7.5 Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the **DEPARTMENT** at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the **DEPARTMENT** upon request. Records of costs incurred include the **CITY'S** general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.

7.6 In the event this Agreement is for services in excess of $25,000.00 and a term for a period of more than 1 year, the provisions of Section 339.135(6)(a), F.S., are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of $25,000.00 and which have a term for a period of more than 1 year."

7.7 The **DEPARTMENT'S** obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

8. PAYMENT ADJUSTMENT

In the event temporary work by the **DEPARTMENT'S** forces or by other Contractors temporarily prevent the **CITY** from performing the work described in this Agreement, the **DEPARTMENT** shall deduct from the affected quarterly lump sum payment(s)

the acreage of the affected area and only compensate the **CITY** for the actual work it performs.

The **DEPARTMENT** shall initiate this procedure only if the temporary work described in this section is for a period of one (1) month or longer. Adjustment to the **CITY'S** payment shall also be done as noted in Section Three (3). In the event this Agreement is terminated as established by Section Nine (9) herein, no payment will be prorated for the quarter in which termination occurs for the work that has been completed.

9. TERMINATION

This Agreement, or part thereof, is subject to termination under any one of the following conditions:

9.1. In the event the **DEPARTMENT** exercises the option identified by Section Four (4) of this Agreement.

9.2. As mutually agreed to by both parties.

9.3. In accordance with Section 287.058(1) (c), Florida Statutes, the **DEPARTMENT** shall reserve the right to unilaterally cancel this Agreement if the **CITY** refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the **CITY** pertinent to this Agreement which are subject to provisions of Chapter 119, of the Florida Statutes.

10. TERMS

10.1. The term of this Agreement shall only commence when the **DEPARTMENT** issues the **CITY** the Notice to Proceed Letter.

10.2. In accordance with Section 287.058(1)(e), Florida Statutes, this Agreement is for a term of one (1) year beginning on the date stated in the Notice to Proceed.

10.3. In accordance with Section 287.0582, Florida Statutes, the **DEPARTMENT** shall only appropriate the annual amount of ONE HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS ($150,000.00) per year at the beginning of each **DEPARTMENT** Fiscal Year (July 1st).

10.4 This Agreement shall commence on November 1, 2010, and end on October 31, 2011.

10.5 In accordance with Section 287.058(1)(f), Florida Statutes, this Agreement may be renewed on a yearly basis for a maximum of two (2) years after the initial term for a period no longer than the term of the original contract, whichever period is

longer, only if mutually agreed to in writing by the **DEPARTMENT** and the **CITY**, subject to the same terms and conditions set forth in this Agreement. Said renewals shall be contingent upon both satisfactory **CITY** performance evaluations by the **DEPARTMENT** and the availability of future funding.

11. ATTACHMENT "A" AMENDMENT

It is further understood that Attachment "A" may be amended or changed at any time, as mutually agreed to in writing by both parties. Payment as specified in Item Seven (7) above shall reflect such amendment or change.

12. TIME EXTENSION

In accordance with Section 287.012(14), Florida Statutes, this Agreement may be extended if mutually agreed to in writing by both parties, for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in this Agreement; provided the **DEPARTMENT** may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There shall be only one extension of this Agreement.

13. ADDITIONAL LANDSCAPING

The **CITY** may construct additional landscaping within the limits of the right-of-way identified as a result of this Agreement, subject to the following conditions:

13.1. Plans for any new landscaping shall be subject to approval by the **DEPARTMENT.** The **CITY** shall not change or deviate from said plans without the prior written approval of the **DEPARTMENT**.

13.2. All landscaping shall be developed and implemented in accordance with appropriate state safety and road design standards;

13.3. All requirements and terms established by this Agreement shall also apply to any additional landscaping installed under this item;

13.4. The **CITY** agrees to complete, execute and comply with the requirements of the **DEPARTMENT'S** standard permit provided as Attachment "C" (not to actual size) to this Agreement, which by reference hereto shall become a part hereof.

13.5. No change will be made in the payment terms established under Section Seven (7) of this Agreement due to any increase in cost to the **CITY** resulting from the installation and maintenance of landscaping added under this item;

13.6. In the event this Agreement is terminated as established under Section (9) herein, the **CITY** agrees to accept full responsibility for all maintenance activities within the entire area(s) defined by the plans and permits established as a result of this Section. The **CITY** shall provide this maintenance at no cost to the **DEPARTMENT**.

14. This writing embodies the entire Agreement and understanding between the parties hereto and there are not other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

15. This Agreement is nontransferable and non-assignable in whole or in part without consent of the **DEPARTMENT**.

16. This Agreement, regardless of where executed, shall be governed by and constructed in accordance with the laws of the State of Florida.

- REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

CITY OF MIAMI BEACH

BY:_____
MAYOR

ATTEST:_____
CITY Clerk (Seal)

FLORIDA STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY:_____
District Secretary

ATTEST:_____
Executive Secretary

LEGAL REVIEW:

BY:_____
District General Counsel

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/2/10
Date

Contract Number: AQ 105
Financial Project Number: 25308727801

ATTACHMENT "A"

Below is the state road, the limits, length and acreage of the areas to be maintained by the City of Miami Beach under this **AGREEMENT**.

CITY OF MIAMI BEACH

STATE ROAD	STREET NAME	FROM	TO	LENGTH (MILES)	ACREAGE
I-395	Mac Arthur Causeway	East side of Watson Island	West side of East Channel Bridge	1.816	5.303
			TOTAL	1.816	5.303

TOTAL ACREAGE: 5.303

TOTAL ANNUAL MAXIMUM LIMITING AMOUNT ELIGIBLE FOR REIMBURSEMENT: $150,000.00

Contract Number: AQ 105
Financial Project Number: 25308727801

ATTACHMENT "B"

ATTACH CITY RESOLUTION

Contract Number: AQ 105
Financial Project Number: 25308727801

Condensed Title:

Setting of Public Hearing – Pursuant to Miami Beach City Code Section 118-262, to review a Design Review Board decision (DRB File No. 22347) rendered on July 7, 2010, requested by the project applicant the Euroamerican Group.

Key Intended Outcome Supported:

Not Applicable

Issue:

Pursuant to Miami Beach City Code Section 118-262, the Administration is requesting that the Mayor and City Commission schedule a Public Hearing on November 17, 2010 to review a decision of the Design Review Board pertaining to DRB File No. 22347, requested by the applicant, the Euroamerican Group. The Euroamerican Group is appealing the condition of the DRB to reduce the overall height of the southeast portion of the project (east wing fronting the Venetian Causeway) by a minimum of one (1) floor.

Item Summary/Recommendation:

The Administration recommends that the City Commission adopt the Resolution scheduling a Public Hearing on November 17, 2010.

Advisory Board Recommendation:

The Design Review Board approved the subject development project on July 6, 2010, subject to the conditions of the Final Order, including Condition 3.a: 'The height of the southeast portion of the project (east wing fronting the Venetian Causeway) shall be reduced by a minimum of one (1) floor, subject to the review and approval of staff'.

Financial Information:

Source of Funds:

OBPI

	Amount	Account	Approved
1			
2			
3			
4			
Total			

Financial Impact Summary:

The proposed Resolution is not expected to have any fiscal impact.

City Clerk's Office Legislative Tracking:

Richard Lorber or Thomas Mooney

Sign-Offs:

Department Director	Assistant City Manager	City Manager

MIAMIBEACH

AGENDA ITEM C7K

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PUBLIC HEARING PURSUANT TO MIAMI BEACH CITY CODE SECTION 118-262 TO REVIEW A DESIGN REVIEW BOARD DECISION, FILED BY THE EUROAMERICAN GROUP, FOR THE PROPERTY LOCATED AT 31 VENETIAN WAY (DRB FILE NO. 22347).**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

Pursuant to City Code Section 118-262, the Euroamerican Group, as the project applicant, is requesting a review of the Design Review Board decision rendered on July 7, 2010 (DRB File No. 22347) pertaining to a development project at 31 Venetian Way.

The Design Review Section of the Miami Beach Code allows the applicant, or the city manager on behalf of the city administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust to seek a review of any Design Review Board Order by the City Commission. For purposes of this section, "affected person" shall mean either (i) a person owning property within 375 feet of the applicant's project reviewed by the board, or (ii) a person that appeared before the Design Review Board (directly or represented by counsel), and whose appearance is confirmed in the record of the Design Review Board's public hearing(s) for such project.

Pursuant to Section 118-262 of the Miami Beach Code, the review by the City Commission is not a "de novo" hearing. It must be based upon the record of the hearing before the Design Review Board. Furthermore, Section 118-262 (b) states the following:

In order to reverse, or remand for amendment, modification or rehearing any decision of the Design Review Board, the City Commission shall find that the Design Review Board did not do one of the following:

1) provide procedural due process;
2) observe essential requirements of law; or
3) base its decision upon substantial, competent evidence.

In order to reverse or remand a decision of the DRB, a 5/7th vote of the City Commission is required.

CONCLUSION

The Administration recommends setting a public hearing on November 17, 2010 to review a decision of the Design Review Board pertaining to DRB file No. 22347.

JMG/JGG/RGL/TRM
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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PUBLIC HEARING PURSUANT TO MIAMI BEACH CITY CODE SECTION 118-262 TO REVIEW A DESIGN REVIEW BOARD DECISION, FILED BY THE EUROAMERICAN GROUP, FOR THE PROPERTY LOCATED AT 31 VENETIAN WAY (DRB FILE NO. 22347).

WHEREAS, a process for review by the Mayor and City Commission of decisions rendered by the Design Review Board when requested by an applicant or any affected person has been established under Section 118-262 of the Miami Beach City Code; and

WHEREAS, the Euroamerican Group is the applicant for the proposed development project at 31 Venetian Way (DRB File No. 22347); and

WHEREAS, the Euroamerican Group has requested a review of the Design Review Board decision rendered on July 7, 2010, pertaining to the development project at 31 Venetian Way (DRB File No. 22347).

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 authorize the setting of a public hearing on November 17, 2010 to consider the review of a Design Review Board decision in DRB File No. 22347, pertaining to the development project at 31 Venetian Way, as requested by the Euroamerican Group.

PASSED and ADOPTED this 15th day of September, 2010.

ATTEST:

CITY CLERK Robert Parcher	MAYOR Matti H. Bower

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY 8/31/10 DATE

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Condensed Title:

Resolutions of the Mayor and City Commission of the City of Miami Beach, Florida, setting Public Hearings to consider two Ordinances of the City of Miami Beach, Florida; one would amend the Future Land Use Map of the Comprehensive Plan by changing the Future Land Use Category for the Parcel known as the "1600 Lenox Avenue" from the current RM-1, "Residential Multifamily Medium Intensity," to the Future Land Use Category of CD-1, "Commercial, Low Intensity;" and the other ordinance to change the Zoning Map from RM-1 "Residential Multifamily Medium Intensity," to CD-1 "Commercial, Low Intensity;" both with a restriction limiting the Property to no more than 10 Residential Units per acre as provided for in the Voluntary Covenant.

Key Intended Outcome Supported:

Regulatory and Neighborhood satisfaction

Supporting Data (Surveys, Environmental Scan, etc Regulatory – required by Florida Statutes

Issue:

Should the City Commission set the public hearings to consider amending the Future Land Use Map for 1600 Lenox Avenue from RM-1, to CD-1; and amending the Zoning Map from RM-1 to CD-1.

Item Summary/Recommendation:

SETTING FIRST READING PUBLIC HEARINGS

The City, at the request of the property owner, is proposing to change the land use category on the Future Land Use Map and change the zoning district designation of this purposely built commercial property in order to use the site for commercial, retail, office and limited residential uses.

The change of land use designation and zoning district does not increase the floor area ratio of the subject site. The current land use designation is RM-1 Multi Family Residential Low Density Category which has a maximum floor area ratio (FAR) of 1.25 and a maximum density of 60 units per acre. Similarly, the proposed land use designation of CD-1 Commercial Low Intensity category has a maximum FAR of 1.0 and 1.25 when more than 25 percent of the total area of a building is used for residential or hotel units. Therefore, the request is consistent with the City Charter provisions of Section 1.03 (c). It should be noted that the property owner has voluntarily proffered a covenant to restrict any residential development that may be proposed in the future to a maximum of 10 units per acre.

The zoning designation allows only residential use as a main permitted use, and other uses which are accessory uses, subordinate to the main use. This land use category and zoning district regulations do not permit commercial uses. The existing commercial uses are functioning as legal, non-conforming; however, a nonconforming use of a building shall not be permitted to extend throughout other parts of that building.

The Administration recommends that the City Commission approve the resolutions setting the public hearings for October 27, 2010.

Advisory Board Recommendation:

At the July 27, 2010 meeting, the Planning Board recommended that the approval both proposed changes to the Future Land Use and the Zoning Maps by a vote of 4-0 (three members absent).

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary: The proposed resolution is not expected to have any fiscal impact upon the resources of the City at this time. When the site is redeveloped, revenues to the City may increase.

City Clerk's Office Legislative Tracking:

Richard Lorber or Mercy Lamazares

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager JGG for JMG

DATE: September 15, 2010

SUBJECT: **1600 Lenox Avenue - Amending the Future Land Use and Zoning Maps - Setting of First and only Reading Public Hearings.**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PUBLIC HEARING TO CONSIDER AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN BY CHANGING THE FUTURE LAND USE CATEGORY FOR THE PARCEL KNOWN AS "1600 LENOX AVENUE," MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION BELOW, FROM THE CURRENT RM-1, "MULTI-FAMILY, LOW INTENSITY," TO THE FUTURE LAND USE CATEGORY OF CD-1, "COMMERCIAL, LOW INTENSITY;" WITH A RESTRICTION LIMITING THE PROPERTY TO COMMERCIAL USES AND NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PUBLIC HEARING TO CONSIDER AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FOR THE FOR THE PARCEL KNOWN AS "1600 LENOX AVENUE," MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION BELOW, FROM THE CURRENT ZONING CLASSIFICATION RM-1, "RESIDENTIAL MULTIFAMILY LOW INTENSITY," TO THE PROPOSED ZONING CLASSIFICATION CD-1, "COMMMERCIAL, LOW INTENSITY," WITH A RESTRICTION LIMITING THE PROPERTY TO COMMERCIAL USES AND NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission set first reading public hearings for each of the above for the October 27, 2010 meeting.

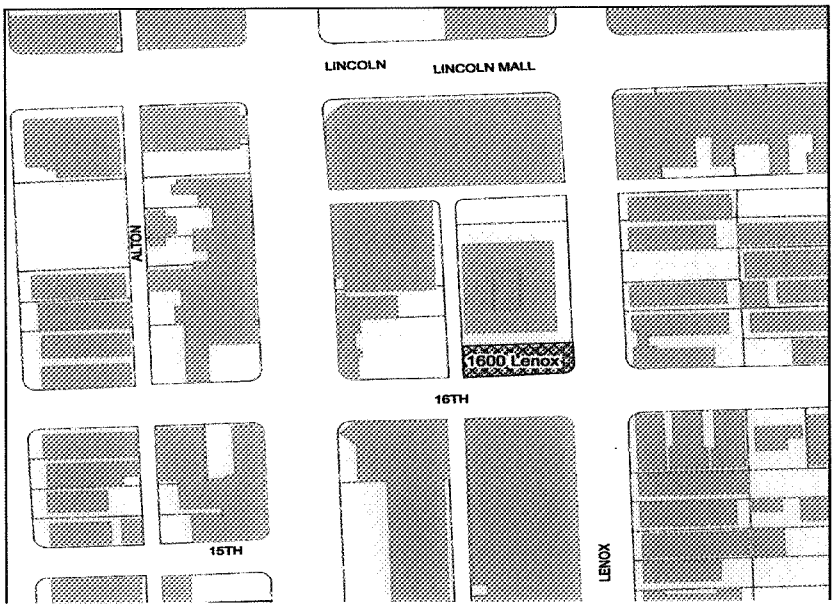
BACKGROUND

At its May 27, 2010 meeting the Land Use and Development Committee (LUDC) referred the rezoning and FLUM change for the property at 1600 Lenox Avenue to the Planning Board for its review and recommendation.

Although these two separate requests can be heard together at a public hearing, it is necessary to have separate motions for each request.

ZONING / SITE DATA

Legal Description: Lot 1, Block 46 of COMMERCIAL SUBDIVISION according to the Plat thereof, as recorded in Plat Book 6, at Page 5 of the Public Records of Miami-Dade County, Florida



Site Area: Size: 50 X 150 feet (approximately 7,500 sq. ft. (or +/- 0.172 acre)

Existing FLUM Category: RM-1 Residential Multifamily Low Intensity
Proposed FLUM Category: CD-1 Commercial, Low Intensity
Density Limits: RM-1 - 60 dwellings units per acre
Density Limits: CD-1 - 60 dwelling units per acre
Intensity Limits: RM-1 - shall not exceed 1.25 FAR
Intensity Limits: CD-1 - shall not exceed 1.0 FAR for Commercial; 1.25 FAR for residential or mixed use
Existing Zoning Designation: RM-1 Residential Multifamily Low Intensity
Proposed Zoning Designation: CD-1 Commercial, Low Intensity

Existing FAR:	RM-1 - 1.25 FAR
Proposed FAR:	CD-1 -1.0 except when more than 25 percent of the total area of a building is used for residential units, the maximum FAR shall be the same as RM-1 district: 1.25
Existing Land Uses:	There is a 69-unit condominium building directly adjacent to the north (1610 Lenox Avenue) of the subject property; there is a 20-unit condominium building directly across to the east (1601 Lenox Avenue); there is a 30-unit residential building diagonally across (1038 16th Street); and a 18-unit condominium building across the street to the south with commercial space on the ground floor (1560 Lenox Avenue), which is located in a CD-1, commercial low intensity zoning district.

ANALYSIS

History of the Site

The Property is located in the first commercial subdivision created by Carl Fisher in Miami Beach in February 1920. The creation of this commercial subdivision has had a major impact in the development of the City as reflected along Alton Road, which remains one of Miami Beach's major commercial corridors today. The subject site remained vacant until the existing building was constructed in 1937. It was built as a single-story commercial building with nine store spaces. Among other tenants, the building housed a food market for over 50 years and a bar that began in 1941 as the Knotty Pine Bar and is today known as the Abbey Brewing Company. These and other unique commercial uses have provided an invaluable service to the local residents for over 70 years.

Planning and Zoning Issues

The site is currently designated RM-1 Residential Multifamily Low Intensity on the Future Land Use Map of the Comprehensive Plan, and zoned RM-1. The zoning designation allows only residential use as a main permitted use, and other uses which are accessory uses specifically authorized in the land use category, which are required to be subordinate to the main use. This land use category and zoning district regulations do not permit commercial uses. The existing commercial uses are functioning as legal, non-conforming; however, a nonconforming use of a building shall not be permitted to extend throughout other parts of that building.

City Charter Issues

The request for changing the Future Land Use Map of the City's Comprehensive Plan as well as the Zoning Map of the City, is affected by the City Charter provisions of Section 1.03 (c), which partially states: The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zone floor area ratio as it exists on the date of adoption of this Charter Amendment (November 7, 2001). Including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless such increase in zone floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.

The change of land use designation and zoning district does not increase the floor area ratio of the subject site. The current land use designation is RM-1 Multi Family Residential Low Density Category which has a maximum floor area ratio (FAR) of 1.25 and a maximum density of 60 units per acre. Similarly, the proposed land use designation of CD-1 Commercial Low Intensity category has a maximum FAR of 1.0 and 1.25 when more than 25 percent of the total area of a building is used for residential or hotel units. Therefore, the request is consistent with the City Charter provisions of Section 1.03 (c). It should be noted that the property owner has voluntarily proffered a covenant to restrict any residential development that may be proposed in the future to a maximum of 10 units per acre.

Comprehensive Plan Issues

Prior to 1989, the area north of 16th Street had a zoning classification of C-2, which is a commercial classification. The change of zoning and land use took effect in 1989, when the Zoning Ordinance of the City was extensively amended to carry out the 1989 Comprehensive Plan resulting in a new set of land development regulations (LDR). However, it should be noted that the block to the south (Block 65) is designated CD-1 in the Future Land Use Map, and zoned the same, therefore compatibility exists.

The total land area involved in this application is 0.17 acres. Under Section 163.3187 of the Florida Statutes, land use map amendments may be considered "small-scale" amendments, if less than 10 acres in size; and if the proposed amendment involves a residential land use, the residential land use has a density of 10 units or less per acre; or if the proposed future land use category allows a maximum residential density of the same or less than the maximum residential density allowable under the existing future land use category. Small scale development amendments adopted pursuant to this Section require only one public hearing before the governing board (City Commission), which shall be an adoption hearing, and receive expedited review and a less stringent State approval process. However, this provision does not apply in cases where a level of residential density above 10 dwelling units per acre is being permitted. Although the City is requesting this land use change, the property owner is proposing a covenant running with the land and recorded in public records limiting any future proposal for residential use to 10 units per acre.

Interlocal Agreement for Public School Facility Planning

The 2005 Florida Legislature adopted laws which are incorporated in the Florida Statutes, requiring each local government to adopt an intergovernmental coordination element as part of their comprehensive plan, as well as a statutory mandate to implement public school concurrency. In compliance with this requirement, the application by the City was submitted to the Miami-Dade County Public Schools for its review and concurrency determination. The Preliminary Concurrency Analysis yields a maximum residential density of 2 multifamily dwelling units, which generates less than one student in any level or type of school, therefore it is exempt from the requirements of public school concurrency and no further action is required at this time. However, a final determination of Public School Concurrency and capacity reservation will only be made at the time of approval of final plat, site plan or functional equivalent. As such, this analysis does not constitute a Public School Concurrency approval. However, any final determination of Public School Concurrency and capacity reservation will only be made at the time of approval of a final project should residential uses be desired.

Summary
The City, at the request of the property owner, is proposing to change the land use category on the Future Land Use Map and change the zoning district designation of this purposely built commercial property in order to use the site for commercial, retail, office and limited residential uses. This proposal requires a Future Land Use Map change and zoning map change. A covenant restricting residential uses on the site is also required in order for the land use map amendment to be considered a small-scale amendment by the Florida Department of Community Affairs.

It should also be noted that the property is a designated a local historic site and lies adjacent to the National Register Architectural District and Flamingo Park local Historic District. All future projects shall be subject to review by the Historic Preservation Board pursuant to Section 118--563 of the City Code.

These amendments must be processed together as they are interrelated to one another. The zoning change contemplated by these applications would enable the adaptive reuse of the site.

PLANNING BOARD ACTION

At the July 27, 2010 meeting the Planning Board recommended that the City Commission approve the proposed change to the Future Land Use Map of the City's Comprehensive Plan and Zoning Map by a vote of 4-0 (three members absent) on two separate motions.

CONCLUSION

The Administration recommends that the City Commission set the first and only reading public hearings for both the Future Land Use and the Zoning Maps for the October 27, 2010 meeting.

Pursuant to Florida Statutes, a small scale development amendment involving a use of 10 acres or fewer and has a density of 10 units or less per acre may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan. Small scale development amendments require only one public hearing before the governing board, which shall be an adoption hearing. The procedure for transmittal of a complete proposed plan amendment shall be by affirmative vote of not less than a majority of the members of the governing body present which shall constitute a quorum.

In the case of a small scale amendment, notification by mail each to real property owner whose address is known by reference to the latest ad valorem tax records will be required, as well as to the owners of record of land lying within 375 feet of the land, which is to be changed. Such notice shall be given at least 30 days prior to the date set for the public hearing. The same procedure applies to change the Zoning Map; however both notifications can be prepared in the same notice.

The notice shall also be published in a standard size newspaper; the required advertisements shall be no less than 2 columns wide by 10 inches long and the headline in the advertisement shall be in a type no smaller than 18 point and shall be placed in a

newspaper of general paid circulation in the municipality and of general interest and readership in the municipality.

The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The (name of local governmental unit) proposes to adopt the following ordinance: (title of the ordinance). A public hearing on the ordinance will be held on (date and time) at (meeting place).

The advertisement shall contain both ordinance titles and a geographic location map which clearly indicates the area covered by the proposed ordinance.

RGL

JMG/JGG/RGL/ML

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PUBLIC HEARING TO CONSIDER AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN BY CHANGING THE FUTURE LAND USE CATEGORY FOR THE PARCEL KNOWN AS "1600 LENOX AVENUE," MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION BELOW, FROM THE CURRENT RM-1, "MULTI-FAMILY, LOW INTENSITY," TO THE FUTURE LAND USE CATEGORY OF CD-1, "COMMERCIAL, LOW INTENSITY;" WITH A RESTRICTION LIMITING THE PROPERTY TO NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT.

WHEREAS, the City of Miami Beach has made an application to change the Future Land Use Map category for the parcel referred to herein as "1600 Lenox Avenue," located at 1600 Lenox Avenue, from the current RM-1, Multi-Family, Low Intensity to the Future Land Use category CD-1, Commercial, Low Intensity; and

WHEREAS, the property owner, 1600 Lenox Investors, LLC, intends to continue use of the property for commercial uses in accordance with the existing regulations in the Land Development Regulations of the City Code, as it may be amended in the future, with the exception of a limitation of no more than 10 residential units per acre as provided for in the voluntary covenant attached hereto; and

WHEREAS, amending the Future Land Use category of the subject 1600 Lenox Avenue parcel as provided herein is necessary to ensure the development of that property will be compatible with development in adjacent and surrounding areas, and will contribute to the general health and welfare of the City; and

WHEREAS, the City of Miami Beach has determined that changing the Future Land Use category of the subject 1600 Lenox Avenue parcel as provided herein will ensure that new development is compatible and in scale with the built environment, and is in the best interest of the City; and

WHEREAS, full legal description of the Affected Property is contained in Exhibit "A" attached to this Ordinance, and shortened descriptions of such properties will be codified in the amendments below.

> **LEGAL DESCRIPTION**: A parcel of land commonly known as the "1600 Lenox Avenue," approximately 7,457 square feet (0.171 acres), deemed to be a small-scale amendment, from the current RM-1, "Multi-Family Residential Low Intensity," to the Future Land Use category of CD-1, "Commercial, Low Intensity," with commercial uses and a restriction limiting the property to no more than 10 residential units per acre as provided for in the voluntary covenant attached hereto.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that a first and only public

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that a first and only public hearing shall be held on October 27, 2010 to consider adopting the proposed amendment; directing staff to transmit this small-scale amendment to the Florida Department of Community Affairs and making the appropriate changes to the Future Land Use Map of the City

PASSED AND ADOPTED this _____ day of_____, 2010

ATTEST:

_____
MAYOR

_____
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____
City Attorney Date

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RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SETTING A PUBLIC HEARING TO CONSIDER AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FOR THE PARCEL KNOWN AS "1600 LENOX AVENUE," MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION BELOW, FROM THE CURRENT ZONING CLASSIFICATION RM-1, "RESIDENTIAL MULTIFAMILY LOW INTENSITY," TO THE PROPOSED ZONING CLASSIFICATION CD-1, "COMMMERCIAL, LOW INTENSITY," WITH A RESTRICTION LIMITING THE PROPERTY TO COMMERCIAL USES AND NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT.

WHEREAS, the City of Miami Beach has made an application to change the zoning classification of the parcel referred to herein as "1600 Lenox Avenue," located at 1600 Lenox Avenue, from RM-1, Residential Multifamily Low Intensity, to CD-1, Commercial, Low Intensity; and

WHEREAS, the property owner, 1600 Lenox Investors, LLC, intends to continue use of the property for commercial uses in accordance with the existing regulations in the Land Development Regulations of the City Code, as it may be amended in the future, with the exception of a limitation of no more than 10 residential units per acre as provided for in the voluntary covenant attached hereto; and

WHEREAS, amending the zoning of the subject 1600 Lenox Avenue parcel as provided herein is necessary to ensure the development of that property will be compatible with development in adjacent and surrounding areas, and will contribute to the general health and welfare of the City;

WHEREAS, the City of Miami Beach has determined that the rezoning of the subject 1600 Lenox Avenue parcel as provided herein will ensure that new development is compatible and in scale with the built environment, and is in the best interest of the City;

WHEREAS, full legal description of the Affected Property is contained below, and shortened descriptions of such properties will be codified in the amendments below.

LEGAL DESCRIPTION: LOT 1 BLK 46 COMMERCIAL SUBDIVISION, as recorded in Plat Book 6, Page 5 in the public records of Miami-Dade County, Florida.

A parcel of land more commonly known as "1600 Lenox Avenue," approximately 7,457 square feet (0.171 acres), from the current RM-1, "Multi-Family Residential Low Intensity," to the Future Land Use category of CD-1, "Commercial, Low Intensity," with commercial uses and a restriction limiting the property to no more than 10 residential units per acre as provided for in the voluntary covenant attached hereto.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that a first and only public hearing shall be held on October 27, 2010 to consider adopting the proposed amendment; directing staff to transmit this small-scale amendment to the Florida Department of Community Affairs and making the appropriate changes to the Future Land Use Map of the City

PASSED AND ADOPTED this _____ day of_____, 2010

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____
City Attorney Date

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Condensed Title:

A resolution of the Mayor and City Commission of the City of Miami Beach, Florida, accepting the donation of $12,500 from Crescent Heights, Inc. a real estate and management corporation to purchase a specially trained canine to be utilized by the Miami Beach Police Department's Patrol Division Canine Squad, for the dual purpose of explosive detection, and tracking and apprehension of subjects involved in criminal activity.

Key Intended Outcome Supported:

Maintain crime rates at or below national trends.

Supporting Data (Surveys, Environmental Scan, etc.): According to the Center For Research and Public Policy, and Business Residential Satisfaction Survey of City of Miami Beach residents in 2009, indicated that their three top most important areas of for the City of Miami Beach to address in an effort to improve public safety throughout the City is Preventing Crime 44.9%, Enforcing Traffic Laws 36.1% and Increasing Visibility of Police in Neighborhoods 32.4%.

Issue:

Shall the Commission adopt this Resolution?

Item Summary/Recommendation:

The Miami Beach Police Department has identified a need to purchase a canine with ability to be trained to detect explosive devices, track and apprehend subjects involved in criminal activity. Crescent Heights, Inc. a real estate and management corporation has graciously agreed to donate $12,500 to the Miami Beach Police Department to purchase a canine for the Patrol Division Canine Squad. The canine will be purchased from Metro-Dade K9 an approved City of Miami Beach vendor. The vendor will be responsible for training the dog in basic obedience and explosive detection prior to acceptance by the Miami Beach Police Department. To maintain the skill levels of the handlers and the explosive detection ability of the canine, there will be on-going training provided by the canine vendor as well as in-service training with the Canine Squad. The utilization of a dual purpose canine will assist the Miami Beach Police Department in deterring criminal activities in the City of Miami Beach.

Advisory Board Recommendation:

NA

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:
NA

City Clerk's Office Legislative Tracking:

Michael Gruen, Manager MG
Planning and Research Section

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Carlos E. Noriega, Chief MG Miami Beach Police Dept.		

MIAMIBEACH

AGENDA ITEM C7M
DATE 9-15-10

MIAMIBEACH

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

MEMO #

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE DONATION OF $12,500 FROM CRESCENT HEIGHTS, INC. A REAL ESTATE AND MANAGEMENT CORPORATION TO PURCHASE A SPECIALLY TRAINED CANINE TO BE UTILIZED BY THE MIAMI BEACH POLICE DEPARTMENT'S PATROL DIVISION CANINE SQUAD, FOR THE DUAL PURPOSE OF EXPLOSIVE DEVICE DETECTION, AND TRACKING AND APPREHENSION OF SUBJECTS INVOLVED IN CRIMINAL ACTIVITY.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

The Miami Beach Police Department has identified a need to purchase a canine with ability to be trained to detect explosive devices, track and apprehend subjects involved in criminal activity. Crescent Heights, Inc. a real estate and management corporation has graciously agreed to donate $12,500 to the Miami Beach Police Department to purchase a canine for the Patrol Division Canine Squad. The canine will be purchased from Metro-Dade K9 an approved City of Miami Beach vendor. The vendor will be responsible for training the dog in basic obedience and explosive detection prior to acceptance by the Miami Beach Police Department. To maintain the skill levels of the handlers and the explosive detection ability of the canine, there will be on-going training provided by the canine vendor as well as in-service training with the Canine Squad. The utilization of a dual purpose canine will assist the Miami Beach Police Department in deterring criminal activities in the City of Miami Beach.

JMG/CN/RAM/MG

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE DONATION OF $12,500 FROM CRESCENT HEIGHTS, INC., A REAL ESTATE AND MANAGEMENT CORPORATION, TO PURCHASE A SPECIALLY TRAINED CANINE TO BE UTILIZED BY THE MIAMI BEACH POLICE DEPARTMENT'S PATROL DIVISION CANINE SQUAD, FOR THE DUAL PURPOSE OF EXPLOSIVE DEVICE DETECTION, AND TRACKING AND APPREHENSION OF SUBJECTS INVOLVED IN CRIMINAL ACTIVITY.

WHEREAS, the Miami Beach Police Department has identified a need to acquire a dual purpose canine for explosive device detection, as well as the detection and apprehension of subjects involved in criminal activity in the City of Miami Beach; and

WHEREAS, Crescent Heights, Inc., a Real Estate and Management Corporation, has graciously agreed to donate $12,500 to purchase a canine for the Miami Beach Police Department Patrol Division Canine Squad for explosive device detection, tracking and apprehension of subject(s) involved in criminal activity; and

WHEREAS, law enforcement agencies with specially trained canines have proven to be an effective means to deter crime, and the utilization of a dual purpose canine will assist the Miami Beach Police Department in deterring criminal activities; and

WHEREAS, the canine will be purchased from Metro-Dade K9 Services, an approved Miami Beach Police Department canine vendor, for a sum of $12,500.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, accepting the donation of $12,500 from Crescent Heights, Inc., a real estate and management corporation to purchase a specially trained canine to be utilized by the Miami Beach Police Department, Patrol Division Canine Squad, for the dual purpose of explosive device detection, and tracking and apprehension of subjects involved in criminal activity.

PASSED and **ADOPTED** this _____ day of September, 2010.

ATTEST:

_____
MAYOR MATTI HERRERA BOWER

_____
ROBERT PARCHER, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY AB 9/2/10 DATE

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Condensed Title:

A resolution execute an agreement between the City of Miami Beach on behalf of the MBPD and the IRS Criminal Investigation Division to participate in the IRS Financial Investigative Strike Force High Intensity Drug Trafficking Area Group 5 Task Force for the purpose of apprehending and prosecuting individuals who are involved in narcotics trafficking, money laundering and other major crimes.

Key Intended Outcome Supported:

Maintain crime rates at or below national trends.

Supporting Data (Surveys, Environmental Scan, etc.): According to the Center For Research and Public Policy, and Business Residential Satisfaction Survey of City of Miami Beach residents in 2009, indicated that their three top most important areas of for the City of Miami Beach to address in an effort to improve public safety throughout the City is Preventing Crime 44.9%, Enforcing Traffic Laws 36.1% and Increasing Visibility of Police in Neighborhoods 32.4%.

Issue:

Shall the Commission adopt this Resolution?

Item Summary/Recommendation:

The Miami Office of the IRS Criminal Investigations Division has established the IRS Financial Investigative Strike Force HIDTA Group 5 for the purpose of apprehending and prosecuting individuals who are involved in narcotics trafficking, money laundering and other major crimes. It is a well know fact, that street crime in Miami Beach is related to illicit narcotic activity to include use, sale and distribution of cocaine, marijuana, heroin and other designer type drugs. This Strike Force has enhanced the effectiveness of Federal State and local enforcement resources through a well coordinated initiative seeking the most effective investigative and prosecutive avenues that identifies major narcotic activities.

In an effort to support the Strike Force, the Miami Beach Police Department (MBPD) has been asked by the IRS Criminal Investigations Division to participate and execute an Agreement between the IRS Criminal Investigations Division and the City of Miami Beach on behalf of the MBPD. As a result, a detective from the Criminal Investigations Division will be assigned to the Strike Force to work in conjunction with their personnel in identifying, locating and apprehending individuals who commit these crimes in the City of Miami Beach and South Florida. Participation in the Strike Force will benefit the City of Miami Beach and the MBPD because of access to investigative resources, capabilities and potential revenue sharing under forfeiture proceedings. Pursuant to this Agreement, the IRS Criminal Investigations Division has agreed to reimburse the City of Miami Beach for $15,000 in overtime and $3,000 in travel and related expenses incurred by the Detective in connection with Strike Force investigations for the term of the agreement. Upon all the signatures to the Agreement, the Detective can participate in the Strike Force until September 30, 2011.

Advisory Board Recommendation:

NA

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:
NA

City Clerk's Office Legislative Tracking:

Michael Gruen, Manager
Planning and Research Section

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Carlos E. Noriega, Chief Miami Beach Police Dept.		

MIAMIBEACH

AGENDA ITEM C7N
DATE 9-15-10

MIAMIBEACH

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

MEMO # COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE AND CITY CLERK TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, ON BEHALF OF THE MIAMI BEACH POLICE DEPARTMENT, AND THE INTERNAL REVENUE SERVICE (IRS) CRIMINAL INVESTIGATION DIVISION TO PARTICIPATE IN THE IRS FINANCIAL INVESTIGATIVE STRIKE FORCE HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) GROUP 5 TASK FORCE FOR THE PURPOSE OF APPREHENDING AND PROSECUTING INDIVIDUALS WHO ARE INVOLVED IN NARCOTICS TRAFFICKING, MONEY LAUNDERING AND OTHER MAJOR CRIMES.**

ADMINISTRATION RECOMMENDATION

Approve the Resolution.

ANALYSIS

The Miami Office of the IRS Criminal Investigations Division has established the IRS Financial Investigative Strike Force HIDTA Group 5 for the purpose of apprehending and prosecuting individuals who are involved in narcotics trafficking, money laundering and other major crimes. It is a well know fact, that street crime in Miami Beach is related to illicit narcotic activity to include use, sale and distribution of cocaine, marijuana, heroin and other designer type drugs. This Strike Force has enhanced the effectiveness of Federal, State and local law enforcement resources through a well coordinated initiative seeking the most effective investigative and prosecutive avenues that identifies major narcotic activities.

In an effort to support the Strike Force, the Miami Beach Police Department (MBPD) has been asked by the IRS Criminal Investigations Division to participate and execute an Agreement between the IRS Criminal Investigations Division and the City of Miami Beach on behalf of the MBPD. As a result, a detective from the Criminal Investigations Division will be assigned to the Strike Force to work in conjunction with their personnel in identifying, locating and apprehending individuals who commit these crimes in the City of Miami Beach and South Florida. Participation in the Strike Force will benefit the City of Miami Beach and the MBPD because of access to investigative capabilities, and potential revenue sharing under forfeiture proceedings. Pursuant to this Agreement, the IRS Criminal Investigations Division has agreed to reimburse the City of Miami Beach for $15,000 in overtime and $3,000 in travel and related expenses incurred by the Detective in connection with Strike Force investigations for the contract term. Upon all the signatures to the Agreement, the Detective can participate in the Strike Force until September 30, 2011.

JMG/CN/RAM/MG

RESOLUTION _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, AND CITY CLERK TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, ON BEHALF OF THE MIAMI BEACH POLICE DEPARTMENT, AND THE INTERNAL REVENUE SERVICE (IRS) CRIMINAL INVESTIGATION DIVISION TO PARTICIPATE IN THE IRS FINANCIAL INVESTIGATIVE STRIKE FORCE HIGH INTENSITY DRUG TRAFFICKING AREA (HIDTA) GROUP 5 TASK FORCE FOR THE PURPOSE OF APPREHENDING AND PROSECUTING INDIVIDUALS WHO ARE INVOLVED IN NARCOTICS TRAFFICKING, MONEY LAUNDERING AND OTHER MAJOR CRIMES.

WHEREAS, the Miami Field Office of the IRS Criminal Investigations Division has established the IRS Financial Investigative Strike Force HIDTA Group 5 (Task Force) for the purpose of apprehending and prosecuting individuals who are involved in narcotics trafficking, money laundering and other major crimes; and

WHEREAS, the IRS Financial Investigative Strike Force HIDTA Group 5 enhances the effectiveness of Federal, State and local law enforcement resources through a well coordinated law enforcement initiative, which seeks the most effective investigative and prosecutive avenues that identifies major narcotic activities; and

WHEREAS, a detective from the Miami Beach Police Department will be assigned to the Task Force, to work in conjunction with Federal, State and local law enforcement personnel in identifying, locating and apprehending individuals who commit these crimes in the City of Miami Beach and South Florida; and

WHEREAS, it is a great benefit to the Miami Beach Police Department to participate in this IRS Financial Investigative Strike Force HIDTA Group 5 based upon the accessibility to various investigative resources, capabilities, and potential revenue sharing under Federal forfeiture proceedings; and

WHEREAS, the IRS Criminal Investigations Division will reimburse the City of Miami Beach and the Miami Beach Police Department for overtime expenses up to $15,000, and $3,000 in travel and related expenses for the term of the agreement pursuant to 31 U.S.C. § 9703, in connection with the IRS Financial Investigative Strike Force HIDTA Group 5; and

WHEREAS, the City of Miami Beach, on behalf of the Miami Beach Police Department, and the IRS Criminal Investigations Division wishes to execute the Agreement to participate in the IRS Financial Investigative Strike Force HIDTA Group 5, which shall commence upon the signatures of all parties and will remain in effect until September 30, 2011.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the City Manager, or his designee, and City Clerk are hereby authorized to execute the attached Agreement with the IRS Criminal Investigations Division to participate in the IRS Financial Investigative Strike Force HIDTA Group 5 for the purpose of apprehending and prosecuting individuals who are involved in narcotics trafficking, money laundering and other major crimes.

PASSED and **ADOPTED** this _____ day of September, 2010.

ATTEST:

_____
MAYOR MATTI HERRERA BOWER

_____
ROBERT PARCHER, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

9/1/10
CITY ATTORNEY AB DATE

Condensed Title:

A Resolution of the Mayor and City Commission of the City of Miami Beach, Florida authorizing the City Manager, and City Clerk to execute a Regional Law Enforcement Exchange Memorandum of Understanding between the City of Miami Beach, on behalf of the Miami Beach Police Department and the Florida Department of Law Enforcement for the Miami Beach Police Department to access and share information contained in police records of participating Florida law enforcement agencies statewide.

Key Intended Outcome Supported:

Maintain crime rates at or below national trends.

Supporting Data (Surveys, Environmental Scan, etc.): According to the Center For Research and Public Policy, and Business Residential Satisfaction Survey of City of Miami Beach residents in 2009, indicated that their three top most important areas of for the City of Miami Beach to address in an effort to improve public safety throughout the City is Preventing Crime 44.9%, Enforcing Traffic Laws 36.1% and Increasing Visibility of Police in Neighborhoods 32.4%.

Issue:

Shall the Commission adopt this Resolution?

Item Summary/Recommendation:

The Florida Department of Law Enforcement has initiated a new program that is titled the "Regional Law Enforcement Exchange System" designed to provide Florida law enforcement agencies access to information contained in records throughout the State of Florida. Miami Beach Police Department detectives and patrol officer depend greatly on information that may link a suspect to a particular crime, and having access to participating police agencies police reports would greatly enhance the capability to identify a potential suspect. The Regional Law Enforcement Exchange System will provide authorized police personnel access to offense reports, supplemental police reports and arrest affidavits that will assist sworn personnel identifying and apprehending subjects who may be involved in crimes in their respective jurisdiction. The automated Regional Law Enforcement Exchange System can accessed via the Criminal Justice Network (CJNET) a web based application transmitted through the City's current high speed network connection with the full support of the Information Technology Department, in addition all information shared or accessed will be in accordance with Chapter 119 of the Florida Statutes. The Florida Department of Law Enforcement will provide the equipment to which will transmit the data and technical support at no cost to the City of Miami Beach. By agreeing to the terms in the Regional Law Enforcement Exchange Memorandum of Understanding all sworn authorized Miami Beach Police Department employees will be able to share information as well as access the system at no cost to the or charge to the City of Miami Beach.

Advisory Board Recommendation:

NA

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:
NA

City Clerk's Office Legislative Tracking:

Michael Gruen, Manager

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Carlos E. Noriega, Chief		

MIAMIBEACH

AGENDA ITEM C7O
DATE 9-15-10

MIAMIBEACH

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

MEMO # COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MAIMI BEACH, FLORIDA AUTHORIZING THE CITY MANAGER, AND CITY CLERK TO EXECUTE THE REGIONAL LAW ENFORCEMENT EXCHANGE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MIAMI BEACH, ON BEHALF OF THE MIAMI BEACH POLICE DEPARTMENT AND THE FLORDA DEPARTMENT OF LAW INFORCEMENT WHICH SHALL ALLOW THE MIAMI BEACH POLICE DEPARTMENT TO ACCESS, AND SHARE VARIOUS CRIMINAL JUSTICE INFORMATION THAT IS CONTAINED IN THE LAW ENFORCEMENT RECORDS OF PARTICIPATING FLORIDA LAW ENFORCEMENT AGENCIES THROUGHOUT THE STATE OF FLORIDA.**

ADMINISTRATION RECOMMENDATION

Approve the Recommendation

ANALYSIS

The Florida Department of Law Enforcement has initiated a new program that is titled the "Regional Law Enforcement Exchange System" designed to provide Florida law enforcement agencies access to information contained in records throughout the State of Florida. Miami Beach Police Department detectives and patrol officer depend greatly on information that may link a suspect to a particular crime, and having access to participating police agencies police reports would greatly enhance the capability to identify a potential suspect. The Regional Law Enforcement Exchange System will provide authorized police personnel access to offense reports, supplemental police reports and arrest affidavits that will assist sworn personnel identifying and apprehending subjects who may be involved in crimes in their respective jurisdiction. The automated Regional Law Enforcement Exchange System can accessed via the Criminal Justice Network (CJNET) a web based application transmitted through the City's current high speed network connection with the full support of the Information Technology Department, in addition all information shared or accessed will be in accordance with Chapter 119 of the Florida Statutes. The Florida Department of Law Enforcement will provide the equipment to which will transmit the data and technical support at no cost to the City of Miami Beach. By agreeing to the terms in the Regional Law Enforcement Exchange Memorandum of Understanding all sworn authorized Miami Beach Police Department employees will be able to share information as well as access the system at no cost to the or charge to the City of Miami Beach.

JMG/CN/RAM/MG

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER, AND CITY CLERK TO EXECUTE THE REGIONAL LAW ENFORCEMENT EXCHANGE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MIAMI BEACH, ON BEHALF OF THE MIAMI BEACH POLICE DEPARTMENT, AND THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT, WHICH SHALL ALLOW THE MIAMI BEACH POLICE DEPARTMENT TO ACCESS, AND SHARE VARIOUS CRIMINAL JUSTICE INFORMATION THAT IS CONTAINED IN THE LAW ENFORCEMENT RECORDS OF PARTICIPATING FLORIDA LAW ENFORCEMENT AGENCIES THROUGHOUT THE STATE OF FLORIDA.

WHEREAS, the Florida Department of Law Enforcement has initiated a new program which is titled the "Regional Law Enforcement Exchange System" designed to provide Florida law enforcement agencies access to shared information contained in records throughout the State of Florida; and

WHEREAS, the Regional Law Enforcement Exchange System will provide authorized police personnel access to offense reports, supplemental police reports, and arrest affidavits that will assist sworn police personnel in identifying and apprehending subjects who may be involved in crimes in their respective jurisdiction; and

WHEREAS, to participate in this program the City of Miami Beach on behalf of the Miami Beach Police Department must execute a Regional Law Enforcement Exchange Memorandum of Understanding with the Florida Department of Law Enforcement, which details the background and purpose, parties, authority, source, status and purpose of shared information, responsibilities of contributors of information, access to information, use and dissemination of information, security, costs, liability, effective dates, duration, modification, termination notice and contract; and

WHEREAS, Miami Beach Police Department detectives and patrol officers depend greatly on information that may link a suspect to a particular crime, and having access to participating police agencies police reports and records would greatly enhance the capability to identify a potential suspect or fugitive; and

WHEREAS, the automated Regional Law Enforcement Exchange System can be accessed via the Criminal Justice Network (CJNET), a web base application transmitted through the City of Miami Beach's current high speed network connection, with the full support of the Information Technology Department; and

WHEREAS, the Florida Department of Law Enforcement, at no cost to the City of Miami Beach, will provide the Miami Beach Police Department with the equipment that will be necessary to transmit the data and technical support for the Regional Law Enforcement Exchange System.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the City Manager and City Clerk are authorized to execute the Regional Law Enforcement Exchange Memorandum of Understanding between the City of Miami Beach, on behalf of the Miami Beach Police Department, and the Florida Department of Law Enforcement, which shall allow the Miami Beach Police Department to access, and share various criminal justice information that is contained in the law enforcement records of participating Florida law enforcement agencies throughout the State of Florida.

PASSED and **ADOPTED** this _____ day of September, 2010.

ATTEST:

_____
MAYOR MATTI HERRERA BOWER

_____
ROBERT PARCHER, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY AB 9/3/10 DATE

MEMORANDUM OF UNDERSTANDING

V. 1.0

BETWEEN

THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT
(FDLE)

AND

THE CITY OF MIAMI BEACH ON BEHALF OF THE MIAMI BEACH POLICE DEPARTMENT FOR THE IMPLEMENTATION OF

THE REGIONAL LAW ENFORCEMENT EXCHANGE SYSTEM
(R-LEX)

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I. BACKGROUND/PURPOSE

Recognizing a need for more efficient statewide law enforcement data sharing, a group of representatives from state and local law enforcement agencies were empanelled to create the Florida Information Sharing Workgroup. The workgroup eventually created and published Florida's Criminal Information Sharing Strategy containing a number of recommendations. Chief among them was the regional concept of information sharing, calling upon each Regional Domestic Security Task Force (RDSTF) region to have an information sharing project. The regional projects could then later be "linked" together to form a statewide mechanism for sharing law enforcement data.

In lieu of purchasing separate systems, the Tallahassee, Ft. Myers, and Miami regions, along with the state node (consisting of statewide law enforcement agencies) agreed to participate in a joint procurement process for a Regional Law Enforcement Exchange (R-LEX) system. In addition to the expected initial cost savings, a joint solution may also provide reduced costs for maintenance, support, and training. Users will also benefit in having a consistent user interface and analytical capabilities.

Representatives from each of the three regions and the state node have participated in an extensive solution design and procurement process. Utilizing funding provided by the United States Department of Homeland Security, an agreement, referred to herein as the R-LEX Agreement, has been entered into between the three regions, state node, and Knowledge Computing Corporation (KCC) for the acquisition and implementation of the R-LEX system. The R-LEX project will allow participating agencies to provide data (principally records management and jail management systems) to a secure "warehouse" where other participating agencies will have the ability to query the data. KCC's COPLINK product provides a user interface that includes detailed query and analytical capabilities that will allow for effective manipulation of the vast quantity of data.

The purpose of this MOU is to formally set forth the terms and conditions for participating in the R-LEX project, including the ownership and control of the information within the system. As used herein, references to the R-LEX Agreement shall include any subsequent amendments to that Agreement. It is intended to supplement but not supersede the previously-signed R-LEX Procurement MOU.

II. PARTIES

A. The parties to this MOU are the Florida Department of Law Enforcement and the CITY OF MIAMI BEACH POLICE DEPARTMENT.

B. Other law enforcement agencies within the Tallahassee, Ft. Myers, and Miami Regions, along with the state node, may choose to participate in R-LEX by signing and agreeing to this R-LEX MOU with the Florida Department of Law Enforcement. Such agencies, upon becoming a party to the MOU, shall have the same rights, privileges, obligations, and responsibilities as all other parties, consistent with and as determined by the agency's use of the system.

C. Law enforcement agencies in other Regions, and federal law enforcement agencies, may participate in the R-LEX system with the majority approval of the Executive Steering Committee (ESC) members and upon signing and agreeing to this MOU. (The structure of the ESC is defined in Section IX – Governance, below.)

III. AUTHORITY

Authority for Florida state, county, and local agencies to enter into this MOU includes Sections 943.03(5), 943.03(14), 943.0312(2), and 943.0544(5), Florida Statutes (2009).

IV. SOURCE, STATUS, AND PURPOSE OF SHARED INFORMATION

A. The R-LEX solution relies upon a cooperative partnership of law enforcement agencies (contributing Agencies) to provide records and other data from certain data systems under their control (sharing their data) as identified in Section 2 Objectives and Scope of the Statement of Work for R-LEX Project Implementation, Support, and Operations, September 24, 2009 (SOW), a copy of which is available on the R-LEX web site at http://www.fdle.state.fl.us/Content/RLEX/Documents.aspx. Contributing Agencies agree to share their identified data with each other and with other parties to this MOU.

B. Each Agency participating in R-LEX does so under its own individual legal status, jurisdiction, and authority, and all R-LEX operations are based upon the legal status, jurisdiction, and authority of the individual participating agencies. The R-LEX data sharing initiative is not intended to, and shall not be deemed to have independent legal status. This MOU is an agreement between the parties and is not intended to create, and does not create or confer, on any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise.

C. The R-LEX warehouse system will be housed in the secure FDLE datacenter. In use, the system will be encrypted over the CJ-Net and only law enforcement agencies will have access to the data.

D. R-LEX will only be populated with source information derived from each contributing Agency's "own records," and is not in any manner intended to be an official repository of original records, or to be used as a substitute for one, nor is the information in the system to be accorded any independent record system status.

E. There is no obligation and there should be no assumption that a particular Agency's records housed in the R-LEX data warehouse represent a complete or accurate mirror image of that Agency's records system for any subject or person.

F. Each Agency contributing data to R-LEX agrees to permit all data stored to be exportable in a NIEM/LEXS-compliant format for the purpose of sharing data with other participating agencies.

G. Commercially available references, public source information, and software applications, such as commercial directories, census data, mapping applications, and analytical applications are considered to be non-record material and will be maintained in accordance with applicable contracts and/or licensing agreements. To the extent that any such information is relevant and appropriate for preservation as independent records, it will be the responsibility of the accessing Agency to incorporate such information as records of the accessing Agency in the Agency's own official records system(s) in accordance with that Agency's records management processes and any applicable contract or licensing agreement.

V. RESPONSIBILITIES OF CONTRIBUTORS OF INFORMATION

A. Each Agency retains sole ownership of and sole responsibility for the information it contributes, and may at will at any time update, correct, or delete any of its information contained in R-LEX. All system entries will be clearly marked to identify the contributing Agency.

B. Each Agency will be responsible for ensuring sealed or expunged records are updated as such within the R-LEX system. The action will occur as an automated process, but can be performed manually by the vendor should the automated process fail.

C. The contributing Agency has the sole responsibility and accountability for ensuring that no information entered into R-LEX was obtained in violation of any Federal, State, or local law applicable to the contributor and for ensuring compliance with all laws, regulations, policies, and procedures applicable to the Agency's entry and sharing of information into R-LEX, to include, but not limited to, firearm ownership data prohibited from being compiled by Section 790.335, Florida Statutes.

D. In an effort to maintain system discipline, contributing Agencies shall submit data, including any updates or changes to the original submission, on at least a monthly basis. Updates and changes are encouraged as often as the contributing Agency can feasibly execute them.

E. R-LEX includes an audit capability that will log user activity. Each Agency will designate a point of contact who shall have access to that member Agency's portion of the audit log. Internal requests for copies of the audit log may be forwarded to each member Agency for direct response to that member Agency's portion of the audit log.

VI. ACCESS TO INFORMATION

A. Each Agency may restrict any investigative information that is deemed necessary for confidentiality or security purposes, understanding that costs related to out-of-scope (see Section 2.2, Project Scope of the SOW) restrictions or modifications will be the responsibility of the requesting agency.

B. Newly discovered links, matches, relationships, interpretations, etc., located in the analysis of R-LEX information may be relevant and appropriate for preservation as independent records. It will be the responsibility of the accessing Agency to incorporate such information as records of the accessing Agency in the Agency's own official records system(s) in accordance with that Agency's records management processes. An Agency that desires to incorporate in its own separate records information contributed by another Agency, including any analytical products based on another Agency's information, must first determine the current status of that information from the entering Agency, and advise the entering Agency of its intent to use the data.

C. An Agency member may not access R-LEX unless he or she has a legitimate, official need to know for an authorized criminal justice purpose.

VII. USE AND DISSEMINATION OF INFORMATION

A. Any release of information from the R-LEX system should be made in conformance with the exemptions from dissemination imposed by Florida law. Participating Agencies will not release information generated by another Agency without first consulting the originating (contributing) Agency to determine the current status of that information. Information which is exempt from disclosure by law may not be released without the permission of the originating Agency.

B. Information obtained from the R-LEX system, including analytical products derived therefrom, shall not be used as a basis for enforcement or other official action, unless the user Agency first notifies and verifies the reliability and accuracy of the information with the Agency(s) that contributed the information in question.

C. Information in the system shall not be disseminated outside of an accessing Agency without first obtaining express permission of each Agency that contributed the information in question unless the information is subject to disclosure by court order or applicable law. The owner of the information shall be subsequently notified of any and all disseminations made under this exception.

D. The parties to this MOU recognize and acknowledge that any Agency having custody of information remains responsible for responding to public records requests for that information in accordance with applicable law (specifically, Chapter 119, Florida Statutes).

E. Information or summaries of information from the R-LEX system may be shared with a non-participating law enforcement agency in the furtherance of a legitimate law enforcement investigation.

VIII. SECURITY

A. Each Agency will be responsible for designating those employees who have access to R-LEX and agrees to use the same degree of care in protecting information accessed under this MOU as it exercises with respect to its own sensitive information.

B. Each Agency shall designate an Administrator who will be authorized to add and delete users from the R-LEX system. Each Agency is responsible for notifying its Administrator to revoke user access to the R-LEX system when the user no longer requires or no longer is permitted access to the R-LEX system or has separated from the Agency.

C. Each Agency is responsible for training those employees authorized to access the R-LEX system regarding the use and dissemination of information obtained from the system.

D. Each Agency agrees to take appropriate corrective administrative and/or disciplinary action against any of its personnel who misuse the R-LEX system, as that Agency would if it were an abuse of sensitive information in its own record system.

E. Personnel, physical, administrative, and technical security shall be consistent with the FBI's CJIS Security Policy.

IX. PROPERTY

A. Equipment purchased to support the technical architecture of this consolidated effort and installed in the secure datacenter of the FDLE Headquarters will become the property of FDLE, and will be held for the use and benefit of the participating Agencies.

B. I-box equipment purchased and installed at a participating Agency site to support this effort will become the property of that Agency.

C. Each Agency accessing R-LEX for query purposes shall provide its own computers for its designated employees to use and access R-LEX. Configuration of the computer equipment owned by the accessing Agency shall be the responsibility of that Agency.

X. COSTS

A. As detailed in the R-LEX Agreement, federal grant funding has been obtained or applied for in amounts sufficient to cover initial implementation of the R-LEX system.

B. Each Agency will use a vendor provided interface box (I-Box) to extract and copy data to the R-LEX system. The cost, maintenance, and warranty replacement of each I-Box is provided for the first five (5) years of the R-LEX Agreement. Funding for the I-Box will be requested, but cannot be guaranteed beyond the term of the R-LEX Agreement.

C. After the first year following implementation and the expiration of any applicable warranties, ongoing costs will be typical software/system maintenance costs. Efforts will be made to secure future federal grant funding to meet these costs; however such funding is not guaranteed. If future grant funding cannot be secured, the Executive Steering Committee (ESC) will seek other funding alternatives. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

D. During initial data configuration, mapping, uploading, testing and hardware and software installation, a participating Agency is required to provide, at its cost, personnel familiar with the agency databases, networks, and computer systems. Each Agency will also be required to provide, at its cost, internal resources to administer system access and coordinate training.

E. Agency-specific operational costs such as internet connectivity fees or hardware to access the CJ-Net are not covered by grant funds.

F. Each Agency is responsible for notifying FDLE (see contact below) at least sixty (60) days prior to performing any upgrade or replacement of any system feeding data to R-LEX. The R-LEX Agreement provides for twenty (20) hours of effort, annually, per data source to update existing data mappings as required by modifications in or to the underlying data source (i.e., version changes or customizations). This is likely to cover the updates required when performing minor upgrades to the R-LEX mappings, but major upgrades may exceed this cost and will be the responsibility of the Agency. KCC will provide a written estimate that should be taken into account as part of the overall cost of the upgrade or replacement.

XI. LIABILITY

A. R-LEX is not a separate legal entity capable of maintaining an employer-employee relationship and, as such, no person assigned by an Agency to perform R-LEX related functions shall be considered an employee of the R-LEX or of any other Agency for any purpose. The assigning Agency thus remains solely responsible for supervision, work schedules, performance appraisals, compensation, overtime, vacations, retirement, expenses, disability, and all other employment-related benefits incident to assignment of its personnel to R-LEX functions.

B. Unless specifically addressed by the terms of this MOU (or other written agreement), the parties acknowledge responsibility for the negligent or wrongful acts or omissions of their respective officers and employees, but only to the extent they would be liable under the laws of the jurisdiction(s) to which they are subject. Participation in R-LEX does not constitute a waiver of any defense or immunity lawfully available to an Agency.

XII. GOVERNANCE

A. The R-LEX system will be operated under a shared management concept in which the parties will be represented by an Executive Steering Committee (ESC). The responsibilities of the ESC are more particularly defined in the SOW, Section 5.1.3 – Project Governance Structure, which is available on the R-LEX web site at http://www.fdle.state.fl.us/Content/RLEX/Documents.aspx.

B. The ESC may establish additional procedures and rules for the governance of the R-LEX system and in furtherance thereof may enter into one or more separate formal or informal agreements, provided that any such agreement does not conflict with the spirit, intent, or provisions of this MOU, and is sufficiently memorialized to meet the business purposes of the ESC (including adequately informing current and future parties).

XIII. EFFECTIVE DATE/DURATION/MODIFICATION/TERMINATION

A. This MOU shall become effective when signed by the duly authorized representatives of FDLE and the participating Agency.

B. This MOU shall continue in force for the participating Agencies indefinitely for so long as it continues to advance those Agencies' purposes, contingent upon approval and availability of necessary funding.

C. At any time an Agency may provide thirty (30) days prior written notice to the other participating Agencies of its intent to withdraw from participation in R-LEX. This MOU shall remain in effect for the remaining participating Agencies.

D. This MOU may be terminated at any time by the mutual written agreement of the duly authorized representatives of all parties.

E. An individual Agency's participation in R-LEX may be terminated, involuntarily, by unanimous agreement of the R-LEX ESC, if such Agency fails to take appropriate corrective and/or remedial action within a reasonable period, not to exceed ninety (90) days, following notification of a documented finding that the Agency in question is in systemic or repeated violation of applicable laws and procedures governing

access to and use of the participating Agencies' data, or is otherwise in breach of this MOU.

F. All information contributed or accessible to R-LEX by a terminating or terminated Agency will be deleted or rendered inaccessible by the Agency from R-LEX.

G. All rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of all information received during an Agency's participation in this MOU shall survive any termination of that Agency's participation in R-LEX.

H. Each Agency terminating or having its participation in R-LEX terminated will be responsible for the $3,000 fee incurred in the removal of said Agency's data contributed to R-LEX.

XIV. AMENDMENTS

A. This MOU may be modified upon the mutual written consent of the participating Agencies. However, the participating Agencies may, without the need of formal MOU modification, cooperatively address and resolve administrative, technical, and operational details relating to this MOU, provided that any such resolution: does not conflict with the spirit, intent, or provisions of this MOU; could not reasonably be viewed as particularly sensitive, controversial, or objectionable by one or more parties; and is sufficiently memorialized to meet the business purposes of R-LEX governance (including adequately informing current and future parties).

XV. NOTICE AND CONTACT

A. All notices provided under or pursuant to this MOU shall be in writing, delivered either by hand-delivery, or first class, certified mail, return receipt requested, to the representatives identified below at the addresses set forth below.

B. The name and address of FDLE's representative responsible for the administration of this MOU is:

Name: _____

Address: _____

C. The name and address of the representative of the participating Agency responsible for the administration of this MOU is:

Name: _____

Address: _____

XVI. SIGNATORY PAGE

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE)

AND

THE CITY OF MIAMI BEACH POLICE DEPARTMENT FOR THE IMPLEMENTATION OF

THE REGIONAL LAW ENFORCEMENT EXCHANGE SYSTEM (R-LEX)

AGREED TO BY:

FOR THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT:

Signature: _____

Date: _____

Name: Gerald Bailey

Title: Commissioner

Agency: Florida Department of Law Enforcement

FOR THE AGENCY:

Signature: _____

Date: _____

Name: _____

Title: _____

Agency: _____

Condensed Title:

A Resolution of the Mayor and City Commission of the City of Miami Beach, Florida, Adopting and Appropriating the Second Amendment to the Police Confiscation Trust Fund Budget for Fiscal Year 2009/10 in the amount of $4,618 to be funded from the proceeds of State Confiscated Funds.

Key Intended Outcome Supported:

Increase Resident and Business ratings of Public Safety.

Supporting Data (Surveys, Environmental Scan, etc.): According to the Center For Research and Public Policy Residential and Business Satisfaction Survey of City of Miami Beach residents in 2009, indicated that their three top most important areas of for the City of Miami Beach to address in an effort to improve public safety throughout the City is Preventing Crime 44.9%, Enforcing Traffic Laws 36.1% and Increasing Visibility of Police in Neighborhoods 32.4%,

Issue:

Shall the Mayor and City Commission adopt and appropriate the second amendment to the Police Confiscation Trust Fund Budget for Fiscal Year 2009/10?

Item Summary/Recommendation:

The Chief of Police has reviewed and identified the needs for the appropriation and has established that the expenditures of forfeiture funds are in compliance with Section 932.7055, Florida State Statutes and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies.

The Administration recommends that the Mayor and City Commission adopt the second amendment to the Police Confiscation Trust Fund Budget for Fiscal Year 2009/10 in the amount of $4,618 for payment of Legal and Administrative Fees.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1		Confiscation Funds:
	2	$ 4,618	607-8000-351210 State funds
	3		
	4		
OBPI	Total	$ 4,618	

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

MR Mauvett Rattigan, Miami Beach Police Department

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Chief Carlos Noriega		

MIAMIBEACH

AGENDA ITEM C7P

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING AND APPROPRIATING THE SECOND AMENDMENT TO THE POLICE CONFISCATION TRUST FUND BUDGET FOR FISCAL YEAR 2009/10 IN THE AMOUNT OF $4,618.00 TO BE FUNDED FROM THE PROCEEDS OF STATE CONFISCATED FUNDS.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

Florida Statute 932.7055 provides for expenditures of forfeiture funds for law enforcement purposes.

Chief of Police, Carlos Noriega, has reviewed and identified the need for the appropriation and has established that the expenditures of forfeiture funds are in compliance with Section 932.7055, Florida State Statutes, and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies. These forfeiture funds have been deposited in the Police Confiscation Trust Fund.

There are legal and administrative costs incurred in our City Attorney's Office in claiming and obtaining these funds. The City Attorney's Office has been instrumental in obtaining over $18,400 through State-related Confiscations for the Miami Beach Police Department. Significant staff time and costs have been devoted to this endeavor. As such, the Confiscation Fund will pay the sum of $4,618 for Legal and Administrative Fees associated with claiming and obtaining State-related confiscated funds

The City has complied with all statutory procedures involved in the transaction of these funds.

CONCLUSION

The Administration recommends that the Mayor and City Commission adopt the Second Amendment to the Operating Budget for the Police Confiscation Trust Fund for Fiscal Year 2009/10, in the amount of $4,618, to provide for Legal and Administrative Fees associated with claiming and obtaining State-related confiscation funds.

JMG/CN/RM/MR

EXHIBIT "A"

MIAMI BEACH POLICE DEPARTMENT
CONFISCATION TRUST FUND BUDGET
SECONDT AMENDMENT
FISCAL YEAR 2009/10

STATE FUNDS:

Administrative and Legal Fees associated with collecting confiscation revenues.	**$ 4,618**
TOTAL STATE FUNDS:	**$ 4,618**

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING AND APPROPRIATING THE SECOND AMENDMENT TO THE POLICE CONFISCATION TRUST FUND BUDGET FOR FISCAL YEAR 2009/10 IN THE AMOUNT OF $4,618 TO BE FUNDED FROM THE PROCEEDS OF STATE CONFISCATED FUNDS.

WHEREAS, Section 932.7055 of the Florida Statutes sets forth the purpose and procedures to be utilized for the appropriation and expenditures of the Police Confiscation Trust Fund; and

WHEREAS, the City Attorney's Office has been instrumental in obtaining over $18,400 in confiscated funds for the City of Miami Beach Police Department pursuant to Section 932.701 of the Florida Statutes; and

WHEREAS, the City Attorney's Office has incurred significant staff time and costs in connection with various forfeiture proceedings on behalf of the City of Miami Beach Police Department; and

WHEREAS, the Chief of Police of the City of Miami Beach has submitted a written certification which states that this request complies with the provisions of Section 932.7055 of the Florida Statutes (written certification attached as Exhibit A), and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies; and

WHEREAS, funds in the amount of $4,618 are available in the Police Confiscation Trust Fund.

	CURRENT BUDGET	INCREASE	AMENDED BUDGET
STATE	$ 46,161	$ 4,618	$ 50,779
FEDERAL	181,000	0	181,000
TOTAL	$227,161	$ 4,618	$ 231,779

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 for the City of Miami Beach hereby adopt the Second Amendment to the Fiscal Year 2009/10 Police Confiscation Trust Fund Budget in the amount of $4,618, to be funded from the proceeds of State Confiscated Funds for payment of Legal and Administrative Fees.

PASSED and **ADOPTED** this _____ day of September, 2010.

ATTEST:

_____
MAYOR MATTI HERRERA BOWER

_____
ROBERT PARCHER, CITY CLERK

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

CITY ATTORNEY AB DATE 9/1/10

Certification

I, Carlos Noriega, Chief of Police, City of Miami Beach, do hereby certify that the aforementioned proposed request for expenditures from the City of Miami Beach Police Confiscation Trust Fund, for the 2009/10 fiscal year providing funds for Legal and Administrative Fees complies with the provisions of Section 932.7055(4)(b), Florida Statutes, and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies.

Carlos Noriega
Chief of Police
Miami Beach Police Department

9/1/10
Date

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Condensed Title:

A Resolution of the Mayor and City Commission of the City of Miami Beach, Florida authorizing the City Manager and City Clerk to execute a memorandum of understanding between the City of Miami Beach on behalf of the Miami Beach Police Department and the United States Marshalls Service, which serves to extend the participation of the Miami Beach Police Department for the purpose of locating and apprehending fugitives in an effort to reduce violent crime.

Key Intended Outcome Supported:

Maintain crime rates at or below national trends

Supporting Data (Surveys, Environmental Scan, etc.): According to the Center For Research and Public Policy, and Business Residential Satisfaction Survey of City of Miami Beach residents in 2009, indicated that their three top most important areas of for the City of Miami Beach to address in an effort to improve public safety throughout the City is Preventing Crime 44.9%, Enforcing Traffic Laws 36.1% and Increasing Visibility of Police in Neighborhoods 32.4%.

Issue:

Shall the Commission adopt the Resolution?

Item Summary/Recommendation:

On December 19, 2000 the Presidential Threat Protection Act of 2000 was enacted which provides for the United States Justice Department through the United States Marshals Service to establish permanent Regional Fugitive Task Forces consisting of Federal, State and local law enforcement agencies in designated regions of the United States. The purpose of the Task Force is to locate and apprehend fugitives. One of these regions includes the Regional Fugitive Task Force based in Florida. It is a known fact that fugitives and persons who have active State and Federal arrest warrants frequent South Florida including the City of Miami Beach and as a result the residents of the City of Miami Beach and the Miami Beach Police Department would greatly benefit by participating in this Task Force. On October 5, 2009 the Miami Beach City Commission authorized the City Manager to execute the Memorandum of Understanding between the City of Miami Beach on behalf of the Miami Beach Police Department until September 30, 2010.

Participation in this endeavor would involve assigning a detective full time to the Task Force for an unspecified period, however, the Miami Beach Police Department has the option to withdraw participation after providing 30 days advanced written notice to the Regional Fugitive Task Force Chief Inspector. While the Miami Beach Police Department Detective is involved in fugitive apprehension investigative operations, the United States Marshals Service will provide a vehicle, reimburse overtime costs consistent with the Fair Labor Standards Act, fund travel and other investigative expenses pending the availability of funding.

Advisory Board Recommendation:

NA

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary: NA

City Clerk's Office Legislative Tracking:

Michael Gruen, Manager
Planning and Research Section

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Carlos E. Noriega, Chief		

MIAMIBEACH

AGENDA ITEM C7Q
DATE 9-15-10

MIAMIBEACH

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

MEMO #

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MIAMI BEACH, ON BEHALF OF THE MIAMI BEACH POLICE DEPARTMENT, AND THE UNITED STATES MARSHALS SERVICE, WHICH SERVES TO EXTEND THE PARTICIPATION OF THE MIAMI BEACH POLICE DEPARTMENT, FOR THE PURPOSE OF LOCATING AND APPREHENDING FUGITIVES IN AN EFFORT TO REDUCE VIOLENT CRIME.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

On December 19, 2000 the Presidential Threat Protection Act of 2000 was enacted which provides for the United States Justice Department through the United States Marshals Service to establish permanent Regional Fugitive Task Forces consisting of Federal, State and local law enforcement agencies in designated regions of the United States. The purpose of the Task Force is to locate and apprehend fugitives. One of these Regional Fugitive Task Forces is located in South Florida.

It is a known fact that fugitives and persons with active State and Federal warrants frequent South Florida including the City of Miami Beach and as a result the residents of the City of Miami Beach and the Miami Beach Police Department would greatly benefit by participating in this Task Force. On October 5, 2009, the Miami Beach City Commission authorized the City Manager to execute the Memorandum of Understanding between the City of Miami Beach and the United States Marshalls Service on behalf of the Miami Beach Police Department.

Participation in this endeavor would involve assigning a detective full time to the Task Force for an unspecified period, however, the Miami Beach Police Department has the option to withdraw participation after providing 30 days advanced written notice to the Regional Fugitive Task Force Chief Inspector. While the Miami Beach Police Department Detective is involved in fugitive apprehension investigative operations, the United States Marshals Service will provide a vehicle, reimburse overtime costs consistent with the Fair Labor Standards Act, fund travel and other investigative expenses pending the availability of funding.

JMG/CN/RAM/MG

RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MIAMI BEACH, ON BEHALF OF THE MIAMI BEACH POLICE DEPARTMENT, AND THE UNITED STATES MARSHALS SERVICE, WHICH SERVES TO EXTEND THE PARTICIPATION OF THE MIAMI BEACH POLICE DEPARTMENT FOR THE PURPOSE OF LOCATING AND APPREHENDING FUGITIVES IN AN EFFORT TO REDUCE VIOLENT CRIME.

WHEREAS, on December 19, 2000 the Presidential Threat Protection Act of 2000 was enacted to enable the United States Justice Department, through the United States Marshals Service, to establish permanent Regional Fugitive Task Forces consisting of Federal, state and local law enforcement agencies in designated regions of the United States; and

WHEREAS, a detective of the Miami Beach Police Department will be assigned to the Regional Fugitive Task Force, and will be working in conjunction with Federal, state and other local law enforcement personnel in locating and apprehending fugitives in the City of Miami Beach and South Florida; and

WHEREAS, it is a known fact that fugitives and persons who have active Federal and state arrest warrants frequent the South Florida area, including the City of Miami Beach; and

WHEREAS, on October 5, 2009, the Miami Beach City Commission authorized the City Manager to execute a Memorandum of Understanding between the City of Miami Beach and the United Sates Marshalls Service on behalf of the Miami Beach Police Department, which is scheduled to expire on September 30, 2010; and

WHEREAS, the United States Marshals Service will continue to provide the Miami Beach Police Department a vehicle that will be utilized by a detective of the Miami Beach Police Department, and will reimburse the Miami Beach Police Department for overtime costs consistent with the Fair Labor Standards Act, travel expenses and investigative costs that are incurred by the detective in locating and apprehending fugitives, pending the availability of funding; and

WHEREAS, the City of Miami Beach, on behalf of the Miami Beach Police Department, and the United States Marshals Service, wish to extend the Memorandum of Understanding, and the participation of the Miami Beach Police Department in the Regional Fugitive Task Force.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, authorize the City Manager and City Clerk to execute a the Memorandum of Understanding between the City of Miami Beach, on behalf of the Miami Beach Police Department, and the United States Marshals Service, which serves to extend the participation of the Miami Beach Police Department, for the purpose of locating and apprehending fugitives in an effort to reduce violent crime.

PASSED and **ADOPTED** this _____ day of September, 2010.

ATTEST:

_____
MATTI HERRERA BOWER
MAYOR

_____
ROBERT PARCHER, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY AB DATE 9/1/10

PARTIES AND AUTHORITY:

This Memorandum of Understanding (MOU) is entered into by the **CITY OF MIAMI BEACH POLICE DEPARTMENT** and the United States Marshals Service (USMS) pursuant to 28 U.S.C. § 566(e)(1)(B). As set forth in the Presidential Threat Protection Act of 2000 and directed by the Attorney General, the USMS has been granted authority to direct and coordinate permanent Regional Fugitive Task Forces consisting of Federal, state, and local law enforcement authorities for the purpose of locating and apprehending fugitives. The authority of the USMS to investigate fugitive matters as directed by the Attorney General is set forth in 28 USC § 566. The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC § 561(g) and 28 CFR 0.111. The authority of United States Marshals and Deputy U.S. Marshals, "in executing the laws of the United States within a State . . . [to] exercise the same powers which a sheriff of the State may exercise in executing the laws thereof" is set forth in 28 USC § 564. Additional authority is derived from 18 USC § 3053 and Office of Investigative Agency Policies Resolutions 2 & 15. *(See also)* "Memorandum for Howard M. Shapiro, General Counsel, Federal Bureau of Investigation" concerning the "Authority to Pursue Non-Federal Fugitives", issued by the U.S. Department of Justice, Office of Legal Counsel, dated February 21, 1995. *(See also)* Memorandum concerning the Authority to Pursue Non-Federal Fugitives, issued by the USMS Office of General Counsel, dated May, 1, 1995. *(See also)* 42 U.S.C. § 16941(a)(the Attorney General shall use the resources of federal law enforcement, including the United States Marshals Service, to assist jurisdictions in locating and apprehending sex offenders who violate sex offender registration requirements).

MISSION:

The primary mission of the task force is to investigate and arrest, as part of joint law enforcement operations, persons who have active state and federal warrants for their arrest. The intent of the joint effort is to investigate and apprehend local, state and federal fugitives, thereby improving public safety and reducing violent crime.

Each participating agency agrees to refer cases for investigation by the RFTF (Regional Fugitive Task Force). Cases will be adopted by the RFTF at the discretion of the RFTF Chief Inspector. Targeted crimes will primarily include violent crimes against persons, weapons offenses, felony drug offenses, failure to register as a sex offender, and crimes committed by subjects who have a criminal history involving violent crimes, felony drug offenses, and/or weapons offenses. Upon receipt of a written request, the RFTF may also assist non-participating law enforcement agencies in investigating, locating and arresting their fugitives. Task force personnel will be assigned federal, state, and local fugitive cases for investigation. Investigative teams will consist of personnel from different agencies whenever possible. Participating agencies retain responsibility for the cases they refer to the RFTF.

Federal fugitive cases referred to the task force for investigation by any participating agency will be entered into the National Crime Information Center (NCIC) by the USMS or originating agency, as appropriate. State or local fugitive cases will be entered into NCIC (and other applicable state or local lookout systems) as appropriate by the concerned state or local agency.

SUPERVISION:
The RFTF will consist of law enforcement and administrative personnel from federal, state, and local law enforcement agencies. Agency personnel must be approved by the RFTF Chief Inspector prior to assignment to the RFTF. Agency personnel may be removed at any time at the discretion of the RFTF Chief Inspector.

Direction and coordination of the RFTF shall be the responsibility of the USMS RFTF Chief Inspector. Administrative matters which are internal to the participating agencies remain the responsibility of the respective agencies. Furthermore, each agency retains responsibility for the conduct of its personnel.

A Task Force Advisory Committee, consisting of representatives of participating agencies and USMS RFTF personnel, may be established at the discretion of the RFTF Chief Inspector and will meet and confer as necessary to review and address issues concerning operational matters within the RFTF.

PERSONNEL:
In accordance with Homeland Security Presidential Directive 12, personnel assigned to the task force are required to undergo background investigations in order to be provided unescorted access to USMS offices, records, and computer systems. The USMS shall bear the costs associated with those investigations. Non-USMS law enforcement officers assigned to the task force will be deputized as Special Deputy U.S. Marshals. Task force personnel may be required to travel outside of the jurisdiction to which they are normally assigned in furtherance of task force operations. State or local task force officers traveling on official business at the direction of the USMS shall be reimbursed directly by the USMS for their travel expenses in accordance with applicable federal laws, rules, and regulations.

REIMBURSEMENT:
If the Marshals Service receives Asset Forfeiture funding for either 1) overtime incurred by state and local investigators who provide full time support to USMS RFTF joint law enforcement task forces; or 2) travel, training, purchase or lease of police vehicles, fuel, supplies or equipment for state and local investigators in direct support of state and local investigators, the USMS shall, pending availability of funds, reimburse your organization for expenses incurred, depending on which category of funding is provided.

Reimbursement of overtime work shall be consistent with the Fair Labor Standards Act. Annual overtime for each state or local law enforcement officer is capped at the equivalent of 25% of a GS-1811-12, Step 1, of the general pay scale for the RUS. Reimbursement for all types of qualified expenses shall be contingent upon availability of funds and the submission of a proper invoice which shall be submitted quarterly on a fiscal year basis, and which provides the names of the investigators who incurred overtime for the RFTF during the quarter; the number of overtime hours incurred, the hourly regular and overtime rates in effect for each investigator, and the total quarterly cost. The invoice must be submitted to the RFTF Chief Inspector, who will review the invoice, stamp and sign indicating that services were received and that the invoice is approved for payment. Invoices for equipment, supplies, training, fuel, and vehicle lease must provide supporting documentation including receipts.

VEHICLES AND EQUIPMENT:

Notwithstanding the above, pending the availability of asset forfeiture funding and approval by the USMS in advance of any purchase, the USMS may reimburse or make direct payments to qualified third party vendors for vehicles and equipment purchased by the undersigned state or local agency in support of full time state and local investigators assigned to the RFTF involved in joint law enforcement operations. Such vehicle and equipment purchases are to be contracted for and titled in the name of the state or local law enforcement agency and must comply with requirements prescribed by the USMS pursuant to this MOU and applicable policies of the United States Department of Justice. Vehicles and equipment purchased by state and local law enforcement agencies with asset forfeiture monies provided by the USMS must remain available for exclusive use of the task force officers assigned to the RFTF by the undersigned participant agency for the duration of the task force. Upon termination of the agreement, usage and disposition of such vehicles are at the discretion of the undersigned state or local law enforcement agency.

Pending the availability of funds and equipment, the USMS will issue USMS radios, telephones, and other communication devices to each task force officer to be used for official RFTF business. All equipment used by or assigned to task force officers by the USMS or an agency will remain the property of the agency issuing the equipment and will be returned to that agency upon termination of the task force, or upon agency request.

RECORDS AND REPORTS:

Original reports of investigation, evidence, and other investigative materials generated, seized, or collected by the RFTF shall be retained by the agency in the RFTF responsible for the case. However, evidence may be turned over to other law enforcement agencies as appropriate. Copies of investigative reports and other materials may be provided to other agencies in accordance with applicable laws, rules, and regulations. Task force statistics will be maintained in the USMS Justice Detainee Information System (JDIS) - Warrant Information Network (WIN). Statistics will be made available to any participating agency upon request.

INFORMANTS:
Pending the availability of funds, the USMS may provide funding for the payment of informants. However, all payments of informants utilizing USMS funding shall comply with USMS policy.

USE OF FORCE:
All members of the RFTF shall comply with their agencies' guidelines concerning the use of firearms, deadly force, and less-lethal devices. Copies of all applicable firearms, deadly force, and less-lethal policies shall be provided to the RFTF Chief Inspector and each concerned task force officer. In the event of a shooting involving task force personnel, the incident will be investigated by the appropriate agency(s).

NEWS MEDIA
Media inquires will be referred to the RFTF Chief Inspector. A press release may be issued and press conference held, upon agreement and through coordination with participant agencies' representatives. All press releases will exclusively make reference to the task force.

RELEASE OF LIABILITY:
Each agency shall be responsible for the acts or omissions of its employees.
Participating agencies or their employees shall not be considered as the agents of any other participating agency. Nothing herein waives or limits sovereign immunity under federal or state statutory or constitutional law.

EFFECTIVE DATE AND TERMINATION:
This MOU is in effect once signed by a law enforcement participant agency.
Participating agencies may withdraw their participation after providing 30 days advanced written notice to the RFTF Chief Inspector.

_____
RFTF Chief Inspector

_____
Participant Agency Representative

_____
Assistant Director, IOD

Condensed Title:

A resolution ratifying Amendment No. 4 to the City's NSP1 Agreement with MBCDC, approving a one-time only transfer in the ownership of the property located at 530 75 Street from MBCDC to MBCDC: Lottie Apartments, LLC; and further authorizing the City Manager to execute any and all documents to effectuate the aforestated transactions.

Key Intended Outcome Supported:

Increase access to workforce or affordable housing.

Supporting Data (Surveys, Environmental Scan, etc.):

Based on the 2009 Customer Satisfaction Survey, 38% of residents rated availability of workforce housing as acceptable / the right amount.

Issue:

Shall the City ratify a one-time assignment in the ownership of the Lottie Apartments, located at 530 75 Street, Miami Beach, Florida, from MBCDC to MBCDC: Lottie Apartments, LLC, a limited liability corporation whose sole member is MBCDC?

Item Summary/Recommendation:

On July 31, 2009, the City of Miami Beach was awarded a total of $2,549,551 from the State (DCA) under the Neighborhood Stabilization Program (NSP1) for the purchase and rehabilitation of foreclosed properties to be renovated for affordable housing. Pursuant to an RFP process, a contract was awarded to Miami Beach Community Development Corporation, a not-for-profit corporation (MBCDC), accepting its proposal for the acquisition and rehabilitation of the 16-unit residential property located at 7871 Crespi Boulevard, which was acquired on January 27, 2010.

The City was subsequently awarded two additional NSP 1 allocations and, at the time of the second award, DCA staff recommended that, in light of the impending NSP1 obligation deadline of September 2010, the City attach any additional allocations to the existing agreement governing the award of the NSP1 funds via a contract amendment. DCA observed that the City had already awarded the original NSP1 funding allocation to its HUD-recognized Community Housing Development Organization (CHDO) as its development partner after undertaking a Request for Proposals process, wherein MBCDC was selected as the sole responsive bidder. Subsequently, on February 3, 2010, the City Commission approved Resolution No. 2010-27335 authorizing any and all additional recaptured NSP1 funds to be used for acquisition and/or rehabilitation of additional foreclosed buildings. The expenditure deadlines remained the same. The City amended its contract with DCA as well as its contract with MBCDC to first accept and utilize additional NSP1 funding in the amount of $4,755,717 for the acquisition and rehabilitation of The Neptune, a 35-unit building, located at 1632 Meridian Avenue, Miami Beach, Florida; and then to accept and utilize an additional $2,000,000 for the acquisition and rehabilitation of the Lottie Apartments, a nine -unit building, located at 530 75 Street, Miami Beach, Florida.

As is customary for every project MBCDC develops, a separate ownership entity was created for each property, requiring a one-time assignment in the transfer of ownership for each acquisition from MBCDC to the newly created limited liability corporation. The transfer in ownership of the building at 7871 Crespi Blvd. from MBCDC to a limited liability corporation was approved by the City Commission on March 10, 2010, per Resolution No. 2010-27348. The transfer in ownership of The Neptune from MBCDC to MBCDC: Neptune, LLC was approved by the City Commission on May 12, 2010, per Resolution No. 2010-27390.

In the case of the Lottie Apartments, the funding allocation was awarded to MBCDC, and MBCDC: Lottie Apartments, LLC, a Florida not-for-profit limited liability company was created to own the property. The closing of the acquisition took place on August 10, 2010, while the City Commission was in recess. Amendment No. 4 to the NSP1 Agreement between the City and MBCDC approves the transfer in ownership from MBCDC, Inc. to MBCDC: Lottie Apartments, LLC. Therefore, ratification of Amendment No. 4 to the NSP1 Agreement between the City and MBCDC is required.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1	N/A	N/A
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Anna Parekh

Sign-Offs:

Department Director	Assistant City Manager	City Manager
AP	HMF	JMG

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MIAMIBEACH

AGENDA ITEM C7R

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower andMembers of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RATIFYING AMENDMENT NO. 4 TO THE NSP1 AGREEMENT BETWEEN THE CITY AND MIAMI BEACH COMMUNITY DEVELOPMENT CORPORATION (MBCDC), APPROVING A ONE TIME ONLY TRANSFER IN THE OWNERSHIP OF THE PROPERTY LOCATED AT 530 75 STREET, MIAMI BEACH, FLORIDA, FROM MBCDC TO MBCDC: LOTTIE APARTMENTS, LLC, A LIMITED LIABILITY CORPORATION WHOSESOLE MEMBER AND AGENT IS MBCDC**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

On July 19, 2009, the City of Miami Beach was awarded a total of $2,549,551 from the State Department of Community Affairs (DCA) under the Neighborhood Stabilization Program (NSP1) for the purchase and rehabilitation of foreclosed properties to be renovated for affordable housing. The City Commission adopted Resolution No. 2009-27039, approving a plan which called for the purchase and rehabilitation, as necessary, of one or more foreclosed and abandoned multi-family buildings in the City. These buildings would be in those areas of the City that were determined to have the greatest need and would be made available as rental housing units for income-qualified households.

Pursuant to the issuance of a Request for Proposals to solicit developers with the capability and capacity to meet the requirements and strict deadlines of the DCA contract, a contract was awarded to Miami Beach Community Development Corporation (MBCDC), a not-for-profit corporation, accepting its proposal for the acquisition and rehabilitation of a sixteen (16) unit residential property located at 7871 Crespi Boulevard, Miami Beach.

The City was subsequently advised by the DCA of the award of additional allocations to the City. At the time of the second award, DCA staff recommended that, in light of the impending NSP1 obligation deadline of September 2010, the City attach any additional allocations to the existing agreement governing the award of the NSP1 funds via a contract amendment. DCA observed that the City had already awarded the original NSP1 funding allocation to its HUD-recognized Community Housing Development Organization (CHDO) as its development partner after undertaking a Request for Proposals process, wherein the Miami Beach Community Development Corporation (MBCDC) was selected as the sole responsive bidder.

On February 2, 2010, the City Commission approved Resolution No. 2010-27335 authorizing any and all additional recaptured NSP1 funds allocated to the City to be utilized for the acquisition and rehabilitation, as necessary, of foreclosed, bank-owned buildings that meet the requirements of the NSP program, with such units in those buildings to be made available as rental properties for income-qualified households and developed by the NSP1 Sub-recipient (MBCDC).

The City subsequently amended its contract with DCA as well as its contract with MBCDC to first accept and utilize NSP1 funding in the amount of $4,755,717 for the acquisition and rehabilitation of The Neptune, a 35-unit building, located at 1632 Meridian Avenue, Miami Beach, Florida; and then to accept and utilize $2,000,000 for the acquisition and rehabilitation of the Lottie Apartments, a nine-unit building, located at 530 75 Street, Miami Beach, Florida.

As is customary for every project MBCDC develops, a separate ownership entity was created for each property, requiring a one-time assignment in the transfer of ownership for each acquisition from MBCDC to the newly created limited liability corporation. The transfer in ownership of the building at 7871 Crespi Blvd. from MBCDC to a limited liability corporation was approved by the City Commission on March 10, 2010, per Resolution No. 2010-27348. The transfer in ownership of The Neptune from MBCDC to MBCDC: Neptune, LLC was approved by the City Commission on May 12, 2010, per Resolution No. 2010-27390.

In the case of the Lottie Apartments, the funding allocation was awarded to MBCDC, but MBCDC: Lottie Apartments, LLC, a Florida not-for-profit limited liability company was created to own the property. The closing of the acquisition took place on August 10, 2010, while the City Commission was in recess. Amendment No. 4 to the NSP1 Agreement between the City and MBCDC approves the transfer in ownership from MBCDC, Inc. to MBCDC: Lottie Apartments, LLC. Therefore ratification of Amendment No. 4 to the NSP1 Agreement between the City and MBCDC is required.

In order to ensure that the property remains as affordable housing during the required 30-year Affordability Period, a reverter clause in favor of the City was included in the mortgage.

CONCLUSION

The Administration recommends ratification of Amendment No. 4 to the NSP1 Agreement between the City and MBCDC, approving a one-time only transfer in the ownership of the property located at 530 75 Street, Miami Beach, Florida, from MBCDC to MBCDC: Lottie Apartments, LLC, a limited liability corporation whose sole member is MBCDC.

JMG/HMF/AP

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RATIFYING AMENDMENT NO. 4 TO THE NSP1 AGREEMENT BETWEEN THE CITY AND MIAMI BEACH COMMUNITY DEVELOPMENT CORPORATION (MBCDC), APPROVING A ONE TIME ONLY TRANSFER IN THE OWNERSHIP OF THE PROPERTY LOCATED AT 530 75 STREET, MIAMI BEACH, FLORIDA, FROM MBCDC TO MBCDC: LOTTIE APARTMENTS, LLC, A LIMITED LIABILITY CORPORATION WHOSE SOLE MEMBER AND AGENT IS MBCDC.

WHEREAS, on July 31, 2009, pursuant to the City's application for same authorized under Resolution No. 2009-27039, the City was awarded a grant under the NSP1 Program, in the amount of $2,549,551, and, accordingly, on November 24, 2009, the City entered into an NSP1 Grant Agreement with the State of Florida Department of Community Affairs (DCA); and

WHEREAS, as authorized pursuant to Resolution No. 2009-27194, the City entered into an NSP1 Agreement with Developer (as the sole responsive proposer pursuant to a City issued Request for Proposals for potential NSP1 funded projects), dated January 27, 2010, in the amount of $2,376,181.53, for funding related to Developer's acquisition and rehabilitation of a sixteen (16) unit residential property located at 7871 Crespi Boulevard, Miami Beach, Florida (the Crespi Project), with any remaining funds to be utilized for the "Secondary Objective Project—Home Ownership Activities"; and

WHEREAS, on February 3, 2010, pursuant to Resolution No. 2010-27335, the City was authorized to execute subsequent amendments to the NSP1 Agreement with Developer, for any additional NSP1 funds which might be granted pursuant to the City's requests; and

WHEREAS, on March 24, 2010, the City was awarded an additional allocation of NSP1 funds, in the amount of $4,755,717, and, accordingly, executed Modification No. 1 to the November 24, 2009 NSP1 Grant Agreement with DCA; and

WHEREAS, on March 30, 2010, City and Developer also executed Amendment No. 2 to the Developer's NSP1 Agreement, to identify and include the Neptune Project, and to identify the additional NSP1 funding being allocated for said project, in the amount of $4,679,226.78; and

WHEREAS, on July 1, 2010, the City was awarded an additional allocation of $2,000,000 in recaptured NSP1 funds, and, accordingly, executed Modification No. 2 to the November 24, 2009 NSP1 Grant Agreement with DCA; and

WHEREAS, on March 3, 2010, Developer entered into a contract for purchase and sale of the Lottie Apartments, a nine (9) unit residential property, located at 530 75th Street, Miami Beach, Florida, for a purchase price of $1,185,000; and

WHEREAS, on July 22, 2010, City and Developer executed Amendment No. 3 to Developer's NSP1 Agreement, to identify and include the Lottie Apartments Project, and to identify the additional NSP1 funding being allocated for said Project, in the amount of $1,864,000.00 for the acquisition and rehabilitation; and

WHEREAS, Developer has requested that the City approve a transfer in the ownership of the Lottie Apartments from MBCDC, to MBCDC: Lottie Apartments, LLC, a Florida limited liability corporation whose sole member and agent is MBCDC.

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 ratify Amendment No. 4 to the NSP1 Agreement between the City and Miami Beach Community Development Corporation (MBCDC), approving a one time only transfer in the ownership of the Property located at 530 75 Street, Miami Beach, Florida from MBCDC to MBCDC: Lottie Apartments, LLC, a limited liability corporation whose sole member and agent is MBCDC.

PASSED AND ADOPTED this _____ day of _____, 2010.

_____
CITY MANAGER

ATTEST:

_____
CITY CLERK

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney — 9/7/10 Date

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Condensed Title:

A Resolution Accepting The City Manager's Recommendation Pertaining To The Ranking To Award A Concession Agreement For The Management And Operation Of A Concession Facility Within The Structure Commonly Referred To As The "Pavilion Building" Located In South Pointe Park.

Key Intended Outcome Supported:

Increase community satisfaction with city government.

Supporting Data (Surveys, Environmental Scan, etc.):

75% of residents and 68% of businesses rated Miami Beach city government as excellent or good in meeting their needs and expectations.

Issue:

Shall the City Commission approve the City Manager's recommendation?

Item Summary/Recommendation:

On May 12, 2010, the Mayor and City Commission approved the issuance of Request for Proposals (RFP) No. 34-09/10, for the management and operation of a concession facility commonly referred to as the "Pavilion Building," located in South Pointe Park (the "RFP").

It is the City's intent to enter into a concession agreement, by means of this RFP process, to grant to the successful proposer the right during the term of the concession agreement to manage and operate the concession facility within the structure commonly referred to as the "Pavilion Building", located in South Pointe Park. The Pavilion Building includes City field offices, as well as a Community Room which will be available to the public to rent, but will not be part of the concession agreement.

The term of this Agreement will be for a period of two (2) years with the sole option and discretion of the City, to renew for an additional three (3), one (1) year periods.

On June 22, 2010, the RFP was issued with an opening date of July 22, 2010 and notices were sent to prospective proposers resulting in the receipt of two (2) proposals from Blissberry, LLC; and Paradigm Hospitality LLC. Paradigm did not provide pricing for their menu items, which was a minimum requirement for consideration. Therefore, they were deemed non-responsive.

The City Manager, via a Letter to Commission (LTC) No. 221-2010, appointed the Committee which convened on August 26, 2010 to listen to the presentation and conduct a questions and answers session with the responsive proposer. After discussing their individual perceptions of the proposer's qualifications, experience, and competence, the Committee members unanimously approved a motion, to recommend to the Commission that the Administration enter into contract negotiations with Blissberry.

APPROVE THE AWARD OF CONTRACT.

Financial Information:

Source of Funds:		Amount	Account	Approved
	1.			
OBPI	Total			

Financial Impact Summary: Revenue Generating.

City Clerk's Office Legislative Tracking:

Gus Lopez, Ext: 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
GL AP	HF PDW	JMG

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MIAMIBEACH

AGENDA ITEM C7S
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 34-09/10, TO AWARD A CONCESSION AGREEMENT FOR THE MANAGEMENT AND OPERATION OF A CONCESSION FACILITY WITHIN THE STRUCTURE COMMONLY REFERRED TO AS THE "PAVILION BUILDING," LOCATED IN SOUTH POINTE PARK; AND AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH THE RESPONSIVE PROPOSER, BLISSBERRY, LLC.; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT, UPON CONCLUSION OF SUCCESSFUL NEGOTIATIONS.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

KEY INTENDED OUTCOMES SUPPORTED

Increase Community Satisfaction with City Government.

BACKGROUND

At the conclusion of an approved Request for Proposals (RFP) process, on July 15, 2009, the Mayor and City Commission accepted the City Manager's recommendation, authorizing the Administration to enter into negotiations with the top-ranked firm of SB Café, LLC, D/B/A Touch Catering Services, Inc. for the management and operation of a concession facility commonly referred to as the "Pavilion Building," located in South Pointe Park. The City Administration began its negotiations with SB Café, Inc. in late July, 2009. After several months of negotiation SB Café terminated negotiation of the concession agreement in December, 2009. Upon failure to mutually agree to the terms, negotiations were deemed as unsuccessful.

In light of the level of use and popularity of the park, and to enhance the park's amenities for users, it was recommended that a new competitive process be initiated to identify a concessionaire for this location.

On May 12, 2010, the Mayor and City Commission approved the issuance of Request for Proposals (RFP) No. 34-09/10, for the management and operation of a concession facility commonly referred to as the "Pavilion Building," located in South Pointe Park (the "RFP").

SCOPE OF SERVICES

It is the City's intent to enter into a concession agreement, by means of this RFP process, to grant to the successful proposer the right during the term of the concession agreement to manage and operate the concession facility within the structure commonly referred to as the "Pavilion Building", located in South Pointe Park. The Pavilion Building includes City field offices, as well as a Community Room which will be available to the public to rent, but will not be part of the concession agreement.

Any agreement entered into by the City will be for an initial term of two (2) years, with an option to renew for three (3) additional one (1) year terms, with said renewal terms being at the City's sole option and discretion.

The successful proposer will be authorized to conduct the following kinds of business(es) within the concession area, as provided herein, all at it's sole cost and expense:

PERMITTED USE(S):

Operate and manage the concession area, which shall sell and/or provide the following:

a) Non-alcoholic beverages.
b) Pre-packaged and/or prepared foods with limited heating requirements will be negotiated based on the proposed menu. By way of example, the City has allowed the following in other concession agreements: the use of steamers, warmers, microwaves, sandwich press and coffee maker.

MENUS:

Proposer shall develop menus for the sale of food and non-alcoholic beverages.

Proposer is advised that the City has an existing "Concession Agreement for Operation of Vending Machines", dated October 19, 2005, which entitles the vendor to the placement of up to six (6) vending machines within South Pointe Park. Therefore, proposer shall at all times price products of similar type and/or volume in a manner equal or greater to the pricing of the vending machine items. At no time shall proposer's items be sold at a lower price than similar items sold in the vending machines.

SCHEDULE OF OPERATION:

The successful proposer's operation shall be open in accordance with an agreed upon schedule. The City and successful proposer will negotiate the days of operation as well as the starting and closing hours of operation. Any changes to the agreed upon days or hours of operation will require the prior written consent of the City Manager.

CONCESSION FEES:

Performance Bond or Alternate Security:
The successful proposer shall furnish the City with a security deposit, as agreed to by the City. Said security shall serve to secure the successful proposer's performance in accordance with the provisions of the concession agreement. In the event the successful proposer fails to perform in accordance with said provisions, the City may retain said security, as well as pursue any and all other

legal remedies provided in the concession agreement, or as may be provided by applicable law.

Minimum Guarantee (MG):
In consideration of the City executing a concession agreement and granting the rights provided in the agreement, the successful proposer shall guarantee and pay to the City an annual minimum concession fee.

Percentage of Gross (PG):
During the initial term and any approved renewal term, the successful proposer shall pay the City a percentage of its gross receipts. During any term of the concession agreement, if the amount of the annual PG is greater than the annual MG, then the successful proposer shall pay to the City the difference between the PG amount and the MG amount. In the event that the City chooses to extend the term of the concession agreement for any renewal term(s), the renewal term(s) MG shall be increased in a manner to be negotiated between the City and successful proposer.

RFP PROCESS

On June 22, 2010, the RFP was issued with an opening date of August 11, 2010. A Pre-proposal meeting to provide information to prospective proposers was held on July 27, 2010. A non-mandatory site visit was held on July 28, 2010; BidNet sent notices to 14 prospective proposers; BidSync sent notices to prospective proposers of which 13 viewed the RFP. Additionally, postcard mailings were sent to all restaurant businesses operating at the City.

The following two (2) proposals were received by the RFP deadline for receipt of proposals:

- Blissberry, LLC.
- Paradigm Hospitality, LLC.

The City Manager, via Letter to Commission (LTC) No. 221-2010, appointed an Evaluation Committee ("The Committee") consisting of the following individuals:

- Aaron Swimmer, Miami Beach Resident, Leadership Academy
- Clotilde Luce, Miami Beach Resident, Leadership Academy
- Gary Farmer, Cultural Affairs Program Manager, Cultural Arts
- John Oldenburg, Assistant Director, Parks and Recreation
- Jim Nourse, Food and Beverage Manager, Miami Beach Golf Course
- Manny Marquez Jr., Revenue Manager, Finance

During the review process for responsiveness performed by the Procurement Division, Paradigm Hospitality was deemed non-responsive as they did not meet the minimum requirement for failing to include prices for the proposed food and beverage items.

The Minimum Requirements required proposers to provide a menu of all proposed food and beverage items, including prices for same, to be offered for sale. Proposers were to provide evidence of operating a comparable concession operation of similar size or other food and beverage business.

EVALUATION PROCESS

On August 26, 2010, the Committee convened to listen to the presentation by the responsive proposer, Blissberry, LLC ("Blissberry") and conduct questions and answers session. The Committee

unanimously agreed to nominate Gary Farmer as Committee Chair. Manny Marquez was not able to participate as he had to attend another meeting.

The Committee discussed the proposal, taking into consideration the benefits and challenges presented by the location of the Concession Area. The Committee also discussed the apparent marketing knowledge and success despite the current economic market of the vendor.

Blissberry, which has been operating in South Beach since 2008, included an operational plan that addressed marketing goals, customer service, and their priced menu for the operation of the concession; their proposed Minimum Guarantee (MG) is $9,000 annually, and a Percentage of Gross (PG) of 15% of its concession/food and beverage sales, whichever is greater. See attached proposal.

After the presentation, and the tasting of samples from the proposed menu, the Committee proceeded to deliberate and evaluate according to the criteria as set forth in the RFP, for a total of 100 points:

	Criteria	Scoring Weight
A	EXPERIENCE AND QUALIFICATIONS	30
B	OPERATIONAL EXPERTISE AND PROCEDURES	20
C	FINANCIAL	25
D	PAST PERFORMANCE	25

The Committee scored and ranked the proposer as follows:

RFP 34-09-10	Gary Farmer	John Oldenburg	Jim Nourse	Aaron Swimmer	Clotilde Luce	Totals
BLISSBERRY	81	71	76	82	71	381

A motion was made by committee member John Oldenburg, and seconded by committee member Aaron Swimmer, and unanimously approved by the Committee, to recommend to the Commission that the Administration enter into contract negotiations with Blissberry, LLC.

CONCLUSION

The Administration recommends that the Mayor and City Commission adopt the attached Resolution accepting the recommendation of the City Manager pursuant to Request for Proposals (RFP) No. 34-09/10, for the Management and Operation of a Concession Facility within the structure commonly referred to as the "Pavilion Building," located in South Pointe Park; and authorizing the Administration to enter into negotiations with the Blissberry, LLC.; and further authorizing the Mayor and City Clerk to execute an agreement upon conclusion of successful negotiations.

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Blissberry, LLC

1650 Alton Road, Miami Beach, FL 33139

EXECUTIVE SUMMARY

Dear Members of the Evaluation Committee:

Blissberry, LLC is pleased to submit its proposal in response to RFP No. 34-09/10, for the Management and Operation of a Concession Facility within the structure commonly referred to as the "Pavilion Building," located in South Pointe Park.

Blissberry agrees to manage and operate the Pavilion Building and will conduct the following kinds of businesses within the Concession Areas, as provided below, all at our sole cost and expense:

Non-alcoholic beverages;
Prepared and/or prepackaged foods;
Beach related food/beverages;
Community room/special events catering; and of course
Blissberry yogurt

SCHEDULE OF OPERATION:

Days of Operation: seven days a week, 365 days a year.

Hours of Operation: open at 9:00 a.m. and close at 7:00 p.m., or sunset, whichever is sooner.

CONCESSION FEES

Minimum Guarantee:

We propose to pay the City a Minimum Guaranteed Annual Concession Fee of $9,000 ($750.00 per month).

Percentage of Gross:

We propose to pay the City 15% of our gross receipts. In the event that our annual Percentage of Gross is less than our Minimum Guaranteed Annual Fee, then we agree to pay to the City, on an annual basis, the difference between the Percentage of Gross Amount and the Minimum Guarantee Annual Fee.

Our Commitment

We are committed to a successful partnership with the City of Miami Beach to ensure that only healthy and quality products will be provided to residents and visitors of South Pointe Park.

We are thank you for the opportunity to submit our proposal and look forward to meeting you in person to discuss in greater detail our vision, goals and objectives.

Thank you,

Kim Pham
Founder and Owner of Blissberry

QUALIFICATIONS AND EXPERIENCE

Blissberry, LLC is a privately held company which currently utilizes the strengths, expertise, and longetivity of its founder and manager, Ms. Kim Pham, and her partner and co-Manager, Mr. Sean Gipson.

Ms. Pham began her career as a production manager then shifted her attention towards the business and sales environment. She is actively co-managing all areas of Blissberry and assists Blissberry's clients with their varying needs.

Ms. Namiko Rodrigues has over ten years of restaurant and hospitality experience. Additionally, has several years of experience in food management and preparation in accordance with USDA Department of Health guidelines. Ms. Namiko Rodrigues has managed sales analysis forecasting and reporting activities to include menu design and event planning. Ms. Rodrigues js experienced in facilities safety management in restaurant environments. She is fluent in English, French and extensive knowledge of Spanish.

Also, involved with the operations is Mr. Randall E. Truesdale Sr. has a wealth of experience in event management; business development; hospitality; and restaurant consultancy.

Mr. Truesdale's restaurant experience includes Blissberry Yogurt Bar in South Beach. Since 2008, he has facilitated computer and web environment administration. He manages budget and purchasing controls through implementation of inventory control system, and assisted with the development of the Blissberry employee training and handbook.

Mr. Truesdale was the Co-Owner & General Manager, Richard's Grill, located in St John, U.S. Virgin Islands. Mr. Truesdale successfully managed an upscale family style restaurant, increased sales by 40% through quality food, exceptional service, and family value.

Maximum Guarantee & Percentage of Gross Sales

Minimum Guarantee:

We propose to pay the City a Minimum Guaranteed Annual Concession Fee of $9,000.

Percentage of Gross:

We propose to pay the City 15% of our gross receipts. In the event that our annual Percentage of Gross is less than our Minimum Guaranteed Annual Fee, then we agree to pay to the City, on an annual basis, the difference between the Percentage of Gross Amount and the Minimum Guarantee Annual Fee.

METHODOLOGY/APPROACH

Community Room Special Event Catering

Driving local, social and corporate business into the Pavilion will be a priority for everyone on our team. We will partner with other accounts in the area to drive business into the Community Room as well as mine the local and regional market for meeting and social event opportunities. And, we will deliver results because we know that serving food is actually the end of a process that begins with an assessment of opportunities and customer preferences.

To begin, we look at the overall features and the benefits of the South Pointe Park (the "Park"), study the primary market segments, understand the neighborhood's needs and desires, and understand the City's goals and objectives. We will provide exquisite meals accompanied by impeccable service.

We believe our success in helping sell the Pavilion for an event will be the result of our analysis and business plan development and will be supported through our participation in and coordination with the City's Parks and Recreation Department.

Our staff will work closely with the "South of Fifth" homeowners to ensure that all noise ordinances are adhered to, and that the residents' needs and wants are addressed.

Marketing Plan

We believe strongly that our ability to provide marketing expertise is critical in our continued success at the Pavilion. Our commitment to marketing directly benefits the City by creating a web of connections through our customers and other clients. As well as impacting the overall customer experience by enhancing the meeting and event planning process, providing hands on contact to all our customers and enabling us to more fully understand and therefore appreciate and better serve the residents and visitors. We project that even in the first year sales will be be greater than the initial current location. There is more foot traffic, and with an expanded menu, more employees, and extensive marketing plan . Sales should exceed current location. We have contracted with The Beach Channel commercials which reached 116,000 households, 20,000 hotel rooms and 11 million annual viewers.

Commitment to Customer Excellence

We are driven by our desire to continually improve customer satisfaction. Satisfied customers translate into a greater appreciation of the Park and the City's efforts for excellence customer service.

The success of our marketing strategy is dependant on the close working relationship between the City of Miami Beach, especially, the Parks and Recreation Department.

Understanding the Customer

To create a positive and memorable experience for the *customer at every venue is the focus of Blissberry. We value our customers and residents, and we understand that they are the reason for the success or failure of the Pavilion.*

Food Sanitation and Safety

Before the selection of any recipe, before the purchase of one ingredient, and before any meal is served, we will take every precaution to ensure that our safety and sanitation procedures are in compliance with or exceed federal, state, and local health codes.

Excellence sanitation and food safety practices are essential for operating a successful food and beverage program. Our food safety requirements for our employees are stringent. We require constant employee training on sanitation practices, procedures, and policies. We demand each employee to clean as they go to reduce the risk of food contamination. Employees are monitored to ensure that hand washing is constant and that gloves are frequently changed to prevent any contaminations.

Most importantly, we will ensure that the safety and integrity of the food is protected from the time of its delivery, and throughout its storage and preparation and transportation from our kitchen into the hands of the customer. Now, we focus on the creation of a great meal. Selecting the freshest ingredients is the first step to preparing delicious meals. We will use quality products for all our recipes and signature meals.

The cleanliness of the Pavilion sets the tone for the entire dining experience. We understand the revenue impact that the first impression has on the buying decisions of the customers. We will create the

ambiance for a positive experience by providing a clean and comfortable dining area for the Pavilion. We will have the required staffing to keep the environment clean and sanitary at all times.

Our workers on duty will be charged with the responsibility of making sure the chairs are cleaned, tables are wiped off, and food is not on the floor.

The Clean-As-You-Go Philosophy

Superior sanitation is a hallmark of sound, cost-effective food service and is dependent on knowledgeable, motivated employees who understand the reasons behind our procedures. Our clean-as-you-go philosophy emphasizes superior sanitation by:

Reducing the risks of food contamination
Making the equipment at the Café last longer
Ensuring that your equipment performs more efficiently

Food Protection

We will ensure that each food service employee understands the concepts of food protection.

Employee Performance / Dress Standards

In no other business are personal cleanliness and appearance as important as they are in food service. A well-groomed employee immediately creates a favorable impression of the services we perform. Our clients, customers, and the local health board expect us to maintain strict standards of cleanliness.

Customer Complaints

In an effort to achieve a quality experience, it is our duty to handle all customer complaints and comments in the most professional manner possible. If a complaint can be handled at the Pavilion, our trained staff will attempt to correct it to the best of their ability and inform the manager as soon as possible. During all situations, we instruct our staff to remain as courteous as possible and to:

Always appear cheerful when in the presence of a customer.
Always be helpful in the presence of a customer.
Always answer guest questions as they are received and, when necessary, direct them to a manager.

blissberry

Yogurt Bar & Beach Grill

Monday-Thursday: 9am-7pm
Friday-Sunday: 9am-8pm

Beach service till Sunset daily

beverages

pure bliss H2O: *Pure fresh bottled bliss , you may want 2. 1 to take home.*	$2
Lychee Green Tea: *A SOBE Favorite , Sweet or Un-Sweetened, your bliss*	$2
Fresh Squeezed Soda Lemonade: *made w/ fresh squeezed local lemons, it will bubble up your day*	$4
Fresh Squeezed Lemonade: *Made fresh daily with local lemons*	*$4*
Vietnamese Iced Coffee 16oz: *Gourmet fair-trade coffee w/ condensed milk, shaken and served over ice*	$4
Fresh Squeezed Florida OJ 16 oz: *100% Local and freshly squeezes to perfection. You can taste the freshness*	$4
blissberry snow bubble *A fresh blended fruit smoothie layered over a tapioca ball treat*	$6

Gourmet blissberry Yogurt

Mini: 4 oz w/ Toppings	$5.00
Medium: 8 oz w/ Toppings	$6.00
Mega: 16 oz w/ Toppings	$8.50

Gourmet Cupcakes

Mini	$1.50
The Big Kid	$3.00

Bringing Bliss to you!

planet bliss APPROVED

blissberry

Yogurt Bar &Beach Grill

Hot off The Press

Wrap it up Club: Chicken Panini *Club Sandwich wrapped and in Spinach tortilla & Pressed*	$9
Classic Cuban Panini: *Made with cuban bread and pressed to perfection*	$9
Gourmet Vietnamese Panini: *grilled chicken, with pickled carrots and jicama, jalapenos , cilantro, and pressed*	$9
Veggie Panini Press: *Grilled peppers, topped mozzarella tomatoes, and basil wrapped in a organic*	$9
Grilled Chicken Quesadilla: Made with blended cheese and pressed to perfection	$9

Soups and salads

Skinny Dip: *Fresh cut Veggies w/ Fresh Organic Hummus Dip*	$8
blissberry Signature Salad: *Made with mangos, avocados, mandarin oranges, bean sprouts, and topped with grilled Chicken on a bed of mixed greens w/ fresh made balsamic vinaigrette*	$8
berry Spinach Salad: Strawberries, blueberries (seasonal), almonds, feta cheese on a bed of spinach tossed w/ almonds and a berry vignetter	$10
Fruit Salad: A medley of fresh fruits, garnished w/ granola, coconut, and drizzled w/ agave	$12
Caesar Salad w/ Grilled or Blackened Chicken	$12
Soup of the Day: Prepared w/ only the freshest ingredients you will always be satisfied	$4 *cup* *$8 bowl*

Tots & Tinys

No Meat please Quesadilla, filled with fresh grated cheese and	$6
Grilled Kosher Hot Doggie Dog	$6
The Grilled Cheese: A perfect grilled cheese sandwich made with your bread of choice	$6
Try it with tomatoes! add ($1)	$7

South Point

World Famous Miami Beach, Fl 33139

Tel 305 538-5130

TEXT : Bliss2Go

Cash or The Bliss Loyalty Card accepted only! 10% DISCOUNT w/ Loyalty Card

Bringing bliss to you!

planet bliss APPROVED

THE BEACH
CHANNEL

I don't know what we would do, if we didn't have Blissberry Yogurt Bar. Everyone in our office goes there for 3:00 munches.

I have been working with and going to Blissberry for over 3 years now. In 2008, we chose them as "Best Yogurt on the Beach" hands down!

Sun Post 2008 Best of the Beach

Now, we hear that they are expanding! We are so excited. Kim has brought a wholesome, healthy, fat-free treat to Lincoln and Alton and now.... South Pointe!

Kim has always been so sweet to the kids and they love going to Blissberry.
As a father of 3, I'd much rather them be eating Blissberry Yogurt than chips, cokes and candy bars.

We hear at the Beach Channel, are really looking forward to partnering up with Kim at Blissberry Yogurt Bar and promoting how incredible her product is.

Doug Witt
Sales Director
305.205.8922
doug@thebeachchannel.tv

the babysitting company

Blissberry Yogurt Bar is not only a delicious sweet treat, they are healthy, nutritious and environment friendly. Parents and yogurt lovers know that when they walk into Blissberry in the middle of the action on Miami Beach, they are walking into owner Kim's home away from home. She makes everyone feel welcome as well as her friendly and professional staff. The yogurt and other food and beverage items are healthy, taste great and the store is always spotless. I am very excited to hear about the possibility of Blissberry expanding their business to local parks in the Miami area.

The Babysitting Company is a Miami based private babysitting company working with hotels, resorts, residents, sports teams, special events. The company works exclusively with The Biltmore, Fontainebleau, The Sagamore, W South Beach, The Continuum and Apogee and is fully insured, licensed and certified with services also offered in Phoenix, Denver, LA, Las Vegas, Park City, Chicago, DC, New York, London and Israel. All of the babysitters are reliable, professional and energetic. They are over 18, background checked, drug tested and CPR certified. They are personally interviewed and held to the highest standard in the industry, including the requirement of at least 2 years of college or university. Many of the babysitters are nursing students, pre school teachers, paramedics and swim instructors. In addition, all of the babysitters speak fluent English while many speak other languages as well.

With the expansion of Blissberry, I look forward to collaborating and working together to create the best experience for local families looking for healthy and fun supervised activities including yoga, dance, games, story telling and arts and crafts.

Rachel Charlupski
The Babysitting Company
Founder

CELEBRITY
INTERNATIONAL

August 5, 2010

To Whom It May Concern,

My company, Florida Team Golf & Celebrity International, had the pleasure of working with Blissberry during the Alonzo Mourning Summer Groove Golf Classic we've been producing for the past 12 years.

Their healthy food and beverages were the perfect complement to the top Miami Restaurants involved, such as Prime 112, Chop House and Devito South Beach. Their friendly and professional staff engaged golfers in conversation and gave a great impression. Even the presentation of their tent was amazing.

South Pointe Park would be pleased to have Blissberry available for residents and guests. On behalf of myself and my company, we look forward to working with Blissberry again on our upcoming events and highly recommend them for your location.

If you have any questions or require additional information, feel free to contact me at (305) 255-3500.

Thank you,

Jason Venger
Vice President
FT Golf & Celebrity International

F.T. Golf ; Celebrity International 12982 SW 89th Ave., Miami, FL 33176 PH: 305.255.3500 ; FX: 305-255-3532

August 6, 2010

To: Whom it may concern:

I have known Kim from our neighborhood since she opened Blissberry. Kim and Blissberry have been extremely supportive our SpendforED, a 501(c)(3) dedicated to supporting our Public Schools. SpendforED asks businesses to accept "ED BUCKS" which are in essence special coupons sold throughout the community. Our business partners extend discounts by accepting ED BUCKS. It is a very nice way for local businesses to show their support.

I have also seen Kim at other events at some of the local schools on Miami Beach providing complimentary yogurt, but what I like most about her is her commitment to always finding ways to involve kids in different community activities. She is CONSTANTLY coming up with fresh ideas that are beneficial to children.

I think it would be a great plus to have a healthy dessert offering in the parks of Miami Beach and I know Blissberry would serve our residents well.

Erik Sussman

President & Founder

SpendforED
1101 Brickell Avenue
PH South Tower
Miami, FL 33131

o 305 579 4056
f 305 579 4054
m 305 978 8107
www.SpendforED.org

T H A N K Y O U

for your time and consideration

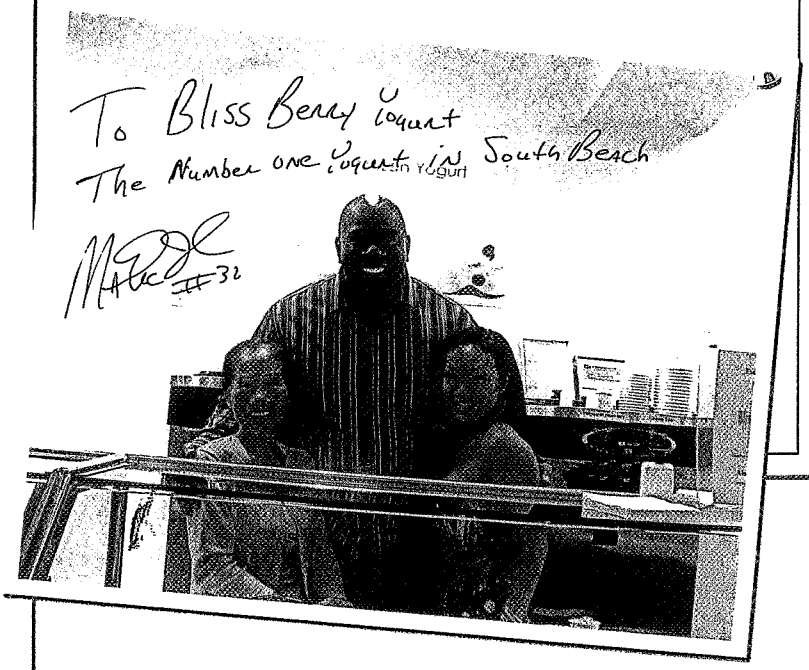
BEST FROZEN YOGURT

Blissberry Yogurt Bar

1650 Alton Road, Miami Beach
786-623-5664
www.blissberryyogurtbar.com

Blissberry has taken the Beach by storm with its delicious, refreshing, tart, fat-free yogurt. The taste is so amazing, it's been called addictive. You know they're doing something right when celebrities like Magic Johnson are hanging out there and calling it the number one frozen yogurt in South Beach. Not only can you enjoy a frozen yogurt with the freshest fruits, an all-natural smoothie or a moist cupcake in a great atmosphere, there's also free Wi-Fi.

The SunPost
The story matters.



the BLISSBERRY *family*

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER, PURSUANT TO REQUEST FOR PROPOSALS (RFP) NO. 34-09/10, TO AWARD A CONCESSION AGREEMENT FOR THE MANAGEMENT AND OPERATION OF A CONCESSION FACILITY WITHIN THE STRUCTURE COMMONLY REFERRED TO AS THE "PAVILION BUILDING," LOCATED IN SOUTH POINTE PARK; AND AUTHORIZING THE ADMINISTRATION TO ENTER INTO NEGOTIATIONS WITH THE RESPONSIVE PROPOSER, BLISSBERRY, LLC.; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT, UPON CONCLUSION OF SUCCESSFUL NEGOTIATIONS.

WHEREAS, on May 12, 2010, the Mayor and City Commission approved the issuance of Request for Proposals (RFP) No. 34-09/10, for the management and operation of a concession facility commonly referred to as the "Pavilion Building," located in South Pointe Park (the "RFP"); and

WHEREAS, on June 22, 2010, the RFP was issued with an opening date of August 11, 2010; and

WHEREAS, notices were sent to over 200 prospective prosposers resulting in the receipt of two (2) proposals from Blissberry, LLC, and Paradigm Hospitality, LLC; and

WHEREAS, during the review process performed by the Procurement Division, Paradigm Hospitality was deemed non-responsive as it did not meet the minimum requirement for failing to include prices for the proposed food and beverage items; and

WHEREAS, the City Manager, via Letter to Commission (LTC) No. 221-2010, ("The Committee") appointed the following individuals to the RFP Evaluation Committee:

- Aaron Swimmer, Miami Beach Resident, Leadership Academy;
- Clotilde Luce, Miami Beach Resident, Leadership Academy;
- Gary Farmer, Cultural Affairs Program Manager, Cultural Arts;
- John Oldenburg, Assistant Director, Parks and Recreation;
- Jim Nourse, Food and Beverage Manager, Miami Beach Golf Course;
- Manny Marquez Jr., Revenue Manager, Finance; and

WHEREAS, on August 26, 2010, the Committee convened to listen to the presentation and taste samples from the proposed menu by the responsive proposer, Blissberry, LLC ("Blissberry"), and a quorum was attained; and

WHEREAS, a motion was made by committee member John Oldenburg, and seconded by committee member Aaron Swimmer, and unanimously approved by the Committee, to recommend that the Administration enter into contract negotiations with Blissberry; and

WHEREAS, the City Manager has reviewed and concurs with the Evaluation Committee's recommendation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the City Manager, pursuant to Request for Proposals (RFP) No. 34-09/10, for the Management and Operation of a Concession Facility within the structure commonly referred to as the "Pavilion Building," located in South Pointe Park; and authorize the Administration to enter into negotiations with the Blissberry, LLC.; and further authorize the Mayor and City Clerk to execute an agreement upon conclusion of successful negotiations.

PASSED AND ADOPTED THIS _____ DAY OF _____2010.

ATTEST:

_____ _____

CITY CLERK **MAYOR**

T:\AGENDA\2010\September 15\Consent\RFP 34-09-10 For A Concession Agreement at the South Pointe Pavilion - RESO.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/8/10
Date

City Commission Meeting

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
September 15, 2010

Mayor Matti Herrera Bower
Vice-Mayor Jorge Exposito
Commissioner Michael Góngora
Commissioner Jerry Libbin
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

City Manager Jorge M. Gonzalez
City Attorney Jose Smith
City Clerk Robert E. Parcher

*Visit us at **www.miamibeachfl.gov** for agendas and video "streaming" of City Commission Meetings.*

ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

REGULAR AGENDA

R5 - Ordinances

R5A An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 3 Entitled "Lobbyists", Section 2-482 Thereof Entitled "Registration" So As To Clarify That The Annual Lobbyist Registration Fee Is Required To Be Paid For Each Twelve Month Period Commencing October 1 Of Each Year; And Amending City Code Section 2-485 Thereof Entitled "List Of Expenditures; Fee Disclosure; Reporting Requirements", So As To Change Annual Reporting Date For Lobbyist Expenditure And Fee Disclosure From October 1 To January 31, And Changing Corresponding Annual Date For Post-Delinquency Lobbbyist Suspension Due To Failure To File Report After Imposition Of Penalty From December 1 To March 31; Providing For Repealer, Severability, Codification, And Effective Date.
10:15 a.m. Second Reading Public Hearing (Page 323)
(City Clerk's Office)
(First Reading on July 14, 2010)

R5 - Ordinances (Continued)

R5B An Ordinance Amending The Code Of The City Of Miami Beach, Florida; Amending Chapter 82, "Public Property," Article II, "Sale Or Lease Of Public Property," Sections 82-36 Through 82-40, Amending The Procedures For Sale Or Lease Of City Property; Providing For Inclusion In The Code Of The City Of Miami Beach, Florida; Repealer; Severability; And An Effective Date. **10:20 a.m. Second Reading Public Hearing** (Page 331)

(City Attorney's Office/Real Estate, Housing & Community Development)
(First Reading on July 14, 2010)

R5C An Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division I, Entitled "Generally," By Amending Section 106-55, Entitled "Parking Rates, Fees, And Penalties," By Amending Subsection (N), Entitled "Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicles Incentive," By Amending Vehicle Participation Criteria For The Hybrid/ILEV Vehicles Incentive Program To Include Vehicles With An EPA (Environmental Protection Agency) Rating Of Six "6" Or Higher ("Smartway" Designation) And Street Legal Electric Vehicles, Increasing The Number Of Reserved Hybrid Vehicle Spaces At The 42nd Street Garage From One Percent (1%) To Two Percent (2%), Establishing One Percent (1%) Of The Parking Spaces At The 7th Street Garage And 13th Street As Reserved For Hybrid Vehicles Only, And Establishing An Automatic Review Of All Hybrid Vehicle Incentives Upon Reaching A Hybrid Permit Sales Threshold Of Five Percent (5%) Of Total Permit Sales; Providing For Codification, Repealer, Severability, And An Effective Date. **10:40 a.m. Second Reading Public Hearing** (Page 343)

(Parking Department)
(First Reading on July 14, 2010)

R5 - Ordinances (Continued)

R5D North Beach Town Center Zoning & Comprehensive Plan Amendments (Page 351)

1. An Ordinance Amending Part II: Goals, Objectives And Policies Of The City Of Miami Beach Comprehensive Plan, Policy 1.2 Of Objective 1: Land Development Regulations Of The Future Land Use Element, By Adding New Categories "Town Center Core" (TC-1); "Town Center Mixed Use" (TC-2); And "Town Center Residential Office" (TC-3); And Accompanying Standards For Land Development Regulations And Directing Transmittal Of This Ordinance And All Applicable Documents To Affected Agencies; Providing For Repealer; Severability; Inclusion In The Comprehensive Plan And An Effective Date. **11:00 a.m. First Public Hearing**

2. An Ordinance Amending The Future Land Use Map Of The City's Comprehensive Plan For The North Beach Town Center From CD-3, "Commercial, High Intensity" To TC-1, "Town Center Core"; From CD-2, "Commercial, Medium Intensity" To TC-2, "Town Center Mixed Use"; And From RM-1, "Residential Multifamily, Low Intensity" To TC-3, "Town Center Residential Office"; Directing Transmittal Of This Ordinance And All Applicable Documents To Affected Agencies; Providing For Repealer, Severability, And An Effective Date. **11:00 a.m. First Public Hearing**

3. An Ordinance Amending The City's Land Development Regulations, By Amending Chapter 142, "Zoning Districts And Regulations", Article II, "District Regulations", By Creating A New Division 20, "TC North Beach Town Center Districts", Creating New Zoning Districts TC-1, Town Center Core; TC-2, Town Center Mixed Use; And TC-3, Town Center Residential Office; Providing For Purpose And Intent, Definitions, Main Permitted, Conditional, Accessory And Prohibited Uses, Development Regulations, Design Review Standards, And Parking Regulations; Amending Chapter 130, "Off-Street Parking", Article II, "Districts; Requirements", Section 130-31, "Parking Districts Established", Amending The Boundaries Of Parking District 4; Amending Article III, Section 130-68, "Commercial And Noncommercial Parking Garages", Adopting New Regulations In TC-3 And GU For Commercial And Noncommercial Parking Garages; Amending Chapter 138, "Signs", Article V, "Sign Regulations By Districts", Section 138-172, "Schedule Of Sign Regulations For Principal Use Signs"; Creating A New Section 138-174, "North Beach Town Center Signage"; Amending Chapter 142, Division 4, "Alcoholic Beverages," Sections 142-1301 And 142-1302 To Include TC Districts; Providing For Codification; Repealer; Severability; And An Effective Date. **11:00 a.m. First Public Hearing**

4. An Ordinance Amending The Official Zoning District Map, Referenced In Section 142-72 Of The City Code, By Changing The Zoning District Classifications For The North Beach Town Center From CD-3, "Commercial, High Intensity" To TC-1, "Town Center Core"; From CD-2, "Commercial, Medium Intensity" To TC-2, "Town Center Mixed Use"; And From RM-1, "Residential Multifamily, Low Intensity" To TC-3, "Town Center Residential Office" And TC-3(C) "Town Center Conditional Neighborhood Commercial"; And Amending The Affected Portion Of The City's Official Zoning District Map To Correspond With These Changes; Providing For Repealer; Severability; And An Effective Date. **11:00 a.m. First Public Hearing**

(Planning Department)

R5 - Ordinances (Continued)

R5E South Shore Hospital - Amending The Future Land Use Map And Zoning Maps (Page 407)

1 An Ordinance Amending The Future Land Use Map Of The Comprehensive Plan By Changing The Future Land Use Category For The Parcel Known As The "South Shore Hospital," More Particularly Described In The Legal Description Attached As Exhibit "A," From The Current PF-RHO, "Public Facility (Religious, Hospital, Other)," To The Future Land Use Category Of CD-2, "Commercial, Medium Intensity;" With A Restriction Limiting The Property To No More Than 10 Residential Units Per Acre As Provided For In The Voluntary Covenant; Providing For Inclusion In The Comprehensive Plan, Transmittal, Repealer, Severability And An Effective Date. **11:15 a.m. First And Only Reading Public Hearing**

2. An Ordinance Amending The Official Zoning District Map, Referenced In Section 142-72 Of The Code Of The City Of Miami Beach, Florida, By Changing The Zoning District Classification For The Parcel Known As The "South Shore Hospital," More Particularly Described In The Legal Description Attached As Exhibit "A" Hereto, From The Current Zoning Classification HD, "Hospital District," To The Proposed Zoning Classification CD-2, "Commercial, Medium Intensity," With A Restriction Limiting The Property To No More Than 10 Residential Units Per Acre As Provided For In The Voluntary Covenant Attached Hereto; Providing For Codification, Repealer, Severability And An Effective Date. **11:15 a.m. First And Only Reading Public Hearing**

(Planning Department)

R5F An Ordinance Amending The City's Comprehensive Plan To Include New Or Revised And/Or Updated Goals, Objectives And Policies In The Following Elements; Future Land Use, Transportation, Housing, Infrastructure, Conservation/Coastal Zone Management, Recreation And Open Space, Capital Improvements, Intergovernmental And Historic Preservation; All In Relation To Certain Items Identified In The City's 2005-2007 Evaluation And Appraisal Report (EAR); And Authorizing And Directing The City Administration To Transmit The Proposed Amendments To The Florida Department Of Community Affairs An Any Other Required State And Local Agencies; Providing For Repealer, Severability, Codification And An Effective Date. **11:40 a.m. First Reading Public Hearing** (Page 433)

(Planning Department)

R5G An Ordinance Amending Ordinance No. 1335, The Classified Employees' Leave Ordinance, By Amending The Provisions For Accumulation And Payment Of Annual And Sick Leave For The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME); Providing For A Repealer, Severability, And An Effective Date. **11:50 a.m. Second Reading Public Hearing** (Page 443)

(Human Resources)
(First Reading on July 14, 2010)

R5H An Ordinance Amending The Miami Beach Employees' Retirement Plan; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And The American Federation Of State, County And Municipal Employees (AFSCME), And Government Supervisors Association (GSA); Implementing Similar Retirement Plan Amendments For Members Who Are Not Included In Any Bargaining Unit; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing An Effective Date. **11:51 a.m. Second Reading Public Hearing** (Page 451)

(Human Resources)
(First Reading on July 14, 2010)

R5 - Ordinances (Continued)

R5I An Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record", Providing For The Purchase Of Additional Creditable Service Upon Completion Of Ten Years Of Service With The City; Amending Section 66 Entitled "Service And Disability Benefits Generally", Providing For The Inclusion Of Compensation For Certain Off Duty Services In A Member's Salary For Pension Purposes, And Providing For The Sale Of Unused Sick And/Or Vacation Time For Inclusion In A Member's Final Average Monthly Earnings, Subject To Certain Limitations; Revising The Limitation On Overtime Pay Included In Salary For Pension Purposes; Amending Section 67, Entitled "Cost-Of-Living Adjustment", Providing For An Annual Adjustment On The Anniversary Date Of A Member's Retirement Or Separation From Employment; "Amending Section 79 Entitled "Deferred Retirement Option Plan", Providing For A Maximum Drop Period Of Sixty Months And A Modified Cost Of Living Adjustment During The Drop Period; Creating A New Section 87 Entitled "Benefits For Employees Hired On Or After July 14, 2010"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date. **11:52 a.m. Second Reading Public Hearing** (Page 475)

(Human Resources)
(First Reading on July 14, 2010)

R5J An Ordinance Implementing Provisions Of The 2009-2012 Collective Bargaining Agreement Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Creating A New Article IV Of Chapter 78, Miami Beach City Code Entitled "Health Benefits For Firefighters And Police Officers"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date. **11:53 a.m. Second Reading Public Hearing** (Page 501)

(Human Resources)
(First Reading on July 14, 2010)

R5K An Ordinance Amending The Land Development Regulations Of The Miami Beach City Code; Amending Section 118-593, "Historic Preservation Designation"; Amending Section 118-593(E), "Delineation On Zoning Map"; Amending Section 118-593(E)(1), "Historic Preservation Sites (HPS)" By Designating The Miami Beach Rod & Reel Club At 218 South Hibiscus Drive, As An Historic Site, As More Particularly Described Herein; Providing That The City's Zoning Map Shall Be Amended To Include The Miami Beach Rod & Reel Club Historic Site; Adopting The Designation Report Attached Hereto As Appendix "A"; Providing For Inclusion In The Land Development Regulations Of The City Code, Repealer, Severability, And An Effective Date. **5:15 p.m. First And Only Reading Public Hearing** (Page 507)

(Planning Department)

R5L An Ordinance Amending The Code Of The City Of Miami Beach, By Amending Chapter 106, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division 1, Entitled "Generally," By Amending Section 106-47, Entitled "Freight, Commercial, And Passenger Curb Loading Zones; Hours, Deliveries" By Amending Commercial Delivery Regulations And Providing Relief To Residential Areas In Close Proximity To Commercial Operations With Late Hour Deliveries And Similar Habitual Sources Of Noise; Providing For Codification, Repealer, Severability, And An Effective Date. **First Reading** (Page 523)

(Parking Department)

R5 - Ordinances (Continued)

R5M An Ordinance Amending Ordinance No. 789, The Classified Employees' Salary Ordinance; Providing For The Group I Classifications, Being Those Classifications Covered By The American Federation Of State, County And Municipal Employees/Local No. 1554 (AFSCME), By Transferring The Classifications Of Building Services Technician, Concession Attendant, Customer Service Representative, Ice Rink Technician, Recreation Leader I, Recreation Leader II, School Guard, And Storekeeper III From Group VI, Being Classifications In The Classified Service Not Covered By A Bargaining Unit ("Others") To Group I, And By Abolishing The Classification Of Stores Clerk From Group I; Providing For The Classifications In Group V, Being Those Classifications Covered By The Government Supervisors Association Of Florida/OPIEU Local 100 (GSA); By Abolishing The Classifications Of Parking Facilities Supervisor, Property Management Operations Supervisor And Tennis Center Supervisor From Group V; Providing For Classifications In Group VI, Being Classifications In The Classified Service Not Covered By A Bargaining Unit ("Others"), By Establishing The Classifications Of Fire Inspector I And Seasonal Recreational Aide, And By Transferring The Classifications Of Building Services Technician, Concession Attendant, Customer Service Representative, Ice Rink Technician, Recreation Leader I, Recreation Leader II, School Guard, And Storekeeper III From Group VI To Group I; Providing For Repealer, Severability, And An Effective Date. **First Reading**

(Human Resources)

(Item submitted in a separate "Budget Related Items" book)

R5N Amend Special Masters Fees

An Ordinance Amending The Following Provisions Of The Miami Beach City Code With Regard To Administrative Special Master Hearing Appeal Fees Which Will Be Set Uniformly Via Resolution Of The City Commission, And To Provide Consistent References To Administrative Special Master Hearing Procedures And Appeal Fees Throughout The City Code, By Amending Chapter 18, Entitled "Businesses," By Amending Article XV, Entitled "Street Performers And Art Vendors"; By Amending Section 18-911(B) Thereof; By Amending Chapter 30, Entitled "Code Enforcement," By Amending Article Iii, Entitled "Enforcement Procedures," By Amending Sections 30-72(A) And 30-79(A) Thereof; By Amending Chapter 42, Entitled "Emergency Services," By Amending Article Ii, Entitled "Alarm Systems," By Amending Section 42-91(C) Thereof; By Amending Chapter 46, Entitled "Environment," By Amending Article VI, Entitled "Noise," By Amending Sections 46-159(B)-(C) And 46-161(D) Thereof; By Amending Chapter 82, Entitled "Public Property," By Amending Article Iv, Entitled "Uses In Public Rights-Of-Way," By Amending Section 82-151(E) Thereof; By Amending Chapter 86, Entitled "Sales," By Amending Article II, Entitled "Garage Sales," And Article III, Entitled "Non-Profit Vending And Distribution," By Amending Sections 86-108(B) And 86-150(B), Respectively; By Amending Chapter 90, Entitled "Solid Waste," By Amending Article IV, Entitled "Private Waste Collectors/Contractors," By Amending Section 90-231(B) Thereof; By Amending Chapter 102, Entitled "Taxation," By Amending Article IV, Entitled "Resort Tax," And Article V, Entitled "Local Business Tax," By Amending Sections 102-322(C)(1), 102-372(A), 102-377(A)(2), And 102-384, Respectively; By Amending Chapter 106, Entitled "Traffic And Vehicles," By Amending Article V, Entitled "Police Vehicle Towing," And Article X, Entitled "Nonmotorized Vehicles For Hire," By Amending Sections 106-220(A) And 106-467(B)-(C), Respectively; By Amending Chapter 130, Entitled "Off-Street Parking," By Amending Article X, Entitled "Supplementary Convention Center Parking," By Amending Section 130-286; Providing For Codification; Severability; Repealer; And An Effective Date. **First Reading**

(City Clerk's Office)

(Item submitted in a separate "Budget Related Items" book)

R5 - Ordinances (Continued)

R5O Parking Rate Ordinance Amendments
An Ordinance Amending The Code Of The City Of Miami Beach, By Amending Chapter 106, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division 1, Entitled "Generally," By Amending Section 106-55, Entitled "Parking Rates, Fees, And Penalties;" By Amending Parking Meter Rates And Time Limits In The South Beach Parking Zone And Amending The Fees For The Hotel Hang Tag Program; Providing For Codification, Repealer, Severability, And An Effective Date. **First Reading**

(Parking Department)

(Item submitted in a separate "Budget Related Items" book)

R5P Ordinances Related To Modifications To The Building, Fire, Planning And Public Works Department Fees Approved On February 1, 2010 Related To The Building Development Process

1. An Ordinance Amending Chapter 14 Of The City Of Miami Beach Code, By Deleting Part 1, Sections 14-61 Thru 14-338 Thereof; Amending Sections 14-61 Through 14-70; And Amending Appendix A, Sections 14-61(B) Through 14-70(7); By Modifying Inspection Fees For Building, Plumbing, Electrical, And Mechanical Work, And For Other Building Department Activities; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading**

2. An Ordinance Amending Chapter 50 Of The City Of Miami Beach Code, By Amending Section 50-3 Thereof, Entitled "Plans Examination, Inspection, Permits"; And Amending Appendix A, Sections 50-3(b) Through 50-3(bb), By Adding New Fees And Modifying The Fee Schedule For The Fire Department Review Process; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading**

3. An Ordinance Amending Chapter 15 Of The City Of Miami Beach Code, Article II, Entitled "Zoning Review Fee Associated With The Building Process", By Adding New Sections 15-38, 15-39, And 15-40 Thereof; And Amending Appendix A, Section 15-32, Adding New Fees And Modifying The Fee Schedule For Zoning Review Associated With The Building Process; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading**

4. An Ordinance Amending Chapter 98 Of The City Of Miami Beach Code, Article III, Division 2, Section 98-92, Entitled "Application; Amount Of Deposit; Use Of Deposit To Replace Surface; Permit Fees," By Adding Subsections (F), And (G); And Amending Appendix A Sections 98-92(C) Through 98-92(E) By Adding New Fees And Modifying The Fee Schedule For Public Works Review Associated With The Building Process; Providing For Repealer, Severability, Codification, And An Effective Date.
First Reading

(Building/Fire/Planning/Public Works)

(Item submitted in a separate "Budget Related Items" book)

R5Q Sidewalk Café Ordinance
An Ordinance Amending, Respectively, Appendix A To Section 82-383(a), And Appendix A To Section 50-3(z) Of The City Code, To Modify The Sidewalk Café Occupancy Fee And The Sidewalk Café Propane Tank Heater Fee; Providing For Repealer, Codification, Severability, And An Effective Date. **First Reading**

(Public Works)

(Item submitted in a separate "Budget Related Items" book)

R7 - Resolutions

R7A A Resolution Approving On Second Reading (And Final Approval), Following A Duly Noticed Public Hearing, A Lease Agreement Between The City And David A. Wrubel, CPA, PA, For Use Of Approximately 1,518 Square Feet Of City-Owned Property, Located At 1130 Washington Avenue, 5th Floor, Miami Beach, Florida; Said Lease Having An Initial Term Of Three Years, With Two Additional Three Year Renewal Terms, At The City's Sole Discretion; Authorizing The Mayor And City Clerk To Executed The Lease Agreement. **10:25 a.m. Second Reading Public Hearing** (Page 533)
(Real Estate, Housing & Community Development)
(First Reading on July 14, 2010)

R7B A Resolution Approving On Second Reading (And Final Approval), Following A Duly Noticed Public Hearing, A Lease Agreement Between The City And Leonardo Salon, Inc., For Use Of Approximately 1,326.78 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 1 (A/K/A 765 17th Street), Miami Beach, Florida; Said Lease Having An Initial Term Of Four Years And 364 Days, With One Additional Five Year Renewal Term, At The City's Sole Discretion; Authorizing The Mayor And City Clerk To Execute The Lease Agreement. **10:30 a.m. Second Reading Public Hearing** (Page 567)
(Real Estate, Housing & Community Development)
(First Reading on July 14, 2010)

R7C A Resolution Approving On Second Reading (And Final Approval), Following A Duly Noticed Public Hearing, A Lease Agreement Between The City And Massage Partners, Inc., For Use Of Approximately 1,802.89 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 2 (A/K/A 767 17th Street), Miami Beach, Florida; Said Lease Having A Term Of Nine Years And 364 Days; Authorizing The Mayor And City Clerk To Execute The Lease Agreement. **10:35 a.m. Second Reading Public Hearing** (Page 597)
(Real Estate, Housing & Community Development)
(First Reading on July 14, 2010)

R7D A Resolution Approving A Two Month Lease Extension And Authorizing The Mayor And City Clerk To Execute A Lease Agreement Between The City Of Miami Beach, As Tenant, And Meridian Miami, LLC, As Landlord, For Use Of Approximately 5,311 Rentable Square Feet Of Property, Located At 1680 Meridian Avenue, Suites 201 And 203, Miami Beach, Florida, To Be Used As Administrative Offices For The City's Fire Department; Said Lease Having A Term Of Nine (9) Months, Commencing On December 1, 2010, And Ending On August 31, 2011. (Page 699)
(Real Estate, Housing & Community Development)

R7 - Resolutions (Continued)

R7E A Resolution Approving, Following Second And Final Reading And Public Hearing, A Development Agreement Between The City And The Housing Authority Of The City Of Miami Beach (HACMB) Pertaining To The Design, Development, And Construction Of The Following Projects On Certain Real Property Owned By HACMB, Located At 1231-1251 17th Street, Miami Beach, Florida: 1.) An Affordable Elderly Housing Project With Ground Level, Neighborhood Oriented Commercial Space, To Be Developed And Constructed At HACMB's Sole Cost And Expense; (The "HACMB Project") And 2.) A Public Right Of Way, Including A Bridge, For Vehicular And Pedestrian Access, Connecting West Avenue And Dade Boulevard, To Be Designed, Developed, And Constructed At The City's Sole Cost And Expense (The "West Avenue Bridge Project") Over A Perpetual Easement Over The Property; Which Easement The City Intends To Purchase From HACMB (The 'City Easement"), Pursuant To The Terms And Conditions Of That Certain Purchase And Sale Agreement Between The City And HACMB, As Approved (In Substantial Form) On July 14, 2010, Pursuant To Resolution No. 2010-27451. **10:45 a.m. Second Reading Public Hearing** (Page 721)

(Economic Development)

(First Reading Public Hearing on July 14, 2010)

R7F A Resolution Authorizing The Issuance By The City Of Miami Beach, Florida Of (I) Parking Revenue Refunding Bonds, Series 2010A, In An Aggregate Principal Amount Not To Exceed $20,000,000, For The Purpose Of Refunding The City's Outstanding Parking Revenue Bonds, Series 1997, And (II) Parking Revenue Bonds, Series 2010B, In An Aggregate Principal Amount Not To Exceed $30,000,000, For The Purpose Of Paying Costs Of Improvements To The Parking System; Providing For The Issuance Of Additional Parking Revenue Bonds And The Incurrence Of Other Types Of Indebtedness Of The City To Pay All Or Part Of The Cost Of Additional Improvements To The City's Parking System And For Refunding Outstanding Parking Revenue Bonds; Providing For The Payment Of Such Bonds And Other System Debt; Setting Forth The Rights And Remedies Of The Holders Of Such Bonds And Other System Debt; Providing Certain Details Of The Series 2010 Bonds; Delegating Other Matters In Connection With The Issuance Of The Series 2010 Bonds, Including Whether To Secure One Or More Credit Facilities And/Or Reserve Account Insurance Policies, And The Refunding Of The Prior Bonds To The Mayor; Appointing Underwriters, A Bond Registrar, An Escrow Agent And A Disclosure Dissemination Agent; Authorizing The Negotiated Sale Of The Series 2010 Bonds And Approving The Form And Execution Of A Bond Purchase Agreement For The Series 2010 Bonds; Approving The Forms Of A Preliminary Official Statement And An Official Statement For The Series 2010 Bonds And Authorizing Execution Of The Official Statement; Covenanting To Provide Continuing Disclosure In Connection With The Series 2010 Bonds And Approving The Form And Execution Of A Continuing Disclosure Agreement; Approving The Form And Execution Of An Escrow Deposit Agreement For The Prior Bonds; Authorizing Officials Of The City To Take All Necessary Actions In Connection With The Issuance Of The Series 2010 Bonds And Refunding Of The Prior Bonds; Providing A Severability Clause; And Providing An Effective Date. **11:30 a.m. First Reading Public Hearing** (Page 773)

(Finance Department)

(Deferred from July 14, 2010)

R7 - Resolutions (Continued)

R7G1 A Resolution Adopting: 1) The Tentative Ad Valorem Millage of 6.2155 Mills For General Operating Purposes, Which is Zero Point Two Percent (0.2%) More Than the "Rolled-Back" Rate Of 6.2030 Mills; And 2) The Debt Service Millage Rate of 0.2870 Mills; Further Setting The Second Public Hearing To Consider The Millage Rate For Fiscal Year (FY) FY 2010/11, On Monday, September 20, 2010 At 5:01 p.m. **5:01 p.m. First Reading Public Hearing** (Page)
(Office of Budget & Performance Improvement)
(Item submitted in a separate "Budget Related Items" book)

R7G2 A Resolution Adopting Tentative Budgets For The General, G.O. Debt Service, RDA Ad Valorem Taxes, Enterprise, And Internal Service Funds For Fiscal Year 2010/11 Subject To A Second Public Hearing Scheduled On Monday, September 20, 2010 At 5:01 p.m. **5:01 p.m. First Reading Public Hearing** (Page)
(Office of Budget & Performance Improvement)
(Item submitted in a separate "Budget Related Items" book)

R7H1 A Resolution Of The Board Of Directors Of The Normandy Shores Local Government Neighborhood Improvement District Adopting The Tentative Ad Valorem Millage Of 1.0375 Mills For Fiscal Year (FY) 2010/11 For The Normandy Shores Local Government District, Which Is Three And One Half Percent (3.5%) More Than The "Rolled-Back" Of 1.0025 Mills, Subject To A Second Public Hearing Scheduled On Monday, September 20, 2010 At 5:02 p.m. **5:02 p.m. First Reading Public Hearing** (Page)
(Office of Budget & Performance Improvement)
(Item submitted in a separate "Budget Related Items" book)

R7H2 A Resolution Of The Board Of Directors Of The Normandy Shores Local Government Neighborhood Improvement District Adopting The Tentative Operating Budget For Fiscal Year (FY) 2010/11 Subject To A Second Public Hearing Scheduled On Monday, September 20, 2010 At 5:02 p.m. **5:02 p.m. First Reading Public Hearing** (Page)
(Office of Budget & Performance Improvement)
(Item submitted in a separate "Budget Related Items" book)

R9 - New Business and Commission Requests

R9A Board And Committee Appointments. (Page 905)
(City Clerk's Office)

R9A1 Board And Committee Appointments - City Commission Appointments. (Page 911)
(City Clerk's Office)

R9A2 Nomination Of Manuel Miñagori To The Normandy Shores Local Government Neighborhood Improvement District Board. (Page 917)
(Requested by Commissioner Jerry Libbin)

R9 - New Business and Commission Requests (Continued)

R9B1 Dr. Stanley Sutnick Citizen's Forum. (12:30 p.m.) (Page 919)
R9B2 Dr. Stanley Sutnick Citizen's Forum. (5:30 p.m.)

R9C Discuss Motion To Rescind The Vote Taken At The June 9, 2010 Commission Meeting On Agenda Item C4F To Build Twelve (12) Clay Courts And Five (5) Hard Courts At Flamingo Park And Further Discuss The Tennis Courts. (Page 921)
(Requested by Commissioner Edward L. Tobin)

R9D Discussion Regarding Recent Billing Of Parking Impact Fees And The Possibility Of A Moratorium Due To Present Economic Market Conditions. (Page 923)
(Requested by Commissioner Jonah Wolfson)

R9E New World Symphony

1. Discussion Regarding The Re-Naming Of Lincoln Park To Miami Beach Music Garden Or Music Garden Of Miami Beach. (Page 925)
(Requested by Commissioners Edward L. Tobin)

2. Discussion Regarding Holding A City Sponsored Contest Between September 16 And October 15 To Name The New Public Park Associated With The New World Symphony. (Page 927)
(Requested by Commissioner Jerry Libbin)

3. Discussion Regarding The Naming Of The New Park East Of The New World Symphony Building. (Page 929)
(Requested by Commissioner Deede Weithorn)

4. Discussion Regarding The Naming Rights Of The New World Symphony Building And Creating Regulations For Naming Rights When The City Has Funded A Project Or Owns The Land Where The Project Is Developed. (Page 931)
(Requested by Commissioner Deede Weithorn)

5. Discussion Regarding Two (2) Proposed Ordinances Providing For Exemption Of The City Naming Ordinance. (Page 933)
   a) New World Symphony (NWS) Leased Premises And NWS Improvements.
   b) Lincoln Park From City's Naming Ordinance.
(Requested by Commissioner Jonah Wolfson)

R9F Discussion Regarding The Issue Of Amending The Closing Time For The Fillmore Miami Beach At The Jackie Gleason Theatre From Midnight To 2:00 a.m. For The Winter Party Event In March 2011. (Page 941)
(Requested by Commissioner Michael Góngora)

R9G Discussion About A Proposed Settlement Agreement Regarding K.T.K.L Corporation, Vs. City Of Miami Beach, In The Eleventh Judicial Circuit Of Florida, General Jurisdiction, Case No.: 97-2687 CA 03. (Page 943)
(City Attorney's Office)

R10 - City Attorney Report

R10A Notice Of Attorney Client Session (Page 947)
Pursuant To §286.011, Florida Statutes, The City Attorney Hereby Advises The Mayor And City Commission That He Desires Advice Concerning The Following Pending Litigation Matter:

K.T.K.L Corporation Vs. City Of Miami Beach, Eleventh Judicial Circuit Of Florida, General Jurisdiction, Case No.: 97-2687 CA 03

Therefore, A Private Closed Attorney-Client Session Will Be Held During The Lunch Recess Of The City Commission Meeting On September 15, 2010 In The City Manager's Large Conference Room, Fourth Floor, City Hall, To Discuss Settlement Negotiations And/Or Strategy Related To Litigation Expenditures With Regard To The Above-Referenced Litigation Matter.

The Following Individuals Will Be In Attendance: Mayor Matti Herrera Bower; Members Of The City Commission: Jorge Exposito, Michael Gongora, Jerry Libbin, Edward Tobin, Deede Weithorn And Jonah Wolfson; City Attorney Jose Smith, City Manager Jorge Gonzalez, Chief Deputy City Attorney Donald Papy, First Assistant City Attorney Steven Rothstein, Special Counsel Rodolfo Sorondo, And Special Counsel Michael Garcia.

R10B Notice Of Closed Executive Session (Page 949)
Pursuant To Section 447.605, Florida Statutes, A Closed Executive Session Will Be Held During Recess Of The City Commission Meeting On Wednesday, September 15, 2010, In The City Manager's Large Conference Room, Fourth Floor, City Hall, For A Discussion Relative To Collective Bargaining.

Reports and Informational Items

Reports and Informational Items (see LTC #234-2010)

End of Regular Agenda

MIAMIBEACH

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

HOW A PERSON MAY APPEAR BEFORE THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA

THE REGULARLY SCHEDULED MEETINGS OF THE CITY COMMISSION ARE ESTABLISHED BY RESOLUTION. SCHEDULED MEETING DATES ARE AVAILABLE ON THE CITY'S WEBSITE, DISPLAYED ON CABLE CHANNEL 77, AND ARE AVAILABLE IN THE CITY CLERK'S OFFICE. COMMISSION MEETINGS COMMENCE NO EARLIER THAN 9:00 A.M. GENERALLY THE CITY COMMISSION IS IN RECESS DURING THE MONTH OF AUGUST.

1. DR. STANLEY SUTNICK CITIZENS' FORUM will be held during the first Commission meeting each month. The Forum is split into two (2) sessions, 1:30 p.m. and 5:30 p.m., or as soon as possible thereafter, provided that the Commission Meeting has not already adjourned prior to the time set for either session of the Forum. In the event of adjournment prior to the Stanley Sutnick Citizens' Forum, notice will be posted on Cable Channel 77, and posted at City Hall. Approximately thirty (30) minutes will be allocated for each session, with individuals being limited to no more than three (3) minutes or for a time period established by the Mayor. No appointment or advance notification is needed in order to speak to the Commission during this Forum.

2. Prior to every Commission meeting, an Agenda and backup material are published by the Administration. Copies of the Agenda may be obtained at the City Clerk's Office on the Monday prior to the Commission regular meeting. The complete Agenda, including all backup material, is available for inspection beginning the Monday prior to the Commission meeting at the City Clerk's Office and at the following Miami Beach Branch Libraries: Main, North Shore, and South Shore. The information is also available on the City's website: www.miamibeachfl.gov the Friday prior to a Commission Meeting.

3. Any person requesting placement of an item on the Agenda must provide a written statement with his/her complete address and telephone number to the Office of the City Manager, 1700 Convention Center Drive, 4th Floor, Miami Beach, Fl 33139, briefly outlining the subject matter of the proposed presentation. In order to determine whether or not the request can be handled administratively, an appointment may be scheduled to discuss the matter with a member of the City Manager's staff. "Requests for Agenda Consideration" will not be placed on the Agenda until after Administrative staff review. Such review will ensure that the issue is germane to the City's business and has been addressed in sufficient detail so that the City Commission may be fully apprised. Such written requests must be received in the City Manager's Office no later than noon on Tuesday of the week prior to the scheduled Commission meeting to allow time for processing and inclusion in the Agenda package. Presenters will be allowed sufficient time, within the discretion of the Mayor, to make their presentations and will be limited to those subjects included in their written requests.

4. Once an Agenda for a Commission Meeting is published, persons wishing to speak on item(s) listed on the Agenda, other than public hearing items and the Dr. Stanley Sutnick Citizens Forum, should call or come to City Hall, Office of the City Clerk, 1700 Convention Center Drive, telephone 673-7411, before 5:00 p.m., no later than the day prior to the Commission meeting and give their name, the Agenda item to be discussed, and if known, the Agenda item number.

5. All persons who have been listed by the City Clerk to speak on the Agenda item in which they are specifically interested, and persons granted permission by the Mayor, will be allowed sufficient time, within the discretion of the Mayor, to present their views. When there are scheduled public hearings on an Agenda item, IT IS NOT necessary to register at the City Clerk's Office in advance of the meeting. All persons wishing to speak at a public hearing may do so and will be allowed sufficient time, within the discretion of the Mayor, to present their views.

6. If a person wishes to address the Commission on an emergency matter, which is not listed on the Agenda, there will be a period allocated at the commencement of the Commission Meeting when the Mayor calls for additions to, deletions from, or corrections to the Agenda. The decision as to whether or not the matter will be heard, and when it will be heard, is at the discretion of the Mayor. On the presentation of an emergency matter, the speaker's remarks must be concise and related to a specific item. Each speaker will be limited to three minutes, or for a longer or shorter period, at the discretion of the Mayor.

MIAMIBEACH

CITY CLERK'S OFFICE
LOBBYISTS LIST
September 15, 2010

LOBBYIST NAME	RETAINED BY	REGISTERED	DISCLOSURE
C7I Approve Professional Service Agmt with First Class Parking – RFP 40-07/08			
Neisen Kasdin	First Class Parking	02/26/2009	$550 per hour
C7K Review a Design Review Board Decision - EuroAmenican Group			
Neisen Kasdin	EuroAmenican Group	02/25/05	$400 per hour
C7L – Amend Flum and Zoning District Map – 1600 Lenox			
Matthew Amster	1600 Lenox Investors/Greenstreet Partners	05/14/2010	$285 per hour
R5E South Shore Hospital - Amending The Future Land Use Map And Zoning Maps			
Jonathan Cardello	South Beach Heights, LLC	12/15/2008	$60,000
Russell Galbut	South Beach Heights, LLC	01/12/2009	No Compensation
R7E Development Agmt with The Housing Authority of Miami Beach			
Eve Boutsis	Housing Authority	12/17/2009	No compensation

R5

Condensed Title:

Requesting authorization to amend the date lobbyist are required to file their annual expenditures and compensation disclosure from October 1st for the preceding calendar year to February 28th for the preceding calendar year.

Key Intended Outcome Supported:

N/A

Supporting Data (Surveys, Environmental Scan, etc.):
N/A

Issue:

Should the City Commission approve the ordinance on second and final reading?

Item Summary/Recommendation:

SECOND READING – PUBLIC HEARING
City Code Section 2-485 (List of expenditures; fee disclosure; reporting requirements). Paraphrasing 2-485(a), the current City Code requires that on October 1st of each year, lobbyist subject to the lobbyist registration requirements shall submit to the city clerk a sign statement under oath listing all lobbying expenditures and compensation received for the PRECEDING [emphasis added] calendar year. This requirement has created a tremendous amount of follow-up work each year for the city clerk's office due to the fact that the reporting period is nine (9) months after the end of the calendar year.

The ordinance amendment proposed is to change the disclosure due date from October 1st of each year for the preceding calendar year to February 28th of each year for the preceding calendar year. This reduces the reporting requirement from nine (9) months to two (2) months.

Lastly, should the City Commission authorize the City Code amendments, for the purposes of transitioning from the October 1st date to the February 28th reporting date, it is requested that the report for 2009 and 2010 be submitted by February 28th, 2011.

The Administration recommends approving the ordinance.

Advisory Board Recommendation:

Approved at the Neighborhood/Community Affairs Committee meeting of June 29th

Financial Information:

Source of Funds:		Amount	Account
n/a	1	N/A	
Financial Impact Summary:			

City Clerk's Office Legislative Tracking:

Robert Parcher, extension 7411

Sign-Offs:

Robert Parcher, Department Director	Dolores Mejia, Special Projects Coordinator	Jorge M. Gonzalez, City Manager
RP	DM	JMG

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MIAMIBEACH

AGENDA ITEM R5A
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **Second Reading Public Hearing**

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 3 ENTITLED "LOBBYISTS", SECTION 2-482 THEREOF ENTITLED "REGISTRATION" SO AS TO CLARIFY THAT THE ANNUAL LOBBYIST REGISTRATION FEE IS REQUIRED TO BE PAID FOR EACH TWELVE MONTH PERIOD COMMENCING OCTOBER 1 OF EACH YEAR; AND AMENDING CITY CODE SECTION 2-485 THEREOF ENTITLED "LIST OF EXPENDITURES; FEE DISCLOSURE; REPORTING REQUIREMENTS", SO AS TO CHANGE ANNUAL REPORTING DATE FOR LOBBYIST EXPENDITURE AND FEE DISCLOSURE FROM OCTOBER 1 TO FEBRUARY 28, AND CHANGING CORRESPONDING ANNUAL DATE FOR POST-DELINQUENCY LOBBBYIST SUSPENSION DUE TO FAILURE TO FILE REPORT AFTER IMPOSITION OF PENALTY FROM DECEMBER 1 TO APRIL 30; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

Adopt the ordinance.

FUNDING

Not applicable.

BACKGROUND

The first reading of the ordinance was approved as amended at the July 14, 2010 Commission Meeting. The Administration initially proposed changing the disclosure due date from October 1st of each year for the preceding calendar year to January 31st of each year for the preceding calendar year. This change reduces the reporting delay from nine (9) months to one (1) month. At the July 14, 2010 Commission Meeting the City Commission determined that the January 31st date may not give the lobbyist ample time to prepare their report and amended the date for lobbyist expenditure and fee disclosure from January 31st to February 28th.

City Code Section 2-485 (List of expenditures; fee disclosure; reporting requirements). Paraphrasing 2-485(a), the current City Code requires that on October 1st of each year, lobbyist subject to the lobbyist registration requirements shall submit to the city clerk a sign statement under oath listing all lobbying expenditures and compensation received for the PRECEDING [emphasis added] calendar year. This requirement has created a tremendous amount of follow-up work each year for the city clerk's office due to the fact that the reporting period is nine (9) months after the end of the calendar year.

The ordinance amendment proposed is to change the disclosure due date from October 1st of each year for the preceding calendar year to February 28th of each year for the preceding calendar year. This reduces reporting delay from nine (9) months to two (2) months.

In addition, City Code Section 2-485 (d), requires the city clerk to notify any lobbyist who fails to timely file the disclosure report by December 1st shall automatically be suspended from lobbying until the $50 per day fine is paid or the lobbyist appeals to the Miami-Dade County Ethics Commission. The proposed amendment changes the December 1st date to April 30th which is aligned with the February 28th reporting period.

Clarifying language is being proposed to City Code Section 2-482(f) regarding the annual lobbyist registration. (f) "In addition to the $350 per issue registration fee required in subsection (a) of this sections, annual registration of all lobbyist shall be required for each twelve months period commencing October 1st of each year and the fee for such annual registration shall be $500 as specified in Appendix A.

Lastly, should the City Commission authorize the City Code amendments, for the purposes of transitioning from the October 1st date to the February 28th reporting date, it is requested that the report for 2009 and 2010 be submitted by February 28, 2011.

CONCLUSION

Although the City Clerk's office will be doing the same amount of initial work to comply with the City Code, by reducing the nine (9) month period to two (2) months will provide for more timely responses from the lobbyist.

The Administration recommends that the Mayor and City Commission approve the ordinance.

JMG/REP

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 3 ENTITLED "LOBBYISTS", SECTION 2-482 THEREOF ENTITLED "REGISTRATION" SO AS TO CLARIFY THAT THE ANNUAL LOBBYIST REGISTRATION FEE IS REQUIRED TO BE PAID FOR EACH TWELVE MONTH PERIOD COMMENCING OCTOBER 1 OF EACH YEAR; AND AMENDING CITY CODE SECTION 2-485 THEREOF ENTITLED "LIST OF EXPENDITURES; FEE DISCLOSURE; REPORTING REQUIREMENTS", SO AS TO CHANGE ANNUAL REPORTING DATE FOR LOBBYIST EXPENDITURE AND FEE DISCLOSURE FROM OCTOBER 1 TO FEBRUARY 28, AND CHANGING CORRESPONDING ANNUAL DATE FOR POST-DELINQUENCY LOBBBYIST SUSPENSION DUE TO FAILURE TO FILE REPORT AFTER IMPOSITION OF PENALTY FROM DECEMBER 1 TO APRIL 30; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Miami Beach City Code Chapter 2, Article VII, Division 3 entitled "Lobbyists", Section 2-482 thereof is hereby amended to read as follows:

Sec. 2-482. Registration.
(a) All lobbyists shall, before engaging in any lobbying activities, register with the city clerk. Every person required to register shall register on forms prepared by the clerk, pay a registration fee of $350.00, as specified in appendix A and state under oath:

(1) His name;

(2) His business address;

(3) The name and business address of each person or entity which has employed the registrant to lobby;

(4) The commissioner or personnel sought to be lobbied, and whether the lobbyist has entered into any contractual relationship (paid or unpaid) with said city commissioner or personnel from 12 months preceding such person's commencement of service with the city to the present date, stating the general nature of the subject contractual relationship.

(5) The specific issue on which he has been employed to lobby; and

(6) The terms and amount of compensation to be paid by each principal to the lobbyist with regard to the specific issue on which the lobbyist has been engaged to lobby.

Cross references: List of expenditures; fee disclosure; reporting requirements, § 2-485.
(b) Any change to any information originally filed, or any additional city commissioner or personnel who are also sought to be lobbied shall require that the lobbyist file an amendment to the registration forms, although no additional fee shall be required for such amendment. The

lobbyist has a continuing duty to supply information and amend the forms filed throughout the period for which the lobbying occurs.

(c) If the lobbyist represents a corporation, partnership or trust, the chief officer, partner or beneficiary shall also be identified. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five percent or more ownership interest in such corporation, partnership, or trust.

(d) Separate registration shall be required for each principal represented on each specific issue. Such issue shall be described with as much detail as is practical, including but not limited to a specific description where applicable of a pending request for a proposal, invitation to bid, or public hearing number.

(e) Each person who withdraws as a lobbyist for a particular client shall file an appropriate notice of withdrawal.

(f) In addition to the $350.00 per issue registration fee required in subsection (a) of this section, annual registration of all lobbyists shall be required ~~prior to~~ for each twelve month period commencing October 1 of each year~~;~~, and the fee for such annual registration shall be $500.00, as specified in appendix A.

(g) Every registrant shall be required to state the extent of any business, financial, familial or professional relationship, or other relationship giving rise to an appearance of an impropriety, with any current city commissioner or city personnel who is sought to be lobbied as identified on the lobbyist registration form filed.

(h) The registration fees required by subsections (a) and (f) of this section shall be deposited by the clerk into a separate account and shall be expended for the purpose of recording, transcribing, administration, and other costs incurred in maintaining these records for availability to the public. There shall be no fee required for filing a notice of withdrawal, and the city commission may in its discretion, waive the registration fee upon a finding of financial hardship. Prior to conducting any lobbying, all principals must file a form with the city clerk, signed by the principal or the principal's representative, stating under oath that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor. Each principal shall file a form under oath with the city clerk at the point in time at which a lobbyist is no longer authorized to represent the principal. Any person (except those exempt from the definition of "lobbyist" as set forth in section 2-481 above) who only appears as a representative of a not-for-profit corporation or entity without special compensation or reimbursement for the appearance, whether direct or indirect to express support of or opposition to any item, shall register with the clerk as required by this section but, shall not be required to pay any registration fees. Copies of registration forms shall be furnished to each commissioner or other personnel named on the forms.

(i) All members of the city commission and all city personnel shall be diligent to ascertain whether persons required to register pursuant to this section have complied. Commissioners or city personnel may not knowingly permit themselves to be lobbied by a person who is not registered pursuant to this section to lobby the commissioner or the relevant committee, board or city personnel.

(j) The city clerk shall publish logs on a quarterly and annual basis reflecting the lobbyist registrations filed. All logs required by this section shall be prepared in a manner substantially similar to the logs prepared for the state legislature pursuant to F.S. § 11.045.

SECTION 2. That Miami Beach City Code Chapter 2, Article VII, Division 3 entitled "Lobbyists", Section 2-485 thereof is hereby amended to read as follows:

Sec. 2-485. List of expenditures; fee disclosure; reporting requirements.

(a) On ~~October 1~~ February 28th [1] of each year, lobbyists subject to lobbyist registration requirements shall submit to the city clerk a signed statement under oath as provided herein listing all lobbying expenditures, as well as compensation received, for the preceding calendar year with regard to the specific issue on which the lobbyist has been engaged to lobby. A statement shall be filed even if there have been no expenditures or compensation during the reporting period. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events.

(b) Each lobbyist and his/her principal shall, before engaging in any lobbying activities, submit to the city clerk a joint signed statement under oath disclosing the terms and amount of compensation to be paid by each principal to the lobbyist with regard to the specific issue on which the lobbyist has been engaged to lobby. If no compensation will be paid concerning the subject lobby services, a statement shall nonetheless be filed reflecting as such.

(c) Any change to information originally filed shall require that the lobbyist (and principal under subsection (b) above) file, within three business days from such changed circumstances, a signed statement under oath amending the above-referenced reports; additionally, in the event official action on the specific lobbied issue is scheduled to occur during said three day period, the lobbyist and principal shall prior to said official action, further disclose the amendment by publicly stating on the record at which the official action is to occur the subject amendment. The lobbyist and principal have a continuing duty to supply accurate information and amend said reports when so needed.

(d) The city clerk shall notify any lobbyist (or principal) who fails to timely file the expenditure or fee disclosure reports referenced in sections (a) and (b) above. In addition to any other penalties which may be imposed as provided in section 2-485.1, a fine of $50.00 per day shall be assessed for reports filed after the due date. Any lobbyist who fails to file the required expenditure report by ~~December 1~~ April 30 shall be automatically suspended from lobbying until all fines are paid, unless the fine has been appealed to the Miami Dade County Ethics Commission.

(e) The city clerk shall notify the Miami-Dade County Commission on Ethics and Public Trust of the failure of a lobbyist (or principal) to file either of the reports referenced above and/or pay the assessed fines after notification.

(f) A lobbyist (or principal) may appeal a fine and may request a hearing before the Miami-Dade Commission on Ethics and Public Trust. A request for a hearing on the fine must be filed with the Miami-Dade Commission on Ethics and Public Trust within 15 calendar days of receipt of the notification of the failure to file the required disclosure form. The Miami-Dade Commission on Ethics and Public Trust shall have the authority to waive the fine, in whole or in part, based on good cause shown.

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[1] For purposes of transitioning this change of date and related lobbyist responsibility to timely file disclosure reports as required hereinabove, reports for calendar years 2009 and 2010 shall be submitted to the City Clerk by February 28, 2011, with subsequent years' reports to be filed with the City Clerk by February 28 of each respective following year, as set forth in (a) above.

SECTION 3. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect the _____ day of _____, 2010.

PASSED and **ADOPTED** this _____ day of _____, 2010.

ATTEST:

_____
MAYOR

_____
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 8/31/10 Date

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MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:15 a.m.
Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 3 Entitled "Lobbyists", Section 2-482 Thereof Entitled "Registration" So As To Clarify That The Annual Lobbyist Registration Fee Is Required To Be Paid For Each Twelve Month Period Commencing October 1 Of Each Year; And Amending City Code Section 2-485 Thereof Entitled "List Of Expenditures; Fee Disclosure; Reporting Requirements", So As To Change Annual Reporting Date For Lobbyist Expenditure And Fee Disclosure From October 1 To February 28, And Changing Corresponding Annual Date For Post-Delinquency Lobbbyist Suspension Due To Failure To File Report After Imposition Of Penalty From December 1 To April 30, 2010.

Inquiries may be directed to the City Clerk's Office (305) 673-7411

10:20 a.m.
Ordinance Amending The Code Of The City Of Miami Beach, Florida; Amending Chapter 82, "Public Property," Article II, "Sale Or Lease Of Public Property," Sections 82-36 Through 82-40, Amending The Procedures For Sale Or Lease Of City Property; Providing For Inclusion In The Code Of The City Of Miami Beach.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:40 a.m.
Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division I, Entitled "Generally," By Amending Section 106-55, Entitled "Parking Rates, Fees, And Penalties," By Amending Subsection (N), Entitled "Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicles Incentive," By Amending Vehicle Participation Criteria For The Hybrid/ILEV Vehicles Incentive Program To Include Vehicles With An EPA (Environmental Protection Agency) Rating Of Six "6" Or Higher ("Smartway" Designation) And Street Legal Electric Vehicles, Increasing The Number Of Reserved Hybrid Vehicle Spaces At The 42nd Street Garage From One Percent (1%) To Two Percent (2%), Establishing One Percent (1%) Of The Parking Spaces At The 7th Street Garage And 13th Street As Reserved For Hybrid Vehicles Only, And Establishing An Automatic Review Of All Hybrid Vehicle Incentives Upon Reaching A Hybrid Permit Sales Threshold Of Five Percent (5%) Of Total Permit Sales.

Inquiries may be directed to the Parking Department (305) 673-7275

11:50 a.m.
Ordinance Amending Ordinance No. 1335, The Classified Employees' Leave Ordinance, By Amending The Provisions For Accumulation And Payment Of Annual Leave For The American Federation Of State, County And Municipal Employees/Local No. 1554 (AFSCME).

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:51 a.m.
Ordinance Amending The Miami Beach Employees' Retirement Plan; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME), And Government Supervisors Association Of Florida/OPEIU Local 100 (GSA); Implementing Similar Retirement Plan Amendments For Members Who Are Not Included In Any Bargaining Unit; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing An Effective Date

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:52 a.m.
Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And Fire-Fighters Of Miami Beach, IAFF Local 1510, And The Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record", Providing For The Purchase Of Additional Creditable Service Upon Completion Of Ten Years Of Service With The City; Amending Section 66 Entitled "Service And Disability Benefits Generally", Providing For The Inclusion Of Compensation For Certain Off Duty Services In A Member's Salary For Pension Purposes, And Providing For The Sale Of Unused Sick And/Or Vacation Time For Inclusion In A Member's Final Average Monthly Earnings, Subject To Certain Limitations; Amending Section 79 Entitled "Deferred Retirement Option Plan", Providing For A Maximum Drop Period Of Sixty Months And A Modified Cost Of Living Adjustment During The Drop Period; Creating A New Section 87 Entitled "Benefits For Employees Hired On Or After July 14, 2010"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:53 a.m.
Ordinance Implementing Provisions Of The 2009-2012 Collective Bargaining Agreement Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Creating A New Article IV Of Chapter 78, Miami Beach City Code Entitled "Health Benefits For Firefighters And Police Officers.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).
Ad #613

Condensed Title:

An Ordinance amending Chapter 82 ("Public Property"), Article II ("Sale or Lease of Public Property"), Sections 82-36 through 82-40, amending the procedures for sale or lease of City property.

Key Intended Outcome Supported:

Increase resident satisfaction with the level of services and facilities.

Supporting Data (Surveys, Environmental Scan, etc.):
Approximately 40% of retail businesses surveyed, rank Miami Beach as one of the best places to do business and 61% of the same group would recommend Miami Beach as a place to do business.

Issue:

Should the City Commission approve the Ordinance amendment?

Item Summary/Recommendation:

SECOND READING & PUBLIC HEARING
Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, currently provides that the lease of any City-owned property, including option periods, requires the following:

1) a public bidding process;
2) Planning Department analysis;
3) an independent appraisal to determine the value of the leasehold interest;
4) two (2) readings of the proposed lease; and
5) a public hearing to obtain citizen input.

The proposed Ordinance amendment deals primarily with streamlining the procedures for leasing City property, and was initiated pursuant to a request by the City Administration, in order for City-owned properties to remain competitive in the commercial real estate market. This was prompted by the City's recent efforts to lease commercial space in Historic City Hall and at 1701 Meridian Avenue. The current approval process has created delays that impact The City's ability to compete for viable commercial tenants in a very difficult real estate market.

The Finance & Citywide Projects Committee, at its May 20, 2010 meeting, discussed and unanimously approved the proposed amendment to the Ordinance.

On July 14, 2010, the City Commission approved the proposed Ordinance amendment on first reading and scheduled a public hearing on September 15, 2010.

The Administration and City Attorney's Office hereby also recommend that the Mayor and City Commission approve the Ordinance amendment on second reading, after a duly noticed public hearing.

Advisory Board Recommendation:

Finance & Citywide Projects Committee on May 20, 2010.

Financial Information:

Source of Funds:		Amount	Account
n/a	1	N/A	

Financial Impact Summary: This amendment does not significantly alter how the Administration currently reviews and processes City leases. Therefore, there is no fiscal impact associated with this amendment.

City Clerk's Office Legislative Tracking:

Anna Parekh, extension 7193

Sign-Offs:

Anna Parekh, Department Director	Hilda M. Fernandez, Assistant City Manager	Jorge M. Gonzalez, City Manager
AP	HF	JMG

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MIAMIBEACH

AGENDA ITEM R5B
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **SECOND READING & PUBLIC HEARING**

SUBJECT: **AN ORDINANCE AMENDING CHAPTER 82 ("PUBLIC PROPERTY"), ARTICLE II ("SALE OR LEASE OF PUBLIC PROPERTY"), SECTIONS 82-36 THROUGH 82-40, AMENDING THE PROCEDURES FOR SALE OR LEASE OF CITY PROPERTY**

ADMINISTRATION RECOMMENDATION
Adopt the Ordinance.

KEY INTENDED OUTCOMES SUPPORTED
Increase resident satisfaction with the level of services and facilities.

BACKGROUND
On March 8, 2006, the Mayor and City Commission adopted Ordinance No. 2006-3509, amending the procedure for the sale or lease of public property by requiring two separate readings prior to approval of any sale or lease of public property.

Sections 82-36 through 82-40 of the Miami Beach City Code, governing the sale/lease of public property, currently provides that the lease of any City-owned property, including option periods, requires the following:

1) a public bidding process;
2) Planning Department analysis;
3) an independent appraisal to determine the value of the leasehold interest;
4) two (2) readings of the proposed lease; and
5) a public hearing to obtain citizen input.

Section 82-36 through 82-39 further provide for the waiver of the competitive bidding and appraisal requirements, by 5/7^{ths} vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions.

ANALYSIS
The Administration typically requests that the majority of proposed leases be reviewed by the F&CPC prior to first reading by the City Commission. Historically, the lease approval process includes the following four (4) steps:

1) Referral of the lease discussion item to the Finance & Citywide Projects Committee (F&CPC) by the City Commission;
2) Discussion of the proposed lease by the F&CPC;
3) Approval, on first reading, of the proposed lease and setting of a public hearing;
4) Approval, on second reading, of the lease following a duly noticed public hearing.

Steps one and two above, while not currently mandatory pursuant to the current Shapiro Ordinance,

were deemed appropriate and prudent especially when applied to the $1.00 per year leases, as is the case with the not-for-profit tenants. This has provided the Administration with the benefit of the F&CPC's direction with regard to any "public benefit component" and/or "benchmark" terms to be included in these leases with non-profits to offset the below market rates. The application of steps one and two above to all commercial leases paying average market rates may have a detrimental effect on the City's ability to remain competitive with the private sector in the current economic market as explained in the attached memo from Koniver Stern, the City's contracted real estate broker (Attachment A). The process of referring alone adds another month to the schedule.

For example, a four (4) month delay in obtaining approval of a lease is not typical in the commercial real estate market. Lessees that require new space because they are at the end of a current lease often cannot wait four months after the conclusion of negotiations (which in itself may take some time) to obtain approval, move-out and move-in. If the delay results in additional expenses to remain in their leased space, then these potential lessees may pursue other competitive options.

Furthermore, amending the Shapiro Ordinance to streamline the lease approval process would allow the City to commence the collection of Rent a minimum of one month sooner, resulting in additional revenue to the City. The following chart demonstrates the total revenue the City was unable to collect from recently approved leases during the 09/10 Fiscal Year, due to the current reviews and two-reading requirement pursuant to the Shapiro Ordinance.

ECOMB	$ 200.10
GEMCOR, Inc.	$ 3,153.77
Immunity, Inc.	$ 6,848.96
MDGLCC Foundation, Inc.	$ 4,223.00
Miami Beach Film Society, Inc.	$ 4,205.00
Paul A. Sack	$ 1,382.98
Rubin & Bickman, PLLC	$ 3,045.49
Strang Adams, P.A.	$ 1,819.29
	$24,878.59

At the October 21, 2008 meeting of the F&CPC, and subsequently at their meeting of March 10, 2009, the Committee also approved the Administration's recommendation that the process of developing lease agreements based on supply and demand be utilized for the leasing and occupancy of these available spaces, and that any future commercial leases (including renewals and/or extensions) for use of City-owned properties (not programmed for City use) be handled as it is in the private sector and not through a competitive bid process, with the Administration ensuring that market rates are negotiated and operating expenses included. All leases would continue to require City Commission approval pursuant to the Shapiro Ordinance.

The F&CPC, at its May 20, 2010 meeting, discussed and unanimously approved the proposed amendments to the Shapiro Ordinance.

On July 14, 2010, the City Commission approved the proposed Ordinance amendment on first reading and scheduled a public hearing on September 15, 2010.

PROPOSED AMENDMENTS

The proposed amendment deals primarily with streamlining the procedures for leasing City property, and was initiated pursuant to a request by the City Administration, in order for City-owned properties to remain competitive in the commercial real estate market.

Under the current provisions of the Shapiro Ordinance, City leases are subject to two (2) readings (at two separate City Commission meetings), with the second reading followed by a public hearing. Additionally, pursuant to policy established by the City Commission, proposed leases are also presented to the City's Finance and Citywide Projects Committee, for its review and recommendation.

The current process has made the approval of a City lease a lengthy process, which can take months, since it requires that multiple actions be taken at the Committee level and at various City Commission meetings, including:

1. Referral of the proposed lease to the Finance/Citywide Projects Committee;
2. Discussion of the lease at the Finance and Citywide Projects Committee;
3. First reading before the City Commission;
4. Approval by the City Commission to set the public hearing, followed by a fifteen (15) day notice requirement prior to the hearing; and
5. Second (and final) reading of the lease and holding of the public hearing.

When the Shapiro Ordinance was last amended (in 2006), to include the "two readings" requirement for City leases, the real estate market was considerably different, and the City itself was not leasing the number of City properties (particularly City-owned commercial properties) that it is today. Leasing volume has also increased due to turnover as a result of current economic/market conditions. The proposed amendment—which, again, only changes the procedures for City leases and NOT for the sale of City properties—seeks to balance the City's desire to remain competitive and economically viable in today's commercial real estate market, with the acknowledgement that leases of public property should continue to require close scrutiny, by both the City Commission and the general public.

The following are the major proposed changes:

1. For leases of MORE THAN TEN (10) YEARS (including renewal options):

   - Review by Finance and Citywide Projects Committee (The Manager can refer to the Committee directly, instead of having to go to the City Commission for prior authorization);
   - Two (2) readings—this requirement is unchanged;
   - Second reading public hearing—this requirement is also unchanged except that the Manager can set the hearing without prior Commission authorization, and the noticing requirement is now seven (7) days instead of (15) days; and
   - Competitive bidding, appraisal, and Planning Department analysis— all still required (Note: As provided under the current Ordinance, bidding/appraisal requirements can continue to be waived by 5/7ths vote).

2. For leases of TEN (10) YEARS OR LESS (including renewal options):

   (NOTE: SINCE MOST OF THE CITY'S CURRENT COMMERCIAL LEASES FALL WITHIN THIS CATEGORY, THIS IS PRIMARILY WHERE THE MAJOR CHANGES ARE PROPOSED)

   - Review by Finance and Citywide Projects Committee (Manager can refer without prior Commission authorization);

- Only one (1) reading required (instead of two);
- First (and only) reading must be a public hearing (Manager can set without prior Commission authorization, and noticing requirement is seven (7) days instead of fifteen (15) days);
- Competitive bidding and appraisal still required (but can continue to be waived by 5/7ths vote); and
- No Planning Dept. Analysis required (Note: Manager has the discretion, however, to require Planning Analysis for any lease, regardless of term).

FISCAL IMPACT

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action and determined that this amendment does not significantly alter how the Administration currently reviews and processes leases for the use of City properties. Therefore, there is no fiscal impact associated with this Ordinance amendment.

CONCLUSION

The proposed amendment was unanimously approved by the Committee. In order to remain competitive and economically viable in today's commercial real estate market, the Administration and City Attorney's Office hereby also recommend that the Mayor and City Commission approve on second reading, following a duly noticed public hearing, an amendment to the procedures for the sale or lease of City property.

JMG/HMF/AP/RR

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ATTACHMENT A

KONIVER STERN GROUP
RETAIL REAL ESTATE & BROKERAGE

MEMO

Date: June 24, 2010

To: Hilda Fernandez

From: Lyle B. Stern

Re: **Shapiro Ordinance**

In response to your request for our perspective with regards to proposed changes to the Shapiro Ordinance as it relates to retail leases in the parking garage, here are my thoughts:

The retail real estate market exists in a constantly evolving environment. In order to be competitive, landlords must lower barriers to entry for tenants. In addition to location, price, delivery, condition, etc, one of the important factors to the tenant is the ability to make the decision, lock in an opportunity, commit capital and be assured that the opportunity won't be lost before a lease is signed, once a letter of intent is negotiated. The City's current requirement that there be two commission meetings for public review/vetting of the lease requires a tenant to be involved in an environment unlike any other lease negotiation in the City.

After identifying the opportunity and negotiating a letter of intent, the tenant is required to fully negotiate a lease and commit working capital to attorney's fees, complete a lease and still have no assurance that the landlord will execute the lease. This dynamic is antithetical to normal deal flow. While it is the rare occasion that fully negotiated leases do not get executed by the landlord or the tenant, it is certainly not the norm. So we are asking tenants to commit capital and go into a holding period which can exceed 90 days, possibly losing other opportunities in the market for an uncertain outcome. In that timeline, the tenant can not even commit to commence architectural drawings since they have no assurance that the lease will be executed, providing yet another delay in rent commencement for the City. In our opinion, lowering or eliminating this barrier to entry could benefit the City greatly.

1665 Washington Avenue, Penthouse
Miami Beach, Florida 33139
T (305) 532-6100 F (305) 532-6101

www.koniversterngroup.com

First Reading
7-14-10

ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA; AMENDING CHAPTER 82, "PUBLIC PROPERTY," ARTICLE II, "SALE OR LEASE OF PUBLIC PROPERTY," SECTIONS 82-36 THROUGH 82-40, AMENDING THE PROCEDURES FOR SALE OR LEASE OF CITY PROPERTY; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Code of the City of Miami Beach provides specific procedures for the sale or lease of public property in Chapter 82 (the Ordinance); and

WHEREAS, the City Commission finds that it is in the best interest of the City to amend certain procedures therein for approval of leases or sale of public property.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Miami Beach City Code Chapter 82, "Public Property," Article II, "Sale or Lease of Public Property," Sections 82-36 through 82-40, is amended as follows:

Sec. 82-36. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City property includes but is not limited to any land, water or air rights.

Lease of city property means any right to lease city property by way of agreement, irrespective of consideration being paid to the city, and irrespective of the city's also utilizing or being allowed to utilize the property for any purpose during the term of the lease. For purposes of this article, the term "lease" shall not include special event permits~~,~~; revocable permits~~,~~; concession agreements~~,~~; convention center ~~or T.O.P.A.~~ use agreements or similar use agreements for short-term use of any of the city's cultural and/or parks and recreation facilities; management and operation agreements;~~,~~ or leases for a term of not more than one (1) year, including option periods.
Sale of city property means any conveyance, transfer, gift, exchange or other transaction in which legal title passes from the city to any person or entity, whether or not the city retains

any partial title, interest, reservation, easement, right-of-way, dedication, restriction, or license in regard to the property. ~~"Sale" shall include vacations of alleys and rights-of-way, and terminations of public easements on private property (excluding grants and/or terminations of utility easements).~~

Sec. 82-37. Committee Review and Public Hearing.

a) Prior to the sale or lease of city property for a term of more than ten (10) years (including option periods):

1. the proposed sale or lease shall be transmitted by the city manager (without the need for referral by the city commission) to the finance and citywide projects committee, for its review; and

2. the city commission shall have read the title of the resolution approving the sale or lease on two (2) separate dates, with the second reading to be accompanied by a public hearing, which may be set by the city manager and shall be advertised not less than seven (7) days prior to said hearing, in order to obtain citizen input into the proposed sale or lease.

b) Prior to the lease of city property for a term of ten (10) years or less (including option periods):

1. the proposed lease shall be transmitted by the city manager (without the need for referral by the city commission) to the finance and citywide projects committee, for its review; and

2. the city commission may approve the lease on one (1) reading, which shall be accompanied by a public hearing, which may be set by the city manager and shall be advertised not less than seven (7) days prior to said hearing, in order to obtain citizens input into the proposed lease.

~~Prior to the sale and/or lease of city property, the city commission shall have read the title of the resolution approving such sale and/or lease on two separate dates and immediately following the second reading hold a public hearing, advertised not less than 15 days prior to the hearing, in order to obtain citizen input into any proposed sale and/or lease.~~

Sec. 82-38. Planning Analysis.

For any sale of city property, or lease of city property of more than ten (10) years (including option periods), and ~~I~~in order for the city commission and the public to be fully apprised of all conditions relating to the proposed sale ~~and/~~or lease of such city property, the ~~planning, design and historic preservation divisions~~ city's planning department shall prepare ~~an~~ written analysis, to be submitted to the city commission concurrent with its consideration of the proposed sale or lease, using the following criteria:

(1) Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city's comprehensive plan.

(2) The impact on adjacent propert~~y~~ies (if any), including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level, ~~or~~ enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the ~~proponent~~ purchaser/lessee shall be responsible for obtaining and paying for a traffic impact analysis from a reputable traffic engineer.

(3) A determination as to whether or not the proposed use ~~is in keeping with~~ involves a public purpose, or is in keeping with the ~~and~~ community's needs, such as expanding the city's revenue base, reducing city costs, creating jobs, creating a significant revenue stream, and/or improving the community's overall quality of life.

(4) A ~~D~~determination as to whether or not the ~~development~~ proposed use is in keeping with the surrounding neighborhood, will block views or create other environmental intrusions, and evaluation of the design and aesthetic considerations of the proposed development or project.

(5) The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.

~~(6) A determination as to whether or not alternatives are available for the proposed disposition, including assembly of adjacent properties, and whether the project could be accomplished under a private ownership assembly.~~

~~(7) Within the constraints of public objectives, the department should examine financial issues such as job generation, providing housing opportunities, and the return to the city for its disposition of the property.~~

(6~~8~~) Such other issues as the ~~planning, design and historic preservation division~~ city manager or his authorized designee, who shall be the city's planning director, may deem appropriate in analysis of the proposed disposition.

Notwithstanding any provision in this section 82-83, the city manager, in his/her reasonable judgment and discretion, may require the planning department to prepare a written analysis (using the criteria in subsections 1-6 above) on any proposed lease, regardless of the term, where the city manager determines that such analysis is in the best interest of the city.

Sec. 82-39. Advertised public bidding process.

a) There shall be no sale or lease of city property unless there has been an advertised public bidding process. ~~In addition, the sale or lease shall comply with all requirements of state, county and city laws and regulations.~~ For leases of city property, the conditions of this section 82-39(a) may be waived by a five-seventh (5/7ths) vote of the city commission, upon a finding by the city commission that the public interest would be served by waiving such conditions.

b) For any sale of city property, or lease of city property of more than ten (10) years (including option periods), the city shall obtain ~~there shall also be~~ an independent appraisal of the fair market or rental value of the property. ~~The appraiser must be experienced in determining a reasonable return for projects of a public/private joint venture nature. Should the purchaser or lessee be unwilling to pay the cost of such appraisal, then any such cost may be deducted from a bid bond or similar deposit made in a bid process.~~ The appraisal shall include a determination of the value of the property based on proposed and possible uses including, without limitation, the highest and best use(s) of the property thereof~~,~~ by the proposed purchaser or lessee. With regard to any lease of city property for which an appraisal is required, the conditions of this section 82-39(b) may be waived by a five-sevenths (5/7ths) vote of the city commission, upon a finding by the city commission that the public interest would be served by waiving such condition.

~~In regard to all leases of more than five years, including option periods, the conditions of this section, and in regard to leases of five years or less, including option periods, the conditions of this section, and the public hearing requirement in section 82-37, may be waived by a five-sevenths vote of the city commission upon a finding by the city commission that the public interest would be served by waiving such conditions. In regard to any sale, the conditions of only this section may be waived upon a five-sevenths vote of the city commission upon a finding by the city commission that the public interest would be served by waiving such conditions (of bidding and/or appraisal) for the disposition of the property~~.

Sec. 82-40. Payment of costs.

All costs associated with the sale or lease procedures addressed in this article shall ~~be~~, at the option of the city manager, be paid by the purchaser or lessee prior to, or at the time of closing (for sales), or (for leases) execution of the lease agreement by lessee.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all sections and parts of sections in

conflict herewith be and the same are hereby repealed.

SECTION 3. INCLUSION IN CODE OF THE CITY OF MIAMI BEACH, FLORIDA.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word ordinance may be changed to section or other appropriate word.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this _____ day of _____, 2010.

_____
MAYOR

ATTEST:

_____
CITY CLERK

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 6/10/10 Date

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:15 a.m.
Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 3 Entitled "Lobbyists", Section 2-482 Thereof Entitled "Registration" So As To Clarify That The Annual Lobbyist Registration Fee Is Required To Be Paid For Each Twelve Month Period Commencing October 1 Of Each Year; And Amending City Code Section 2-485 Thereof Entitled "List Of Expenditures; Fee Disclosure; Reporting Requirements", So As To Change Annual Reporting Date For Lobbyist Expenditure And Fee Disclosure From October 1 To February 28, And Changing Corresponding Annual Date For Post-Delinquency Lobbbyist Suspension Due To Failure To File Report After Imposition Of Penalty From December 1 To April 30, 2010.

Inquiries may be directed to the City Clerk's Office (305) 673-7411

10:20 a.m.
Ordinance Amending The Code Of The City Of Miami Beach, Florida; Amending Chapter 82, "Public Property," Article II, "Sale Or Lease Of Public Property," Sections 82-36 Through 82-40, Amending The Procedures For Sale Or Lease Of City Property; Providing For Inclusion In The Code Of The City Of Miami Beach.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:40 a.m.
Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division I, Entitled "Generally," By Amending Section 106-55, Entitled "Parking Rates, Fees, And Penalties," By Amending Subsection (N), Entitled "Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicles Incentive," By Amending Vehicle Participation Criteria For The Hybrid/ILEV Vehicles Incentive Program To Include Vehicles With An EPA (Environmental Protection Agency) Rating Of Six "6" Or Higher ("Smartway" Designation) And Street Legal Electric Vehicles, Increasing The Number Of Reserved Hybrid Vehicle Spaces At The 42nd Street Garage From One Percent (1%) To Two Percent (2%), Establishing One Percent (1%) Of The Parking Spaces At The 7th Street Garage And 13th Street As Reserved For Hybrid Vehicles Only, And Establishing An Automatic Review Of All Hybrid Vehicle Incentives Upon Reaching A Hybrid Permit Sales Threshold Of Five Percent (5%) Of Total Permit Sales.

Inquiries may be directed to the Parking Department (305) 673-7275

11:50 a.m.
Ordinance Amending Ordinance No. 1335, The Classified Employees' Leave Ordinance, By Amending The Provisions For Accumulation And Payment Of Annual Leave For The American Federation Of State, County And Municipal Employees/Local No. 1554 (AFSCME).

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:51 a.m.
Ordinance Amending The Miami Beach Employees' Retirement Plan; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME), And Government Supervisors Association Of Florida/OPEIU Local 100 (GSA); Implementing Similar Retirement Plan Amendments For Members Who Are Not Included In Any Bargaining Unit; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing An Effective Date

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:52 a.m.
Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And Fire-Fighters Of Miami Beach, IAFF Local 1510, And The Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record", Providing For The Purchase Of Additional Creditable Service Upon Completion Of Ten Years Of Service With The City; Amending Section 66 Entitled "Service And Disability Benefits Generally", Providing For The Inclusion Of Compensation For Certain Off Duty Services In A Member's Salary For Pension Purposes, And Providing For The Sale Of Unused Sick And/Or Vacation Time For Inclusion In A Member's Final Average Monthly Earnings, Subject To Certain Limitations; Amending Section 79 Entitled "Deferred Retirement Option Plan", Providing For A Maximum Drop Period Of Sixty Months And A Modified Cost Of Living Adjustment During The Drop Period; Creating A New Section 87 Entitled "Benefits For Employees Hired On Or After July 14, 2010"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:53 a.m.
Ordinance Implementing Provisions Of The 2009-2012 Collective Bargaining Agreement Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Creating A New Article IV Of Chapter 78, Miami Beach City Code Entitled "Health Benefits For Firefighters And Police Officers.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).
Ad #613

Condensed Title:

An Ordinance Amending Section Chapter 106, "Traffic and Vehicles" Article II, "Metered Parking" by amending Sections 106-55(n), "Parking Rates, Fees, and Penalties; incentives for Hybrid/ILEV vehicles.

Key Intended Outcome Supported:

Improve Parking Availability.

Supporting Data (Surveys, Environmental Scan, etc.): 74% of residents and 72% of businesses rate the availability of parking across the City as too little or much too little. Availability of parking was one of the changes residents identified to Make Miami Beach better to live, work or play.

Issue:

Whether to amend the parking rate ordinance to include additional incentives promoting the use of hybrid/ILEV vehicles.

Item Summary/Recommendation:

SECOND READING

In order to continue providing incentives to the public at large promoting hybrid vehicle use, the City's Transportation and Parking Committee (TPC) endorsed the amendments below on April 12, 2010 and June 7, 2010 and the Sustainability Committee (SC) endorsed the amendments below on April 20, 2010. An amendment to the City's Parking Rate Ordinance is necessary in order to initiate these amendments. The following are the recommended amendments to the program: In addition to the list maintained by the Florida Department of Highway Safety and Motor Vehicles, vehicles with an EPA (Environmental Protection Agency) rating of six "6" or higher or "Smartway" designation will also be honored. Vehicles rated at a six "6" or higher by the EPA are rated as "very good environmental performers relative to other vehicles". In addition, all street legal electric vehicles will also be honored in the program with the exception of those electric vehicles for rent at commercial establishments.

42nd Street Municipal Parking Garage – Increase the number of spaces for ILEV hybrid vehicles from one percent (1%) to two percent (2%) representing 13 spaces of the 620 parking spaces within the 42nd Street parking facility.

7th Street and 13th Street Garages – One percent (1%) of the parking spaces within theses parking facilities shall be identified as "Hybrid Vehicle Parking Only" for use by recognized ILEV/hybrid vehicles. The 7th Street Municipal Parking Garage has 646 spaces; therefore, one percent or seven (7) parking spaces will be designated as "Hybrid Vehicle Parking Only".* The 13th Street Municipal Parking Garage has 286 spaces; therefore, one percent or three (3) parking spaces will be designated as "Hybrid Vehicle Parking Only".*

Automatic Review - It is prudent to establish an automatic review of all Hybrid/ILEV vehicle incentives upon reaching a hybrid permit sales threshold of five percent (5%) of total permit sales is necessary.

Note: *ILEV/Hybrid vehicle spaces will be progressively enforced to ensure compliance; however, during major events, the ILEV/Hybrid Vehicle Program may be temporarily discontinued for those specific event dates in order to ensure maximum utilization of all parking spaces.

Administration Recommendation: Approve the amendment of the ordinance on second reading and final public hearing.

Advisory Board Recommendation:

The Transportation and Parking Committee (TPC) endorsed the proposed amendments on April 12, 2010 and June 7, 2010 and the Sustainability Committee endorsed the proposed amendments on April 20, 2010.

Financial Information:

Source of Funds:		Amount	Account	Approved
OBPI	1			
	Total			

Financial Impact Summary: ***The financial impact is unknown due to the unknown number of hybrid/ILEV vehicles participating.***

City Clerk's Office Legislative Tracking:

Saul Frances, Parking Director

Sign-Offs:

Department Director	Assistant City Manager	City Manager
SF	JGG	JMG

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MIAMIBEACH

AGENDA ITEM RSC
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **SECOND READING AND FINAL PUBLIC HEARING**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SECTION 106-55(n) OF THE CITY CODE, ENTITLED "HYBRID/ILEV (INHERENTLY LOW EMISSIONS VEHICLES) VEHICLES INCENTIVE," AMENDING VEHICLE PARTICIPATION CRITERIA TO INCLUDE VEHICLES WITH AN EPA (ENVIRONMENTAL PROTECTION AGENCY) RATING OF SIX "6" OR HIGHER ("SMARTWAY" DESIGNATION) AND STREET LEGAL ELECTRIC VEHICLES; INCREASING THE NUMBER OF RESERVED HYBRID VEHICLE SPACES AT THE 42ND STREET GARAGE FROM ONE PERCENT (1%) TO TWO PERCENT (2%) AND ESTABLISHING ONE PERCENT (1%) OF THE PARKING SPACES AT THE 7TH STREET GARAGE AND 13TH STREET AS RESERVED FOR HYBRID VEHICLES ONLY; ESTABLISHING AN AUTOMATIC REVIEW OF ALL HYBRID VEHICLE INCENTIVES UPON REACHING A HYBRID PERMIT SALES THRESHOLD OF FIVE PERCENT (5%) OF TOTAL PERMIT SALES; PROVIDING FOR REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

The Administration recommends that the Mayor and Commission approve the amendment of the ordinance on second reading and final public hearing.

First Reading Discussion by the City Commission:

On July 14, 2010, at the first reading of the proposed ordinance amendment, the Mayor and Commission referred the item to the Finance and Citywide Projects Committee for discussion. In addition, members of the City Commission had inquiries regarding the availability of parking for employees of commercial corridors such as Lincoln Road.

The Municipal Monthly Parking Program (MMPP) is available for all members of the public and is the primary option for commercial employee parking needs. The MMPP is available at a monthly rate of $70.00 (plus sales tax). Employees receive either an access card for a garage or receive a permit which must be affixed to the driver's side windshield.

Typically, requests for monthly parking are handled as availability allows. Most municipal surface lots have sufficient availability to accommodate demand; however, most garages do

not. For those facilities that do not have immediate availability, customers are placed on a waiting list for their "preferred facility" and an "interim facility" is offered until their place on the waiting list is reached. By way of example, the Lincoln Road corridor is lined on both sides with municipal surface parking lots. Customers wishing to use either the 17th Street Garage or City Hall Garage are placed on each facility's waiting list and an interim facility (a surface lot) is offered until they are transitioned into a garage.

Historically, employee parking in the Lincoln Road area meant very long waiting lists with over one thousand (1,000) customers and at its peak had an 18 month wait time (2004 - 2008). This has improved significantly over time. Most recently, the opening of the City Hall Garage in December 2009 created sufficient availability in the area for monthly parking that waiting lists for both garages were depleted. Since that time, demand has begun to creep again and as of August 25, 2010, there were 207 and 75 customers on the waiting lists for the 17th Street Garage and City Hall Garage, respectively. The opening of the Pennsylvania Garage, which is expected shortly, should absorb most, if not all, of the current waiting lists for the existing garages. The Parking Department continues to closely monitor transient and monthly usage levels in order to optimize this delicate balance.

ANALYSIS

In order to continue providing incentives to the public at large promoting hybrid vehicle use, the City's Transportation and Parking Committee (TPC) endorsed the amendments below on April 12, 2010 and June 7, 2010 and the Sustainability Committee (SC) endorsed the amendments below on April 20, 2010. An amendment to the City's Parking Rate Ordinance is necessary in order to initiate these amendments.

The following are the recommended amendments to the program:

- In addition to the list maintained by the Florida Department of Highway Safety and Motor Vehicles, vehicles with an EPA (Environmental Protection Agency) rating of six "6" or higher or "Smartway" designation will also be honored. The EPA evaluates all vehicles on their impact to the environment. Ratings are based on a scale of one (1) to ten (10) with "10" being the highest and best rating. Each vehicle receives an Air Pollution Score and Greenhouse Gas Score. Vehicles rated at a six "6" or higher by the EPA are rated as "very good environmental performers relative to other vehicles". In addition, all street legal electric vehicles will also be honored in the program with the exception of those electric vehicles for rent at commercial establishments.

- 42nd Street Municipal Parking Garage – Increase from one percent (1%) to two percent (2%) of the parking spaces within the 42nd Street parking facility shall be identified as "Hybrid Vehicle Parking Only" for use by recognized ILEV/hybrid vehicles. These parking spaces will be located in the most convenient parking spaces in the facility with only disabled parking spaces being in more convenient and accessible locations. The 42nd Street Municipal Parking Garage has 620 spaces; therefore, up to two percent (2%) or up to thirteen (13) parking spaces will be designated as "Hybrid Vehicle Parking Only".*

- 7th Street Garage – One percent (1%) of the parking spaces within the 7th Street parking facility shall be identified as "Hybrid Vehicle Parking Only" for use by recognized ILEV/hybrid vehicles. These parking spaces will be located in the most

convenient parking spaces in the facility with only disabled parking spaces being in more convenient and accessible locations. The 7th Street Municipal Parking Garage has 646 spaces; therefore, one percent or seven (7) parking spaces will be designated as "Hybrid Vehicle Parking Only".*

- 13th Street Garage – One percent (1%) of the parking spaces within the 13th Street parking facility shall be identified as "Hybrid Vehicle Parking Only" for use by recognized ILEV/hybrid vehicles. These parking spaces will be located in the most convenient parking spaces in the facility with only disabled parking spaces being in more convenient and accessible locations. The 13th Street Municipal Parking Garage has 286 spaces; therefore, one percent or three (3) parking spaces will be designated as "Hybrid Vehicle Parking Only".*

- Automatic Review - It is prudent to establish an automatic review of all Hybrid/ILEV vehicle incentives upon reaching a hybrid permit sales threshold of five percent (5%) of total permit sales is necessary.

Note: *ILEV/Hybrid vehicle spaces will be progressively enforced to ensure compliance; however, during major events, the ILEV/Hybrid Vehicle Program may be temporarily discontinued for those specific event dates in order to ensure maximum utilization of all parking spaces.

CONCLUSION

In conclusion, the Administration recommends that the Mayor and City Commission amend Chapter 106, "Traffic and Vehicles" Article II, "Metered Parking" by amending Sections 106-55(n), "Parking Rates, Fees, and Penalties; amending incentives for Hybrid/ILEV vehicles. The Administration will monitor the program over the next six months in order to determine the amendments impact and effectiveness.

Furthermore, at the request of the City Commission this program was referred to the Finance and Citywide Projects Committee for discussion. The Administration will report the outcome of that discussion via a Letter to Commission.

JMG/JGG/SF
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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 106 OF THE MIAMI BEACH CITY CODE, ENTITLED "TRAFFIC AND VEHICLES," BY AMENDING ARTICLE II, ENTITLED "METERED PARKING," BY AMENDING DIVISION I, ENTITLED "GENERALLY," BY AMENDING SECTION 106-55, ENTITLED "PARKING RATES, FEES, AND PENALTIES," BY AMENDING SUBSECTION (N), ENTITLED "HYBRID/ILEV (INHERENTLY LOW EMISSIONS VEHICLES) VEHICLES INCENTIVE," BY AMENDING VEHICLE PARTICIPATION CRITERIA FOR THE HYBRID/ILEV VEHICLES INCENTIVE PROGRAM TO INCLUDE VEHICLES WITH AN EPA (ENVIRONMENTAL PROTECTION AGENCY) RATING OF SIX "6" OR HIGHER ("SMARTWAY" DESIGNATION) AND STREET LEGAL ELECTRIC VEHICLES, INCREASING THE NUMBER OF RESERVED HYBRID VEHICLE SPACES AT THE 42ND STREET GARAGE FROM ONE PERCENT (1%) TO TWO PERCENT (2%), ESTABLISHING ONE PERCENT (1%) OF THE PARKING SPACES AT THE 7TH STREET GARAGE AND 13TH STREET AS RESERVED FOR HYBRID VEHICLES ONLY, AND ESTABLISHING AN AUTOMATIC REVIEW OF ALL HYBRID VEHICLE INCENTIVES UPON REACHING A HYBRID PERMIT SALES THRESHOLD OF FIVE PERCENT (5%) OF TOTAL PERMIT SALES; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Ordinance No. 2007-3586 was passed and adopted on December 12, 2007 by the Mayor and City Commission establishing incentives for use of Hybrid/ILEV vehicles in the City; and

WHEREAS, on May 14, 2008, the City Commission approved an amendment increasing the parking permit discount from 25% to 50%; establishing a $100.00 annual fee for Hybrid Citywide Parking Decals; and honoring said Hybrid Citywide Parking Decals at both on-street and off-street metered parking spaces; and

WHEREAS, the City of Miami Beach Parking Department recognizes that additional amendments to the Hybrid/ILEV (Inherently Low Emissions Vehicles) incentives are necessary in order to further incentivize and promote Hybrid/ILEV vehicles; and

WHEREAS, the EPA (Environmental Protection Agency) also recognizes the benefit of energy efficient vehicles and provides for vehicle emissions criteria and ratings for all vehicles according to their performance, and all street legal electric vehicles also provide these same benefits; and

WHEREAS, the City wishes to establish further incentives for Hybrid/ILEV vehicle use in the City by expanding reserved hybrid parking spaces at the 42nd Street Garage from one percent (1%) to two percent (2%), and by establishing one percent (1%) of the parking spaces at the 7th Street Garage and the 13th Street Garage as reserved spaces for Hybrid/ILEV vehicles; and

WHEREAS, it is prudent to establish an automatic review of all Hybrid/ILEV vehicle incentives upon reaching a hybrid permit sales threshold of five percent (5%) of total permit sales; and

WHEREAS, the City's Transportation and Parking Committee (TPC) discussed and endorsed the recommendations set forth in this Ordinance at their meetings held on April 12, 2010 and June 7, 2010, and the Sustainability Committee also discussed and endorsed these recommendations at its meeting on April 20, 2010; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. That Chapter 106, "Traffic and Vehicles," Article II, "Metered Parking," Division 1, "Generally," Section 106-55, "Parking Rate Fees, and Penalties," Subsection (n), "Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicle Incentive" of the Code of the City of Miami Beach, Florida, is hereby amended, as follows:

Chapter 106. Traffic and Vehicles

* * *

Sec. 106-55. Parking rates, fees, and penalties.

* * *

(n) Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicles Incentive:

Effective ~~January 1, 2008~~ October 1, 2010, the ~~City will establish a~~ Hybrid/ILEV Program ~~which~~ will use the State ILEV list; EPA (Environmental Protection Agency) vehicle rating of six "6" or higher or "Smartway" designation; and allow all street legal electric vehicles to qualify~~ing vehicles~~ for participation in the Program. Incentives to be offered to qualified and registered vehicle owners include:

a. Monthly parking permit holders for all facilities will be afforded a fifty percent (50%) discount on the monthly rate.

b. Residential permit holders in all designated zones shall receive a fifty percent (50%) savings on either their annual or semi-annual residential permit.

c. ~~Two hundred and fifty (250)~~ Five hundred (500) Citywide parking decals, honored at metered spaces only, shall be available only to State registered Hybrid/ILEV vehicles; vehicles receiving an EPA (Environmental Protection Agency) rating of six "6" or higher or "Smartway" designation; and all street legal electric vehicles on a first-come, first served basis. The cost of the Hybrid Citywide Decal is $100.00 per year.

d. ~~One~~ Two percent ~~(1%)~~ (2%) of the parking spaces at the 42nd Street Municipal Parking Garage may be designated as "Hybrid/ILEV Vehicle Parking Only" for use by recognized Hybrid/ILEV vehicles. One percent (1%) of the parking spaces at the 7th Street Garage and 13th Street Garage may be designated as "Hybrid/ILEV Vehicle Parking Only" for use by recognized Hybrid/ILEV vehicles.Notwithstanding the preceding sentence, the City Manager or his designee, who shall be the City's Parking Director, reserves the right, in his reasonable business judgement and discretion, to temporarily suspend the aforestated "Hybrid/ILEV Vehicle Parking Only" during special events in order to ensure maximum utilization of all parking spaces.

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten (10) days following adoption.

PASSED AND **ADOPTED** this _____ day of July, 2010.

ATTEST:

_____
MAYOR MATTI HERRERA BOWER

_____
ROBERT PARCHER, CITY CLERK

Underscore denotes new language
~~Strike-through~~ denotes deleted language
07/07/2010

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
7/7/10
CITY ATTORNEY DATE

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MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:15 a.m.
Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 3 Entitled "Lobbyists", Section 2-482 Thereof Entitled "Registration" So As To Clarify That The Annual Lobbyist Registration Fee Is Required To Be Paid For Each Twelve Month Period Commencing October 1 Of Each Year; And Amending City Code Section 2-485 Thereof Entitled "List Of Expenditures; Fee Disclosure; Reporting Requirements", So As To Change Annual Reporting Date For Lobbyist Expenditure And Fee Disclosure From October 1 To February 28, And Changing Corresponding Annual Date For Post-Delinquency Lobbbyist Suspension Due To Failure To File Report After Imposition Of Penalty From December 1 To April 30, 2010.

Inquiries may be directed to the City Clerk's Office (305) 673-7411

10:20 a.m.
Ordinance Amending The Code Of The City Of Miami Beach, Florida; Amending Chapter 82, "Public Property," Article II, "Sale Or Lease Of Public Property," Sections 82-36 Through 82-40, Amending The Procedures For Sale Or Lease Of City Property; Providing For Inclusion In The Code Of The City Of Miami Beach.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:40 a.m.
Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division I, Entitled "Generally," By Amending Section 106-55, Entitled "Parking Rates, Fees, And Penalties," By Amending Subsection (N), Entitled "Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicles Incentive," By Amending Vehicle Participation Criteria For The Hybrid/ILEV Vehicles Incentive Program To Include Vehicles With An EPA (Environmental Protection Agency) Rating Of Six "6" Or Higher ("Smartway" Designation) And Street Legal Electric Vehicles, Increasing The Number Of Reserved Hybrid Vehicle Spaces At The 42nd Street Garage From One Percent (1%) To Two Percent (2%), Establishing One Percent (1%) Of The Parking Spaces At The 7th Street Garage And 13th Street As Reserved For Hybrid Vehicles Only, And Establishing An Automatic Review Of All Hybrid Vehicle Incentives Upon Reaching A Hybrid Permit Sales Threshold Of Five Percent (5%) Of Total Permit Sales.

Inquiries may be directed to the Parking Department (305) 673-7275

11:50 a.m.
Ordinance Amending Ordinance No. 1335, The Classified Employees' Leave Ordinance, By Amending The Provisions For Accumulation And Payment Of Annual Leave For The American Federation Of State, County And Municipal Employees/Local No. 1554 (AFSCME).

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:51 a.m.
Ordinance Amending The Miami Beach Employees' Retirement Plan; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME), And Government Supervisors Association Of Florida/OPEIU Local 100 (GSA); Implementing Similar Retirement Plan Amendments For Members Who Are Not Included In Any Bargaining Unit; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing An Effective Date

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:52 a.m.
Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And Fire-Fighters Of Miami Beach, IAFF Local 1510, And The Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record", Providing For The Purchase Of Additional Creditable Service Upon Completion Of Ten Years Of Service With The City; Amending Section 66 Entitled "Service And Disability Benefits Generally", Providing For The Inclusion Of Compensation For Certain Off Duty Services In A Member's Salary For Pension Purposes, And Providing For The Sale Of Unused Sick And/Or Vacation Time For Inclusion In A Member's Final Average Monthly Earnings, Subject To Certain Limitations; Amending Section 79 Entitled "Deferred Retirement Option Plan", Providing For A Maximum Drop Period Of Sixty Months And A Modified Cost Of Living Adjustment During The Drop Period; Creating A New Section 87 Entitled "Benefits For Employees Hired On Or After July 14, 2010"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:53 a.m.
Ordinance Implementing Provisions Of The 2009-2012 Collective Bargaining Agreement Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Creating A New Article IV Of Chapter 78, Miami Beach City Code Entitled "Health Benefits For Firefighters And Police Officers.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).
Ad #613

Condensed Title:

North Beach Town Center Comprehensive Plan and Zoning Amendments

Key Intended Outcome Supported:

Maintain strong growth management policies

Supporting Data (Surveys, Environmental Scan, etc.):
While nearly half, 47.6%, suggested the effort put forth by the City to regulate development is "about the right amount," nearly one-third, 29.6%, indicated "too little" effort is being put forth by the City in this area.

Issue:

Should the City Commission approve the ordinances on first reading and authorize the City Administration to transmit the proposed comp plan amendments to DCA and any other required state and local agencies.

Item Summary/Recommendation:

FIRST READING PUBLIC HEARING

The proposed rezoning of the area known as the North Beach Town Center is the result of many years of planning and community involvement. The intent is to stimulate private sector reinvestment and to guide future development to create a vibrant mixed-use commercial center serving the entire North Beach community. While 71 Street would be the commercial "main street", the Town Center should encompass the area from 69 –.72 Streets between Collins Avenue and Indian Creek Waterway.

There are four separate ordinances required to accomplish the proposed rezoning:

1. The citywide comprehensive plan would be amended to add the new Town Center (TC) land use categories, TC-1, TC-2, and TC-3. The TC categories are nearly identical to the existing land use categories except for the "Purpose" statements and the introduction of mixed uses into the existing RM-1 multifamily areas.
2. The Future Land Use Map (FLUM), part of the citywide comprehensive plan, would be amended to replace the existing CD-3, CD-2 and RM-1 districts with the new TC districts.
3. The City's Land Development Regulations would be amended to add the new TC zoning district regulations. These would generally keep the same FAR and height limitations, but would add design standards and incentives through parking reductions. The TC-3 district would introduce office uses into the residential district and permit certain other uses as conditional uses.
4. The official zoning map would be amended to replace CD-3 with TC-1, to replace CD-2 with TC-2, and to replace RM-1 with TC-3 and TC-3(c).

Advisory Board Recommendation:

On June 22, 2010, the Planning Board held a public hearing, duly advertised pursuant to the requirements of State Statutes for Comprehensive Plan Amendments; and by a 5-0 vote (2 members absent) recommended approval of each one of the four North Beach Town Center ordinances.

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary: These land use amendments are anticipated to have a positive impact on the City by encouraging redevelopment of underutilized property and creating job opportunities.

City Clerk's Office Legislative Tracking:

Joyce Meyers, Planning Department

Sign-Offs:

Department Director	Assistant City Manager	City Manager
		for JMG

MIAMIBEACH

AGENDA ITEM R5D
DATE 9-15-10

MIAMIBEACH

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

MEMO # COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager JMG for JMG

DATE: September 15, 2010

SUBJECT: **NORTH BEACH TOWN CENTER COMPREHENSIVE PLAN AND ZONING AMENDMENTS**

1. **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PART II: GOALS, OBJECTIVES AND POLICIES OF THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN, POLICY 1.2 OF OBJECTIVE 1: LAND DEVELOPMENT REGULATIONS OF THE FUTURE LAND USE ELEMENT, BY ADDING NEW CATEGORIES "TOWN CENTER CORE" (TC-1); "TOWN CENTER MIXED USE" (TC-2); AND "TOWN CENTER RESIDENTIAL OFFICE" (TC-3); AND ACCOMPANYING STANDARDS FOR LAND DEVELOPMENT REGULATIONS AND DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER; SEVERABILITY; INCLUSION IN THE COMPREHENSIVE PLAN AND AN EFFECTIVE DATE.**

2. **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE"; DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

3. **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS", BY CREATING A NEW DIVISION 20, "TC NORTH BEACH TOWN CENTER DISTRICTS", CREATING NEW ZONING DISTRICTS TC-1, TOWN CENTER CORE; TC-2, TOWN CENTER MIXED USE; AND TC-3, TOWN CENTER RESIDENTIAL OFFICE; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, MAIN PERMITTED, CONDITIONAL, ACCESSORY AND PROHIBITED USES, DEVELOPMENT REGULATIONS, DESIGN REVIEW STANDARDS, AND PARKING REGULATIONS; AMENDING CHAPTER 130, "OFF-STREET PARKING", ARTICLE II, "DISTRICTS; REQUIREMENTS", SECTION 130-31,**

"PARKING DISTRICTS ESTABLISHED", AMENDING THE BOUNDARIES OF PARKING DISTRICT 4; AMENDING ARTICLE III, SECTION 130-68, "COMMERCIAL AND NONCOMMERCIAL PARKING GARAGES", ADOPTING NEW REGULATIONS IN TC-3 AND GU FOR COMMERICAL AND NONCOMMERICAL PARKING GARAGES; AMENDING CHAPTER 138, "SIGNS", ARTICLE V, "SIGN REGULATIONS BY DISTRICTS", SECTION 138-172, "SCHEDULE OF SIGN REGULATIONS FOR PRINCIPAL USE SIGNS"; CREATING A NEW SECTION 138-174, "NORTH BEACH TOWN CENTER SIGNAGE"; AMENDING CHAPTER 142, DIVISION 4, "ALCOHOLIC BEVERAGES", SECTIONS 142-1301 AND 142-1302 TO INCLUDE TC DISTRICTS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

4. **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CITY CODE, BY CHANGING THE ZONING DISTRICT CLASSIFICATIONS FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE" AND TC-3(C) "TOWN CENTER CONDITIONAL NEIGHBORHOOD COMMERCIAL"; AND AMENDING THE AFFECTED PORTION OF THE CITY'S OFFICIAL ZONING DISTRICT MAP TO CORRESPOND WITH THESE CHANGES; PROVIDING FOR REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.**

BACKGROUND

The North Beach Town Center Plan was adopted by the Mayor and City Commission on July 11, 2007. The purpose of the Town Center Plan is to stimulate reinvestment and guide future development to create a vibrant commercial center serving the entire North Beach community. The next step is to amend the comprehensive plan and the zoning ordinance to implement the land use and urban design recommendations in the community vision plan.

The Planning Department prepared the North Beach Town Center (TC) development code as a comprehensive guide to the purpose and effect of each element of the proposed code amendments. This document was reviewed at a community workshop in North Beach on September 16, 2008 and in two workshops with the Planning Board on October 28, 2008 and November 25, 2008.

The Land Use and Development Committee (LUDC) discussed the proposed TC code on February 9, 2009 and heard public testimony. The Committee expressed their desire to ensure that the new regulations are not overly burdensome on developers, provide incentives to attract new development, potentially reducing the area of the Town Center to concentrate development in the blocks between Collins and Abbott Avenues, and emphasizing the importance of constructing a public parking garage. The Committee passed a motion to hold a special LUDC meeting to further discuss this item due to its importance and complexity. Subsequently, staff met individually with the Mayor and members of the LUDC and determined that there was consensus to move forward with the ordinance including certain modifications that have been incorporated into the proposed regulations.

The Land Use and Development Committee discussed the proposed TC code for a second time on March 22, 2010. The Committee voted to send the item on to the Planning Board, after first holding a public workshop in the North Beach Town Center area, and with the following changes and conditions: 1) no variances to the use provisions; 2) prohibit rooftop alcoholic beverage venues; 3) limit accessory uses in hotels in the TC-3 area to a similar ratio of seats to rooms as used for South Pointe; 4) address outdoor bar counters by prohibiting or limiting to more than 100 feet from a residential use; and 5) inclusion of additional TC-3 area north of Publix into area permitting additional expanded conditional uses. The Committee requested that this item return for further consideration after Planning Board review and prior to first reading at the full Commission.

The Planning Department held two additional community workshops on the proposed North Beach Town Center comprehensive plan and zoning amendments on Wednesday, May 5, 2010. The two meetings were held at 4 PM at the Shane Rowing Center and at 6:30 PM at the North Shore Youth Center. Notices of the workshops were mailed to all property owners within a 375 feet radius of the Town Center. Comments from the community were generally positive. A detailed report is attached to this memo on page 13.

The Planning Board held a public hearing on June 22, 2010 and subsequently voted 5-0 to recommend approval of each of the four ordinances, including the Comprehensive Plan text amendment, the Future Land Use Map amendment, the TC zoning district text amendment and the zoning map amendment.

On July 26, 2010, the Land Use and Development Committee discussed for a third time the proposed TC amendments to the comprehensive plan and zoning code, and unanimously recommended that it should be moved forward to first reading public hearing with the full City Commission.

ANALYSIS

Comprehensive Plan amendments

The proposed amendments to the comprehensive plan would create three new land use categories, Town Center Core TC-1, Town Center Commercial TC-2 and Town Center Residential Office TC-3, based upon a lengthy neighborhood planning process that resulted in a vision for a more intensely developed, mixed use "Town Center" to serve the entire North Beach community. These three new TC categories are proposed to replace the existing land use categories on the Future Land Use Map, as shown on page 5. The affected area is bounded by Collins Avenue on the east, 69 Street on the south, Indian Creek Waterway on the west and 72 Street on the North.

Amendments to the comprehensive plan are a necessary precursor to the enactment of the North Beach Town Center TC zoning code. The primary reason for this is the mixture of land uses proposed for the TC-3 district (currently RM-1 low density multi-family residential). The proposed TC-3 district would add office uses as a main permitted use and also offer conditional uses for hotel and certain neighborhood-oriented commercial uses. This expansion of permissible land uses was deemed to be especially important to the North Beach Town Center to provide a transition between the high intensity core (TC-1) and the surrounding low density multifamily residential district, to provide a variety of employment opportunities, to provide opportunities for small business development, to reduce the need for long distance home to work trips and to enliven the pedestrian environment. If not for this change in TC-3 land uses, the entire package TC zoning code amendments could be

adopted without amending the comprehensive plan. Since a comprehensive plan amendment is required for the TC-3 district, the Planning Department has opted to propose new future land use categories for all three districts: TC-1, TC-2 and TC-3. This will highlight the specific intent and purpose of the North Beach Town Center development plan and set the TC districts apart from other commercial and residential/office districts throughout the City. If the City Commission approves the North Beach Town Center comprehensive plan and future land use map amendments on first reading, they will be packaged with the other citywide comprehensive plan amendments that are required to be transmitted to the Department of Community Affairs for review and approval this year. It should be noted that the proposed Florida Constitutional Amendment No. 4 could have an impact on the approval process for the TC districts.

Following is a summary comparison of the existing comprehensive plan and proposed amendments for the North Beach Town Center TC categories.

TC-1
Existing: **CD-3 High Intensity Commercial**
Proposed: **Town Center Core TC-1**
The TC-1 category is identical to the CD-3 category except for the "Purpose" statement, which describes the special purpose and intent for the core area of the North Beach Town Center. Land uses, density and intensity (FAR) remain the same.

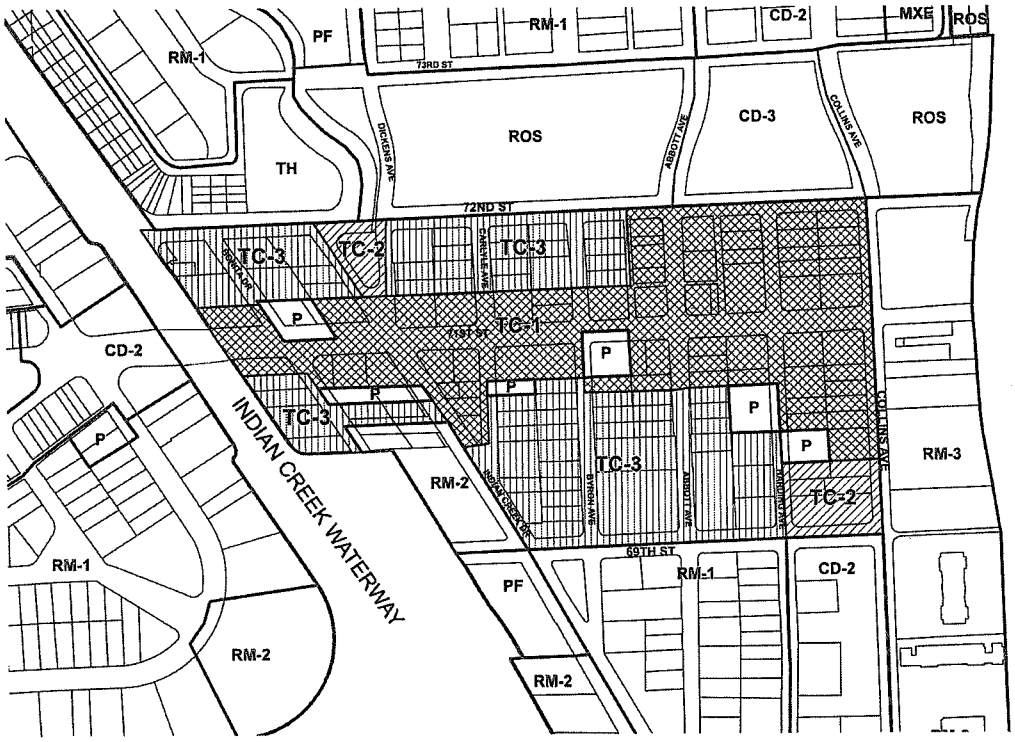
TC-2
Existing: **CD-2 Medium Intensity Commercial**
Proposed: **Town Center Commercial TC-2**
The TC-2 category is identical to the CD-2 category except for the "Purpose" statement, which describes the special purpose and intent for the commercial area of the North Beach Town Center. Land uses, density and intensity (FAR) remain the same.

TC-3
Existing: **RM-1 Low Density Multi Family Residential**
Proposed: **Town Center Residential Office TC-3**
The TC-3 category differs from the RM-1 category by expanding the list of permissible land uses. The RM-1 category is limited to residential uses, whereas the TC-3 category would allow residential, office, hotel, and neighborhood retail and service uses. The low density and intensity (FAR 1.25) from the RM-1 district would remain unchanged. The "Purpose" statement describes the special purpose and intent for the TC-3 area of the North Beach Town Center.

Category	2010 Amended Comp Plan	Proposed TC Comp Plan amendment
TC-1	**CD-3 High Intensity Commercial**	**Town Center Core TC-1**
Land uses	Various types of commercial uses including business and professional offices, retail sales and service establishments, eating and drinking establishments; apartment residential uses; apartment hotels; and hotels.	Various types of commercial uses including, business and professional offices, retail sales and service establishments, eating and drinking establishments; and apartment residential uses; apartment hotels; and hotels.
Density limits	**150** dwelling units per acre	**150** dwelling units per acre
Intensity	FAR **2.25** on lot area ≤45,000 sq. ft. and FAR **2.75** on lot area >45,000 sq. ft.	FAR **2.25** on lot area ≤45,000 sq. ft. and FAR **2.75** on lot area >45,000 sq. ft.

Category	2010 Amended Comp Plan	Proposed TC Comp Plan amendment
TC-2	**CD-2 Medium Intensity Commercial**	**Town Center Commercial (TC-2)**
Land uses	Various types of commercial uses including business and professional offices, retail sales and service establishments, eating and drinking establishments; apartment residential uses; apartment hotels; and hotels.	Various types of commercial uses including, business and professional offices, retail sales and service establishments, eating and drinking establishments, apartment residential uses, hotels, and apartment hotels.
Density limits	**100** dwelling units per acre	**100** dwelling units per acre
Intensity	FAR **1.5** for commercial; FAR **2.0** for residential or mixed use	FAR **1.5** for commercial; FAR **2.0** for residential or mixed use
TC-3	**RM-1 Low Density Multi Family Residential**	**Town Center Residential Office (TC-3)**
	Single family detached dwellings; single family attached dwellings, townhouse dwellings and multiple family dwellings	Existing single family detached dwellings; single family attached dwellings, townhouse dwellings, multiple family dwellings, offices, hotels, and neighborhood retail and services.
Density limits	**60** dwelling units per acre	**60** dwelling units per acre
Intensity	FAR **1.25**	FAR **1.25**

Proposed Future Land Use Map (FLUM) amendment



Zoning Code Amendments

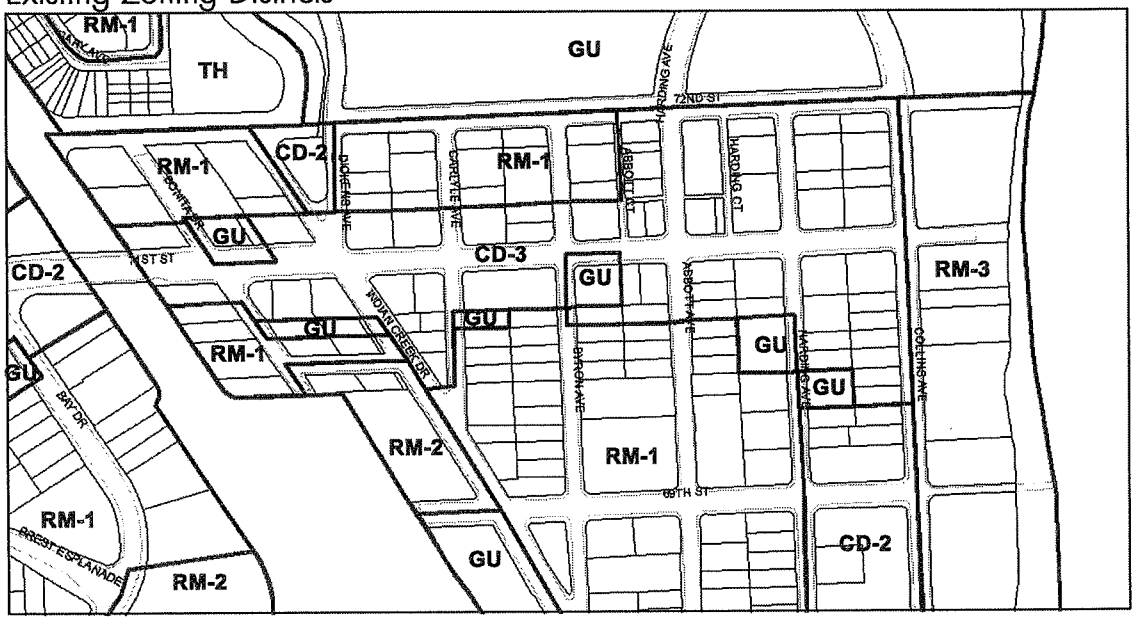
The proposed land development regulations for the North Beach Town Center will create three new zoning districts as shown on the map on page 7. The boundaries of the proposed new zoning districts will exactly follow the boundaries of the existing CD-3, CD-2 and RM-1 zoning district boundaries on the zoning map.

- **TC-1, Town Center Core** district replaces the CD-3 Commercial High Intensity district
- **TC-2, Town Center Mixed Use** district replaces the CD-2 Commercial Medium Intensity district
- **TC-3, Town Center Residential Office** district replaces the RM-1 Residential Multi-Family Low Intensity district
    - **TC-3(c)** is a sub-district within TC-3 that differs only in that certain neighborhood-oriented commercial uses may be permissible as conditional uses

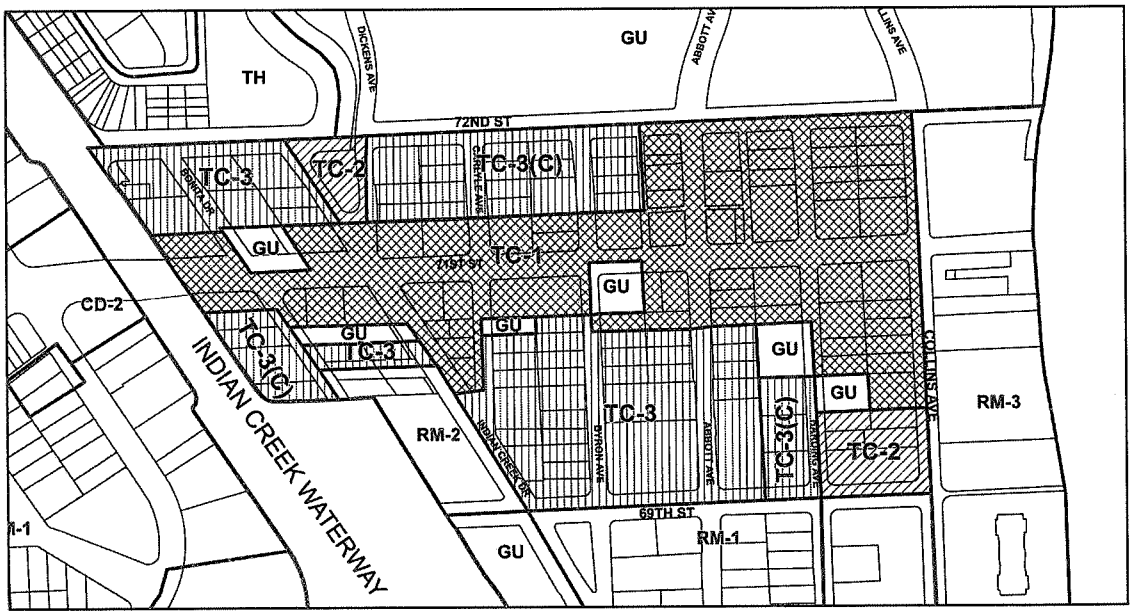
The TC North Beach Town Center Districts are intended to: promote development of a compact, pedestrian-oriented town center consisting of a high-intensity employment center, vibrant and dynamic mixed-use areas, and attractive residential living environments with compatible office uses and neighborhood-oriented commercial services; promote a diverse mix of residential, business, commercial, office, institutional, educational, and cultural and entertainment activities for workers, visitors and residents; encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage and town center businesses; provide opportunities for live/work lifestyles and increase the availability of affordable office space in the North Beach area; promote the health and well-being of residents by encouraging physical activity, waterfront access, alternative transportation, and greater social interaction; create a place that represents a unique, attractive and memorable destination for residents and visitors; enhance the community's character through the promotion of high-quality urban design.

North Beach Town Center
Proposed Zoning Changes

Existing Zoning Districts



Proposed Zoning Districts



Proposed District Regulations

TC-1 Town Center Core District
The TC-1 district is intended to encourage and enhance the high-intensity commercial employment center function of the Town Center's core area and its regulations are intended to support the Town Center's role as the hub of community-wide importance for business, office, retail, governmental services, culture and entertainment while also accommodating mixed-use and residential projects as important components of the area's vitality.

Maximum Floor Area Ratio (FAR) and maximum building height would remain the same as CD-3. The maximum FAR is 2.25 for lots 45,000 sq. ft of less and 2.75 for lots over 45,000 sq. ft. Maximum building height is 75 feet or 7 stories. Permissible land uses would remain the same except as noted below.

Following are highlights of proposed regulations in TC-1 that are different from CD-3:

1. Land uses: outdoor bar counters, accessory to a hotel, located within 100 feet of an apartment unit may not be operated between 8 pm and 8 am. Also, alcoholic beverage establishments may not be located in any open area about the ground floor, except restaurants with less than 40 seats until 8 pm with no music.
2. Minimum setback requirements – 5 feet adjacent to all streets; 10 feet side and rear where abutting a TC-3 district or a future alley; 20 feet adjacent to any waterfront; otherwise 0 feet
3. An increased setback would be required for portions of buildings above 50 feet in height along 71 Street equal to 1 ft. setback for each 1 ft. of height above 50 feet (max. 25 ft setback for a 75 ft. high building) This is intended to maintain a more human scale for buildings facing 71 Street.
4. Ground floor retail, restaurant or cultural space would be required for 75% of the frontage along 71 St and Collins Ave. in order to develop a cohesive retail storefront district. Distance separation from schools would be waived for restaurants serving alcoholic beverages.
5. Open space would be required for building sites over 20,000 sq. ft. in the form of an urban plaza occupying at least 10% of the lot area.
6. Publicly accessible waterfront pedestrian walkways would be required along Indian Creek.
7. A dedication or easement for an alley would be required in the rear or side setback area. The creation of alleys is an extremely important means of improving vehicular traffic flow by removing service and delivery functions from the main streets. It will also enhance the safety and comfort of the pedestrian environment by reducing curb cuts that create conflicts between vehicles pedestrians and bicycles.
8. Allowable encroachments in required yard areas would be more limited.
9. Signage regulations would be slightly modified to be more compatible with required shade trees along the street.

TC-2 Town Center Mixed Use District
The TC-2 district is intended to support medium intensity mixed-use (residential/nonresidential) projects with active retail ground floor uses.

Maximum development intensity, including Floor Area Ratio (FAR) and maximum building height would remain the same as CD -2. The maximum FAR is 1.5 with a .5 bonus for residential mixed-use and the maximum height is 50 feet. Permissible land uses would remain the same except as noted below.

Following are highlights of proposed regulations in TC-2 that are different from CD-2:

1. Land uses: outdoor bar counters, accessory to a hotel, located within 100 feet of an apartment unit may not be operated between 8 pm and 8 am. Also, alcoholic beverage establishments may not be located in any open area about the ground floor, except restaurants with less than 40 seats until 8 pm with no music.
2. Minimum setback requirements – 5 feet adjacent to all streets; 10 feet side and rear where abutting a future alley; 20 feet adjacent to any waterfront; otherwise 0 feet
3. Ground floor retail, restaurant or cultural space would be required for 75% of the frontage along 71 St and Collins Ave. in order to develop a cohesive retail storefront district. Distance separation from schools would be waived for restaurants serving alcoholic beverages.
4. Open space would be required for building sites over 20,000 sq. ft. in the form of an urban plaza occupying at least 10% of the lot area.
5. Publicly accessible waterfront pedestrian walkways would be required along Indian Creek.
6. A dedication or easement for an alley would be required in the rear or side setback area.
7. Allowable encroachments in required yard areas would be more limited.
8. Signage regulations would be slightly modified to be more compatible with required shade trees along the street.

<u>TC-3 Town Center Residential Office District</u>
The TC-3 district is intended to accommodate low density multi-family residential development and low intensity office and tourist lodging uses, and also to accommodate small-scale ground floor neighborhood commercial uses that are compatible with the residential character of the TC-3 district in certain areas designated as TC-3(c) on the zoning map.

Maximum Floor Area Ratio (FAR) would remain at 1.25, which is the same as RM-1. Following are highlights of proposed regulations in TC-3 that are different from RM-1:

1. The list of permissible land uses would be expanded to allow neighborhood compatible mixed uses and to provide diverse opportunities for employment.
   a. Main permitted uses – residential and office
   b. Conditional uses – RM-1 conditional uses plus hotels
   c. Accessory uses – RM-1 accessory uses and special regulations for hotels outlined in Sec. 142-736 (c) (3) on pages 7-8 of the ordinance.
   d. Prohibited uses – accessory uses associated with hotels including dance halls, outdoor entertainment establishment, open air entertainment establishment; outdoor bar counter and alcoholic beverage establishments located in any open area above the ground floor.
2. A subdistrict within TC-3, which is labeled TC-3(c) on the zoning map, (see map on page 7) would provide for Conditional Uses in limited areas. These would include the following neighborhood retail and service uses located on the ground floor and limited to 2,500 sq. ft. or less per establishment:
   - antique stores,
   - art/craft galleries,
   - artist studios,
   - bakery or specialty food stores,
   - barber shops and beauty salons,
   - dry cleaner with off-site processing (dry cleaning receiving station),
   - newspapers and magazines,

- photo studio,
- shoe repair,
- tailor or dressmaker,
- food service establishments with less than 30 seats (including outdoor café seating with alcohol limited to beer and wine and closing no later than 11:00 PM,
- full service restaurants serving alcoholic beverage or with 30 seats or more may be permitted only on waterfront properties with a publicly accessible waterfront walkway

Comments from the community meeting on May 5th would encourage the City to expand this list of uses, and to make the conditional use process less time consuming and expensive for small businesses to undertake.

3. Commercial and non-commercial parking garages are permissible as conditional uses in RM-1 and would also be conditional uses in the TC-3 district. A new subsection Sec. 130-68 (9) is proposed in Chapter 130. "Off Street Parking" to consolidate regulations pertaining to parking garages in TC-3. Most of the regulations would be the same as for parking garages in RM-1, with the following exceptions.
   a. commercial uses would be permissible as conditional uses on the ground floor of a parking structure without limitation on size, except that the total combined commercial and/or residential space shall not to exceed 25% of the total floor area of the structure.
   b. residential or commercial uses would be required on the first level facing a street or waterway, but would not be required on the upper floors.
   c. the parking spaces may serve residential or commercial uses without limitation on the percentage of residential spaces.
   d. minimum front yard setbacks would be reduced from 15 feet to 10 feet facing streets with right-of-way greater than 50 feet. This would apply only to front yards along Abbott Ave. and Indian Creek Drive. (Note: this provision was added subsequent to the Planning Board hearing on 6/22/10 and prior to the LUDC meeting on 7/26/10.)
4. Minimum setback requirements – 15 feet front yard (exceptions see 3d.above); 7.5 feet side yard facing a street (10 feet for lots over 50 feet in width); 7.5 feet side interior lot line except 10 feet for buildings over 33 feet in height and 10 feet where abutting TC-1; 10 feet rear yard; 20 feet adjacent to any waterfront
5. Height limitations are proposed to ensure compatibility with the predominant low scale built environment as follows:
   a. maximum building height 4 stories or 45 feet, except for waterfront lots which may be 5 stories or 50 feet due to the greater (20 ft) setback requirement
   b. increased setback (1:1 ratio) would be required for portions of buildings above 23 feet in height along the front lot line to be compatible with the existing 2-story buildings
   c. rear yard setbacks (1:1 ratio) would be required for portions of buildings above 33 feet in height
   d. limitations on rooftop features that may exceed the height and setbacks

<u>Parking</u> regulations in the North Beach Town Center are intended to provide centralized public parking garages to serve the Town Center; to minimize the amount of on-site parking required for individual lots, thereby reducing building bulk and maximizing ground floor space available for retail and restaurant uses; and to promote walking, bicycling and transit

ridership to help reduce the demand for parking within the district. The following provisions are recommended:

1. to modify the boundaries of Parking District #4 to include all of the TC-1 district (see section 3 on page 16 of the proposed ordinance)
2. to permit offsite parking within a distance of 800 feet from the development site
3. to reduce the residential parking requirements for smaller units
4. to encourage shared parking between uses that have different peak usage periods and add residential uses to the calculation of shared parking minimums (see Sec. 130-221 of the City Code)
5. to provide a parking credit as an incentive for developers to provide urban plaza space or space for a public library
6. to provide a parking credit for bicycle parking and for commercial developments that provide showers for bicycle commuters
7. to define parking requirements for "live-work" units.

Minimum bicycle parking requirements for various land uses are proposed for the TC districts. The bicycle parking requirements are based on the LEED (Leadership in Energy and Environmental Design) standards for neighborhood development. The Administration envisions these bicycle parking standards to be a model for the entire city.

Streetscape improvements are required to be constructed by developers and detailed design standards are set forth in the North Beach Town Center Design Standards (see below). This includes sidewalks in the public right-of-way and a minimum 5-feet-wide setback area on private property adjoining all streets.

Design Review Standards will be proposed to further define and illustrate the urban design intent for the North Beach Town Center. This is a separate document that is intended to be adopted by the Design Review Board. It is entitled "Design Review Standards for the North Beach Town Center TC Zoning Districts", also know as the "NBTC Design Standards". The document contains customized design standards for such things as access drives, alleys, parking, building location on the lot, shade canopies, waterfront pedestrian walkways, urban plazas, signs, and streetscape design. It also contains the Infill Regulating Plan which illustrates the plan for the entire Town Center and shows how individual lots should relate to the whole.

Economic Impact

In accordance with Charter section 5.02, which requires that the "City of Miami Beach shall consider the long-term economic impact (at least 5 years) of proposed legislative actions," This shall confirm that the City Administration evaluated the long-term economic impact (at least 5 years) of this proposed legislative action, and determined that there may be the following positive and negative economic impacts from the proposed North Beach Town Center zoning code.

The overall economic impact is expected to be positive, as these specially crafted TC zoning districts send a clear message that the City welcomes and encourages redevelopment of greater intensity, and variety within the Town Center. When the real estate market rebounds following the recession, staff anticipates that the latent demand for retail, restaurant, personal services, office space and quality housing in the North Beach community will support reinvestment in the Town Center. Many parking lots and underutilized commercial properties will be redeveloped with mixed uses. The reduced parking requirements in this ordinance provide a significant incentive through cost savings for new development. The

proposed city-subsidized parking garage would further expand the economic incentives for private sector redevelopment. Properties in the TC-3 district, which are currently limited to residential uses, will have many more land use options, including office, hotel and neighborhood-oriented retail and personal services This may lead to increased property values and benefit the local economy by proving affordable space for small business development.

A few of the proposed land development regulations could be perceived to have potential negative impacts on the flexibility to design new construction to achieve maximum value. These include increased building setbacks, alley dedications, waterfront walkways, and lower height limits in the TC-3 district. However, the Planning Department has carefully studied these conditions and is confident that a suitable building envelope is provided by the proposed regulations to allow new construction up to the maximum FAR. Height restrictions in TC-3 are counterbalanced by reduced minimum setbacks; and the space required for waterfront walkways is counterbalanced by reduced setbacks, greater height and the opportunity to provide retail and restaurant uses along the waterfront. Furthermore, the Administration believes that the overall benefits to be gained by these development regulations will help to increase property values throughout the Town Center and far outweigh any inconvenience to individual properties.

During the May 5, 2010 community meetings, some property owners brought up the following economic concerns: (1) that mandatory retail uses on 71 Street and Collins Avenue would be burdensome in the present day economy due to a lack of qualified tenants. (2) that the conditional use approval process in TC-3(c) would be too expensive and time consuming for small business to undertake; (3) that mandatory closing by 11 PM would be an undue economic hardship on restaurants that would be allowed to locate along the Indian Creek waterway; and (4) that parking requirements should be eliminated or reduced in the TC-3 district for office and neighborhood commercial uses. The Administration recognizes that there could be some validity to the concern about mandatory retail uses on 71 Street and Collins Ave. in the current market, but believes that this is a short term condition and that the long term economic success of the Town Center district as a viable shopping district depends upon having continuous retail frontage along the major streets. It should be noted that existing uses would not be affected. The Administration agrees that the conditional use application process may be a deterrent to many small businesses. The Planning Board approved a solution to the third concern by increasing the closing time to 12 midnight, subject to limitations that may be placed in the conditional use permit on a case by case basis. The administration recognizes that parking requirements in the TC-3 district will place a burden on small businesses that may wish to locate there, but it may be prudent to wait until a parking garage is assured in this district.

ADMINISTRATION RECOMMENDATION

In view of the above analysis, the Administration recommends that the Mayor and City Commission should approve all four ordinances on first reading and direct transmittal of the Comprehensive Plan amendments and the Future Land Use Map amendments and all applicable documents to affected agencies, including the Florida Department of Community Affairs, for review and comment.

RGL
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Attachment A

Report from North Beach Town Center Zoning Community Meetings - May 5, 2010

The Planning Department held two community meetings on Wednesday, May 5, 2010 on the proposed North Beach Town Center zoning amendments. The two meetings were held at 4 PM at the Shane Rowing Center and at 6:30 PM at the North Shore Youth Center. Notices of the workshops were mailed to all property owners within a 375 feet radius of the Town Center.

A total of approximately 40 people attended the two workshops, including about equal numbers of business persons and interested residents. The feedback was very positive. Everyone supported the concept of encouraging redevelopment of a more intense, walkable, mixed-use Town Center. Several people asked about what incentives the City can offer to stimulate private investment, such as greater height and FAR. Planning staff responded that public parking is the primary incentive available at this time; and they described the RFLI for a public-private joint venture parking garage in North Beach. Staff also highlighted the important steps the City is taking to support cultural activities in the Town Center by rehabilitating the North Beach Bandshell and seeking new groups to operate the Byron Carlyle Theater.

Several people expressed a desire to allow greater flexibility in the types of retail/service uses proposed for conditional uses the TC-3 Town Center Residential Office district. No one objected to introducing retail/service uses into these residential blocks; and everyone supported allowing office uses in TC-3. One person stated that the proposed 11 PM closing time for a restaurant located on the Indian Creek waterfront would make it financially infeasible for the restaurant owner. Everyone present agreed that the indoor portion of a waterfront restaurant could remain open to a later hour without harming the surrounding residential uses. Several people expressed a desire to make parking requirements more flexible for new businesses located in the TC-3 district, perhaps by allowing them to pay parking mitigation fees.

Regarding the TC-1 Town Center Core district, two people expressed concern that the requirement for retail/restaurant/cultural uses on 75% of the ground floor frontage facing 71 Street and Collins Avenue could result in numerous vacancies if there is not a sufficient market for such uses. One person stated that the North Beach Town Center should not be subjected to the same restrictions on outdoor dining and entertainment as South Beach because North Beach is different; and no one expressed any disagreement with the sentiment.

ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PART II: GOALS, OBJECTIVES AND POLICIES OF THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN, POLICY 1.2 OF OBJECTIVE 1: LAND DEVELOPMENT REGULATIONS OF THE FUTURE LAND USE ELEMENT, BY ADDING NEW CATEGORIES "TOWN CENTER CORE" (TC-1); "TOWN CENTER MIXED USE" (TC-2); AND "TOWN CENTER RESIDENTIAL OFFICE" (TC-3); AND ACCOMPANYING STANDARDS FOR LAND DEVELOPMENT REGULATIONS AND DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER; SEVERABILITY; INCLUSION IN THE COMPREHENSIVE PLAN AND AN EFFECTIVE DATE.

WHEREAS, the Miami Beach Mayor and City Commission adopted the North Beach Town Center Plan by Resolution No. 2007-26600 on July 11, 2007 in order to provide comprehensive guidance for private and public sector initiatives toward redevelopment and revitalization in the area bounded by 73 Street, the Atlantic Ocean, 69 Street, and Indian Creek Waterway; and

WHEREAS, the North Beach Town Center will be guided by the Comprehensive Plan as amended in order to achieve the vision set forth in the North Beach Town Center Plan; and

WHEREAS, amending the text of the City of Miami Beach Comprehensive Plan as provided herein is necessary to ensure that development of the North Beach Town Center will be compatible with development in adjacent and surrounding areas, and will contribute to the health and general welfare of the City; and

WHEREAS, the North Beach Town Center districts are intended to:

1. Promote development of a compact, pedestrian-oriented town center consisting of a high-intensity employment center, vibrant and dynamic mixed-use areas, and attractive residential living environments with compatible office uses and neighborhood-oriented commercial services.

2. Promote a diverse mix of residential, business, commercial, office, institutional, educational, and cultural and entertainment activities for workers, visitors and residents.

3. Encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage and town center businesses.

4. Provide opportunities for live/work lifestyles and increase the availability of affordable office space in the North Beach area.

5. Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction.

6. Create a place that represents a unique, attractive and memorable destination for residents and visitors.

7. Enhance the community's character through the promotion of high-quality urban design.

WHEREAS, the TC-1 district is intended to encourage and enhance the high-intensity commercial employment center function of the Town Center's core area and its regulations are intended to support the Town Center's role as the hub of community-wide importance for business, office, retail, governmental services, culture and entertainment while also accommodating mixed-use and residential projects as important components of the area's vitality; and

WHEREAS, the TC-2 district is intended to support medium intensity mixed-use (residential/nonresidential) projects with active retail ground floor uses; and

WHEREAS, the TC-3 district is intended to accommodate low density multi-family residential development and low intensity office and tourist lodging uses, and also accommodating small-scale ground floor neighborhood commercial uses that are compatible with the residential character of the TC-3 district.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. AMENDMENTS TO THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN.

That Policy 1.2 of Objective 1, Land Development Regulations of the Future Land Use Element of the City of Miami Beach Comprehensive Plan is hereby modified as follows:

PART II: GOALS, OBJECTIVES AND POLICIES

FUTURE LAND USE ELEMENT

GOAL:

Ensure that the character and location of land uses maximize the potential for economic benefit and the enjoyment of natural and man-made resources by citizens while minimizing the threat to health, safety and welfare posed by hazards, nuisances, incompatible land uses and environmental degradation.

OBJECTIVE 1: LAND DEVELOPMENT REGULATIONS

Future growth and development, redevelopment and rehabilitation will be managed through the preparation, adoption, implementation and enforcement of land development regulations.

* * *

Policy 1.2

The land development regulations which implement this Comprehensive Plan shall, at a minimum, be based on and be consistent with S. 163.3202, F.S. and shall further be based on the following standards for land use category, and land use intensity:

* * *

Town Center Core Category (TC-1)

Purpose: To encourage and enhance the high-intensity commercial employment center function of the Town Center's core area, as well as, support the Town Center's role as the hub of community-wide importance for business, office, retail, governmental services, culture and entertainment.

Uses which may be Permitted: Various types of commercial uses including, business and professional offices, retail sales and service establishments, eating and drinking establishments; and apartment residential uses; apartment hotels; and hotels.

Other uses which may be permitted are accessory uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to be subordinate to the main use; and conditional uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to go through a public hearing process as prescribed in the Land Development Regulations of the Code of the City of Miami Beach.

Density Limits: **150** dwelling units per acre;

Intensity Limits: a floor area ratio of **2.25** on lot area equal to or less than 45,000 sq. ft; and a floor area ratio of **2.75** on lot area greater than 45,000 sq. ft.

Intensity Limits: Intensity may be limited by such set back, height, floor area ratio and/or other restrictions as the City Commission acting in a legislative capacity determines can effectuate the purpose of this land use category and otherwise implement complementary public policy. However, in no case shall the intensity exceed a floor area ratio of **2.75**.

Town Center Commercial Category (TC-2)

Purpose: To provide support for medium intensity mixed-use (residential/nonresidential) projects with active retail ground floor uses.

Uses which may be Permitted: Various types of commercial uses including, business and professional offices, retail sales and service establishments, eating and drinking establishments, apartment residential uses, hotels, and apartment hotels.

Other uses which may be permitted are accessory uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to be subordinate to the main use; and conditional uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to go through a public hearing process as prescribed in the Land Development Regulations of the Code of the City of Miami Beach.

Density Limits: **100** dwelling units per acre

Intensity Limits: a floor area ratio of **1.5** for commercial; **2.0** for residential or mixed use

Intensity Limits: Intensity may be limited by such set back, height, floor area ratio and/or other restrictions as the City Commission acting in a legislative capacity determines can effectuate the purpose of this land use category and otherwise implement complementary public policy. However, in no case shall the intensity exceed a floor area ratio of **2.0**.

Town Center Residential Office (TC-3)

Purpose: To provide a transition between the high intensity Town Center Core and the surrounding low intensity residential multi-family districts, by providing for contextually compatible residential and mixed-use development within an established, pedestrian, bicycle and transit oriented residential environment. Office and tourist lodging facilities are intended to provide a variety of employment opportunities to support the local economy and to reduce the need for long distance home to work vehicle trips. Neighborhood oriented retail and service uses are intended to provide opportunities for small business development and to enliven the pedestrian environment.

Uses which may be permitted: Existing single family detached dwellings; single family attached dwellings, townhouse dwellings, multiple family dwellings, offices, hotels, and neighborhood retail and services.

Other uses which may be permitted are accessory uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to be subordinate to the main use; and conditional uses specifically authorized in this land use category, as described in the Land Development Regulations, which are required to go through a public hearing process as prescribed in the Land Development Regulations of the Code of the City of Miami Beach.

Density Limits: **60** dwelling units per acre.

Intensity Limits: a floor area ratio of **1.25**

Intensity Limits: Intensity may be limited by such set back, height, floor area ratio and/or other restrictions as the City Commission acting in a legislative capacity determines can effectuate the purpose of this land use category and otherwise implement complementary public policy. However, in no case shall the intensity exceed a floor area ratio of **1.25.**

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. INCLUSION IN COMPREHENSIVE PLAN

It is the intention of the City Commission, and it is hereby ordained that Section 1 is made part of the City of Miami Beach Comprehensive plan, as amended; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 20__; however, the effective date of any plan amendment shall be in accordance with Section 163.3184, Florida Statutes.

PASSED and **ADOPTED** this _____ day of _____, 20__.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ 8/31/10
City Attorney Date

First Reading:
Second Reading:

Verified by: _____ _____
Richard Lorber, AICP, LEED Date
Planning Director

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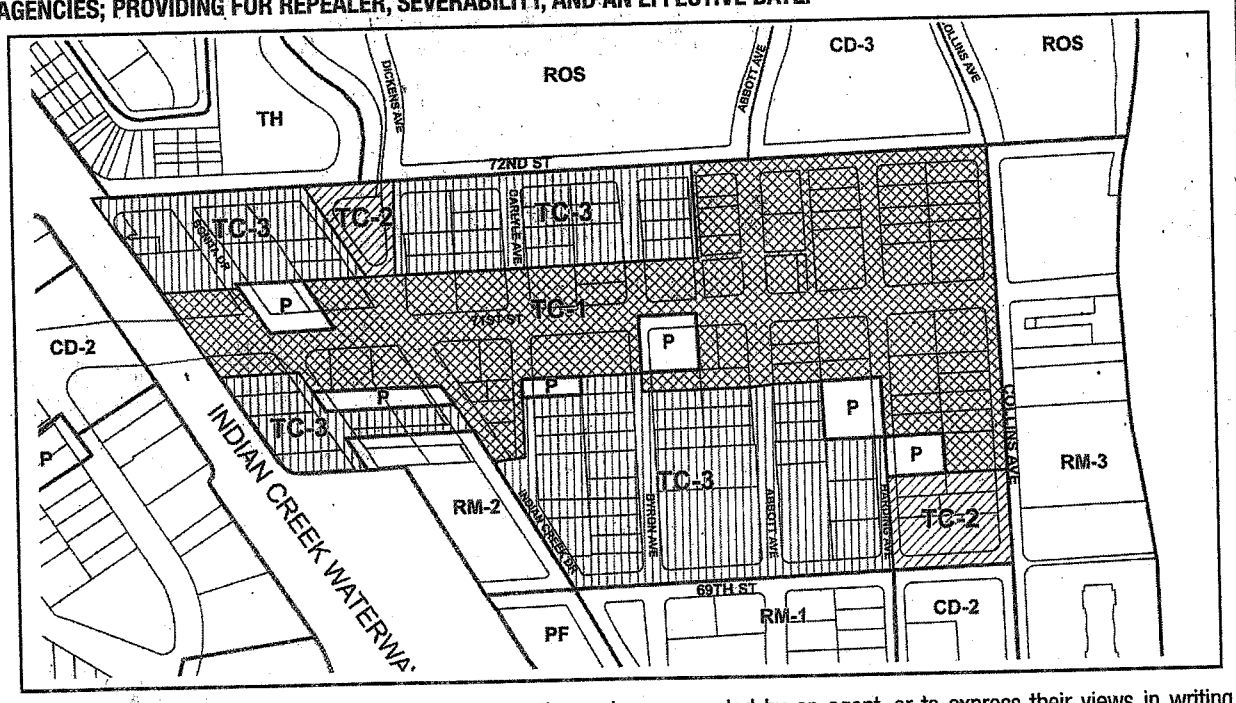
MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF AMENDMENT TO THE FUTURE LAND USE MAP (FLUM) AND TEXT OF THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN that a first reading and public hearing will be held by the City Commission of the City of Miami Beach on **WEDNESDAY, September 15, 2010 at 11:00 a.m.** in the City Commission Chambers, Third Floor, City Hall, located at 1700 Convention Center Drive, Miami Beach, Florida 33139 to consider the following ordinances:

1. **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PART II: GOALS, OBJECTIVES AND POLICIES OF THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN, POLICY 1.2 OF OBJECTIVE 1: LAND DEVELOPMENT REGULATIONS OF THE FUTURE LAND USE ELEMENT, BY ADDING NEW CATEGORIES "TOWN CENTER CORE" (TC-1); "TOWN CENTER MIXED USE" (TC-2); AND "TOWN CENTER RESIDENTIAL OFFICE" (TC-3); AND ACCOMPANYING STANDARDS FOR LAND DEVELOPMENT REGULATIONS AND DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER; SEVERABILITY; INCLUSION IN THE COMPREHENSIVE PLAN AND AN EFFECTIVE DATE.**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE"; DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.



All interested parties are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the Planning Department, 1700 Convention Center Drive, City Hall, Miami Beach, Florida 33139. Copies of the proposed amendments are available in the Planning Department.

Pursuant to Florida Stat. 286.0105, the City hereby advises the public that if a person decides to appeal any decision made by the Planning Board with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record must include the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should contact the Board's Administrator no later than four days prior to the proceeding at (305) 673-7550 for assistance; if hearing impaired, telephone the Florida Relay Service numbers, (305) 673-7218 or 711, for assistance.

AD# 620

ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE"; DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Miami Beach Mayor and City Commission adopted the North Beach Town Center Plan by Resolution No. 2007-26600 on July 11, 2007 in order to provide comprehensive guidance for private and public sector initiatives toward redevelopment and revitalization of the area bounded by 73 Street, the Atlantic Ocean, 69 Street, and Indian Creek Waterway; and

WHEREAS, the North Beach Town Center Development Code is proposed to update the zoning and future land use regulations to be consistent with the long-term vision set forth in the North Beach Town Center Plan; therefore, new districts are proposed to be added to Chapter 142, to be known as "TC North Beach Town Center Districts"; and

WHEREAS, the North Beach Town Center Districts are intended to:

1. Promote development of a compact, pedestrian-oriented town center consisting of a high-intensity employment center, vibrant and dynamic mixed-use areas, and attractive residential living environments with compatible office uses and neighborhood-oriented commercial services.

2. Promote a diverse mix of residential, business, commercial, office, institutional, educational, and cultural and entertainment activities for workers, visitors and residents.

3. Encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage and town center businesses.

4. Provide opportunities for live/work lifestyles and increase the availability of affordable office space in the North Beach area.

5. Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction.

6. Create a place that represents a unique, attractive and memorable destination for residents and visitors.

7. Enhance the community's character through the promotion of high-quality urban design.

WHEREAS, the TC-1 district is intended to encourage and enhance the high-intensity commercial employment center function of the Town Center's core area and its regulations are intended to support the Town Center's role as the hub of community-wide importance for business, office, retail, governmental services, culture and entertainment while also accommodating mixed-use and residential projects as important components of the area's vitality; and

WHEREAS, the TC-2 district is intended to support medium intensity mixed-use (residential/nonresidential) projects with active retail ground floor uses; and

WHEREAS, the TC-3 district is intended to accommodate low density multi-family residential development and low intensity office and tourist lodging uses, and also accommodating small-scale ground floor neighborhood commercial uses that are compatible with the residential character of the TC-3.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. AMENDMENTS TO THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN.

That the Mayor and City Commission hereby amend the Future Land Use Map of the City of Miami Beach Comprehensive Plan by changing the land use designations of the North Beach Town Center from CD-3, "Commercial, High Intensity" to TC-1, "Town Center Core"; from CD-2, "Commercial, Medium Intensity" to TC-2, "Town Center Mixed Use"; and from RM-1 "Residential Multifamily, Low Intensity" to TC-3, "Town Center Residential Office", as depicted on the map.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. INCLUSION IN COMPREHENSIVE PLAN.

It is the intention of the City Commission, and it is hereby ordained that the amendment provided for in Section I is made part of the Future Land Use Map of the City of Miami Beach Comprehensive Plan, as amended; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 20__; however, the effective date of any plan amendment shall be in accordance with Section 163.3184, Florida Statutes.

PASSED and **ADOPTED** this _____ day of _____, 20__.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ City Attorney 8/31/10 Date

First Reading:
Second Reading:

Verified by: _____ _____
Richard Lorber, AICP, LEED Date
Acting Planning Director

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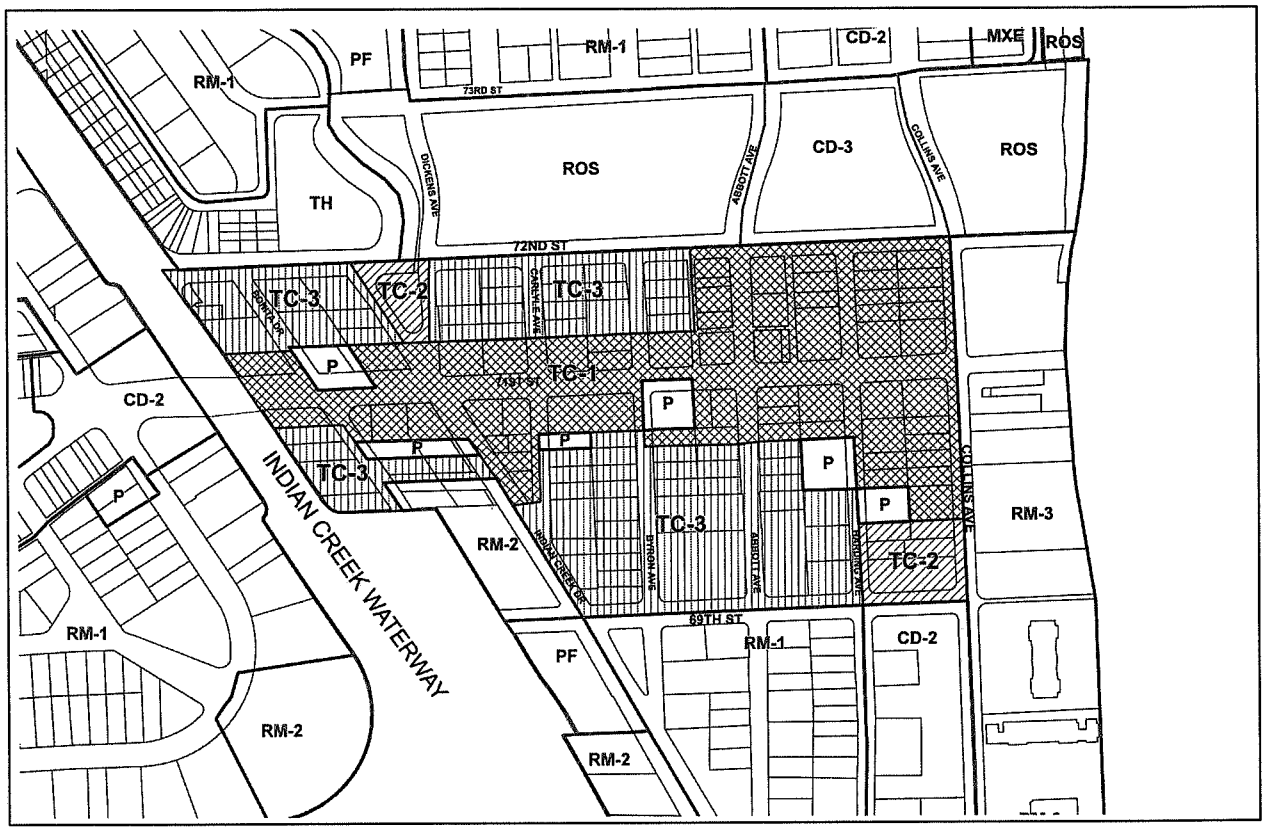
Future Land Use Map (FLUM) Amendment



MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF AMENDMENT TO THE FUTURE LAND USE MAP (FLUM) AND TEXT OF THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN

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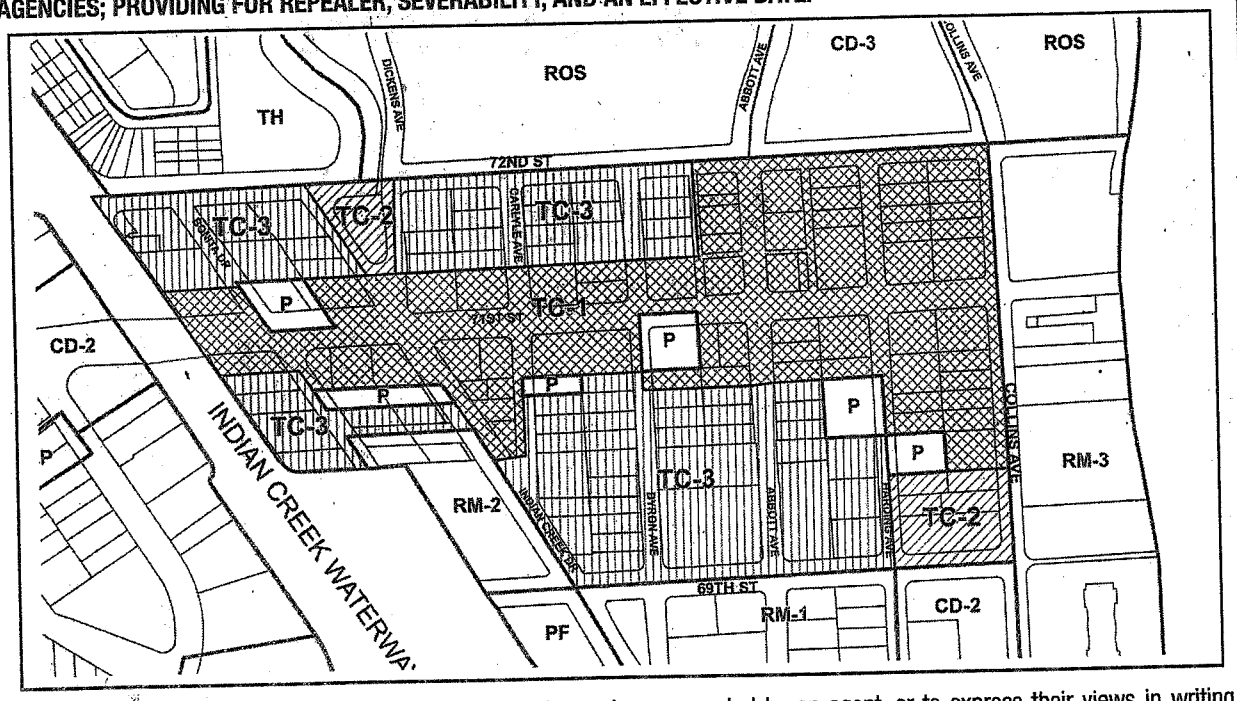
AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PART II: GOALS, OBJECTIVES AND POLICIES OF THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN, POLICY 1.2 OF OBJECTIVE 1: LAND DEVELOPMENT REGULATIONS OF THE FUTURE LAND USE ELEMENT, BY ADDING NEW CATEGORIES "TOWN CENTER CORE" (TC-1); "TOWN CENTER MIXED USE" (TC-2); AND "TOWN CENTER RESIDENTIAL OFFICE" (TC-3); AND ACCOMPANYING STANDARDS FOR LAND DEVELOPMENT REGULATIONS AND DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER; SEVERABILITY; INCLUSION IN THE COMPREHENSIVE PLAN AND AN EFFECTIVE DATE.

2. **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE CITY'S COMPREHENSIVE PLAN FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE"; DIRECTING TRANSMITTAL OF THIS ORDINANCE AND ALL APPLICABLE DOCUMENTS TO AFFECTED AGENCIES; PROVIDING FOR REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**



All interested parties are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the Planning Department, 1700 Convention Center Drive, City Hall, Miami Beach, Florida 33139. Copies of the proposed amendments are available in the Planning Department.

Pursuant to Florida Stat. 286.0105, the City hereby advises the public that if a person decides to appeal any decision made by the Planning Board with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record must include the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should contact the Board's Administrator no later than four days prior to the proceeding at (305) 673-7550 for assistance; if hearing impaired, telephone the Florida Relay Service numbers, (305) 673-7218 or 711, for assistance.

AD# 620

ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS", BY CREATING A NEW DIVISION 20, "TC NORTH BEACH TOWN CENTER DISTRICTS", CREATING NEW ZONING DISTRICTS TC-1, TOWN CENTER CORE; TC-2, TOWN CENTER MIXED USE; AND TC-3, TOWN CENTER RESIDENTIAL OFFICE; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, MAIN PERMITTED, CONDITIONAL, ACCESSORY AND PROHIBITED USES, DEVELOPMENT REGULATIONS, DESIGN REVIEW STANDARDS, AND PARKING REGULATIONS; AMENDING CHAPTER 130, "OFF-STREET PARKING", ARTICLE II, "DISTRICTS; REQUIREMENTS", SECTION 130-31, "PARKING DISTRICTS ESTABLISHED", AMENDING THE BOUNDARIES OF PARKING DISTRICT 4; AMENDING ARTICLE III, SECTION 130-68, "COMMERCIAL AND NONCOMMERCIAL PARKING GARAGES", ADOPTING NEW REGULATIONS IN TC-3 AND GU FOR COMMERICAL AND NONCOMMERICAL PARKING GARAGES; AMENDING CHAPTER 138, "SIGNS", ARTICLE V, "SIGN REGULATIONS BY DISTRICTS", SECTION 138-172, "SCHEDULE OF SIGN REGULATIONS FOR PRINCIPAL USE SIGNS"; CREATING A NEW SECTION 138-174, "NORTH BEACH TOWN CENTER SIGNAGE"; AMENDING CHAPTER 142, DIVISION 4, "ALCOHOLIC BEVERAGES", SECTIONS 142-1301 AND 142-1302 TO INCLUDE TC DISTRICTS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Miami Beach Mayor and City Commission adopted the North Beach Town Center Plan by Resolution No. 2007-26600 on July 11, 2007 in order to provide comprehensive guidance for private and public sector initiatives toward redevelopment and revitalization in the area bounded by 73 Street, the Atlantic Ocean, 69 Street, and Indian Creek Waterway; and

WHEREAS, the North Beach Town Center Development Code is proposed to update the zoning and future land use regulations to be consistent with the long-term vision set forth in the North Beach Town Center Plan; therefore, new districts are proposed to be added to Chapter 142, to be known as "TC North Beach Town Center Districts"; and

WHEREAS, the TC North Beach Town Center Districts are intended to:

1. Promote development of a compact, pedestrian-oriented town center consisting of a high-intensity employment center, vibrant and dynamic

mixed-use areas, and attractive residential living environments with compatible office uses and neighborhood-oriented commercial services.

2. Promote a diverse mix of residential, business, commercial, office, institutional, educational, and cultural and entertainment activities for workers, visitors and residents.

3. Encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage and town center businesses.

4. Provide opportunities for live/work lifestyles and increase the availability of affordable office space in the North Beach area.

5. Promote the health and well-being of residents by encouraging physical activity, waterfront access, alternative transportation, and greater social interaction.

6. Create a place that represents a unique, attractive and memorable destination for residents and visitors.

7. Enhance the community's character through the promotion of high-quality urban design.

WHEREAS, the TC-1 district is intended to encourage and enhance the high-intensity commercial employment center function of the Town Center's core area and its regulations are intended to support the Town Center's role as the hub of community-wide importance for business, office, retail, governmental services, culture and entertainment while also accommodating mixed-use and residential projects as important components of the area's vitality; and

WHEREAS, the TC-2 district is intended to support medium intensity mixed-use (residential/nonresidential) projects with active retail ground floor uses; and

WHEREAS, the TC-3 district is intended to accommodate low density multi-family residential development and low intensity office and tourist lodging uses, and also accommodating small-scale ground floor neighborhood commercial uses that are compatible with the residential character of the TC-3 district in certain areas designated as TC-3(c) on the zoning map.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1: The City of Miami Beach Code Chapter 142 Zoning Districts and Regulations, Article II District Regulations, Sec. 142-71. Districts Established, is hereby amended as follows:

DIVISION 1. GENERALLY

Sec. 142-71. Districts Established

(a) *Districts and symbols.* To achieve the purposes of these land development regulations, the Code of the city, and regulate the use of land, water and buildings, height and bulk of buildings and other structures, and population density and open space, the city is hereby divided into the following districts:

Symbol	District
RS-1	Single-family residential
RS-2	Single-family residential
RS-3	Single-family residential
RS-4	Single-family residential
RM-1	Residential multifamily, low intensity
RM-2	Residential multifamily, medium intensity
RM-3	Residential multifamily, high intensity
RM-PRD	Multifamily, planned residential development
CD-1	Commercial, low intensity
CD-2	Commercial, medium intensity
CD-3	Commercial, high intensity
CCC	Convention center district
GC	Golf course district
GU	Government use
HD	Hospital district
I-1	Industrial, light
MR	Marine recreational
MXE	Mixed use entertainment
RO	Residential/office
RO-2	Residential/office low intensity
RO-3	Residential/office medium intensity
TH	Townhome residential
WD-1	Waterway district
WD-2	Waterway district
R-PS1	Residential medium-low density
R-PS2	Residential medium density
R-PS3	Residential medium-high density
R-PS4	Residential high density
C-PS1	Commercial limited mixed use
C-PS2	Commercial general mixed use
C-PS3	Commercial intensive mixed use
C-PS4	Commercial intensive phased bayside
RM-PS1	Residential mixed-use development
SPE	Special public facilities educational
TC-1	North Beach Town Center core
TC-2	North Beach Town Center mixed use
TC-3	North Beach Town Center residential/office
TC-3(c)	North Beach Town Center residential/office with Conditional Neighborhood Commercial

SECTION 2: The City of Miami Beach Code Chapter 142 Zoning Districts and Regulations, Article II District Regulations, is hereby amended by adding Division 20: TC North Beach Town Center Districts, as follows:

DIVISION 20: TC NORTH BEACH TOWN CENTER DISTRICTS

Sec. 142-734. Purpose and Intent

(a) The North Beach Town Center districts consist of all land bounded by 72 Street, Collins Avenue, 69 Street and Indian Creek Waterway; and consists of three districts: a Town Center Core (TC-1) district, a Town Center Mixed Use (TC-2) district, and a Town Center Residential Office (TC-3) district.

(b) The overall purposes of the North Beach Town Center districts are to:

(1) promote development of a compact, pedestrian-oriented town center consisting of a high-intensity employment center, vibrant and dynamic mixed-use areas, and attractive residential living environments with compatible office uses and neighborhood-oriented commercial services;

(2) promote a diverse mix of residential, business, commercial, office, institutional, educational, and cultural and entertainment activities for workers, visitors and residents;

(3) encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage and town center businesses;

(4) provide opportunities for live/work lifestyles and increase the availability of affordable office space in the North Beach area.

(5) promote the health and well-being of residents by encouraging physical activity, waterfront access, alternative transportation, and greater social interaction;

(6) create a place that represents a unique, attractive and memorable destination for residents and visitors;

(7) enhance the community's character through the promotion of high-quality urban design.

(c) The specific purpose and intent of the three districts in the North Beach Town Center are as follows:

(1) *TC-1 Town Center Core District.* The TC-1 district is intended to promote high intensity compact development that will support the Town

Center's role as the hub of community-wide importance for business, office, retail, governmental services, culture and entertainment.

(2) *TC-2 Town Center Mixed Use District.* The TC-2 district is intended to support medium intensity mixed-use projects with active retail ground floor frontage.

(3) *TC-3 Town Center Residential Office District.* The TC-3 district is intended to be a transition between the high intensity Town Center Core and the surrounding low intensity residential multi-family districts, by providing for contextually compatible residential and mixed-use development within an established, pedestrian, bicycle and transit oriented residential environment. Office and tourist lodging facilities are intended to provide a variety of employment opportunities to support the local economy and to reduce the need for long distance home to work vehicle trips. Neighborhood oriented retail and service uses are permissible in certain limited areas of this district, identified as TC-3(c) on the zoning map, and are intended to provide opportunities for small business development and to enliven the pedestrian environment. TC-3(c) is intended to be a subset of TC-3 and all regulations applicable to TC-3 are equally applicable to TC-3(c) except as expressly provided in section 142-736(c)(3).

Sec. 142-735. Definitions

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) *Alley* means a paved travel way for vehicles within a block that provides access to the rear of buildings, vehicle parking (e.g., garages), deliveries, utility meters, and recycling and garbage bins. The alley is generally a public right-of-way, but in some cases it may be located on private property with a public access easement.

(b) *Street* means all public rights-of-way used for vehicular and pedestrian access, but does not include Alleys.

(c) *Cultural use* means a use that engages in the performing arts (including, but not limited to, music, dance and theater), or visual arts (including, but not limited to, painting, sculpture, and photography), or engages in cultural activities, serves the general public and has a permanent presence in the city.

Sec. 142-736. Main Permitted Uses, Conditional Uses, Accessory Uses, and Prohibited Uses

(a) Land uses in the TC-1 Town Center Core district shall be regulated as follows:

(1) The *main permitted uses* in the TC-1 district are commercial uses; apartments; apartment/hotels; hotels. The ground story frontage along 71 Street and Collins Avenue shall be governed by Sec. 143-737(c). The provisions of Sec. 6-4(a)(1) concerning distance separation for consumption of alcoholic beverages on premises in restaurants shall not apply to this district.

(2) The *conditional uses* in the TC-1 district are adult living congregate facilities; new construction of structures 50,000 square feet and over (even when divided by a district boundary line), which review shall be the first step in the process before the review by any of the other land development boards; outdoor entertainment establishment, neighborhood impact establishment, open air entertainment establishment, nursing homes; religious institution; video game arcades; public and private institutions; and schools and major cultural dormitory facilities as specified in section 142-1332.

(3) The *accessory uses* in the TC-1 district are those uses permitted in article IV, division 2 of this chapter and accessory outdoor bar counters, provided that the accessory outdoor bar counter is not operated or utilized between midnight and 8:00 a.m.; however, accessory outdoor bar counters located within 100 feet of an apartment unit may not be operated or utilized between 8:00 p.m. and 8:00 a.m.

(4) The *prohibited uses* in the TC-1 district are pawnshops, and alcoholic beverage establishments located in any open area above the ground floor (any area that is not included in the FAR calculations), except as provided in this division. However, outdoor restaurant seating, not exceeding 40 seats, associated with indoor venues may be permitted in any open area above the ground floor until 8:00 PM with no background music (amplified or nonamplified).

(b) Land uses in the TC-2 Town Center Mixed Use district shall be regulated the same as for uses in the TC-1 Town Center Core district.

(c) Land uses in the TC-3 Town Center Residential Office district shall be regulated as follows:

(1) *The main permitted uses* in the TC-3 district are single-family detached dwelling, townhomes, apartments and offices.

(2) *The conditional uses* in the TC-3 district are hotel, adult congregate living facility; day care facility; nursing home; religious institutions; private and public institutions; schools; and commercial or noncommercial parking lots and garages (with accessory commercial uses) in accord with Section 130-68(9).

a. In areas designated TC-3(c) on the zoning map, the following uses may be permitted as conditional uses in addition to the uses in paragraph (2) above: Neighborhood-oriented retail and service uses, limited to 2,500 sq. ft or less per establishment, located on the ground floor of buildings. Such neighborhood-oriented retail and service uses shall be limited to antique stores; art/craft galleries; artist studios; bakery or specialty food stores; barber shops and beauty salons; coffee shop or juice bar; dry cleaner or laundry with off-site processing (dry cleaning receiving station); newspapers, magazines and books; photo studio; shoe repair; tailor or dressmaker; and food service establishments with 30 seats or less (including outdoor café seating) with alcohol limited to beer and wine and closing no later than 12 midnight subject to limitations established in the conditional use process. In addition, full service restaurants serving alcoholic beverages or with 30 seats or more may be permitted only on waterfront properties with a publicly accessible waterfront walkway in the area located south of 71 Street.

(3) The *accessory uses* in the TC-3 district are those uses customarily associated with the district purpose, as set forth in article IV, division 2 of this chapter, except that hotels may have accessory uses based upon the criteria below:

a. Hotels in the TC-3 district may include a dining room operated solely for registered hotel visitors and their guests, located inside the building and not visible from the street, with no exterior signs, entrances or exits except as required by the Florida Building Code.

b. Hotels in the TC-3(c) district may include accessory restaurants or bars when approved as part of the Conditional Use. Such accessory restaurants or bars that serve alcohol shall be limited to a maximum of 1.25 seats per hotel or apartment unit for the entire site. The patron occupant load, as determined by the planning director or designee, for all accessory restaurants and bars that serve alcohol on the entire site shall not exceed 1.5 persons per hotel and/or apartment unit. For a hotel or apartment property of less than 32 units, the restaurant or bar may have a maximum of 40 seats in the aggregate on the site. The number of units shall be those that result after any

renovation. Accessory restaurants and bars shall be permitted to sell alcoholic beverages for consumption only on the premises and shall be limited to closing no later than 12 midnight subject to limitations established in the conditional use process.

c. Hotels located in the TC-3 or TC-3(c) districts may have other accessory uses customarily associated with the operation of an apartment building, as referenced in subsection 142-902(2), for the use of registered hotel visitors and their guests only.

(4) The *prohibited uses* in the TC-3 district are accessory dance halls, accessory entertainment establishments, accessory neighborhood impact establishments, accessory outdoor entertainment establishment; accessory open air or outdoor entertainment establishment, as set forth in article V, division 6 of this chapter, accessory outdoor bar counter and alcoholic beverage establishments located in any open area above the ground floor (any area that is not included in the FAR calculations). However, outdoor restaurant seating, not exceeding 40 seats, associated with indoor venues may be permitted in any open area above the ground floor until 8:00 PM with no background music (amplified or nonamplified).

(5) There shall be no variances to these provisions.

Sec. 142-737. Development Regulations

(a) The development regulations in the TC-1, TC-2 and TC-3 Town Center districts are as follows:

TABLE INSET (1)

District	Maximum Floor Area Ratio (FAR)	Maximum building height	Maximum number of stories
TC-1 Town Center Core	For lots equal to or less than 45,000 sq. ft. – 2.25 For lots greater than 45,000 sq. ft. -- 2.75.	75 feet; however, buildings fronting on 71 Street shall not exceed 50 feet in height, except that any portion of the building above 50 feet shall be set back an additional 1 foot for every 1 foot in height above 50 feet.	7 stories
TC-2 Town Center Mixed Use	1.5; except for mixed use buildings where more than 25 percent of the total area of a building is used for residential or hotel units, the maximum FAR shall be 2.0.	50 feet	5 stories
TC-3 Town Center Residential Office	1.25	45 feet; Waterfront lots -- 50 feet; Parking garages as a main use see section 130-68(9). The facade of buildings facing the lot front adjacent to streets shall not exceed 23 feet in height to the top of the roof deck. Any portion of the building above 23 feet shall be set back an additional 1 foot for every 1 foot in height above 23 feet. The rear façade of buildings shall be set back an additional 1 foot for every 1 foot in height above 33 feet.	4 stories, Waterfront lots --- 5 stories

TABLE INSET (2)

District	Minimum Lot Area	Minimum Lot Width	Minimum Apartment Unit Size (square feet)	Average Apartment Unit Size (square feet)
TC-1 Town Center Core TC-2 Town Center Mixed Use TC-3 Town Center Residential Office	Commercial – none Residential – 6,250 sq. ft.	Commercial – none Residential – 50 feet	Commercial – N/A New construction – 550 Rehabilitated building – 400 Elderly housing – see Sec. 142-1183 Hotel units – 15% 300-335 85% 335+	Commercial – N/A New construction – 800 sq. ft. Rehabilitated building – no minimum Elderly housing – see Sec. 142-1183 Hotel units – N/A

(b) *Setback Requirements:* The minimum setback requirements for the TC-1, TC-2 and TC-3 districts are as follows. This includes all buildings, regardless of use, and subterranean parking structures. The minimum setbacks define the buildable area of the lot.

District	Front	Side Facing a Street	Interior Side	Rear
TC-1 Town Center Core	5 feet	5 feet	10 feet when abutting a TC-3 district or a future alley designated on the Infill Regulating Plan; otherwise it shall be 0 feet.	0 feet* abutting an alley or where there is a side lot line abutting 71 Street; otherwise 10 feet. *Properties between Collins Ave, and Harding Ave. must provide access to the interior of the block for service vehicles as determined by the design review process.
TC-2 Town Center Mixed use	5 feet	5 feet	10 feet when abutting a TC-3 district or a future alley designated on the Infill Regulating Plan; otherwise it shall be 0 feet.	0 feet* abutting an alley or where there is a side lot line abutting 71 Street; otherwise 10 feet. *Properties between Collins Ave, and Harding Ave. must provide access to the interior of the block for service vehicles as determined by the design review process.

District	Front	Side Facing a Street	Interior Side	Rear
TC-3 Town Center Residential Office	15 feet	7.5 feet for lots 50 feet wide or less 10 feet for lots greater than 50 feet in width	7.5 feet for buildings up to 33 feet in height; 10 feet for buildings 33 feet or more in height; 10 feet for lots abutting a TC-1 district	10 feet

(1) *Waterfront setbacks:* Notwithstanding the above, for waterfront properties the minimum setback shall be 20 feet from the bulkhead.

(2) *Surface parking lots:* In the TC-1 and TC-2 districts, the minimum setback for surface parking lots shall be the same as for buildings plus an additional 5 feet for landscaping adjacent to all streets. In the TC-3 district the minimum setback for surface parking lots shall be 5 feet adjacent to interior side lot lines, 0 feet abutting an alley and the same as for building setbacks on all other sides.

(3) *Rooftop features:* In the TC-3 district, stairwell and elevator bulkheads and other rooftop features permissible in Section 142-1161 extending above the roofline of a building shall be required to be set back from the main building 1 foot for every 1 foot in height above the top of the roof deck of each level, with the exception of parapet walls which shall not exceed 3.5 feet in height.

(c) *Required Storefront Frontage.* The ground story frontage of a building along 71 Street and Collins Avenue shall house active uses that contribute to a daily vibrant street life, including retail uses, eating and drinking establishments or cultural uses, for a minimum depth of 25 feet from the street façade along a minimum of 75 percent of the building frontage, which shall have glass storefronts. The remaining frontage may be used for lobby and access for upper story uses. Offices and residential uses are prohibited on the ground story street frontage of these streets unless the use is located on a mezzanine or at least 25 feet back from the street façade.

(1) *Retail Kiosks* – Notwithstanding Sections 70-5, 70-41 and 142-874, open air kiosks for retail sales or food service may be placed in or on the edge of surface parking lots or approved Urban Plazas in the TC-1 district. Such kiosks shall be permanent structures, designed and located to enhance and enliven the pedestrian environment and must receive design review approval. Self-service kiosks and vending machines are prohibited. No storage shall be allowed outside of the kiosks.

(d) *Open space.* In the TC-1 and TC-2 districts, sites over 20,000 square feet shall have ground level open space which shall comprise a minimum of 10% of the lot area. Such open space shall be located adjoining the front or side street of the site, or within a central courtyard area that is fully accessible to the public from the front or street side of the property; and shall be designed and maintained according to the Urban Plaza design standards in the NBTC Design Standards referenced in Sec. 142-738.

(e) *Waterfront Pedestrian Walkway.* The Waterfront Pedestrian Walkway is required to provide public access to parcels which are allowed to have uses open to the public. Waterfront lots shall provide a publicly accessible Waterfront Pedestrian Walkway along the entire length of the shoreline. The area within a Waterfront Pedestrian Walkway shall be a public access easement. The walkway shall be included within the required waterfront setback. The easement width for these walkways shall be a minimum of 10 feet in width with a paved walkway not less than 7 feet wide. Design of the Waterfront Pedestrian Walkway shall be substantially in accord with NBTC Design Standards referenced in Sec. 142-738. A covenant confirming public access between the hours of 6 AM and 9 PM, subject to the review and approval by the City Attorney, shall be recorded before the issuance of any permits for the redevelopment project.

(f) *Alleys* shall be provided to benefit property owners and the general public by providing parking, service and delivery access to the rear of all lots, thereby improving traffic flow and eliminating driveways that create vehicle/pedestrian conflicts on public sidewalks. Motor vehicle parking, service and delivery access shall be from an alley wherever one exists, or where a new alley or service corridor can be created by dedication or easement. Where an alley does not exist, the abutting property owner shall dedicate sufficient width [the area within the required setback] to provide the alley abutting his property. Where it is not feasible to construct an alley at the time of redevelopment of any property, as determined by the Planning Director, the developer shall execute and record a covenant effecting such dedication upon certification by the Planning Director that the construction of an alley has become feasible. The Planning Director may accept a perpetual access easement for an alley in lieu of dedication of an alley if he determines such would be appropriate under the circumstances of any particular property. The developer shall maintain the area until the City builds the alley.

(g) *Encroachments.* No encroachments shall be allowed in the required setback areas except as follows; otherwise, encroachments shall be governed by Section 142-1142

(1) In the TC-1 and TC-2 districts, no encroachments shall be allowed in the first 7.5 feet above ground level adjacent to all streets.

(2) In the TC-3 district, no encroachment shall be allowed in the first 5 feet of setback area measured from the property line adjacent to all streets.

(3) In all districts, no encroachment shall be allowed in the first 18 feet above grade abutting an existing or future alley.

(h) *Signs* shall be regulated by Chapter 138 and as permitted by Sec. 138-174 and by the NBTC Design Standards referenced in Sec. 142-738.

(i) *Streetscape improvements.* In all TC districts, the developer/property owner is required to construct all streetscape improvements substantially in accord with the NBTC Design Standards referenced in Sec. 142-738 as part of any development or redevelopment project.

Sec. 142-738. Design Review Standards

Design Review Standards. All development shall substantially conform to the "Design Review Standards for the North Beach Town Center TC Zoning Districts", also known as the "NBTC Design Standards", as adopted and amended periodically by the Design Review Board. The NBTC Design Standards are available from the Planning Department or on the web at miamibeachfl.gov/planning, by clicking on "Design Review".

Sec. 142-739. Parking

(a) Off-Street Parking for motorized vehicles

(1) *Purpose:* Parking regulations in the North Beach Town Center are intended to: provide centralized public parking garages to serve the Town Center and minimize the amount of on-site parking required for individual lots, thereby reducing building bulk and maximizing ground floor space available for retail and restaurant uses; enable people to park once at a convenient location and to access a variety of commercial enterprises in pedestrian friendly environments by encouraging shared parking; reduce diffused, inefficient, single-purpose reserved parking; encourage ground floor retail uses and public facilities; promote walking, bicycling and transit ridership to help reduce the demand for parking within the district; avoid adverse parking impacts on neighborhoods adjacent to the Town Center; maximize on-street parking where possible; increase visibility and accessibility of parking; provide flexibility for redevelopment of small sites; and for the preservation of historic buildings; promote early prototype mixed-use projects using flexible and creative incentives.

(2) Required parking in the North Beach Town Center is governed by Chapter 130 Off-Street Parking, except as modified herein.

a Minimum parking requirements for the TC-1 Town Center Core district are set forth in Parking District No 4 in Sec.130-33, except that apartment buildings shall provide: 1.0 space per unit for units between 550 and 799 square feet; 1.25 spaces per unit for units between 800 and 999 square feet; 1.5 spaces per unit for units between 1000 and 1200 square feet; 2.0 spaces per unit for units above 1200 square feet.

b Minimum parking requirements for the TC-2 Town Center Mixed Use district are set forth in Parking District No 1 in Sec.130-32, except that apartment buildings shall provide: 1.0 space per unit for units between 550 and 799 square feet; 1.25 spaces per unit for units between 800 and 999 square feet; 1.5 spaces per unit for units between 1000 and 1200 square feet; 2.0 spaces per unit for units above 1200 square feet.

c Minimum parking requirements for the TC-3 Town Center Residential Office district are set forth in Parking District No 1 in Sec.130-32, except that apartment buildings shall provide: 1.0 space per unit for units between 550 and 799 square feet; 1.25 spaces per unit for units between 800 and 999 square feet; 1.5 spaces per unit for units between 1000 and 1200 square feet; 2.0 spaces per unit for units above 1200 square feet.

d Parking requirements may be met either on-site or off-site within a distance of 800 feet from the subject lot, subject to Sec. 130-36(b).

e Mixed use development is encouraged to utilize the Shared Parking calculations in Section 130-221. Parking for residential uses may be included in the Shared Parking calculation at a rate of 50% for daytime weekdays, 70% for daytime weekends and 100% for all other times. Shared Parking shall be designated by appropriate signage and markings. The Shared Parking facility may be located off-site within 800 feet of the uses served, subject to Sec. 130-36(b).

f Developments that provide a significant public amenity such as an Urban Plaza (minimum 3,000 sq. ft.) in accord with the NBTC Design Standards referenced in Sec. 142-738, or floor area for a public library (minimum 6,000 sq. ft. and maximum 15,000 sq. ft.) may be exempted from parking requirements for all uses on the site at a rate of one parking space for every 500 square feet of Urban Plaza space or one parking space for every 250 square feet of library space.

g New construction of "live-work" projects shall meet the parking requirements for either residential or commercial uses, whichever is greater, but shall not be required to meet the

parking requirement for both uses. For purposes of this section, a "live-work" unit is defined as a unit containing both a residential and commercial component within the same unit.

(b) *Bicycle Parking.* Short term and long term bicycle parking shall be provided for new construction or substantial rehabilitation over 1,000 sq. ft. according to the minimum standards in the table below.

(1) *Short Term bicycle parking* (bicycle racks) serves people who leave their bicycles for relatively short periods of time, typically for shopping, recreation, eating or errands. Bicycle racks should be located in a highly visible location near the main entrance to the use.

(2) *Long Term bicycle parking* includes facilities that provide a high level of security such as bicycle lockers, bicycle cages and bicycle stations. These facilities serve people who frequently leave their bicycles at the same location for the day or overnight.

TABLE INSET

Land use	Minimum short term bicycle parking spaces (whichever is greater)	Minimum long term bicycle parking spaces (whichever is greater)
Commercial non-retail	4 per project or 1 per 10,000 sq. ft.	1 per 10% of employees or 2 for 5,000 sq ft and under 3 for 5,001-20,000 sq. ft 6 for 20,001 – 50,000 sq. ft. 10 for 50,000 sq. ft. and over
Retail	1 per business, 4 per project or 1 per 5,000 sq. ft.	1 per 10% of employees or 2 for 5,000 sq ft and under 3 for 5,001-20,000 sq. ft 6 for 20,001 – 50,000 sq. ft. 10 for 50,000 sq. ft. and over
Restaurants, bars, nightclubs	1 per 10 seats or occupants	1 per 10% of employees
Hotel	2 per hotel or 1 per 10 rooms	1 per 10% of employees
Multifamily residential	4 per project or 1 per 10 units	1 per unit

(c) Developers are encouraged to provide more than the minimum requirement as appropriate for the particular uses in a building. The minimum required vehicular parking shall be reduced by 1 space for every 5 long term bicycle parking spaces provided and/or 1 space for every 10 short term bicycle parking spaces, not to exceed a total of 15 percent of the required vehicle parking spaces provided.

(d) Nonresidential uses that provide showers and changing facilities for bicyclists shall be exempted from vehicle parking requirements at a rate of 2 vehicle parking spaces for each separate shower up to a maximum of 8 parking spaces.

(e) In the TC-1 and TC-2 districts, short term bicycle parking spaces may be provided in the public right-of-way, subject to design review, in situations where suitable space near the entrance to the building or storefront is not available on private property. Bicycle parking in the public right-of-way shall be approved by the Public Works Department and shall not encroach on the pedestrian throughway zone.

SECTION 3: The City of Miami Beach Code Chapter 130 Off-Street Parking, Article II Districts; Requirements, Sec. 130-31 Parking districts established, and Article III Design Standards, Sec. 130-68. Commercial and noncommercial parking garages, are hereby amended as follows:

Sec. 130-31. Parking districts established.

(a) For the purposes of establishing off-street parking requirements, the city shall be divided into four parking districts.

(1) Parking district no. 1. Parking district no. 1 is that area not included in parking districts nos. 2, 3 and 4.

(2) Parking district no. 2. Parking district no. 2 includes those properties with a lot line on Lincoln Road from the west side of Washington Avenue to the east side of Alton Road and those properties north of Lincoln Road and south of 17th Street from the west side of Washington Avenue to the east side of Lenox Court.

(3) Parking district no. 3. Parking district no. 3 includes those properties with a lot line on Arthur Godfrey Road from the east side of Alton Road to west side of Indian Creek Waterway.

(4) Parking district no. 4. Parking district no. 4 includes those properties within the ~~CD-2 and CD-3~~ TC-1 commercial district~~s~~ in the North Beach Town Center and those properties with a lot line on 71st Street from ~~the west side of Collins Avenue~~ Indian Creek waterway to the east side of Rue Notre Dame, and those properties with a lot line on Normandy Drive from the west side of the Indian Creek Waterway to the east side of Rue Notre Dame.

(b) There shall be no off-street parking requirement for main or accessory uses associated with buildings that existed prior to October 1, 1993, which are (i) located within the architectural district, (ii) a contributing building within a local historic district, or (iii) individually designated historic building. This provision shall not apply to renovations and new additions to existing buildings which create or add floor area to new construction which has a parking requirement.

* * *

Sec. 130-68. Commercial and noncommercial parking garages.

Commercial and noncommercial parking garages as a main use on a separate lot shall be subject to the following regulations, in addition to the other regulations of this article:

* * *

(9) When located in the TC-3 and GU districts located within TC-3 districts in the North Beach Town Center area, the following regulations shall apply:

a. When a parking garage is located in the TC-3 district, such garage may also have first floor space occupied for commercial uses, subject to conditional use approval.

b. Residential or commercial uses shall be incorporated at the first level along every facade facing a street, sidewalk or waterway. ~~For properties not having access to an alley, t~~The required residential or commercial space may ~~shall~~ accommodate entrance and exit drives for vehicles, inclusive of ramping running parallel to the street.

c. When the subject site is abutting or separated by an alley from a TC-1 district, the garage may also serve commercial uses.

d. In no instance shall the above described combined residential and/or commercial space exceed 25 percent of the total floor area of the structure.

e. Additionally, in no instance shall the amount of floor area of the structure used for parking, exclusive of the required parking for the above described residential or commercial space, be less than 50 percent of the total floor area of the structure, so as to insure that the structure's main use is as a parking garage.

f. The height limit shall be 50 feet.

g. Setbacks shall be the same as the setbacks for the TC-3 zoning district, except that parking garages on lots with a front yard facing a street right-of-way greater than 50 feet in width, shall have a minimum front yard setback of 10 feet.

h. The volume of such commercial and noncommercial parking garages shall be limited by the required setbacks and heights described within this section and shall not be subject to the floor area ratios prescribed for in the underlying zoning district.

i. Signage for commercial uses allowable under this provision shall be governed by the TC-3 district regulations.

SECTION 4. The City of Miami Beach Code Chapter 138 Signs is hereby amended as follows:

* * *

Sec. 138-6. Signs located on the valance and underside of awnings or canopies.

In addition to other permitted signs, a non-illuminated sign, not exceeding three square feet in area with letters not exceeding six inches in height, hanging from the underside of an awning or canopy with a minimum height clearance of seven feet six inches is permitted, except in the TC-1 and TC-2 districts which shall be governed by Sec. 138-174. One sign on the valance of an awning or canopy may also be permitted; the length of such sign shall not exceed 25 percent of the length of a single awning, or the length of that portion of the awning or canopy associated with the establishment, up to a maximum of ten square feet and letters shall not exceed eight inches in height. Signs on continuous awnings shall be placed centered on the portion of the valance that corresponds to the individual storefront and be a uniform color. All valance signs shall be subject to the design review process. For purposes of this section, a valance is defined as that vertical portion of the awning that hangs down from the structural brace. Signs on other surface areas of an awning, canopy or roller curtain are not permitted.

* * *

Sec. 138-7. Window signs.

* * *

(c) When there are no other signs associated with the use, the main permitted sign or signs may be located on the window with a total aggregate size not to exceed 20 square feet, except in the TC-1 and TC-2 districts which shall be governed by Sec. 138-174.

* * *

Sec. 138-172. Schedule of sign regulations for principal use signs.

TABLE INSET:

Zoning District	Number	Awning / Marquee	Flat	Projecting	Detached (Monument)	Accessory Signs	Special Conditions
RS-1 RS-2 RS-3 RS-4	Residential use: One sign per street frontage that has copy limited to the name of the building.	Not permitted.	Residential use: Six-inch letters.	Not permitted.	Not permitted.	Not permitted.	30 square feet for a religious institution, public and semipublic uses, clubs or schools.
RM-1 RM-2 RM-3 R-PS 1 R-PS 2 R-PS 3 R-PS 4 RO TC-3	No more than one sign identifying the main permitted uses for each street frontage. Unless otherwise listed in	Ten square feet; the height of the letters shall not exceed 12 inches. Not permitted in the RM-3 district. Not permitted in	One per street frontage; ten square feet for every 50 feet of linear frontage, or fraction thereof, up to maximum of 30 square	15 square feet Not permitted in the RM-3 district. Not permitted in RO.	15 square feet, however, if sign is set back 20 feet from front property line, area may be increased to a maximum of 30 square feet. Pole signs are not permitted.	One sign for all accessory uses; area of sign shall not exceed 75 percent of the main use sign, 20 square feet maximum.	1. Maximum size for schools is 30 square feet. 2. Signs shall not have copy indicating prices. 3. An exterior

	section 138-171, all signs must front on a street.	RO.	feet. Flat signs shall not be located above the ground floor.		Existing pole signs may be repaired only as provided in section 138-10. Notwithstanding the above, a detached sign located on a perimeter wall shall be limited to five square feet and shall not have to comply with the setback requirements of section 138-9. The height and size of the monument structure shall be determined under the design review process except as provided herein. In the RO districts, sign area shall not exceed 10 square feet, and the monument structure shall not exceed five (5) feet in height.	However, in the RM-3 district only detached accessory signs are permitted.	directory sign, attached to the building up to six square feet, listing the names of all licensed uses within the building is permitted; sign material and placement shall be subject to approval through the design review process.
CD-1 CD-2 CD-3 C-PS 1 C-PS 2 C-PS 3 C-PS 4 I-1 MXE TC-1 TC-2	One sign per street frontage for each licensed principal and licensed accessory use, however, multiple signs for the same licensed establishment may be permitted through the design review procedure if the aggregate sign area does not exceed the maximum size permitted under this subsection.	Awning: See section 138-6. Marquee: 175 square feet only in commercial districts.	20 square feet for the first 25 feet of linear frontage, plus one square foot for every three feet of linear frontage over 25 feet up to a maximum of 30 square feet; however one building identification sign for buildings two stories or higher, located on the parapet facing a street, is permitted with an area not to exceed one percent of the wall area on which it is	15 square feet.	15 square feet. Pole signs are not permitted. Existing pole signs may be repaired only as provided in section 138-10. Detached signs are not permitted in the MXE district. The height and size of the monument shall be determined under the design review process.	One for each accessory use; area of each sign shall not exceed one square foot per linear foot of frontage not to exceed 20 square feet. A directory sign, up to six square feet, listing the name of all licensed uses within the building is permitted. No signs shall have copy indicating prices except as provided in this article. For properties fronting	

			placed. Corner buildings may provide one combined sign instead of the two permitted signs. This sign shall be located on the corner of the building visible from both streets and shall have a maximum size of 40 square feet.			Lincoln Road, between Collins Avenue and Washington Avenue, see section 138-173.	

* * *

Sec. 138-174. North Beach Town Center Signage

For those properties located in the North Beach Town Center TC zoning districts, the following shall apply:

(1) *Window signs* in the TC-1 and TC-2 districts. When there are no other flat wall signs associated with the use, the main permitted sign or signs may be located on the ground floor window with a total aggregate size of 20 square feet for the first 25 feet of linear frontage, plus 1 square foot for every three feet of linear frontage up to a maximum of 30 square feet.

(2) *Awning/Marquis signs and Projecting signs* in the TC-1 and TC-2 districts. Signs oriented to pedestrian view shall be permitted to be located perpendicular to the sidewalk, limited to one sign per business establishment for each side facing a street or alley. Such signs may be in addition to other permitted signs, but not exceeding three square feet in area. Generally, letters shall not exceed 6 inches in height unless integrated into a creative graphic design approved by design review. Such signs may be illuminated by an external lighting source if the lighting source is approved by design review.

SECTION 5. The City of Miami Beach Code Chapter 142 Zoning Districts and Regulations, Division 4 Alcoholic Beverages, is hereby amended as follows:

Sec. 142-1301. Permitted districts.

Vendors may be permitted to sell or distribute alcoholic beverages, either for consumption on or off the premises only in the following zoning districts:

(1) RM-2 multiple-family, medium intensity.
(2) RM-3 multiple-family, high intensity.
(3) CD-1 commercial, low intensity.
(4) CD-2 commercial, medium intensity.
(5) CD-3 commercial, high intensity.
(6) CCC convention center district.
(7) HD hospital district.
(8) I-1 industrial, light.
(9) MR marine recreational.
(10) MXE mixed use entertainment.
(11) WD-1 waterway district.
(12) WD-2 waterway district.
(13) R-PS2 residential medium density.
(14) R-PS3 residential medium-high density.
(15) R-PS4 residential high density.
(16) C-PS1 commercial limited mixed use.
(17) C-PS2 commercial general mixed use.
(18) C-PS3 commercial intensive mixed use.
(19) C-PS4 commercial intensive phased bayside.
(20) RM-PS1 residential limited mixed-use development.
(21) TC-1 North Beach Town Center core
(22) TC-2 North Beach Town Center mixed-use
(23) TC-3 North Beach Town Center residential/office

Sec. 142-1302. Permitted main and accessory uses.

Vendors shall be permitted to sell alcoholic beverages within the zoning districts listed in section 142-1301 if such district permits as a permitted main use or accessory use one of the following: Restaurant, bar, alcoholic beverage establishment, outdoor cafe, private club, or golf clubhouse pursuant to the following standards:

(1) Permitted main uses.

a. Restaurants, alcoholic beverage establishments, and private clubs shall be permitted to sell alcoholic beverages for consumption on the premises based upon the following; when beer and wine are served a minimum of 30 seats shall be provided; and when, beer, wine and liquor are served, a minimum of 60 seats shall be provided.

b. Outdoor cafes, when visible from or facing a public street, shall have a minimum of 20 seats in order to be permitted to sell alcoholic beverages for consumption on the premises.

c. Outdoor cafes, when not visible from or on a public street, alley, or way, shall have no minimum seating requirement and shall be permitted to sell alcoholic beverages only for consumption on the premises.

d. Golf clubhouse; when located on a golf course, the sale of alcoholic beverages is permitted only for consumption on the premises.

(2) Accessory uses. Hotels, apartment-hotels, or apartments, or any mixed use having a minimum of 100 apartment units or a minimum of 100 hotel units or which are located in the MXE district shall be permitted to have accessory uses which sell alcoholic beverages pursuant to the following minimum standards:

a. Bars, alcoholic beverage establishments, restaurants, or private clubs which have a minimum of 40 seats shall be permitted to sell alcoholic beverages for consumption on or off the premises.

b. Outdoor cafes when visible from a public street which have a minimum of 20 seats are permitted to sell alcoholic beverages for consumption only on the premises.

c. Outdoor cafes when not visible from a public street, alley, or way, shall have no minimum seating requirement and shall be permitted to sell alcoholic beverages only for consumption on the premises.

d. Golf clubhouse; when located on a golf course, the sale of alcoholic beverages is permitted only for consumption on the premises.

(3) Accessory uses which sell alcoholic beverages in the TC-1, TC-2, and TC-3 district shall be governed by the district use regulations in Sec. 142-746.

SECTION 6. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 7. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 8. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 9. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 20__.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ 8/31/10
City Attorney Date

First Reading:
Second Reading:

Verified by: _____ _____
Richard Lorber, AICP, LEED Date
Acting Planning Director

T:\AGENDA\2010\September 15\Regular\TC Zoning ord.doc

MIAMIBEACH

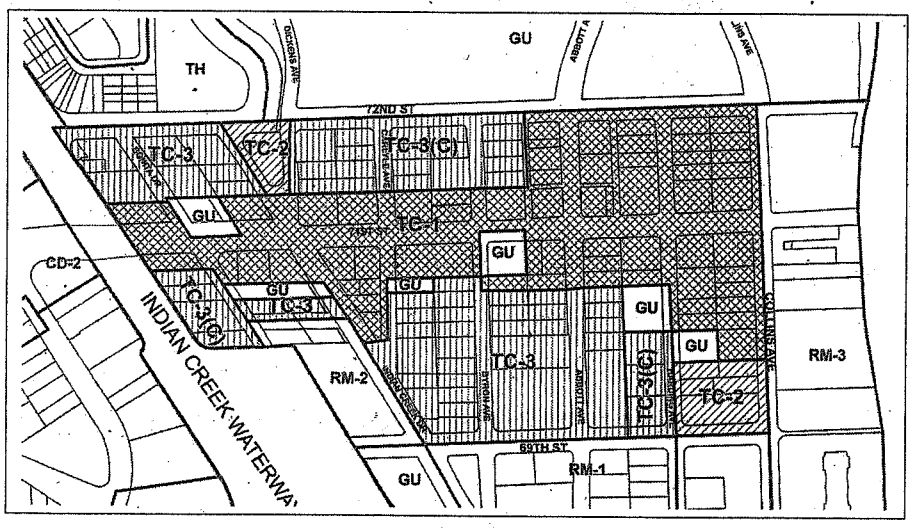
CITY OF MIAMI BEACH
NOTICE OF AMENDMENT TO THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF MIAMI BEACH, FLORIDA

NOTICE IS HEREBY GIVEN that a first reading and public hearing will be held by the City Commission of the City of Miami Beach on **WEDNESDAY, September 15, 2010 at 11:00 a.m.** in the City Commission Chambers, Third Floor, City Hall, located at 1700 Convention Center Drive, Miami Beach, Florida 33139 to consider the following ordinances:

3-

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS", BY CREATING A NEW DIVISION 20, "TC NORTH BEACH TOWN CENTER DISTRICTS", CREATING NEW ZONING DISTRICTS TC-1, TOWN CENTER CORE; TC-2, TOWN CENTER MIXED USE; AND TC-3, TOWN CENTER RESIDENTIAL OFFICE; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, MAIN PERMITTED, CONDITIONAL, ACCESSORY AND PROHIBITED USES, DEVELOPMENT REGULATIONS, DESIGN REVIEW STANDARDS, AND PARKING REGULATIONS; AMENDING CHAPTER 130, "OFF-STREET PARKING", ARTICLE II, "DISTRICTS; REQUIREMENTS", SECTION 130-31, "PARKING DISTRICTS ESTABLISHED", AMENDING THE BOUNDARIES OF PARKING DISTRICT 4; AMENDING ARTICLE III, SECTION 130-68, "COMMERCIAL AND NONCOMMERCIAL PARKING GARAGES", ADOPTING NEW REGULATIONS IN TC-3 AND GU FOR COMMERCIAL AND NONCOMMERCIAL PARKING GARAGES; AMENDING CHAPTER 138, "SIGNS", ARTICLE V, "SIGN REGULATIONS BY DISTRICTS", SECTION 138-172, "SCHEDULE OF SIGN REGULATIONS FOR PRINCIPAL USE SIGNS"; CREATING A NEW SECTION 138-174, "NORTH BEACH TOWN CENTER SIGNAGE"; AMENDING CHAPTER 142, DIVISION 4, "ALCOHOLIC BEVERAGES", SECTIONS 142-1301 AND 142-1302 TO INCLUDE TC DISTRICTS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CITY CODE, BY CHANGING THE ZONING DISTRICT CLASSIFICATIONS FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE" AND TC-3(C) "TOWN CENTER CONDITIONAL NEIGHBORHOOD COMMERCIAL"; AND AMENDING THE AFFECTED PORTION OF THE CITY'S OFFICIAL ZONING DISTRICT MAP TO CORRESPOND WITH THESE CHANGES; PROVIDING FOR REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.



All interested parties are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the Planning Department, 1700 Convention Center Drive, City Hall, Miami Beach, Florida 33139. Copies of the proposed amendments are available in the Planning Department.

Pursuant to Florida Stat. 286.0105, the City hereby advises the public that if a person decides to appeal any decision made by the Planning Board with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record must include the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should contact the Board's Administrator no later than four days prior to the proceeding at (305) 673-7550 for assistance; if hearing impaired, telephone the Florida Relay Service numbers, (305) 673-7218 or 711, for assistance.

AD# 621

ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CITY CODE, BY CHANGING THE ZONING DISTRICT CLASSIFICATIONS FOR THE NORTH BEACH TOWN CENTER FROM CD-3, "COMMERCIAL, HIGH INTENSITY" TO TC-1, "TOWN CENTER CORE"; FROM CD-2, "COMMERCIAL, MEDIUM INTENSITY" TO TC-2, "TOWN CENTER MIXED USE"; AND FROM RM-1, "RESIDENTIAL MULTIFAMILY, LOW INTENSITY" TO TC-3, "TOWN CENTER RESIDENTIAL OFFICE" AND TC-3(C) "TOWN CENTER CONDITIONAL NEIGHBORHOOD COMMERCIAL"; AND AMENDING THE AFFECTED PORTION OF THE CITY'S OFFICIAL ZONING DISTRICT MAP TO CORRESPOND WITH THESE CHANGES; PROVIDING FOR REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Miami Beach Mayor and City Commission adopted the North Beach Town Center Plan by Resolution No. 2007-26600 on July 11, 2007 in order to provide comprehensive guidance for private and public sector initiatives toward redevelopment and revitalization in the area bounded by 73 Street, the Atlantic Ocean, 69 Street, and Indian Creek Waterway; and

WHEREAS, the North Beach Town Center Development Code is proposed to update the zoning and future land use regulations to be consistent with the long-term vision set forth in the North Beach Town Center Plan; therefore, new districts are proposed to be added to Chapter 142, to be known as "TC North Beach Town Center Districts"; and

WHEREAS, the TC North Beach Town Center Districts are intended to:

1. Promote development of a compact, pedestrian-oriented town center consisting of a high-intensity employment center, vibrant and dynamic mixed-use areas, and attractive residential living environments with compatible office uses and neighborhood-oriented commercial services.

2. Promote a diverse mix of residential, business, commercial, office, institutional, educational, and cultural and entertainment activities for workers, visitors and residents.

3. Encourage pedestrian-oriented development within walking distance of transit opportunities at densities and intensities that will help to support transit usage and town center businesses.

4. Provide opportunities for live/work lifestyles and increase the availability of affordable office space in the North Beach area.

5. Promote the health and well-being of residents by encouraging physical activity, alternative transportation, and greater social interaction.

6. Create a place that represents a unique, attractive and memorable destination for residents and visitors.

7. Enhance the community's character through the promotion of high-quality urban design.

WHEREAS, the TC-1 district is intended to encourage and enhance the high-intensity commercial employment center function of the Town Center's core area and its regulations are intended to support the Town Center's role as the hub of community-wide importance for business, office, retail, governmental services, culture and entertainment while also accommodating mixed-use and residential projects as important components of the area's vitality; and

WHEREAS, the TC-2 district is intended to support medium intensity mixed-use (residential/nonresidential) projects with active retail ground floor uses; and

WHEREAS, the TC-3 district is intended to accommodate low density multi-family residential development and low intensity office and tourist lodging uses, and also accommodating small-scale ground floor neighborhood commercial uses that are compatible with the residential character of the TC-3 district in certain areas designated as TC-3(c) on the zoning map.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. AMENDMENTS OF ZONING DISTRICTS AND ZONING MAP OF MIAMI BEACH CITY CODE.

That the Mayor and City Commission hereby amend the Zoning Districts and Zoning District Map of the City of Miami Beach referenced in Section 142-72 of the City Code, by changing the Zoning District Classifications for the North Beach Town Center from CD-3, "Commercial, High Intensity" to TC-1, "Town Center Core"; from CD-2, "Commercial, Medium Intensity" to TC-2, "Town Center Mixed Use"; and from RM-1, "Residential Multifamily, Low Intensity" to TC-3, "Town Center Residential Office" and TC-3(c) "Town Center Conditional Neighborhood Commercial"; and amending the affected portion of the City's official zoning district map to correspond with these changes.

SECTION 2. REPEALER.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 20__.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

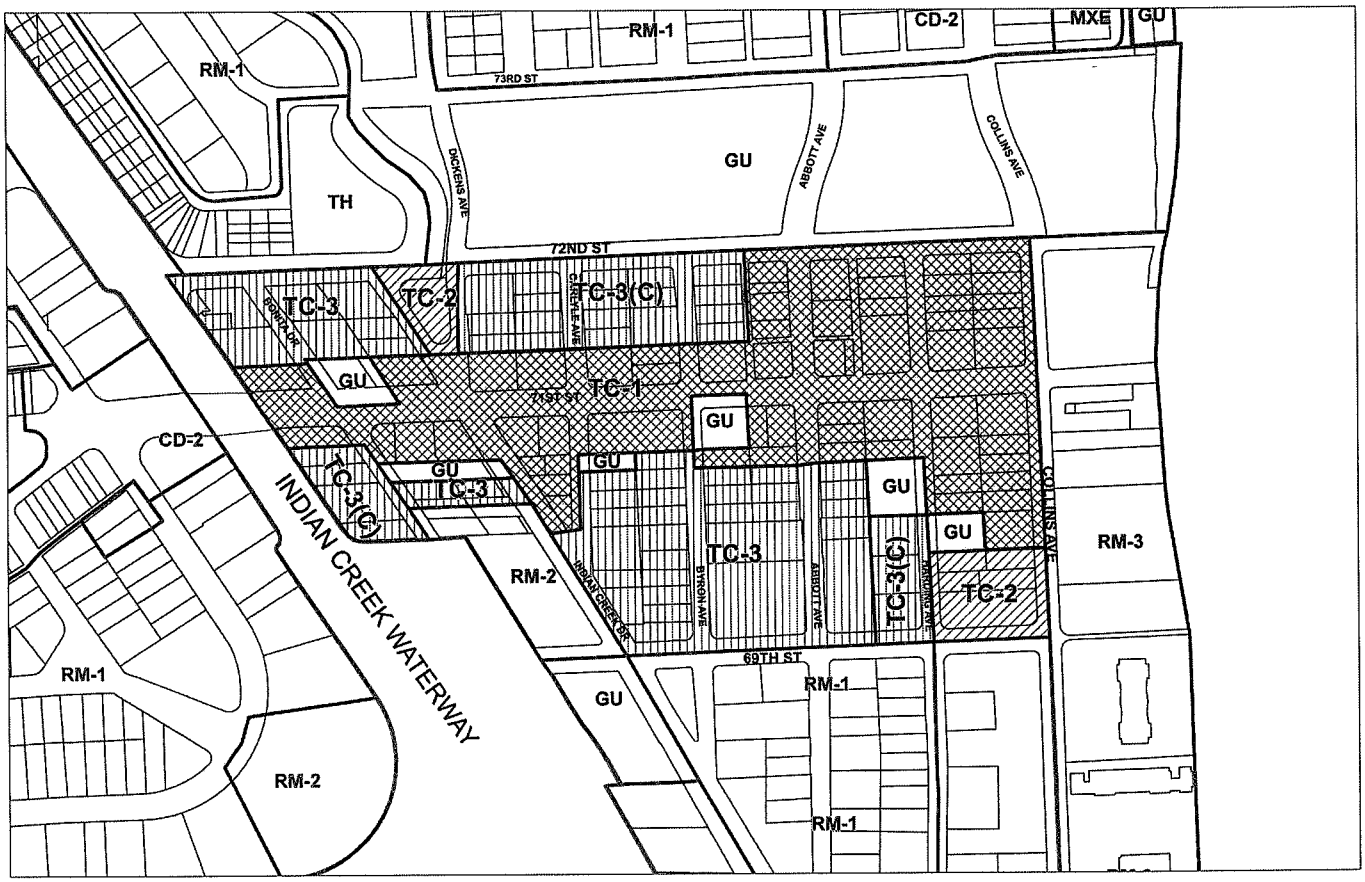
_____ 8/31/10
City Attorney Date

First Reading:
Second Reading:

Verified by: _____ _____
Richard Lorber, AICP, LEED Date
Acting Planning Director

T:\AGENDA\2010\September 15\Regular\TC Zoning map ord.doc

Map attachment:



MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF AMENDMENT TO THE ZONING ORDINANCE AND THE ZONING MAP OF THE CITY OF MIAMI BEACH, FLORIDA

NOTICE IS HEREBY GIVEN that a first reading and public hearing will be held by the City Commission of the City of Miami Beach on **WEDNESDAY, September 15, 2010 at 11:00 a.m.** in the City Commission Chambers, Third Floor, City Hall, located at 1700 Convention Center Drive, Miami Beach, Florida 33139 to consider the following ordinances:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CITY'S LAND DEVELOPMENT REGULATIONS, BY AMENDING CHAPTER 142, "ZONING DISTRICTS AND REGULATIONS", ARTICLE II, "DISTRICT REGULATIONS", BY CREATING A NEW DIVISION 20, "TC NORTH BEACH TOWN CENTER DISTRICTS", CREATING NEW ZONING DISTRICTS TC-1, TOWN CENTER CORE; TC-2, TOWN CENTER MIXED USE; AND TC-3, TOWN CENTER RESIDENTIAL OFFICE; PROVIDING FOR PURPOSE AND INTENT, DEFINITIONS, MAIN PERMITTED, CONDITIONAL, ACCESSORY AND PROHIBITED USES, DEVELOPMENT REGULATIONS, DESIGN REVIEW STANDARDS, AND PARKING REGULATIONS; AMENDING CHAPTER 130, "OFF-STREET PARKING", ARTICLE II, "DISTRICTS; REQUIREMENTS", SECTION 130-31, "PARKING DISTRICTS ESTABLISHED", AMENDING THE BOUNDARIES OF PARKING DISTRICT 4; AMENDING ARTICLE III, SECTION 130-68, "COMMERCIAL AND NONCOMMERCIAL PARKING GARAGES", ADOPTING NEW REGULATIONS IN TC-3 AND GU FOR COMMERCIAL AND NONCOMMERCIAL PARKING GARAGES; AMENDING CHAPTER 138, "SIGNS", ARTICLE V, "SIGN REGULATIONS BY DISTRICTS", SECTION 138-172, "SCHEDULE OF SIGN REGULATIONS FOR PRINCIPAL USE SIGNS"; CREATING A NEW SECTION 138-174, "NORTH BEACH TOWN CENTER SIGNAGE"; AMENDING CHAPTER 142, DIVISION 4, "ALCOHOLIC BEVERAGES", SECTIONS 142-1301 AND 142-1302 TO INCLUDE TC DISTRICTS; PROVIDING FOR CODIFICATION; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.

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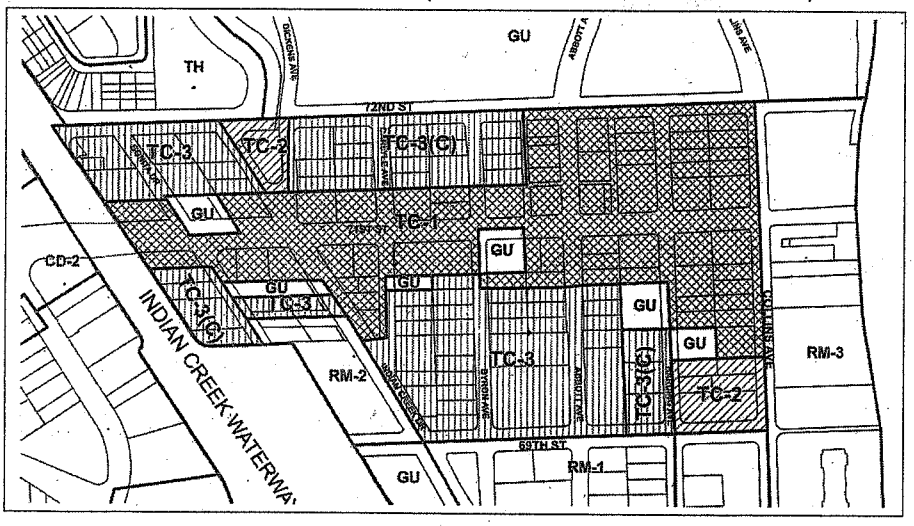

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AD# 621

Condensed Title:

Ordinances of the Mayor and City Commission of the City of Miami Beach, Florida, amending the Future Land Use Map of the Comprehensive Plan by changing the Future Land Use Category for the Parcel known as the "South Shore Hospital," from the current PF-RHO, "Public Facility (Religious, Hospital, Other)," to the Future Land Use Category of CD-2, "Commercial, Medium Intensity;" to change the Zoning Map from HD "Hospital District," to CD-2 "Commercial, Medium Intensity;" both with a restriction limiting the Property to no more than 10 Residential Units per acre as provided for in the Voluntary Covenant.

Key Intended Outcome Supported:

Regulatory and Neighborhood satisfaction

Supporting Data (Surveys, Environmental Scan, etc Regulatory – required by Florida Statutes

Issue:

Should the City Commission adopt the ordinances amending the Future Land Use Map of the City's Comprehensive Plan for the South Shore Hospital from PF-RHO to CD-2; and the Zoning Map from HD to CD-2.

Item Summary/Recommendation:

FIRST AND ONLY READING PUBLIC HEARINGS

The applicant, South Beach Heights I, LLC, wants to amend the Future Land Use and Zoning Maps for the South Shore Hospital so that commercial, retail, offices and residential uses may be permitted on the property. The subject site was a functioning hospital since 1967, but in the past several years, the viability has declined, and it is no longer accredited by the State. The 10-story office tower adjacent to the hospital building functioned as medical facilities and offices, but was heavily damaged by a hurricane several years ago and remains in need of physical repair. Several attempts have been made to revive the hospital use, and also to place a nursing home facility in the office tower, but to date, none of these proposals have progressed further. The applicant is proposing to change the Future Land Use Category of the "South Shore Hospital," site from the current PF-RHO, "Public Facilities – Religious, Hospital, Other," to the Future Land Use Category CD-2, "Commercial, Medium Intensity," and the Zoning Map from HD to CD-2 restricting the residential use to no more than 10 units per acre, agreed upon by a voluntary covenant running with the land.

The Administration recommends that the City Commission adopt the proposed ordinances on first and only reading public hearings for each of the above and direct the Administration to transmit all applicable documents to the Department of Community Affairs (DCA) and other required reviewing agencies. However, at this time the City Commission would have the option to continue the request to change the Future Land Use and Zoning Maps and require that a concept plan be provided for the redevelopment of the site, as has usually been requested in the past for this type of application.

Advisory Board Recommendation:

At the June 22, 2010 meeting, the Planning Board recommended that the City Commission approve both proposed changes - to the Future Land Use and the Zoning Maps by a vote of 6-0 (one member absent).

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary: The proposed ordinances are not expected to have any fiscal impact upon the resources of the City at this time. When the site is redeveloped, revenues to the City may increase.

City Clerk's Office Legislative Tracking:

Richard Lorber or Mercy Lamazares

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **South Shore Hospital – change of the Future Land Use Map and Zoning Map - First and only Reading Public Hearing.**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN BY CHANGING THE FUTURE LAND USE CATEGORY FOR THE PARCEL KNOWN AS THE "SOUTH SHORE HOSPITAL," MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION BELOW, FROM THE CURRENT PF-RHO, "PUBLIC FACILITY (RELIGIOUS, HOSPITAL, OTHER)," TO THE FUTURE LAND USE CATEGORY OF CD-2, "COMMERCIAL, MEDIUM INTENSITY;" WITH A RESTRICTION LIMITING THE PROPERTY TO COMMERCIAL USES CURRENTLY PERMITTED BY THE CITY CODE AND NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT ATTACHED HERETO; PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN, TRANSMITTAL, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FOR THE FOR THE PARCEL KNOWN AS THE "SOUTH SHORE HOSPITAL," MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A" HERETO, FROM THE CURRENT ZONING CLASSIFICATION HD, "HOSPITAL DISTRICT," TO THE PROPOSED ZONING CLASSIFICATION CD-2, "COMMMERCIAL, MEDIUM INTENSITY," WITH A RESTRICTION LIMITING THE PROPERTY TO COMMERCIAL USES CURRENTLY PERMITTED BY THE CITY CODE AND NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT ATTACHED HERETO; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission adopt the proposed ordinances on first and only reading public hearings for each of the above and direct the

Administration to transmit all applicable documents to the Department of Community Affairs (DCA) and other required reviewing agencies.

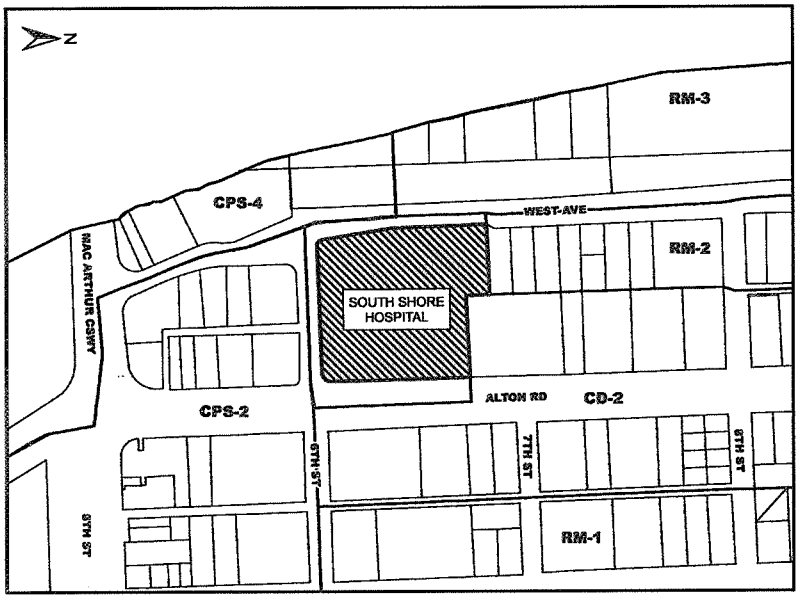
BACKGROUND

The applicant, South Beach Heights I, LLC (SBH), is requesting to amend the Future Land Use Map (FLUM) of the Comprehensive Plan of the City of Miami Beach, Florida, by changing the Future Land Use Category for the Parcel known as the "South Shore Hospital," more particularly described below from the current PF-RHO, "Public Facilities Religious, Hospital, Other," to the proposed Future Land Use Category CD-2, "Commercial, Medium Intensity," restricting the residential use to no more than 10 units per acre, agreed upon by a voluntary covenant running with the land and to be recorded in public records. SBH is also requesting to amend the Official Zoning District Map of the Code of the City of Miami Beach, Florida, by changing the Zoning District Classification from the current HD, "Hospital District," to the proposed Zoning Classification CD-2, "Commercial, Medium Intensity," with the same residential use restriction the to no more than 10 units per acre.

Although these two separate requests can be heard together at a public hearing, it is necessary to have separate motions for each request.

ZONING / SITE DATA

Legal Description: FLEETWOOD SUB PB 28-34 LOTS 1 THRU 4 LESS ST & LOTS 5 THRU 7 & LOTS 27 THRU 32 BLK 2 & PROP INT IN & TO COMMON ELEMENTS NOT DEDICATED TO PUBLIC. LOT SIZE 101200 SQ FT



Site Area:	105,198 sq. ft. (2.415 acres)
Existing Zoning Designation:	HD, Hospital District
Proposed Zoning Designation:	CD-2 Commercial, Medium Intensity zoning district
Existing FLUM Category:	PF-RHO, Public Facility (Religious, Hospital, Other)
Proposed FLUM Category:	CD-2 Commercial, Medium Intensity
Existing FAR:	3.0 (for PF-RHO category according to the City's Comprehensive Plan)
Proposed FAR:	1.5 for commercial uses only in CD-2; mixed use, including residential uses 2.0
Existing Land Uses:	The property currently contains a 10-story office building, a 3 story hospital building, a parking garage structure, and surface parking lot. The hospital and office uses are not currently operating.

ANALYSIS

History of the Site

The subject site is the former South Shore Hospital, which was a functioning hospital since 1967. However, in the past several years, the viability of the hospital declined, and the State of Florida accreditation has been suspended. The 10-story office tower adjacent to the hospital building functioned as medical facilities and offices, but was heavily damaged by a hurricane several years ago and remains in need of physical repair. Several attempts have been made to revive the hospital use, and also to place a nursing home facility in the office tower, but to date, none of these proposals have progressed further.

The Applicant's Proposal

The site's current designation as a PF-RHO Public Facilities (Religious, Hospital, Other) on the FLUM of the Comprehensive Plan, and HD Hospital District in the Zoning Map, prevents the commercial, retail or office as main uses on the property. Although there is no development project for the site at this time, SBH wishes to redevelop the site primarily for commercial use, which necessitates the change of the site's future land use designation from PF-RHO Public Facilities (Religious, Hospital, Other) and the Zoning Map district to CD-2 Commercial Medium Intensity.

Planning and Zoning Issues

The PF-RHO Future Land Use category is consistent with that HD Hospital District zoning. The use of the site as commercial, retail, or general office, without the presence of a functioning hospital, would not be permitted by the zoning regulations, thus it also requires a change of zoning designation, as well as the Future Land Use Map designation, to some other land use category and zoning designation that would allow the desired uses as permitted uses.

The PF-RHO Public Facilities (Religious, Hospital, Other) category does not allow residential uses. However, while the requested new CD-2 category is primarily a commercial category, the Comprehensive Plan permits other uses such as residential uses. In fact, the allowable residential density for property within the CD-2 district is a maximum of 100 dwelling units per acre.

The current request does not propose a development plan for the property, but only a change of land use designation and zoning district. However, the applicant has voluntarily proffered a covenant to restricting residential uses to a maximum of 10 units per acre in any proposed development.

Site Issues
The existing PF-RHO land use designation carries with it a maximum allowable Floor Area Ratio (FAR) of 3.0, which is among the most intense land use categories within the City's Comprehensive Plan. The proposed CD-2 land use category, consistent with the adjacent CD-2 zoning district, allows only half this amount of floor area per square foot of land area, with a maximum base FAR of 1.5 and 2.0 for residential or mixed use if residential uses are incorporated in any future project.

It should be noted that from the standpoint of traffic congestion, trip generation, and parking availability, the change of use from Hospital and accessory hospital uses to commercial, retail, and office actually results in a lesser intensity of use. The trip generation rate and parking requirement for hospital is among the highest of all uses, while office, retail and residential uses are less intense as long as a large restaurant or an entertainment establishment is not one of the commercial uses proposed. The total trip generation for the site could be expected to be reduced by at least one-half, which is beneficial for the long-term planning of the Alton Road/West Avenue corridor.

City Charter Issues
The request for changing the Zoning Map of the City, as well as the Future Land Use Map of the City's Comprehensive Plan is affected by two City Charter provisions: Sections 1.03 (c) and 8.09. Charter section 1.03(c) partially states: "The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zone floor area ratio as it exists on the date of adoption of this Charter Amendment (November 7, 2001), including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless such increase in zone floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach."

Charter Section 8.09 states: "When a hospital district is rezoned, such property shall be rezoned to a district or combination of districts with a floor area ratio no greater than the zoning of abutting land (sharing lot line)..."

The HD Hospital District shares property lines with two different zoning districts: RM-2, Residential Multifamily medium intensity district is north of the site facing West Avenue. The RM-2 regulations allow for a 2.0 FAR and therefore, the rezoning to CD-2 Commercial medium intensity, at a 2.0 FAR, which would include at least 25% of the floor area in residential uses, but restricted by voluntary covenant to no more than 10 units per acre, would be permitted, otherwise only 1.5 FAR, which is the base FAR for the CD-2 would be permitted without a referendum.

Similarly, the HD Hospital District shares a lot line with a property in the CD-2 Commercial Medium Intensity on the north side of the South Shore Hospital site facing Alton Road, and therefore, the request is consistent with both Charter provisions.

Comprehensive Plan Issues
The total land area involved in this application is 2.415 acres. Under Chapter 163 of the Florida Statutes, land use map amendments that are less than 10 acres in size may be considered "small-scale" amendments, and receive expedited review and a less stringent State approval process. However, this provision does not apply in cases where a level of residential density above 10 dwelling units per acre is being permitted. In this regard SBH is proposing a covenant running with the land and recorded in public records limiting any future proposal for residential use to 10 units per acre.

Interlocal Agreement for Public School Facility Planning
The 2005 Florida Legislature adopted laws which are incorporated in the Florida Statutes, requiring each local government to adopt an intergovernmental coordination element as part of their comprehensive plan, as well as a statutory mandate to implement public school concurrency. In compliance with this requirement, the application by SBH was submitted to the Miami-Dade County Public Schools for its review and concurrency determination. A Preliminary Concurrency Analysis determined that the requested land use change would generate 2 students – one elementary and one senior high and that the elementary school serving the area has no capacity available to service the application. However, a final determination of Public School Concurrency and capacity reservation will only be made at the time of approval of a final project.

Summary
SBH is proposing to change the land use category on the Future Land Use Map and change the zoning district designation of the former South Shore Hospital site in order to use the site for commercial, retail, office and limited residential uses. A covenant restricting residential uses on the site is also required, and proffered voluntarily, for the land use map amendment to be considered a small-scale amendment by DCA. A concept plan accompanying the request for rezoning has been required in the past. At this time the City Commission would have the option to continue the request to change the Future Land Use and Zoning Maps and require that a concept plan be provided for the redevelopment of the site.

It should also be noted that future projects that are 50,000 square feet or more shall be subject to Section 142-303 of the City Code – Conditional Use review and approval by the Planning Board – as well as review and approval by the Design Review Board. At that time, more in depth traffic and noise studies will be required to determine how the project(s) will impact the area.

These amendments must be processed together, as they are interrelated to one another. The zoning change contemplated by these applications would enable the adaptive reuse of the site.

PLANNING BOARD ACTION

At the June 22, 2010 meeting the Planning Board recommended that the City Commission approve the proposed change to the Future Land Use Map of the City's Comprehensive Plan and Zoning Map by a vote of 6-0 (one member absent) on two separate motions.

CONCLUSION

The Administration recommends that the City Commission adopt on first and only reading public hearings the proposed changed to the Future Land Use Map and the Zoning Map.

A concept plan accompanying the request for rezoning has been required in the past. At this time the City Commission would have the option to continue the request to change the Future Land Use and Zoning Maps and require that a concept plan be provided for the redevelopment of the site.

Pursuant to Florida Statutes, a small scale development amendment involving a use of 10 acres or fewer and has a density of 10 units or less per acre may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan. Small scale development amendments require only one public hearing before the governing board, which shall be an adoption hearing. The procedure for transmittal of a complete proposed plan amendment shall be by affirmative vote of not less than a majority of the members of the governing body present which shall constitute a quorum.

In the case of a small scale amendment, notification by mail each to real property owner whose address is known by reference to the latest ad valorem tax records will be required, as well as to the owners of record of land lying within 375 feet of the land, which is to be changed. Such notice shall be given at least 30 days prior to the date set for the public hearing.

The notice shall also be published in a standard size or a tabloid size newspaper; the required advertisements shall be no less than 2 columns wide by 10 inches long and the headline in the advertisement shall be in a type no smaller than 18 point and shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality.

The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The (name of local governmental unit) proposes to adopt the following ordinance: (title of the ordinance). A public hearing on the ordinance will be held on (date and time) at (meeting place).

The advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance.

RGL

JMG/JGG/RGL/ML

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The total land area involved in this application is 2.415 acres. Under Chapter 163 of the Florida Statutes, land use map amendments that are less than 10 acres in size may be considered "small-scale" amendments, and receive expedited review and a less stringent State approval process. However, this provision does not apply in cases where a level of residential density above 10 dwelling units per acre is being permitted. In this regard SBH is proposing a covenant running with the land and recorded in public records limiting any future proposal for residential use to 10 units per acre.

Interlocal Agreement for Public School Facility Planning
The 2005 Florida Legislature adopted laws which are incorporated in the Florida Statutes, requiring each local government to adopt an intergovernmental coordination element as part of their comprehensive plan, as well as a statutory mandate to implement public school concurrency. In compliance with this requirement, the application by SBH was submitted to the Miami-Dade County Public Schools for its review and concurrency determination. A Preliminary Concurrency Analysis determined that the requested land use change would generate 2 students – one elementary and one senior high and that the elementary school serving the area has no capacity available to service the application. However, a final determination of Public School Concurrency and capacity reservation will only be made at the time of approval of a final project.

Summary
SBH is proposing to change the land use category on the Future Land Use Map and change the zoning district designation of the former South Shore Hospital site in order to use the site for commercial, retail, office and limited residential uses. A covenant restricting residential uses on the site is also required, and proffered voluntarily, for the land use map amendment to be considered a small-scale amendment by DCA. A concept plan accompanying the request for rezoning has been required in the past. At this time the City Commission would have the option to continue the request to change the Future Land Use and Zoning Maps and require that a concept plan be provided for the redevelopment of the site.

It should also be noted that future projects that are 50,000 square feet or more shall be subject to Section 142-303 of the City Code – Conditional Use review and approval by the Planning Board – as well as review and approval by the Design Review Board. At that time, more in depth traffic and noise studies will be required to determine how the project(s) will impact the area.

These amendments must be processed together, as they are interrelated to one another. The zoning change contemplated by these applications would enable the adaptive reuse of the site.

PLANNING BOARD ACTION

At the June 22, 2010 meeting the Planning Board recommended that the City Commission approve the proposed change to the Future Land Use Map of the City's Comprehensive Plan and Zoning Map by a vote of 6-0 (one member absent) on two separate motions.

CONCLUSION

The Administration recommends that the City Commission adopt on first and only reading public hearings the proposed changed to the Future Land Use Map and the Zoning Map.

A concept plan accompanying the request for rezoning has been required in the past. At this time the City Commission would have the option to continue the request to change the Future Land Use and Zoning Maps and require that a concept plan be provided for the redevelopment of the site.

Pursuant to Florida Statutes, a small scale development amendment involving a use of 10 acres or fewer and has a density of 10 units or less per acre may be approved without regard to statutory limits on the frequency of consideration of amendments to the local comprehensive plan. Small scale development amendments require only one public hearing before the governing board, which shall be an adoption hearing. The procedure for transmittal of a complete proposed plan amendment shall be by affirmative vote of not less than a majority of the members of the governing body present which shall constitute a quorum.

In the case of a small scale amendment, notification by mail each to real property owner whose address is known by reference to the latest ad valorem tax records will be required, as well as to the owners of record of land lying within 375 feet of the land, which is to be changed. Such notice shall be given at least 30 days prior to the date set for the public hearing.

The notice shall also be published in a standard size or a tabloid size newspaper; the required advertisements shall be no less than 2 columns wide by 10 inches long and the headline in the advertisement shall be in a type no smaller than 18 point and shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality.

The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The (name of local governmental unit) proposes to adopt the following ordinance: (title of the ordinance). A public hearing on the ordinance will be held on (date and time) at (meeting place).

The advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance.

JMG/JGG/RGL/ML

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN BY CHANGING THE FUTURE LAND USE CATEGORY FOR THE PARCEL KNOWN AS THE "SOUTH SHORE HOSPITAL," MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A", FROM THE CURRENT PF-RHO, "PUBLIC FACILITY (RELIGIOUS, HOSPITAL, OTHER)," TO THE FUTURE LAND USE CATEGORY OF CD-2, "COMMERCIAL, MEDIUM INTENSITY;" WITH A RESTRICTION LIMITING THE PROPERTY TO NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT; PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN, TRANSMITTAL, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the applicant, South Beach Heights I, LLC, has made an application to the City of Miami Beach to change the Future Land Use Map category for the parcel referred to herein as "South Shore Hospital," located at 630 Alton Road (sometimes referred to as 600 Alton Road), from the current PF-RHO, Public Facility (Religious, Hospital, Other) to the Future Land Use category CD-2, Commercial, Medium Intensity; and

WHEREAS, the applicant intends to redevelop the former hospital site in accordance with the existing regulations in the Land Development Regulations of the City Code with the exception of a limitation of no more than 10 residential units per acre as provided for in the voluntary covenant attached hereto; and

WHEREAS, amending the Future Land Use category of the subject South Shore Hospital parcel as provided herein is necessary to ensure the development of that property will be compatible with development in adjacent and surrounding areas, and will contribute to the general health and welfare of the City; and

WHEREAS, the City of Miami Beach has determined that changing the Future Land Use category of the subject South Shore Hospital parcel as provided herein will ensure that new development is compatible and in scale with the built environment, and is in the best interest of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. The following amendment to the City's Future Land Use Map designations for the property described herein is hereby approved and adopted and the staff is hereby directed to make the appropriate changes to the Future Land Use Map of the City as follows:

A parcel of land more commonly known as The "South Shore Hospital," Approximately 105,198 Square Feet (2.415 Acres), Deemed To Be A Small-Scale Amendment, From The Current PF-RHO, "Public Facility

(Religious, Hospital, Other)," To The Future Land Use Category Of CD-2, "Commercial, Medium Intensity," with a restriction limiting the property to no more than 10 residential units per acre as provided for in the voluntary covenant attached hereto.

SECTION 2. REPEALER.

All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the City Commission that this Ordinance be entered into the Code, and it is hereby ordained that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word. The Exhibits to this Ordinance shall not be codified, but shall be kept on file with this Ordinance in the City Clerk's Office.

SECTION 5. TRANSMITTAL.

The Planning Director is hereby directed to transmit this ordinance to the appropriate state, regional and county agencies as required by applicable law.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect 31 days after adoption pursuant to Chapter 163.3187(c) F.S.

PASSED and ADOPTED this _____ day of _____, 2010.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

9/8/10

City Attorney Date

First Reading:
Second Reading:
Verified by: _____
Planning Director

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EXHIBIT "A"

South Shore Hospital Site:

Legal Description: FLEETWOOD SUB PB 28-34 LOTS 1 THRU 4 LESS ST & LOTS 5 THRU 7 & LOTS 27 THRU 32 BLK 2 & PROP INT IN & TO COMMON ELEMENTS NOT DEDICATED TO PUBLIC LOT SIZE 101200 SQ FT as recorded in the Public Records of Miami-Dade County, Florida.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FOR THE FOR THE PARCEL KNOWN AS THE "SOUTH SHORE HOSPITAL," MORE PARTICULARLY DESCRIBED IN THE LEGAL DESCRIPTION ATTACHED AS EXHIBIT "A" HERETO, FROM THE CURRENT ZONING CLASSIFICATION HD, "HOSPITAL DISTRICT," TO THE PROPOSED ZONING CLASSIFICATION CD-2, "COMMMERCIAL, MEDIUM INTENSITY," WITH A RESTRICTION LIMITING THE PROPERTY TO NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT ATTACHED HERETO; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the applicant, South Beach Heights I, LLC, has made an application to the City of Miami Beach to change the zoning classification of the parcel referred to herein as "South Shore Hospital," located at 630 Alton Road (sometimes referred to as 600 Alton Road), from HD, Hospital District, to CD-2, Commercial, Medium Intensity; and

WHEREAS, the applicant intends to redevelop the former hospital site in accordance with the existing regulations in the Land Development Regulations of the City Code with the exception of a limitation of no more than 10 residential units per acre as provided for in the voluntary covenant attached hereto; and

WHEREAS, amending the zoning of the subject South Shore Hospital parcel as provided herein is necessary to ensure the development of that property will be compatible with development in adjacent and surrounding areas, and will contribute to the general health and welfare of the City;

WHEREAS, the City of Miami Beach has determined that the rezoning of the subject South Shore Hospital parcel as provided herein will ensure that new development is compatible and in scale with the built environment, and is in the best interest of the City;

WHEREAS, full legal description of the Affected Property is contained in Exhibit "A" attached to this Ordinance, and shortened descriptions of such properties will be codified in the amendment below.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. The following amendment to the City's zoning map designations for the property described herein are hereby approved and adopted and the Planning Director is hereby directed to make the appropriate changes to the zoning map of the City as follows:

A parcel of land commonly known as the "South Shore Hospital," approximately 105,198 square feet (2.415 acres), from the current HD "Hospital District," to the proposed zoning classification CD-2, "Commercial, Medium Intensity," with a restriction limiting the property to no more than 10 residential units per acre as provided for in the voluntary covenant attached hereto.

SECTION 2. REPEALER.

All Ordinances or parts of Ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the City Commission that this Ordinance be entered into the Code, and it is hereby ordained that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word. The Exhibits to this Ordinance shall not be codified, but shall be kept on file with this Ordinance in the City Clerk's Office.

SECTION 5. EFFECTIVE DATE.

This ordinance shall take effect 31 days after adoption to correspond to the adoption date of the Future Land Use Map of the City's Comprehensive Plan.

PASSED and **ADOPTED** this _____ day of _____, 2010

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO

FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/8/10 Date

First Reading:
Second Reading:
Verified by: _____
Planning Director

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EXHIBIT "A"

South Shore Hospital Site:

Legal Description: FLEETWOOD SUB PB 28-34 LOTS 1 THRU 4 LESS ST & LOTS 5 THRU 7 & LOTS 27 THRU 32 BLK 2 & PROP INT IN & TO COMMON ELEMENTS NOT DEDICATED TO PUBLIC LOT SIZE 101200 SQ FT. as recorded in the Public Records of Miami-Dade County, Florida.

This instrument prepared by, and after recording return to:

Name: Andrew W. Frey, Esq.
Address: Akerman Senterfitt
1 SE 3 Ave, 25th Floor
Miami, FL 33131

(Space reserved for Clerk of Court)

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration"), made this ____ day of ____, 2010, by South Beach Heights I LLC ("Owner"), in favor of the City of Miami Beach, Florida, a municipality of the State of Florida ("City").

W I T N E S S E T H :

WHEREAS, the Owner holds fee-simple title to certain property in the City of Miami Beach, Florida, located at 630 Alton Road, Miami Beach, Florida, legally described in Exhibit "A" attached hereto and made a part hereof ("Property"); and

WHEREAS, Owner seeks land use and zoning changes for the Property from the City Planning Board and Commission; and

WHEREAS, the Owner is desirous of making a binding commitment to assure that the Property shall be used in accordance with the requirements of State law and City code, and the representations

and commitments made to the City Planning Board and Commission; and

WHEREAS, the Owner proposes to proceed with a small-scale land use plan amendment as permitted under section 163.3187, Florida Statutes; and

WHEREAS, in order to proceed with a small-scale land use plan amendment the Property cannot include greater than ten (10) units per acre residential uses; and

WHEREAS, the Owner enters into this Declaration to provide assurances to the City that the Property will be developed with not greater than ten (10) units per acre residential uses, for as long as its development is based upon the small-scale land use plan amendment.

NOW, THEREFORE, the Owner voluntarily covenants and agrees that the Property shall be subject to the following restrictions that are intended and shall be deemed to be covenants running with the land and binding upon the Owner of the Property, its successors in interest and assigns, as follows:

1. The recitals and findings set forth in the preambles of this Declaration are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

2. Owner, its successors and assigns, shall not develop the Property with any project or building that has a residential

density of greater than ten (10) units per acre, nor redevelop any existing building on the Property to such extent that the Property has a residential density of greater than ten (10) units per acre.

3. This voluntary Declaration shall remain in full force and effect and shall be binding upon the Owner of the Property, and its successors in interest and assigns, for an initial period of thirty (30) years from the date this instrument is recorded in the public records, and shall be automatically extended for successive periods of ten (10) years, unless modified, amended or released prior to the expiration thereof.

4. The City Manager or his or her designee shall release this Declaration if the Property is subject of a final, non-appealable large-scale land use plan amendment adopted by the Miami Beach City Commission that permits on the Property an overall residential density of greater than ten (10) units per acre, and shall execute a written instrument in recordable form effectuating and acknowledging such release, with an attachment to such release being a copy of the City ordinance adopting such plan amendment, which release shall be recorded in the public records of Miami-Dade County. Otherwise, this Declaration may be modified, amended or released as to any portion of the Property by a written instrument executed by the then Owners of the fee-simple title to the land to be affected by such modification, amendment

or release providing that same has been approved by the City of Miami Beach City Commission, or such other City board with jurisdiction over the matter, at a public hearing, which public hearing shall be applied for by and at the expense of the Owner(s), to the extent allowed by applicable law.

5. Invalidation of any provision of this Declaration by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

6. This Declaration shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Owners, when the small-scale amendment becomes final and nonappealable, but in any event prior to the filing of an application for building permit or any design review approval under the small-scale amendment.

7. It is understood and agreed that any official of the City of Miami Beach has the right at any time during normal business hours of entering and investigating the use of the Property, to determine whether the conditions of this Declaration and the requirements of the City's building, zoning and land development regulations are being complied with.

8. An action to enforce the terms and conditions of this Declaration may be brought by the City and may be, at law or in equity, against any party or person violating or attempting to violate any provision of this Declaration or provisions of the

building, zoning or land development regulations, either to restrain violations or to recover damages. The prevailing party in the action shall be entitled to recover costs and reasonable attorneys' fees, at all levels of trial and appeal. This enforcement provision shall be in addition to any other remedies available under the law.

IN WITNESS WHEREOF, the undersigned have set their hand and seal this _____ day of _____, 2010.

Witnesses:

_____

_____

South Beach Heights I LLC

By: _____

Print Name: _____

Title: _____

APPROVED

Planning Director

5/18/2010
Date

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

for City Attorney

May 18, 2010
Date

{M2932645;1}5

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by_____, _____ of South Beach Heights I LLC. He(she) personally appeared before me, is personally known to me or produced _____ as identification, and did take an oath.

[NOTARIAL SEAL]

Notary _____
Print Name: _____
Notary Public, State of _____
My commission expires: _____

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CONSENT OF MORTGAGE AND SUBORDINATION OF MORTGAGE

The undersigned, holder of that certain Mortgage Deed dated , and recorded in Official Records Book _____, at Page ____, of the Public Records of Dade County, Florida, as amended, encumbering the real property to be subjected to the foregoing Declaration of Restrictive Covenants made by _____in favor of the City of Miami Beach, Florida, hereby consents to said Declaration of Restrictive Covenants and agrees that the lien of said Mortgage Deed shall be subject and subordinate to the terms of said Declaration of Restrictive Covenants.

IN WITNESS WHEREOF, the undersigned has set his hand and seal this __ day of _____, ____.

_____
Name:

_____
Name:

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this day of _____, 2001 by _____. He personally appeared before me and is personally known to me or produced _____ as identification and did take an oath.

[NOTARIAL SEAL]

Notary _____
Print Name: _____
Notary Public, State of _____
My commission expires: _____

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{M2932645;1}7

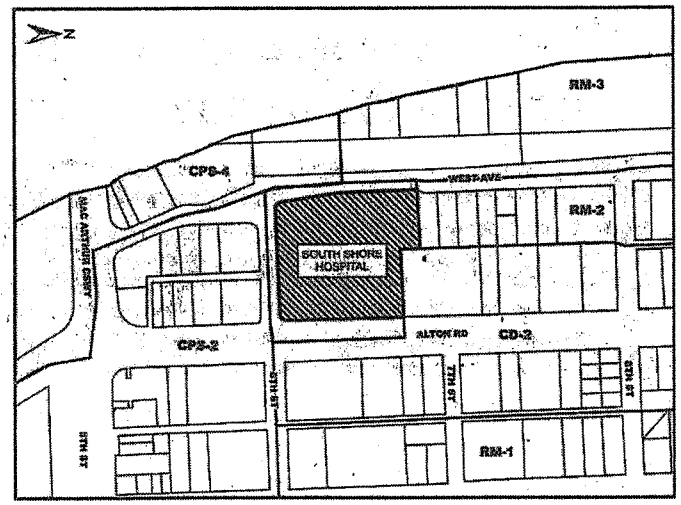
MIAMIBEACH

CITY OF MIAMI BEACH NOTICE OF AMENDMENT TO THE FUTURE LAND USE MAP (FLUM) OF THE CITY OF MIAMI BEACH COMPREHENSIVE PLAN AND ZONING MAP CHANGES

NOTICE IS HEREBY GIVEN that a first reading and public hearing will be held by the City Commission of the City of Miami Beach on **WEDNESDAY, September 15, 2010 at 11:15 A.M.** in the City Commission Chambers, Third Floor, City Hall, located at 1700 Convention Center Drive, Miami Beach, Florida 33139 to consider the following ordinances:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN BY CHANGING THE FUTURE LAND USE CATEGORY FOR THE PARCEL KNOWN AS THE "SOUTH SHORE HOSPITAL," FROM THE CURRENT PF-RHO, "PUBLIC FACILITY (RELIGIOUS, HOSPITAL, OTHER)," TO THE FUTURE LAND USE CATEGORY OF CD-2, "COMMERCIAL, MEDIUM INTENSITY;" WITH A RESTRICTION LIMITING THE PROPERTY TO COMMERCIAL USES AND NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT PROFERRED BY THE APPLICANT; PROVIDING FOR INCLUSION IN THE COMPREHENSIVE PLAN, TRANSMITTAL, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE OFFICIAL ZONING DISTRICT MAP, REFERENCED IN SECTION 142-72 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY CHANGING THE ZONING DISTRICT CLASSIFICATION FOR THE FOR THE PARCEL KNOWN AS THE "SOUTH SHORE HOSPITAL," FROM THE CURRENT ZONING CLASSIFICATION HD, "HOSPITAL DISTRICT," TO THE PROPOSED ZONING CLASSIFICATION CD-2, "COMMERCIAL, MEDIUM INTENSITY," WITH A RESTRICTION LIMITING THE PROPERTY TO COMMERCIAL USES AND NO MORE THAN 10 RESIDENTIAL UNITS PER ACRE AS PROVIDED FOR IN THE VOLUNTARY COVENANT PROFERRED BY THE APPLICANT; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.



All interested parties are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the Planning Department, 1700 Convention Center Drive, City Hall, Miami Beach, Florida 33139. Copies of the proposed amendments are available in the Planning Department.

Pursuant to Florida Stat. 286.0105, the City hereby advises the public that if a person decides to appeal any decision made by the Planning Board with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record must include the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should contact the Board's Administrator no later than four days prior to the proceeding at (305) 673-7550 for assistance; if hearing impaired, telephone the Florida Relay Service numbers, (305) 673-7218 or 711, for assistance.

AD # 617

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Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Amending The City's Comprehensive Plan To Include New Or Revised And/Or Updated Goals, Objectives And Policies In Relation To Certain Items Identified In The City's 2005-2007 Evaluation And Appraisal Report (EAR

Key Intended Outcome Supported:

Regulatory. Required by State Statutes

Supporting Data (Surveys, Environmental Scan, etc.): Regulatory

Issue:

Should the City Commission authorize and direct the City Administration to transmit the proposed amendments to DCA and any other required state and local agencies.

Item Summary/Recommendation:

FIRST READING PUBLIC HEARING

The proposed EAR-based amendments encompass all the Elements of the Comprehensive Plan except the Public School Facilities Element for which amendments were not necessary. These amendments are based on the evaluation of existing policies as recommended in the EAR, including a new Transportation Element which replaced the Traffic Circulation, Mass Transit and Ports and Aviation Facilities Elements.

The proposed amendments are incorporated in two volumes: 1) City of Miami Beach Comprehensive Plan EAR-based amendments 2010; and 2) City of Miami Beach Comprehensive Plan EAR-based amendments 2010 Data and Analysis and a supplement to the Data and Analysis entitled "Development and update of the Transportation Element of the City of Miami Beach Comprehensive Plan in Compliance with the Evaluation and Appraisal Report." This report, prepared by The Corradino Group, was a joint collaboration of the Public Works Department Transportation Division and the Planning Department.

The Administration recommends that the City Commission approve the proposed ordinance on first reading public hearing and direct the Administration to transmit all applicable documents to the Department of Community Affairs (DCA) and other required reviewing agencies.

Advisory Board Recommendation:

The Planning Board held a special meeting on August 10, 2010, duly advertised pursuant to the requirements of State Statutes for Comprehensive Plan Amendments; and by a 4-1 vote (2 members absent) recommended that the City Commission direct the Administration to transmit all applicable documents to the Department of Community Affairs (DCA) and other required reviewing agencies.

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:

The proposed Ordinance may have a fiscal impact depending on the cost of capital improvements that may be necessary to comply with the Goals, Objectives and Policies of the Comprehensive Plan.

City Clerk's Office Legislative Tracking:

Richard Lorber or Mercy Lamazares

Sign-Offs:

Department Director	Assistant City Manager	City Manager
		for JMG

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

First Reading Public Hearing

SUBJECT: **Proposed amendments to the City's Comprehensive Plan**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, AMENDING THE CITY'S COMPREHENSIVE PLAN TO INCLUDE NEW OR REVISED AND/OR UPDATED GOALS, OBJECTIVES AND POLICIES IN THE FOLLOWING ELEMENTS; FUTURE LAND USE, TRANSPORTATION, HOUSING, INFRASTRUCTURE, CONSERVATION/ COASTAL ZONE MANAGEMENT, RECREATION AND OPEN SPACE, CAPITAL IMPROVEMENTS, INTERGOVERNMENTAL AND HISTORIC PRESERVATION; ALL IN RELATION TO CERTAIN ITEMS IDENTIFIED IN THE CITY'S 2005-2007 EVALUATION AND APPRAISAL REPORT (EAR); AND AUTHORIZING AND DIRECTING THE CITY ADMINISTRATION TO TRANSMIT THE PROPOSED AMENDMENTS TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND ANY OTHER REQUIRED STATE AND LOCAL AGENCIES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission approve the proposed ordinance on first reading public hearing and direct the Administration to transmit all applicable documents to the Department of Community Affairs (DCA) and other required reviewing agencies. A second reading and adopting public hearing will be set upon receipt of the Objections, Recommendation and Comments report (ORC), if any, from DCA.

BACKGROUND

Chapter 163.3191, F.S., requires that local governments adopt an Evaluation and Appraisal Report (EAR) once every 7 years assessing the progress in implementing the local government's comprehensive plan. The latest EAR was done during the period of 2005-2007 and adopted by the City Commission on September 26, 2007. The EAR included a number of recommendations, which gave the City the opportunity to revise the Plan to address changing issues and conditions. Although there are other opportunities to periodically revise the Plan, these revisions often occur as the result of outside development applications.

A number of public discussions occurred during Planning Board meetings, which discussions were generally advertised as part of the Board's agenda items, opening an avenue for public input and discussion. Following the recommendations of the EAR amendments to the different elements of the Plan are being proposed, including some that are non-substantive, such as updating obsolete language (i.e., changing names of agencies or updating applicable/correct references to the City Code).

ANALYSIS

The proposed EAR-based amendments encompass all the Elements of the Comprehensive Plan except the Public School Facilities Element for which amendments were not necessary. These amendments are based on the evaluation of existing policies as recommended in the EAR, including a new Transportation Element which replaced the Traffic Circulation, Mass Transit and Ports and Aviation Facilities Elements.

The proposed amendments are incorporated in two volumes: 1) City of Miami Beach Comprehensive Plan EAR-based amendments 2010; and 2) City of Miami Beach Comprehensive Plan EAR-based amendments 2010 Data and Analysis and a supplement to the Data and Analysis entitled "Development and update of the Transportation Element of the City of Miami Beach Comprehensive Plan in Compliance with the Evaluation and Appraisal Report." This report, prepared by The Corradino Group, was a joint collaboration of the Public Works Department Transportation Division and the Planning Department.

Due to the voluminous nature of these documents, hard copies (3 volumes) are available at the City Clerk's Office and CD copies are attached to this memo.

The following is a summary of the proposed amendments:

Land Use Element

The city-wide down-zoning and down-planning process that was completed and adopted by 1999, resulted in a reduction in density, as well as a reduction of approximately 6,500 potential residential units. The Future Land Use Map was amended in that cycle of amendments; however, although the FAR design bonuses were eliminated in the zoning regulations, these base and bonus Intensity limits were not adjusted in the Plan. It was recommended that Policy 1.2 be amended in order to reconcile Density and Intensity. The proposed amendments make these necessary adjustments - these adjustments are reflected in the different land use categories in Policy 1.2. A new Objective 2, Land Use Compatibility, was written to reflect how to achieve compatibility between residential and commercial uses.

Objective 5 (now Objective 6) was amended by deleting the process by which concurrency is measured as public facility capacity availability determination is contained in the Concurrency Management User's Procedural Guide (a supplement to the land development code), which contains the formulas for calculating compliance.

Although deletion of Objective 9, Redevelopment, was recommended, there is still one Redevelopment Area in existence – the City Center/Historic Convention Village Redevelopment Plan - and there are still projects that must be implemented in the South Pointe Redevelopment Area, which was sunsetted on September 30, 2005.

Lastly, a new Objective 11, Cooperation with Military Installations, is being proposed in order to conform to Chapter 163, Florida Statutes, which require local governments to amend the future land use element to include criteria to achieve compatibility with military installations. There is one military installation within the jurisdictional boundaries of the City - the U. S. Coast Guard Station off the MacArthur Causeway.

Traffic Circulation, Mass Transit and Ports, Aviation and Related Facilities Elements

These three transportation-related elements are being replaced by a comprehensive Transportation Element that includes updated objectives and policies that include all aspects of the former elements. There are eleven objectives that include: mobility of people, not merely vehicles; multi-modalism that recognizes and promotes alternative modes of transportation; sustainable and environmentally friendly growth management principles; coordinated with the regional transportation network and other governmental agencies; balances the needs of all current and future users' ensures the economic vitality of the businesses within the City; and enhances the quality of life for the City's neighborhoods.

Housing Element

This element has undergone considerable revisions, including a re-organization of its objectives and policies. One of the recommendations made in the 2005-2007 EAR was to delete the references to the South Pointe Redevelopment Area, as this RDA was sunsetted on September 30, 2005. In addition a new objective is being proposed - Energy Efficiency and Renewable Resources – in order to comply with HB 697, which amended Chapter 163, F. S.

Infrastructure Element

The major change to this element is a new proposed objective regarding the water supply planning. This objective is in response to the 10-year Water Supply Facilities Work Plan, as required by section 163.3177(6)(c), recommended for approval at an earlier meeting and currently being recommended for approval by the South Florida Regional Planning Council and being reviewed by the Florida Department of Community Affairs.

Conservation/Coastal Zone Management

Amendments to this element are proposed according to the EAR recommendations. The City has commissioned a new Citywide Comprehensive Stormwater Management Master Plan which would supersede the existing Comprehensive Stormwater Master Plan; a policy to include this new master plan has been included. In addition, a new Objective 13 is being proposed to include the 10-Year Water Supply Plan.

Recreation and Open Space Element

The proposed amendments to this element are in accordance to the recommendations of the EAR. In addition, two new policies are being proposed relative to public access to the waterfront in residential and commercial development.

Intergovernmental Coordination Element

Two objectives are being deleted: Objective 3, "South Pointe Elementary School," is obsolete as the school re-opened in 1992; and Objective 4, "Historic Preservation Board Membership," which is also obsolete as a Historic Preservation Board was constituted and members are regularly appointed by City Commissioners in accordance with City Code regulations. In addition, Objective 1 is being amended by the inclusion of two policies that coordinate the review of site plans for building permit relative to water supply and sewer facilities. All other amendments follow the recommendations of the EAR.

Capital Improvement Program Element

Most of the Objectives under the Capital Improvement Element of the Plan have been successfully achieved. Notwithstanding, the following recommendations were made as a result of the EAR.

Policy 2.3 should be deleted. This policy relates to the South Pointe Redevelopment Area, which was sunsetted in 2005. Policy 10.1 in the Land Use Element continues to implement projects that may be outstanding. The policy has been deleted.

Policy 2.4 should be deleted. This policy relates to special assessment districts in several areas of the City, including historic districts. No special assessment districts are in existence; none is being proposed.

One of the recommendations made by the EAR was that the City may have to revisit the policies under Objective 4, which refers to overall bond rating and percentages of debt in relation to revenues. The City continues to maintain its AA- credit rating from Standard and Poor's, and Aa3 from Moody's, thus no revision is necessary for this policy.

Historic Preservation Element

Extensive revisions to this element are proposed in order to update the language and make it more relevant to the subject. Some of the amendments consist of, but are not limited to continuing to identify city-owned historic sites and structures and potential for heritage tourism; encourage for local designation or listing on the National Register of Historic Places; increase community participation and education regarding the City's historic preservation efforts; and advance the development of quality new design and rehabilitation in historic districts.

PLANNING BOARD

The Planning Board held a special meeting on August 10, 2010, duly advertised pursuant to the requirements of State Statutes for Comprehensive Plan Amendments; and by a 4-1 vote (2 members absent) recommended that the City Commission direct the Administration to transmit all applicable documents to the Department of Community Affairs (DCA) and other required reviewing agencies.

CONCLUSION

The Administration recommends that the City Commission approve the proposed ordinance on first reading public hearing and direct the Administration to transmit all applicable documents to the Department of Community Affairs (DCA) and other required

reviewing agencies. A second reading and adopting public hearing will be set upon receipt of the Objections, Recommendation and Comments report (ORC), if any, from DCA.

Pursuant to Chapter 163.3184 (15) (a), Florida Statutes, the procedure for transmittal of a proposed plan amendment shall be by affirmative vote of not less than a majority of the members of the governing body present at the hearing and shall be by ordinance. The local governing body shall hold at least two advertised public hearings on the proposed plan amendment as follows:

1. The first public hearing shall be held at the transmittal stage. It shall be held on a weekday at least 7 days after the day that the first advertisement is published.

2. The second public hearing shall be held at the adoption stage and shall be held on a weekday at least 5 days after the day that the second advertisement is published.

Although this section of the Statute is silent on the size requirement for the ad, in an abundance of caution it is suggested that the ad be no less than 2 columns wide by 10 inches long in a standard size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. It should be noted that the advertisement for this public hearing appeared in the "Local" section of the Miami Herald on August 19, 2010.

RGL
JMG/~~JGG~~/RGL/ML

Due to the voluminous nature of these documents, hard copies (3 volumes) are available at the City Clerk's Office and CD copies are attached to this memo.

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, AMENDING THE CITY'S COMPREHENSIVE PLAN TO INCLUDE NEW OR REVISED AND/OR UPDATED GOALS, OBJECTIVES AND POLICIES IN THE FOLLOWING ELEMENTS; FUTURE LAND USE, TRANSPORTATION, HOUSING, INFRASTRUCTURE, CONSERVATION/ COASTAL ZONE MANAGEMENT, RECREATION AND OPEN SPACE, CAPITAL IMPROVEMENTS, INTERGOVERNMENTAL AND HISTORIC PRESERVATION; ALL IN RELATION TO CERTAIN ITEMS IDENTIFIED IN THE CITY'S 2005-2007 EVALUATION AND APPRAISAL REPORT (EAR); AND AUTHORIZING AND DIRECTING THE CITY ADMINISTRATION TO TRANSMIT THE PROPOSED AMENDMENTS TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AND ANY OTHER REQUIRED STATE AND LOCAL AGENCIES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 163.3191(1), Florida Statutes, local governments are required to prepare and adopt an Evaluation and Appraisal Report (EAR) as one component of the local planning process; and,

WHEREAS, at its September 26, 2007 meeting the City of Miami Beach adopted the EAR which was determined to be sufficient to meet the requirements of Section 163.3191, Florida Statutes; and

WHEREAS, the adopted EAR made certain recommendations for updates and amendments to the City's Comprehensive Plan; and

WHEREAS, the City of Miami Beach has proposed amendments to the policies of the comprehensive plan; and

WHEREAS, the City of Miami Beach hereby finds that the adoption of this Ordinance is in the best interest and welfare of the residents of the City; and

WHEREAS, the City Commission, upon first reading of this Ordinance, authorized transmittal of the EAR-based amendments to the Comprehensive Plan to the Department of Community Affairs and review agencies for the purpose of a review in accordance with Sections 163.3184, 163.3187, 163.3189 and 163.3191, Florida Statutes.

NOW THEREFORE, BE IT ORDAINED BY MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, THAT:

SECTION 1.

The City Commission hereby amends the City's Comprehensive Plan according to the recommendations of the 2005-2007 EAR, at the public hearing held on _____.

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the

Comprehensive Plan of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 3. REPEALER.
All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

This Ordinance is not severable, and if any provision hereof is declared invalid, the Ordinance shall be returned to the City Commission for reconsideration.

SECTION 5. EFFECTIVE DATE.

This ordinance shall be effective immediately after the adoption hereof.

PASSED AND ADOPTED this ____ day of _____, 2010.

ATTEST:

_____ CITY CLERK

_____ MAYOR

APPROVED AS TO FORM
AND LANGUAGE
AND FOR EXECUTION

_____ CITY ATTORNEY 9/8/10 DATE

First Reading: _____
Second Reading: _____
Verified by:

_____
Richard G. Lorber, AICP
Acting Planning Director

~~Strikethrough~~ denotes deleted language
Underscore denotes new language

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MIAMIBEACH

CITY OF MIAMI BEACH
PUBLIC HEARING
NOTICE OF PROPOSED AMENDMENTS TO THE CITY'S COMPREHENSIVE PLAN

NOTICE IS HEREBY GIVEN that a first reading and public hearing will be held by the City Commission of the City of Miami Beach on **WEDNESDAY, September 15, 2010 at 11:40 A.M.** or as soon thereafter as possible in the City Commission Chambers, Third Floor, City Hall, located at 1700 Convention Center Drive, Miami Beach, Florida 33139 to consider amendments to the City's **Comprehensive Plan** based on the recommendations of the **2005-2007 Evaluation and Appraisal Report**. This item may be continued and under those circumstances, additional legal notice would not be provided.

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, AMENDING THE CITY'S COMPREHENSIVE PLAN TO INCLUDE NEW OR REVISED AND/OR UPDATED GOALS, OBJECTIVES AND POLICIES IN THE FOLLOWING ELEMENTS; FUTURE LAND USE, TRANSPORTATION, HOUSING, INFRASTRUCTURE, CONSERVATION/COASTAL ZONE MANAGEMENT, RECREATION AND OPEN SPACE, CAPITAL IMPROVEMENTS, INTERGOVERNMENTAL AND HISTORIC PRESERVATION; ALL IN RELATION TO CERTAIN ITEMS IDENTIFIED IN THE CITY'S 2005-2007 EVALUATION AND APPRAISAL REPORT (EAR); AND AUTHORIZING AND DIRECTING THE CITY ADMINISTRATION TO TRANSMIT THE PROPOSED AMENDMENTS TO THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS AN ANY OTHER REQUIRED STATE AND LOCAL AGENCIES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

All interested parties are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the the Planning Department, 1700 Convention Center Drive, City Hall, Miami Beach, Florida 33139. Copies of the proposed amendments are available in the Planning Department.

Pursuant to Florida Stat. 286.0105, the City hereby advises the public that if a person decides to appeal any decision made by the Planning Board with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record must include the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding should contact the Board's Administrator no later than four days prior to the proceeding at (305) 673-7550 for assistance; if hearing impaired, telephone the Florida Relay Service numbers, (305) 673-7218 or 711, for assistance. **AD #619**

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Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Ordinance No. 1335, The Classified Employees' Leave Ordinance, By Amending The Provisions For Accumulation And Payment Of Annual And Sick Leave For The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME); Providing For A Repealer, Severability, And An Effective Date.

Key Intended Outcome Supported:

Control costs of payroll including salary and fringes/ minimize taxes/ ensure expenditure trends are sustainable over the long term.

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Issue:

Shall the City implement measures to ensure a fair and equitable leave accumulation and payment system for employees represented by the American Federation Of State, County and Municipal Employees, Local 1554 (AFSCME) in accordance with the negotiated contract provisions?

Item Summary/Recommendation:

SECOND READING PUBLIC HEARING

All full-time regular classified and unclassified employees accrue annual leave, subject to certain caps. The proposed amendment to the ordinance increases the annual maximum accrual amount of annual leave from 360 hours to 500 hours for employees represented by AFSCME. In addition, it also increases the maximum annual leave amount for which an employee represented by AFSCME may be paid upon separation, termination, retirement, or death from 480 hours to 620 hours in the employee's final year of employment. This makes the accumulation and payment provisions for AFSCME consistent with the following employee salary groups: Communications Workers of America, Local 3178 (CWA); Fraternal Order of Police, William Nichols Lodge No. 8 (FOP); Government Supervisors Association of Florida/OPEIU, Local 100 (GSA); "Others"; and Unclassified. This Ordinance was approved on first reading on July 14, 2010. The Administration recommends approving the ordinance on second reading.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:

The difference between the 480 hours and the 620 hours being proposed based on the AFSCME employees' *current* hourly rates is approximately $947,000. However, in the past three (3) years, no AFSCME member who has separated from the City was paid out at the current vacation cap of 480 hours. Based on current balances and historical and recent trends, it is not likely that all, or any, AFSCME members will reach the cap of vacation accrual in their final year of employment and therefore, the financial impact to the City would be significantly less than the $947,000 in the analysis above and there may not be any impact at all.

City Clerk's Office Legislative Tracking:

Ramiro Inguanzo, Human Resources Director

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Ramiro Inguanzo	Hilda Fernandez	Jorge M. Gonzalez
R. Inguanzo	Hfernandez	

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **SECOND READING PUBLIC HEARING**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING ORDINANCE NO. 1335, THE CLASSIFIED EMPLOYEES' LEAVE ORDINANCE, BY AMENDING THE PROVISIONS FOR ACCUMULATION AND PAYMENT OF ANNUAL AND SICK LEAVE FOR THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1554 (AFSCME); PROVIDING FOR A REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

This Ordinance was approved on first reading on July 14, 2010. The Administration recommends that the City Commission approve the ordinance on second reading.

BACKGROUND

All full-time regular Classified and Unclassified City of Miami Beach employees accumulate 96 hours (12 days) of annual leave per year during the first ten (10) years of employment; after ten (10) years of employment with the City, employees accrue 136 hours (17 days) per year; and after twenty (20) years of employment with the City, employees accrue 176 hours (22 days) per year.

Under the Classified Employees' Leave Ordinance (Ordinance No. 1335) and the Unclassified Employees' Leave Ordinance (Ordinance No.1613), the "must use" cap on the annual vacation accrual for the Communications Workers of America, Local 3178 (CWA), the Fraternal Order of Police, William Nichols Lodge No. 8 (FOP), Government Supervisors Association of Florida/OPEIU, Local 100 (GSA), "Others" and Unclassified salary groups is 500 hours (this annual period runs from the first pay period in January of each year to the last pay period in December of each year). Therefore, an employee who has reached the 500 maximum hours of vacation accrual in one payroll year may not exceed 500 hours during the next payroll year. If an employee does not take the vacation hours that are in excess of the 500 hour cap, the employee forfeits all hours in excess of the 500 hour cap at the beginning of the next payroll year. If an employee separates, retires, is terminated, or passes away at any point during the payroll year in which they exceed the 500 hour maximum, then the maximum amount of vacation leave which they can be paid out is 620 hours. This 620 hour maximum can only be reached in an employee's final year with the City as long as the employee leaves prior to the end of the payroll year and that employee has accrued those hours.

ANALYSIS

For employees covered under the American Federation of State, County and Municipal Employees, Local 1554 (AFSCME), the current "must use" cap on the annual vacation accrual is 360 hours, and the current maximum amount of vacation leave paid upon separation, retirement, termination or death is 480 hours.

On April 30, 2010 the Collective Bargaining Agreement (Agreement) for AFSCME expired. In anticipation of the contract expiring, negotiators for the City and AFSCME began negotiating for a successor three (3) year Agreement in February 2010. The City and AFSCME successfully concluded negotiations and reached a tentative three (3) year labor agreement covering the time period of May 1, 2010 through April 30, 2013. As part of this Agreement, the City and AFSCME agreed to provide active AFSCME members at the time of ratification with the equivalent vacation accrual and payout caps currently offered to the employees in the CWA, FOP, GSA, "Others" and Unclassified salary groups. This successor Agreement was ratified by the City Commission on July 14, 2010.

The proposed ordinance amendment increases the "must use" cap on the annual vacation accrual from 360 hours to 500 hours from one payroll year to the next payroll year for any AFSCME members that are active upon ratification of the successor Agreement (July 14, 2010). In addition, the maximum amount of accrued vacation leave paid upon separation, retirement, termination, or death would be increased from 480 hours to 620 hours in the employee's final year of service. This means that in an employee's final year of employment (and only in their final year) they may exceed the annual "must use" vacation cap of 500 hours and accrue up to a maximum of 620 vacation hours, providing for a maximum payout of 620 hours of vacation upon separation, retirement, termination or death. This would be consistent with the vacation accrual maximums for CWA, FOP, GSA, Others and Unclassified employee groups.

There are currently three hundred fifty eight (358) active full-time members in the AFSCME Bargaining Unit. Current years of service for employees in the AFSCME range from less than one (1) year of service to 29.9 years of service. The average years of service for AFSCME employees is nine (9) years. The current vacation leave balances for AFSCME employees range anywhere from less than one (1) hour to the current maximum number of 360 hours. Currently there are only thirteen (13) AFSCME employees at the vacation maximum accrual of 360 hours. The total value for the current vacation hours accrued for all AFSCME employees is approximately $750,360. This figure is derived from taking each employee's current vacation leave accrual balance and multiplying it times their current hourly rate.

The average vacation accrual balance currently carried by a AFSCME employee at this time is 104 hours (currently there are 215 AFSCME members below 100 hours; 91 AFSCME employees that are between 100 and 200 hours; 25 AFSCME members between 200 and 300 hours; and 26 AFSCME members exceeding 300 hours (with only 13 of those AFSCME members at the 360 hour maximum).

FINANCIAL IMPACT

In order to assess the true value of vacation leave hours paid upon separation, retirement, termination or death, one would need the total amount of hours accrued as well as the employee's potential final salary at time of separation. Since this information is difficult to determine or project, one alternative is to assume the current financial impact by taking the

difference of the employee's current hourly salary multiplied by 480 (the current maximum payout of accrued vacation hours) and the employee's current hourly salary multiplied by 620 (the proposed maximum payout cap for accrued vacation hours). Assuming that all AFSCME employees were taken to the 480 hour cap at their *current* hourly rate, the estimated cost would be approximately $3.2 million. If the cap was increased to the 620 hours being proposed and maximum payouts were calculated at the employee's *current* hourly rate, the estimated cost would be approximately $4.2 million. The difference between the 480 hours and the 620 hours being proposed based on the employees' *current* hourly rates is approximately $947,000.

In the past three (3) years, there have been a total of 81 AFSCME employees who have separated from the City. The average vacation leave payout for the 81 employees was 84.37 hours. The employee with the most vacation leave payout was at 479.98 hours (the maximum amount permitted is 480 hours) and the person with the least vacation leave payout was 1.44 vacation hours. Therefore, there has not been any AFSCME member in the past three (3) years who has separated from the City and was paid out at the maximum vacation cap of 480 hours, although one (1) came very close. Based on current balances and recent trends, it is not likely that all AFSCME members will reach the capped amount of vacation accrual in their final year of employment and therefore, the financial impact to the City is not expected to be significant.

CONCLUSION

The Administration recommends that the City Commission adopt the Ordinance on second reading in order to implement measures to ensure a fair and equitable leave accumulation and payment system for employees in AFSCME.

JMG/RI/kt

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ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING ORDINANCE NO. 1335, THE CLASSIFIED EMPLOYEES' LEAVE ORDINANCE, BY AMENDING THE PROVISIONS FOR ACCUMULATION AND PAYMENT OF ANNUAL AND SICK LEAVE FOR THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1554 (AFSCME); PROVIDING FOR A REPEALER, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach has entered into a Collective Bargaining Agreement with the American Federation of State, County and Municipal Employees, Local 1554 (AFSCME) that provides for the "must use" cap on vacation accrual to be raised from 360 hours to 500 and the maximum amount paid upon retirement, termination, or death is to be raised from 580 hours to 620 hours; and

WHEREAS, these changes apply to those employees in classifications who are represented by AFSCME and who are active at time of ratification of the Agreement; and

WHEREAS, the Classified Leave Ordinance No. 1335, as amended, needs to be further amended to implement the changes negotiated in the Collective Bargaining Agreement between the City of Miami Beach and AFSCME.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA THAT THE FOLLOWING SECTIONS OF THE CLASSIFIED LEAVE ORDINANCE NO. 1335 AS AMENDED SHALL BE AMENDED TO READ AS FOLLOWS:

SECTION 1:

* * *

Sec. 1335-5. Accumulation or Forfeiture of Annual Leave and Sick Leave.

* * *

(b) ~~At the end of each payroll year, all employees except those covered by the Fraternal Order of Police (FOP), the International Association of Fire Fighters (IAFF), the Communication Workers of America, the Government Supervisors Association of Florida/OPEIU, Local 100 (GSA) and classified employees not covered by a bargaining unit known as "Others," will be allowed no more than 360 vacation (annual) hours to be accrued. Employees~~ At the end of each payroll year, employees covered by the Fraternal Order of Police (FOP), Communication Workers of American (CWA), and Classified

employees not covered by a bargaining unit and known as "Others" will be allowed no more than 500 vacation hours to be accrued effective October 1, 2006; those employees covered by the Government Supervisors Association of Florida/OPEIU, Local 100 (GSA) will be allowed no more than 500 vacation hours to be accrued effective January 13, 2010; employees covered by the American Federation of State, County and Municipal Employees, Local 1554 (AFSCME) will be allowed no more than 500 vacation hours to be accrued effective July 14, 2010; employees covered by the International Association of Fire Fighters (IAFF) will be allowed no more than 460 hours for nonshift employees and 690 for 24-hour shift employees to be accrued effective October 1, 2006. Any hours of leave in excess of the above maximum will be forfeited on the last day of the last full pay period of the payroll year.

* * *

Sec. 1335-11. Payment for annual leave.

* * *

(c) *Maximum payment:*

(1) For employees hired before October 1, 1978, payment of annual leave and sick leave upon resignation, retirement, termination, or death of a regular employee shall in no case exceed an amount equal to one year's compensation at the rate of pay received by such regular employee at the time of his retirement, death, termination, or resignation.

(2) For employees hired on or after October 1, 1978, ~~except those covered by the Fraternal Order of Police (FOP), and the International Association of Fire Fighters (IAFF), Communication Workers of America (CWA) the Government Supervisors Association of Florida/OPEIU, Local 100 (GSA) and Classified employees not covered by a bargaining unit and known as the group "others,"~~ upon resignation, retirement, termination, or death of an employee, ~~the maximum annual leave for which an employee or his beneficiary may be paid is 480 hours;~~ for those employees covered by the Fraternal Order of Police (FOP), the Communication Workers of America (CWA) and Classified employees not covered by a bargaining and known as the Group "Others," the maximum annual leave for which an employee or his beneficiary may be paid is 620 hours; and the maximum sick leave for which an employee or his beneficiary may be paid is one-half of his sick leave balance to a maximum payment of 600 hours; for those employees covered by the Government Supervisors Association of Florida/OPEIU, Local 100 (GSA), the maximum annual leave for which an employee or his beneficiary may be paid is 620 hours effective January 13, 2010; and the maximum sick leave for which an employee or his beneficiary may be paid is one-half of his sick leave balance to a maximum payment of 600 hours effective January 13, 2010; ; for those employees covered by the American Federation of State, County and

Municipal Employees, Local 1554 (AFSCME), the maximum annual leave for which an employee or his beneficiary may be paid is 620 hours effective July 14, 2010; and the maximum sick leave for which an employee or his beneficiary may be paid is one-half of his sick leave balance to a maximum payment of 600 hours effective July 14, 2010; for employees covered by the International Association of Fire Fighters (IAFF), the maximum amount of accrued, combined sick and vacation leave paid upon retirement, termination or death shall not exceed 820 hours for nonshift personnel and shall not exceed 1,230 hours for 24-hour shift personnel.

* * *

SECTION 2: REPEALER.

That all ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3: SEVERABILITY.

If any section, subsection, clause, or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4: EFFECTIVE DATE.

This Ordinance shall take effect the _____ day of _____, 2010.

PASSED and ADOPTED this _____ day of _____, 2010.

_____
MAYOR

ATTEST:

_____
CITY CLERK

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APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 8/27/10 Date

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:15 a.m.
Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 3 Entitled "Lobbyists", Section 2-482 Thereof Entitled "Registration" So As To Clarify That The Annual Lobbyist Registration Fee Is Required To Be Paid For Each Twelve Month Period Commencing October 1 Of Each Year; And Amending City Code Section 2-485 Thereof Entitled "List Of Expenditures; Fee Disclosure; Reporting Requirements", So As To Change Annual Reporting Date For Lobbyist Expenditure And Fee Disclosure From October 1 To February 28, And Changing Corresponding Annual Date For Post-Delinquency Lobbbyist Suspension Due To Failure To File Report After Imposition Of Penalty From December 1 To April 30, 2010.

Inquiries may be directed to the City Clerk's Office (305) 673-7411

10:20 a.m.
Ordinance Amending The Code Of The City Of Miami Beach, Florida; Amending Chapter 82, "Public Property," Article II, "Sale Or Lease Of Public Property," Sections 82-36 Through 82-40, Amending The Procedures For Sale Or Lease Of City Property; Providing For Inclusion In The Code Of The City Of Miami Beach.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:40 a.m.
Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division I, Entitled "Generally," By Amending Section 106-55, Entitled "Parking Rates, Fees, And Penalties," By Amending Subsection (N), Entitled "Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicles Incentive," By Amending Vehicle Participation Criteria For The Hybrid/ILEV Vehicles Incentive Program To Include Vehicles With An EPA (Environmental Protection Agency) Rating Of Six "6" Or Higher ("Smartway" Designation) And Street Legal Electric Vehicles, Increasing The Number Of Reserved Hybrid Vehicle Spaces At The 42nd Street Garage From One Percent (1%) To Two Percent (2%), Establishing One Percent (1%) Of The Parking Spaces At The 7th Street Garage And 13th Street As Reserved For Hybrid Vehicles Only, And Establishing An Automatic Review Of All Hybrid Vehicle Incentives Upon Reaching A Hybrid Permit Sales Threshold Of Five Percent (5%) Of Total Permit Sales.

Inquiries may be directed to the Parking Department (305) 673-7275

11:50 a.m.
Ordinance Amending Ordinance No. 1335, The Classified Employees' Leave Ordinance, By Amending The Provisions For Accumulation And Payment Of Annual Leave For The American Federation Of State, County And Municipal Employees/Local No. 1554 (AFSCME).

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:51 a.m.
Ordinance Amending The Miami Beach Employees' Retirement Plan; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME), And Government Supervisors Association Of Florida/OPEIU Local 100 (GSA); Implementing Similar Retirement Plan Amendments For Members Who Are Not Included In Any Bargaining Unit; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing An Effective Date

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:52 a.m.
Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And Fire-Fighters Of Miami Beach, IAFF Local 1510, And The Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record", Providing For The Purchase Of Additional Creditable Service Upon Completion Of Ten Years Of Service With The City; Amending Section 66 Entitled "Service And Disability Benefits Generally", Providing For The Inclusion Of Compensation For Certain Off Duty Services In A Member's Salary For Pension Purposes, And Providing For The Sale Of Unused Sick And/Or Vacation Time For Inclusion In A Member's Final Average Monthly Earnings, Subject To Certain Limitations; Amending Section 79 Entitled "Deferred Retirement Option Plan", Providing For A Maximum Drop Period Of Sixty Months And A Modified Cost Of Living Adjustment During The Drop Period; Creating A New Section 87 Entitled "Benefits For Employees Hired On Or After July 14, 2010"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:53 a.m.
Ordinance Implementing Provisions Of The 2009-2012 Collective Bargaining Agreement Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Creating A New Article IV Of Chapter 78, Miami Beach City Code Entitled "Health Benefits For Firefighters And Police Officers.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).
Ad #613

Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Amending The Miami Beach Employees' Retirement Plan; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME), And Government Supervisors Association Of Florida/OPEIU Local 100 (GSA); Implementing Similar Retirement Plan Amendments For Members Who Are Not Included In Any Bargaining Unit; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing An Effective Date.

Key Intended Outcome Supported:

Control costs of payroll including salary and fringes/ minimize taxes/ ensure expenditure trends are sustainable over the long term.

Supporting Data (Surveys, Environmental Scan, etc.: N/A

Issue:

Should the City Commission adopt the Ordinance to amend the Miami Beach Employees' Retirement Plan on second reading?

Item Summary/Recommendation:

SECOND READING PUBLIC HEARING

The City has been negotiating with the American Federation of State, County, and Municipal Employees, Local 1554 (AFSCME); the Communications Workers of America, Local 3178 (CWA); and the Government Supervisors Association of Florida/OPEIU, Local 100 (GSA) to negotiate changes to the Miami Beach Employees' Retirement Plan (MBERP) in order to effectuate recurring savings in the City's Annual Required Contribution (ARC) to the plan, as well as a reduction in the plan's Unfunded Accrued Actuarial Liability (UUAL).

The Administration negotiated a two percent (2%) increase to the employees' contribution to the pension system, a phased-in change to the Final Average Monthly Earnings (FAME), and changes to MBERP for future employees for the AFSCME and GSA bargaining units. In keeping with the spirit of treating similar groups of employees in a consistent manner, the same changes will be implemented for Unclassified and "Others" employees. The City is still negotiating with the CWA with the goal of reaching the same Agreement. Collectively, these changes result in considerable savings to the City both short and long term.

This Ordinance was approved on first reading on July 14, 2010. The Administration recommends approving the ordinance on second reading.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1	($ 2,297,564)	FY 10/11 savings related to pension changes (additional 2% contribution, FAME change)
	2		
	3		
OBPI	Total		

Financial Impact Summary: Adopting this Ordinance will result in short-term savings in the City's MBERP Annual Required Contribution (ARC), and a long-term reduction in the Unfunded Accrued Actuarial Liability (UUAL). In addition, these amendments to the ordinance will yield additional, long-term, recurring savings in future fiscal years.

City Clerk's Office Legislative Tracking:

Ramiro Inguanzo

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Ramiro Inguanzo	Hilda Fernandez	Jorge M. Gonzalez

T:\AGENDA\2010\September 15\Regular\MBERP Ordinance Summary.doc

MIAMIBEACH

AGENDA ITEM R5H

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **SECOND READING PUBLIC HEARING**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE MIAMI BEACH EMPLOYEES' RETIREMENT PLAN; IMPLEMENTING PROVISIONS OF THE 2009-2012 COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE CITY AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1554 (AFSCME), AND GOVERNMENT SUPERVISORS ASSOCIATION OF FLORIDA/OPEIU LOCAL 100 (GSA); IMPLEMENTING SIMILAR RETIREMENT PLAN AMENDMENTS FOR MEMBERS WHO ARE NOT INCLUDED IN ANY BARGAINING UNIT; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

This Ordinance was approved on first reading on July 14, 2010. The Administration recommends that the City Commission approve the ordinance on second reading.

BACKGROUND

During the July 2009 Finance and Citywide Projects Committee (Committee) budget preparation meetings for the FY2009/2010 Budget, the Committee requested that all City of Miami Beach employees make certain financial concessions to help address the challenges being faced during the FY2009/2010 budget cycle and beyond. The Committee requested the Administration budget for specific employee givebacks for FY2009/2010, which would in turn effectuate a cost savings of approximately $4.3 million (approximately $3.5 million savings attributed to the General Fund and $800,000 from various enterprise funds). Furthermore, in 2010 the City Commission directed the Administration to secure and budget for an additional $11 million in savings attributed to employee givebacks for FY2010/2011. Therefore, the total amount of employee givebacks for both the FY2009/2010 and FY2010/2011 is $15.3 million.

In addition, the City Commission also directed the Administration to negotiate with the respective unions for pension reform to both of the City's pension plans (the Miami Beach Fire Fighters and Police Officers (Fire and Police) Pension Plan and the Miami Beach Employees' Retirement Plan (MBERP)), in order to effectuate recurring savings in the overall reduction to the City's Annual Required Contribution (ARC), as well as a reduction in the Unfunded Accrued Actuarial Liability (UUAL). In keeping with the spirit of treating similar groups of employees in a consistent manner, the Administration has been negotiating with the respective general employee labor unions (AFSCME, GSA and the Communications Workers of America, Local 3175 (CWA)) to implement

changes to MBERP for current and future employees that are the same for all general employees, including the Unclassified and "Others". This is in addition to the wage and other economic concessions the City was negotiating with all Unions.

The target for pension reform for the general employees' salary groups is twelve and one half percent (12.5%) of pension value applicable towards the FY2010/2011. Based on this 12.5% target, the target savings was approximately $2.3 million for FY2010/2011. After assessing a number of options to reach the target savings, the City determined that changing the Final Average Monthly Earnings (FAME) for all general employees who participate in MBERP, which is currently one twelfth (1/12) of the average annual earnings of the Member during the two (2) highest paid years of creditable service, to one twelfth (1/12) of the average annual earnings of the Member during the five (5) highest years, would yield the target savings for the general employees' pension plan. By implementing the change in FAME for the AFSCME, GSA, Unclassified and "Others" salary groups, the City would realize a savings to the City's Annual Required Contribution (ARC) of $1,316,031. Unfortunately, since the CWA has not agreed to the changes the City has not completely met its pension target at this point for the general employees. If the change in FAME was implemented for the CWA salary group, the City would realize an additional savings of $587,424, for a total savings of $1,903,445 towards the City's October 1, 2010 ARC. It should be noted that when this item was initially presented to the City Commission on first reading at the July 14, 2010 City Commission meeting, the Administration was only able to report the estimated figures that were provided to the City by Gabriel, Roeder and Smith (GRS), the actuary for the general employees' pension plan at that time, The Actuarial Impact Statement with changes to all employees in the AFSCME, GSA, Unclassified and "Others" salary groups was submitted by GRS to the MBERP Board and subsequently approved by the Board on August 10, 2010. In addition, GRS estimates that the City would recognize approximately $300,000 in actuary gains for the FY2010/2011 valuation period (assuming all assumptions remaining the same), which in turn would be realized as a savings to the City's Annual Required Contribution (ARC) next year.

ANALYSIS

The negotiated changes pertaining to pension for AFSCME, GSA, Unclassified and "Others" include the following:

Additional Two Percent (2%) Employee Pension Contribution

Although the additional two percent (2%) employee pension contribution is a wage concession, it also has an impact on the pension. The savings resulting from this additional contribution for all general employees who participate in MBERP was not included in the $2.3 million target pension savings referenced above. However, based on the Actuarial Impact Statement adopted by the MBERP Board, GRS has recognized the additional two percent (2%) contribution as a reduction to the City's ARC. Below is a summary of the impact to each of the affected employee groups:

Government Supervisors Association of Florida/OPEIU Local 100 (GSA) - Previously, on October 29, 2009, after a total of seven (7) sessions held, negotiators for the City and GSA successfully concluded negotiations for a successor Collective Bargaining Agreement (Agreement). The term of the Agreement was for three (3) years, from October 1, 2009 through September 30, 2012, with reopener provisions for the second and third years for pension reform and other economic related articles.

The ratified agreement included an additional two percent (2%) increase to the employee's pension contribution for all active GSA members who participate in the Miami Beach Employees' Retirement

Plan (MBERP) beginning on January 18, 2010. The additional employee pension contribution funds have been maintained in an agency account (where the City acts on behalf of the employee in collecting the funds and transmitting those funds to the appropriate agency). The funds collected prior to October 1, 2010 were to be applied to offset the City's required annual contribution to MBERP during the plan year beginning October 1, 2010.

On June 3, 2010, the negotiation teams for the City and GSA began negotiations for the economic reopener provisions applicable for years two (2) and three (3) of the ratified Collective Bargaining Agreement. After two (2) negotiation sessions held, the City and GSA reached a tentative agreement.

During the negotiations for the economic reopeners, GSA raised concerns that their members began contributing the additional two percent (2%) employee pension contribution well before employees in the other Classified bargaining units (American Federation of State, County and Municipal Employees, Local 1554 (AFSCME) and Communications Workers of America, Local 3178 (CWA)). The City and GSA have agreed as part of the amended Agreement to start the additional pension contribution upon the ratification of the AFSCME successor Collective Bargaining Agreement (which was ratified by the City Commission at the July 14, 2010 City Commission meeting). Any funds already collected from GSA members between January 1, 2010 through July 18, 2010, were refunded to them and the funds collected between July 20, 2010 and September 30, 2010 will be applied to offset the City's required annual contribution to MBERP during the plan year beginning October 1, 2010. Any funds collected on and after October 1, 2010 will be sent directly to MBERP.

Upon the ratification of the AFSCME contract, GSA members as a result of the contract re-opener for FY 2010/2011 and FY 2011/2012, saw an increase to the required employee contribution from ten percent (10%) to twelve percent (12%) of earnings for "Tier A" employees (hired prior to August 1, 1993), and an increase to the required employee contribution from eight percent (8%) to ten percent (10%) of earnings for "Tier B" employees (hired on or after August 1, 1993). This contribution commenced with the pay period beginning on July 19, 2010 and will continue forward through the remaining term of the GSA Collective Bargaining Agreement.

American Federation of State, County and Municipal Employees, Local 1554 (AFSCME) - During negotiation sessions, AFSCME agreed to begin an additional two percent (2%) employee pension contribution for their members who participate in MBERP effective with the ratification of their Agreement (pay period beginning on July 19, 2010). This means an increase from ten percent (10%) to twelve percent (12%) of earnings for "Tier A" employees (hired prior to August 1, 1993), and an increase from eight percent (8%) to ten percent (10%) of earnings for "Tier B" employees (hired on or after August 1, 1993).

At the City Commission of July 14, 2010, the City Commission authorized the Administration to create an agency account, as was done with the GSA contributions, for the purposes of retaining the additional two percent (2%) employee contribution. These funds will be applied to offset the City's required annual contribution to MBERP during the plan year beginning October 1, 2010. Any funds collected on and after October 1, 2010 will be sent directly to MBERP.

Unclassified and "Others" On January 18, 2010, the Unclassified and "Others" employees were the first group of employees who began contributing an additional two percent (2%) of earnings towards their pension contribution. These funds have been held in an agency account, as was done with the GSA contributions, for the purposes of retaining the additional two percent (2%) employee

contribution. These funds will be applied to offset the City's required annual contribution to MBERP during the plan year beginning October 1, 2010. Any funds collected on and after October 1, 2010 will be sent directly to MBERP.

Other Pension Changes for Current and Future Employees

Change in the Final Average Monthly Earnings (FAME) Calculation Methodology - During the AFSCME negotiations and the GSA reopener negotiations, both groups agreed to the changes in pension requested by the Administration. This included a five (5) year FAME instead of a two (2) year FAME, and changes for employees hired after the implementation. However, concerns were raised about changing the FAME for certain employees who are close to retirement. The City recognizes that there are a number of employees who have reached or are very close to reaching retirement age eligibility. In order to minimize the impacts of this pension change, the City has agreed to implement the FAME change in a phased-in approach, as described below:

- For those MBERP members who, as of September 30, 2010, are at or within two (2) years of normal retirement age, the FAME will remain being based on the two (2) highest paid years of creditable service.
- For those MBERP members who, as of September 30, 2010, are between two (2) and three (3) years from normal retirement age, the FAME will be based on the three (3) highest paid years of creditable service.
- For those MBERP members who, as of September 30, 2010, are between three (3) and four (4) years from normal retirement age, the FAME will be based on the four (4) highest paid years of creditable service.
- For those MBERP members who, as of September 30, 2010, are more than four (4) years from normal retirement age, the FAME will be based on the five (5) highest paid years of creditable service.

In addition to the savings the change in FAME will yield next fiscal year, it will also yield a savings of 2.12% of payroll for all future years. Therefore, the City anticipates a recurring annual savings to the City's ARC of approximately $1.5 million for all future years, exclusive of CWA.

Changes for future employees - In addition to changing the FAME, AFSCME and GSA have also agreed to the following pension plan changes for all future employees covered under the AFSCME and GSA bargaining units that are hired after the amendment to the City's pension ordinance. As with the other changes, the same provisions will apply to future Unclassified and "Others" employees. Unfortunately, as of this writing, CWA has not agreed to the pension reform measures proposed by the City for current or new employees.

- The normal retirement date will be age 55 with at least thirty (30) years of creditable service, or age 62 with at least five (5) years of creditable service.
- The early retirement date will be the date on which the member's age plus years of creditable service equal 75, with a minimum age of 55.
- The FAME will be an average of the highest five (5) years of employment.
- The benefit multiplier will be two and one half percent (2.5%) multiplied by the member's years of creditable service, subject to a maximum of 80% of the member's FAME.
- The retiree Cost of Living Adjustment (COLA) will be one and one half percent (1.5%) per year, with the first adjustment deferred to one (1) year after the end of the DROP.
- The employee contribution will be ten percent (10%) of salary.

- The standard form of benefit is a lifetime annuity.
- Members who separate from City employment with five (5) or more years of creditable service but prior to the normal or early retirement date will be eligible to receive a normal retirement benefit at age 62.
- Employees will be eligible to enter the Deferred Retirement Option Plan (DROP) at the normal retirement age specified above and may participate in the DROP for a maximum of five (5) years.

GRS has stated that the implementation of the pension changes for any employees hired after the amendment to the City's pension ordinance will not generate any immediate savings. However, future savings will be realized beginning in FY2011/2012 with approximately $900,000 (1.92% of payroll) in savings towards the City's ARC. The pension actuary has estimated that the City will realize an additional annual reduction of seven-tenths percent (.7%) per year of payroll applied as a reduction towards the City's ARC in perpetuity. These savings will range from $910,000 in FY2011/2012 to as much as $5.995 million in FY2020/2021. These calculations are for all employees hired after the amendment to the City pension ordinance who participate in MBERP, (including CWA). Unfortunately, as of this writing, CWA has not agreed to the pension reform measures proposed by the City, so theresulting savings may not be as high.

FISCAL IMPACT

According to GRS, the actuarial impact of pension-related changes for all MBERP members (excluding those in CWA) will decrease the City's ARC by $2,297,564 or 3.28% of non-DROP payroll on October 1, 2010. As has been stated above, these changes will also yield additional savings in future years. Attached is a copy of GRS' Actuarial Impact Statement that was adopted by the MBERP Board on August 10, 2010 (Attachment "A").

CONCLUSION

The employees represented by AFSCME and GSA have agreed to the pension changes proposed by the City. The changes will also apply to Unclassified and "Others" employees. The provisions of MBERP will be the same for all salary groups except for CWA, as they have not yet agreed to these changes. These proposed changes represent substantial short-term and long-term savings for the City, which would be further impacted by any savings realized from similar changes for CWA bargaining unit members.

The Administration recommends that the City Commission adopt the Ordinance on second reading.

JMG/HMF/RI/kt

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ORDINANCE IMPLEMENTING PENSION PROVISIONS OF 2009-2012 COLLECTIVE BARGAINING AGREEMENTS WITH AFSCME AND GSA

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE MIAMI BEACH EMPLOYEES' RETIREMENT PLAN; IMPLEMENTING PROVISIONS OF THE 2009-2012 COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE CITY AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), AND GOVERNMENT SUPERVISORS ASSOCIATION (GSA); IMPLEMENTING SIMILAR RETIREMENT PLAN AMENDMENTS FOR MEMBERS WHO ARE NOT INCLUDED IN ANY BARGAINING UNIT; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

Section 1. Section 2.14 of the Miami Beach Employees' Retirement Plan created by Ordinance 2006-3504, as subsequently amended, is amended to read:

2.14 (a) "Final Average Monthly Earnings" means one-twelfth of the average annual earnings of the Member during the two highest paid years of creditable service except as otherwise provided in this Section 2.14. ~~Notwithstanding the foregoing, for any Member who is in a classification within the AFSCME bargaining unit who entered service with the City on or after April 30, 1993, and for any Member who is in a classification within the GSA bargaining unit who entered service with the City on or after August 1, 1993, "Final Average Monthly Earnings" means one-twelfth of the average annual earnings of the Member during the three highest paid years of service as an Employee, until such time as a collective bargaining agreement is ratified providing for the definition in the first sentence of this Section 2.14.~~ Notwithstanding the foregoing, for any Member who became a member of the Unclassified System prior to October 18, 1992 and was continuously a member of the Unclassified System from that date until March 18, 2006 ~~the effective date of this Ordinance~~, "Final Average Monthly Earnings" means one-twelfth of the average annual earnings of the Member during the two highest paid years of creditable service, but shall not in any event be less than one-twelfth of the earnings of the Member during the twelve months immediately preceding March 18, 2006 ~~the effective date of this Ordinance~~.

(b) Notwithstanding section 2.14(a) above, for any Member who is in a classification within the AFSCME or GSA bargaining units, and for any Unclassified or "Other" Member, effective September 30, 2010 "Final Average Monthly Earnings" means:

1. For those Members who as of September 30, 2010 have attained normal retirement age or are within 24 months from normal retirement age, "Final Average Monthly Earnings" shall have the same meaning as in section 2.14(a) above.

2. For those Members who as of September 30, 2010 are between 24 and 36 months from normal retirement age, "Final Average Monthly Earnings" means one-twelfth (1/12) of the average annual earnings of the Member during the three (3) highest paid years of creditable service.

3. For those Members who as of September 30, 2010 are between 36 and 48 months from normal retirement age, "Final Average Monthly Earnings" means one-twelfth (1/12) of the average annual earnings of the Member during the four (4) highest paid years of creditable service.

4. For those Members who as of September 30, 2010 are more than 48 months from normal retirement age, "Final Average Monthly Earnings" means one-twelfth (1/12) of the average annual earnings of the employee during the five (5) highest paid years of creditable service.

Section 2. Section 6.02 of the Miami Beach Employees' Retirement Plan created by Ordinance 2006-3504, as subsequently amended, is amended to read:

6.02 Contributions by Members

(a) Each Member shall contribute to the Plan eight percent (8%) of earnings, except as otherwise provided in this Section 6.02. Notwithstanding the preceding sentence, effective July 14, 2010, each Member in a classification within the AFSCME and GSA bargaining units, and each Unclassified and "Other" Member, shall contribute to the Plan ten percent (10%) of earnings, except as otherwise provided in this Section 6.02. The contributions made by each Member to the Plan shall be deducted from the Member's Earnings and designated as Employer contributions pursuant to section 414(h) of the Internal Revenue Code. Such designation is contingent upon the contributions being excluded from the Members' gross income for Federal Income Tax purposes. For all other purposes of the Plan, such contributions shall be considered to be Member contributions.

(b) Notwithstanding subsection (a) above, all persons entering service with the City prior to April 1, 1993 who are in the classifications within the AFSCME bargaining unit;

all persons entering service with the City prior to February 21, 1994 who are in classifications within the CWA (MBEBA) bargaining unit, and all persons entering service with the City prior to August 1, 1993 who are in classifications within the GSA bargaining unit or classified as "Other", who were members of the Classified Plan continuously from the date they entered service with the City until March 18, 2006~~the effective date of this Ordinance~~, shall contribute to the Plan ten percent (10%) of their earnings throughout their service as a Member of this Plan. Notwithstanding the preceding sentence, effective July 14, 2010, each Member described in the preceding sentence who is in a classification within the AFSCME or GSA bargaining units shall contribute to the Plan twelve percent (12%) of earnings; and effective January 18, 2010, each Member described in the preceding sentence classified as "Other" shall contribute to the Plan twelve percent (12%) of earnings.

(c) Notwithstanding subsection (a), above, Members of the Unclassified System who entered service with the City prior to October 18, 1992, were continuously members of the Unclassified System from that date until March 18, 2006~~the effective date of this Ordinance~~, and who became Members of this Plan on March 18, 2006~~the effective date of this Ordinance~~ shall contribute to the Plan ten percent (10%) of their earnings. Notwithstanding the preceding sentence, effective January 18, 2010, each Member described in the preceding sentence shall contribute to the Plan twelve percent (12%) of earnings.

(d) Notwithstanding subsection (a), above, Members who are in classifications within the CWA bargaining unit, members of the Classified System who became Members of this Plan on March 18, 2006~~the effective date of this Ordinance~~ and are not in any bargaining unit, and members of the Unclassified System who became Members of this Plan on March 18, 2006~~the effective date of this Ordinance~~, who accrue the maximum retirement benefit payable under the Plan and continue in City employment, shall contribute to the Plan an amount equal to the applicable percentage contribution in accordance with subsections (a), (b) and (c), above, but such percentage shall be applied only to the amount of earnings in excess of such Members' rate of earnings at the time the member accrued the maximum retirement benefit payable under the Plan. For example, if a Member with earnings of $2,000 each pay period attains the maximum benefit percentage payable under the plan (80% or 90%, depending on which cap applies to the member), the employee contribution will cease until the member has earnings in excess of $2,000, at which time the Employee contribution would be 10% (or 12~~8~~%, depending on the contribution rate that is applicable) of the excess over $2,000. If the member's earnings increase to $2,500 per pay period, the Member would contribute $50.00 (at the 10% contribution rate) each pay period. The limitation on member contributions provided in

this subsection shall apply to Members in classifications within the AFSCME and GSA bargaining units upon ratification of a collective bargaining agreement that provides for such limitation.

Section 3. Article 13 of the Miami Beach Employees' Retirement Plan created by Ordinance 2006-3504, as subsequently amended, is amended to read:

ARTICLE 13. Employees hired on or after September 30, 2010.

Notwithstanding any other provision of the Plan, for employees hired on or after September 30, 2010, other than employees hired in classifications within the CWA (MBEBA) bargaining unit, the provisions of the Miami Beach Employees' Retirement Plan created by Ordinance 2006-3504, as subsequently amended, shall be applicable, except as follows:

a. The normal retirement date shall be age 55 with at least thirty (30) years of creditable service, or age 62 with at least five (5) years of creditable service.
b. The early retirement date shall be the date on which the member's age plus years of creditable service equal 75, with a minimum age of 55
c. Final average monthly earnings shall be an average of the highest five (5) years of employment.
d. The benefit multiplier shall be 2.5% multiplied by the member's years of creditable service, subject to a maximum of 80% of the member's FAME.
e. The retiree Cost of Living Adjustment shall be 1.5% per year, with the first adjustment deferred to one year after the end of the DROP.
f. The employee contribution shall be 10% of salary.
g. The standard form of benefit shall be a lifetime annuity.
h. Members who separate from City employment with 5 or more years of creditable service but prior to the normal or early retirement date shall be eligible to receive a normal retirement benefit at age 62.
i. Employees shall be eligible to enter the DROP at the normal retirement age specified in paragraph a, above, and may participate in the DROP for a maximum of 5 years.

~~Election of Contributions and Benefits by Unclassified Employees Hired Prior to October 18, 1992~~

~~13.01 Notwithstanding any other provision of this Ordinance, a Member who became a member of the Unclassified System prior to October 18, 1992 and was continuously a member of the Unclassified System from that date until the effective date of this Ordinance, may make a~~

~~one-time, irrevocable option of contributions and benefits in accordance with this Article 13. Within thirty (30) days following the effective date of this Ordinance, any such Member may elect one of the following options:~~

~~(a) To retain all contributions, rights and benefits provided to members of the Unclassified System who became members of the Unclassified System prior to October 18, 1992 and were continuously members of the Unclassified System from that date until the effective date of this Ordinance, in accordance with the provisions of the Unclassified System in effect on the day before the effective date of this Ordinance;~~

~~(b) To obtain the contributions, rights and benefits otherwise provided in this Ordinance to members of the Unclassified System who became members of the Unclassified System prior to October 18, 1992 and were continuously members of the Unclassified System from that date until the effective date of this Ordinance; or~~

~~(c) To obtain the contributions, rights and benefits otherwise provided in this Ordinance to members of the Unclassified System who became members of the Unclassified System after October 18, 1992, and who became Members of this Plan on the effective date of this Ordinance.~~

~~13.02 In the event a Member who is eligible to make an election pursuant to this Article 13 does not make such an election within thirty (30) days following the effective date of this Ordinance, the contributions, rights and benefits otherwise provided in this Ordinance to members of the Unclassified System who became members of the Unclassified System prior to October 18, 1992 and were continuously members of the Unclassified System from that date until the effective date of this Ordinance, shall apply to such Member.~~

Section 4. Conflicts and Severability.

(a) All Ordinances, and parts of ordinances, in conflict herewith shall be and the same, are hereby repealed.

(b) In the event any article, section, paragraph, sentence, clause, or phrase of this Ordinance shall be adjudicated invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, paragraphs, sentences, clauses or phrases of this Ordinance, which shall be and remain in full force and effect as fully as if the item so adjudged invalid or unconstitutional was not originally a part hereof.

Section 5. Effective Date. This Ordinance shall take effect ten days following adoption, except as otherwise specified herein.

PASSED and ADOPTED by the City Commission of the City of Miami Beach this ____ day of _____, 2010.

_____
Mayor

Attest:

_____

(Seal)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 7/9/10
Date

1st Reading –
2nd Reading –

T:\AGENDA\2010\July 14\Regular\MBERP Ordinance.doc

Attachment "A"

GRS

Gabriel Roeder Smith & Company
Consultants & Actuaries

One East Broward Blvd.
Suite 505
Ft. Lauderdale, FL 33301-1827

954.527.1616 phone
954.525.0083 fax
www.gabrielroeder.com

August 3, 2010

Mr. Rick Rivera
Pension Administrator
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: Actuarial Impact Statement for Proposed Benefit Changes to the Miami Beach Employees' Retirement Plan

Dear Ramiro:

As requested, we have prepared the enclosed Actuarial Impact Statement showing the financial effect of the following proposed changes to the Miami Beach General Employees' Retirement System. The following changes would apply to all active members except for CWA members:

1. Increase employee contributions by 2%
2. Change final average earnings period from two to five years, except for members who are less than five years away from normal retirement eligibility. Members who are eligible for normal retirement in two years or less will have average earnings of two years. Members who are eligible for normal retirement in three years will have average earnings of three years. Members who are eligible for normal retirement in four years will have average earnings of four years.
3. Change the following for new hires only:
    a. Normal Retirement Age of 55 with 30 years of service or age 62 with 5 years of service
    b. Early retirement eligibility of "Rule of 75" with a minimum of age 55
    c. Multiplier of 2.5%, subject to a maximum of 80% of final average monthly earnings
    d. Final average monthly earnings of five years
    e. Normal form of payment of life annuity
    f. Members may participate in the DROP for up to 5 years
    g. Cost-of-living adjustment (COLA) of 1.5% at retirement (no COLA while in the DROP)
    h. Employee contributions of 10%

Please note that the changes for new hires described in item (3) above will have no immediate financial impact on the Plan.

This report is intended to describe the financial effect of the proposed plan changes. No statement in this report is intended to be interpreted as a recommendation in favor of the changes, or in opposition to them.

The calculations are based upon assumptions regarding future events, which may or may not materialize. They are also based upon present and proposed plan provisions that are outlined in the report. If you have reason to believe that the assumptions that were used are unreasonable, that the plan provisions are incorrectly described, that important plan provisions relevant to this proposal are not described, or that conditions have changed since the calculations were made, you should contact the author of this report prior to relying on information in the report.

If you have reason to believe that the information provided in this report is inaccurate, or is in any way incomplete, or if you need further information in order to make an informed decision on the subject matter of this report, please contact the author of the report prior to making such decision.

We welcome your questions and comments.

Sincerely yours,

J. Stephen Palmquist, ASA
Senior Consultant & Actuary

JSP/ma

Enclosures

SUPPLEMENTAL ACTUARIAL VALUATION REPORT

Plan

City of Miami Beach Employees' Retirement Plan

Valuation Date

October 1, 2009

Date of Report

August 3, 2010

Report Requested by

Board of Trustees

Prepared by

J. Stephen Palmquist

Group Valued

All active and inactive members.

Plan Provisions Being Considered for Change

Present Plan Provisions Before Change

- Tier A employees contribute 10% of earnings and Tier B employees contribute 8% of earnings to the Plan
- Normal Retirement eligibility is age 50 with five years of credited service for Tier A employees and age 55 with five years of credited service for Tier B employees.
- Early Retirement is available for Tier B members of the former General Plan whose age plus service is greater than 75, not earlier than age 50.
- The multiplier is 3% with a total accrual cap of 90% for Tier A members and 80% for Tier B members.
- Earnings are averaged over the two highest paid years.
- The normal form of payment is a 50% joint and survivor annuity payable to the spouse.
- Members who are eligible for normal retirement may participate in the deferred retirement option program (DROP) for up to three years.
- Retirees receive an annual cost-of-living adjustment (COLA) of 2.5%. The COLA is not payable while members are in the DROP.

Proposed Plan Changes

The following changes would apply to current members of the Plan except for CWA members:

- Earnings would be averaged over the five highest paid years except for members who are within less than five years away from normal retirement eligibility as of September 30, 2010. Members who are eligible for normal retirement in two years or less will have average earnings of two years. Members who are eligible for normal retirement in three years will have average earnings of three years. Members who are eligible for normal retirement in four years will have average earnings of four years.
- Tier A employees would contribute 12% of earnings and Tier B employees contribute 10% of earnings to the Plan.

The following changes would apply only to all members <u>except</u> CWA members who are hired after September 30, 2010:

- Normal Retirement eligibility would be the earlier of age 55 with 30 years of credited service or age 62 with 5 years of credited service.
- Members who are at least age 55 and whose age plus credited service is greater than 75 would be eligible to receive an early retirement benefit.
- The multiplier would be 2.5% with a total accrual cap of 80%.
- Earnings would be averaged over the five highest paid years.
- The normal form of payment would be a life annuity
- Members who are eligible for normal retirement may participate in the deferred retirement option program (DROP) for up to five years.
- Retirees would receive an annual cost-of-living adjustment (COLA) of 1.5%. The COLA is not payable while members are in the DROP.
- Employees would contribute 10% of earnings to the Plan.

<u>Participants Affected</u>

The changes would apply to active members or new members who are not members of the CWA bargaining unit as of the date of the amending ordinance.

Actuarial Assumptions and Methods

Same as October 1, 2009 Actuarial Valuation Report.

Some of the key assumptions/methods are:

Investment return – 8.35% per year
Salary increase – 6% per year
Cost Method – Entry Age Normal Cost Method

Amortization Period for Any Change in Actuarial Accrued Liability

30 years.

Summary of Data Used in Report

Same as data used in October 1, 2009 Actuarial Valuation Report.

Actuarial Impact of Proposal(s)

See attached page(s). The proposed changes for current members will decrease the annual required contribution by $2,297,564 or 3.28% of Non-DROP payroll. The changes for new hires will have no immediate financial effect.

Special Risks Involved With the Proposal That the Plan Has Not Been Exposed to Previously

None

Other Cost Considerations

None

Possible Conflicts With IRS Qualification Rules

None

As indicated below, the undersigned are Members of the American Academy of Actuaries (MAAA) and meet the Qualification Standards of the Academy of Actuaries to render the actuarial opinion herein.

By J. Stephen Palmquist
J. Stephen Palmquist, ASA, MAAA, FCA
Enrolled Actuary No. 08-1560

By Melissa R. Algayer
Melissa R. Algayer, MAAA, FCA
Enrolled Actuary No. 08-6467

CITY OF MIAMI BEACH EMPLOYEES' RETIREMENT PLAN

Impact Statement – August 3, 2010

Description of Amendment

The proposed ordinance incorporates the following plan changes pursuant to 2009-2012 collective bargaining agreements and would apply to active members except for members of the CWA bargaining unit:

1. Increase employee contributions by 2%
2. Change final average earnings period from two to five years, except for members who are less than five years away from normal retirement eligibility. Members who are eligible for normal retirement in two years or less will have average earnings of two years. Members who are eligible for normal retirement in three years will have average earnings of three years. Members who are eligible for normal retirement in four years will have average earnings of four years.
3. Change the following for new hires only:
   a. Normal Retirement Age from 55 with 5 years of credited service to 55 with 30 years of service or age 62 with 5 years of service
   b. Early retirement eligibility from of "Rule of 75" with a minimum of age 50(only for Tier B members of the former General Plan) to "Rule of 75" with a minimum of age 55
   c. Change multiplier from 3.0% to 2.5% with a maximum accrual of 80%
   d. Final average monthly earnings from two to five years
   e. Normal form of payment from 50% joint and survivor annuity to life annuity
   f. Extend maximum DROP participation from 3 to 5 years
   g. Change cost-of-living adjustment (COLA) from 2.5% to 1.5% at retirement (no COLA during DROP participation)
   h. Employee contributions of 10%

Funding Implications of Amendment

An actuarial cost estimate is attached. The annual required City contribution to the System would decrease by $2,297,564 or 3.28% of Non-DROP payroll. The changes for new hires will have no immediate financial effect.

Certification of Administrator

I believe the amendment to be in compliance with Part VII, Chapter 112, Florida Statutes and Section 14, Article X of the Constitution of the State of Florida.

_____

For the Board of Trustees
as Plan Administrator

ANNUAL REQUIRED CONTRIBUTION (ARC)			
A. Valuation Date	October 1, 2009 *Valuation*	October 1, 2009 *Increase EE Cont. by 2% and 5-Year Final Average Earnings*	*Increase/ (Decrease)*
B. ARC to Be Paid During Fiscal Year Ending	9/30/2011	9/30/2011	
C. Assumed Date of Employer Contrib.	10/1/2010	10/1/2010	
D. Annual Payment to Amortize Unfunded Actuarial Liability	$ 7,119,977	$ 6,782,397	$ (337,580)
E. Employer Normal Cost	9,545,472	7,762,550	(1,782,922)
F. ARC if Paid on the Valuation Date: D+E	16,665,449	14,544,947	(2,120,502)
G. ARC Adjusted for Frequency of Payments	18,057,014	15,759,450	(2,297,564)
H. ARC as % of Covered Payroll			
- Non-DROP Payroll	25.76 %	22.48 %	(3.28) %
- Total Payroll	24.79 %	21.64 %	(3.15) %
I. Covered Payroll for Contribution Year			
- Non-DROP Payroll	70,097,549	70,097,549	-
- Total Payroll	72,835,309	72,835,309	-

ACTUARIAL VALUE OF BENEFITS AND ASSETS

A. Valuation Date	October 1, 2009 *Valuation*	October 1, 2009 *Increase EE Cont. by 2% and 5-Year Final Average Earnings*	*Increase/ (Decrease)*
B. Actuarial Present Value of All Projected Benefits for			
1. Active Members			
a. Service Retirement Benefits	$ 267,872,671	$ 259,557,371	$ (8,315,300)
b. Vesting Benefits	27,198,459	26,035,886	(1,162,573)
c. Disability Benefits	15,514,626	14,920,228	(594,398)
d. Preretirement Death Benefits	5,251,473	5,059,720	(191,753)
e. Return of Member Contributions	651,313	685,544	34,231
f. Total	316,488,542	306,258,749	(10,229,793)
2. Inactive Members			
a. Service Retirees & Beneficiaries	327,327,568	327,327,568	-
b. Disability Retirees	9,874,613	9,874,613	-
c. Terminated Vested Members	12,914,814	12,914,814	-
d. Total	350,116,995	350,116,995	-
3. Total for All Members	666,605,537	656,375,744	(10,229,793)
C. Actuarial Accrued (Past Service) Liability per GASB No. 25	551,698,377	547,712,969	(3,985,408)
D. Plan Assets			
1. Market Value	349,416,064	349,416,064	-
2. Actuarial Value	419,393,718	419,393,718	-
E. Unfunded Actuarial Accrued Liability (C-D2)	132,304,659	128,319,251	(3,985,408)
F. Funded Ratio (D2 ÷ C)	76.0 %	76.6 %	0.6 %
G. Actuarial Present Value of Projected Covered Payroll	518,982,308	518,982,308	-
H. Actuarial Present Value of Projected Member Contributions	39,721,439	46,502,862	6,781,424

CALCULATION OF EMPLOYER NORMAL COST			
A. Valuation Date	October 1, 2009 *Valuation*	October 1, 2009 *Increase EE Cont. by 2% and 5-Year Final Average Earnings*	*Increase/ (Decrease)*
B. Normal Cost for			
1. Service Retirement Benefits	$ 11,131,111	$ 10,493,268	$ (637,843)
2. Vesting Benefits	1,707,845	1,614,685	(93,160)
3. Disability Benefits	1,212,589	1,158,603	(53,986)
4. Preretirement Death Benefits	374,643	358,253	(16,390)
5. Return of Member Contributions	214,559	214,559	-
6. Total for Future Benefits	14,640,747	13,839,368	(801,379)
7. Assumed Amount for Administrative Expenses	657,393	657,393	-
8. Total Normal Cost	15,298,140	14,496,761	(801,379)
% of Covered Payroll			
- Non-DROP Payroll	21.82 %	20.68 %	(1.14) %
- Total Payroll	21.00 %	19.90 %	(1.10) %
C. Expected Member Contribution	5,752,668	6,734,211	981,543
% of Covered Payroll			
- Non-DROP Payroll	8.21 %	9.61 %	1.40 %
- Total Payroll	7.90 %	9.25 %	1.35 %
D. Employer Normal Cost: B8-C	9,545,472	7,762,550	(1,782,922)
% of Covered Payroll			
- Excluding DROP Payroll	13.62 %	11.07 %	(2.54) %
- Including DROP Payroll	13.11 %	10.66 %	(2.45) %

PARTICIPANT DATA		
	October 1, 2009 *Before Changes*	**October 1, 2009** *After Changes*
ACTIVE MEMBERS		
Number (Non-DROP)	1,154	1,154
Covered Annual Non-DROP Payroll	$ 70,097,549	$ 70,097,549
Average Annual Non-DROP Pay	$ 60,743	$ 60,743
Total Covered Annual Payroll	$ 72,835,309	72,835,309
Average Annual Pay	$ 61,258	61,258
Average Age	43.5	43.5
Average Past Service	8.2	8.2
Average Age at Hire	35.3	35.3
DROP PARTICIPANTS		
Number	35	35
Annual Benefits	$ 1,763,119	1,763,119
Average Annual Benefit	$ 50,375	50,375
Average Age	57.9	57.9
RETIREES & BENEFICIARIES		
Number	972	972
Annual Benefits	$ 28,200,927	$ 28,200,927
Average Annual Benefit	$ 29,013	$ 29,013
Average Age	70.8	70.8
DISABILITY RETIREES		
Number	41	41
Annual Benefits	$ 936,354	$ 936,354
Average Annual Benefit	$ 22,838	$ 22,838
Average Age	65.9	65.9
TERMINATED VESTED MEMBERS		
Number	79	79
Annual Benefits	$ 1,373,077	$ 1,373,077
Average Annual Benefit	$ 17,381	$ 17,381
Average Age	46.9	46.9

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:15 a.m.
Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 3 Entitled "Lobbyists", Section 2-482 Thereof Entitled "Registration" So As To Clarify That The Annual Lobbyist Registration Fee Is Required To Be Paid For Each Twelve Month Period Commencing October 1 Of Each Year; And Amending City Code Section 2-485 Thereof Entitled "List Of Expenditures; Fee Disclosure; Reporting Requirements", So As To Change Annual Reporting Date For Lobbyist Expenditure And Fee Disclosure From October 1 To February 28, And Changing Corresponding Annual Date For Post-Delinquency Lobbbyist Suspension Due To Failure To File Report After Imposition Of Penalty From December 1 To April 30, 2010.

Inquiries may be directed to the City Clerk's Office (305) 673-7411

10:20 a.m.
Ordinance Amending The Code Of The City Of Miami Beach, Florida; Amending Chapter 82, "Public Property," Article II, "Sale Or Lease Of Public Property," Sections 82-36 Through 82-40, Amending The Procedures For Sale Or Lease Of City Property; Providing For Inclusion In The Code Of The City Of Miami Beach.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:40 a.m.
Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division I, Entitled "Generally," By Amending Section 106-55, Entitled "Parking Rates, Fees, And Penalties," By Amending Subsection (N), Entitled "Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicles Incentive," By Amending Vehicle Participation Criteria For The Hybrid/ILEV Vehicles Incentive Program To Include Vehicles With An EPA (Environmental Protection Agency) Rating Of Six "6" Or Higher ("Smartway" Designation) And Street Legal Electric Vehicles, Increasing The Number Of Reserved Hybrid Vehicle Spaces At The 42nd Street Garage From One Percent (1%) To Two Percent (2%), Establishing One Percent (1%) Of The Parking Spaces At The 7th Street Garage And 13th Street As Reserved For Hybrid Vehicles Only, And Establishing An Automatic Review Of All Hybrid Vehicle Incentives Upon Reaching A Hybrid Permit Sales Threshold Of Five Percent (5%) Of Total Permit Sales.

Inquiries may be directed to the Parking Department (305) 673-7275

11:50 a.m.
Ordinance Amending Ordinance No. 1335, The Classified Employees' Leave Ordinance, By Amending The Provisions For Accumulation And Payment Of Annual Leave For The American Federation Of State, County And Municipal Employees/Local No. 1554 (AFSCME).

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:51 a.m.
Ordinance Amending The Miami Beach Employees' Retirement Plan; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME), And Government Supervisors Association Of Florida/OPEIU Local 100 (GSA); Implementing Similar Retirement Plan Amendments For Members Who Are Not Included In Any Bargaining Unit; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing An Effective Date

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:52 a.m.
Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And Fire-Fighters Of Miami Beach, IAFF Local 1510, And The Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record", Providing For The Purchase Of Additional Creditable Service Upon Completion Of Ten Years Of Service With The City; Amending Section 66 Entitled "Service And Disability Benefits Generally", Providing For The Inclusion Of Compensation For Certain Off Duty Services In A Member's Salary For Pension Purposes, And Providing For The Sale Of Unused Sick And/Or Vacation Time For Inclusion In A Member's Final Average Monthly Earnings, Subject To Certain Limitations; Amending Section 79 Entitled "Deferred Retirement Option Plan", Providing For A Maximum Drop Period Of Sixty Months And A Modified Cost Of Living Adjustment During The Drop Period; Creating A New Section 87 Entitled "Benefits For Employees Hired On Or After July 14, 2010"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:53 a.m.
Ordinance Implementing Provisions Of The 2009-2012 Collective Bargaining Agreement Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Creating A New Article IV Of Chapter 78, Miami Beach City Code Entitled "Health Benefits For Firefighters And Police Officers.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).
Ad #613

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Condensed Title:

An Ordinance Amending Part I, Subpart B, Article Ix, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date.

Key Intended Outcome Supported:

Control costs of payroll including salary and fringes/ minimize taxes/ ensure expenditure trends are sustainable over the long term.

Supporting Data (Surveys, Environmental Scan, etc N/A

Issue:

Should the City Commission adopt the ordinance to amend Part I, Subpart B, Article IX, Related Special Acts, of the Miami Beach City Code?

Item Summary/Recommendation:

Second Reading

The City negotiated with the IAFF and FOP to amend and change the Fire and Police Pension Plan in order to effectuate recurring savings in the overall reduction to the City's Annual Required Contribution (ARC), as well as a reduction in the Unfunded Accrued Actuarial Liability (UUAL). The IAFF and FOP agreed for current employees to increase the DROP period from 3 to 5 years with a "Guaranteed" zero COLA for 2 years; making Off-Duty assignments pensionable; and using sick and vacation leave in exchange of reaching the fixed cap. For new employees, the retiree COLA will be 1.5%; Rule of 70 with a minimum age of 48; three (3) year FAME; "Guaranteed" 0% retiree COLA for 2 years; and a multiplier of 3% for the first 20 years and 4% thereafter. This Ordinance was approved on first reading on July 14, 2010. The Administration recommends approving the ordinance on second reading.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1	Year 1 ($81,677)	Off-Duty Pensionable
	2	Year 2 ($2,479,134)	Off-Duty Pensionable; Additional FOP pensionable wage; Impact of Zero COLA; Guaranteed Zero DROP COLA; 10 Year Buy Back
	3	Year 3 ($2,447,890) Plus the impact of Changes for future employees	Off-Duty Pensionable; Additional FOP pensionable wages; Impact of Zero COLA; Guaranteed Zero DROP COLA; 10 Year Buy Back; Pension Changes for Future Employee
OBPI	Total	($5,008,701)	

Financial Impact Summary: Savings for three (3) years based on FOP and IAFF Agreements combined total $5,008,701. In addition, these concessions will yield additional, long-term, recurring savings in future fiscal years.

City Clerk's Office Legislative Tracking:

Ramiro Inguanzo, Human Resources Director

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Ramiro Inguanzo	Hilda Fernandez	Jorge M. Gonzalez
R. Inguanzo	Hilda M. Fernandez	

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MIAMIBEACH

AGENDA ITEM RS1
DATE 9-15-10

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **Second Reading**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PART I, SUBPART B, ARTICLE IX, RELATED SPECIAL ACTS, OF THE MIAMI BEACH CITY CODE ENTITLED "PENSION SYSTEM FOR DISABILITY AND RETIREMENT OF MEMBERS OF POLICE AND FIRE DEPARTMENTS"; IMPLEMENTING PROVISIONS OF THE 2009-2012 COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE CITY AND FIRE FIGHTERS OF MIAMI BEACH, IAFF LOCAL 1510, AND MIAMI BEACH FRATERNAL ORDER OF POLICE, WILLIAM NICHOLS LODGE NO. 8; AMENDING SECTION 65 ENTITLED "COMPUTATION OF CREDITABLE SERVICE; SERVICE RECORD", PROVIDING FOR THE PURCHASE OF ADDITIONAL CREDITABLE SERVICE UPON COMPLETION OF TEN YEARS OF SERVICE WITH THE CITY; AMENDING SECTION 66 ENTITLED "SERVICE AND DISABILITY BENEFITS GENERALLY", PROVIDING FOR THE INCLUSION OF COMPENSATION FOR CERTAIN OFF DUTY SERVICES IN A MEMBER'S SALARY FOR PENSION PURPOSES, AND PROVIDING FOR THE SALE OF UNUSED SICK AND/OR VACATION TIME FOR INCLUSION IN A MEMBER'S FINAL AVERAGE MONTHLY EARNINGS, SUBJECT TO CERTAIN LIMITATIONS; REVISING THE LIMITATION ON OVERTIME PAY INCLUDED IN SALARY FOR PENSION PURPOSES; AMENDING SECTION 67, ENTITLED "COST-OF-LIVING ADJUSTMENT", PROVIDING FOR AN ANNUAL ADJUSTMENT ON THE ANNIVERSARY DATE OF A MEMBER'S RETIREMENT OR SEPARATION FROM EMPLOYMENT; "AMENDING SECTION 79 ENTITLED "DEFERRED RETIREMENT OPTION PLAN", PROVIDING FOR A MAXIMUM DROP PERIOD OF SIXTY MONTHS AND A MODIFIED COST OF LIVING ADJUSTMENT DURING THE DROP PERIOD; CREATING A NEW SECTION 87 ENTITLED "BENEFITS FOR EMPLOYEES HIRED ON OR AFTER JULY 14, 2010"; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Adopt the Ordinance on second reading.

BACKGROUND

During the July 2009 Finance and Citywide Projects Committee (Committee) budget preparation meetings for the FY2009/2010 Budget, the Committee requested that all City of Miami Beach employees make certain financial concessions to help address the challenges being faced during the FY2009/2010 budget cycle and beyond. The Committee requested the Administration budget for specific employee givebacks for FY2009/2010, which would in turn effectuate a cost savings of approximately $4.3 million (approximately $3.5 million savings attributed to the General Fund and $800,000 from various enterprise funds). Furthermore, in 2010 the City Commission directed the Administration to secure and budget for an additional $11 million in savings attributed to employee givebacks for FY2010/2011. Therefore, the total amount of employee givebacks for both the FY2009/2010 and FY2010/2011 is $15.3 million.

The City currently has a total of seven (7) salary groups who represent employees: (1) the American Federation of State, County and Municipal Employees, Local 1554 (AFSCME); (2) the Communications Workers of America, Local 3178 (CWA); (3) the Government Supervisors Association of Florida/OPEIU, Local 100 (GSA); (4) the Fraternal Order of Police, William Nichols Lodge No. 8 (FOP); (5) the International Association of Fire Fighters, Local 1510 (IAFF) (6) Unclassified and (7) OTHERS (Classified employees not represented by a bargaining unit). Based upon the direction received from the City Commission, the $15.3 million savings in employee concessions for FY2009/2010 and FY2010/2011 combined was to be divided up proportionately amongst each of the seven (7) salary groups based on total budgeted payroll and a proportionate share of the preliminary FY2010/2011 City's Annual Required Contributions to both of the City's pension plans. In addition, the City Commission alsodirected the Administration to negotiate with the respective unions for pension reform to both of the City's pension plans (the Miami Beach Fire Fighters and Police Officers (Fire and Police) Pension Plan and the Miami Beach Employees' Retirement Plan (MBERP)), in order to obtain recurring savings for future years in each of the pension plans.

The IAFF three (3) year Collective Bargaining Agreement (Agreement) (covering the period of October 1, 2006 through September 30, 2009) expired on September 30, 2009. In anticipation of the Agreement expiring, negotiators for the City and IAFF began negotiating for a successor three (3) year Agreement in August 2009. After eleven (11) formal negotiation sessions and several discussions away from the negotiation table, the City and IAFF successfully concluded negotiations and reached a tentative three (3) year labor agreement covering the time period of October 1, 2009 through September 30, 2012. The IAFF membership ratified the Agreement with 70.8 percent of the members voting in favor of the Agreement, (the certified results were submitted to the City on July 13, 2010). Subsequently, the City Commission adopted a resolution to ratify the Agreement at the July 14, 2010 City Commission meeting.

The FOP three (3) year Collective Bargaining Agreement (Agreement) (covering the period of October 1, 2006 through September 30, 2009) also expired on September 30, 2009. In anticipation of the Agreement expiring, negotiators for the City and FOP began negotiating for a successor three (3) year Agreement in August 2009. After fifteen (15) formal negotiation sessions and several discussions away from the negotiation table, the City and FOP successfully concluded negotiations and reached a tentative three (3) year labor agreement covering the time period of October 1, 2009 through September 30, 2012. The City Commission adopted a resolution to ratify the Agreement at the July 14, 2010 City Commission meeting pending the outcome of the results of the ratification vote of the FOP membership. Subsequently, on August 6, 2010, the FOP membership ratified the Agreement with 77.6 percent of the members voting in favor.

ANALYSIS

The new Agreements with the IAFF and FOP provide for several wage and pension adjustments and changes for current and future employees. The changes that pertain to the pension include the following:

Deferred Retirement Option Plan (DROP) - The current DROP period is three (3) years. However, with the new Agreement, employees who enter the DROP on or after September 1, 2012, will be eligible to participate in the DROP for a period not to exceed five (5) years.

For those employees who enter the DROP on or after September 1, 2012, they will receive a zero percent (0%) cost of living adjustment for the third and fourth annual adjustment dates while in the DROP. If the employee leaves the DROP at any point after six (6) months they will still be subject to a zero percent (0%) COLA for the third and fourth annual adjustment dates. By not having a DROP COLA in the third and fourth years, the City's actuary estimated that there will be a substantial recurring savings in the City's Annual Required Contribution (ARC) towards the Fire Fighters and Police Pension Plan of approximately $700,000 per year.

In addition, the DROP COLA will be granted on the anniversary of the employee entering the DROP, as opposed to the current method of pro-rating it to occur on October 1st of each year. The retiree COLA will be earned/granted on that same anniversary date.

Additional Creditable Service - Currently, Fire and Police employees can purchase additional creditable service of up to two (2) years of full-time public safety service as a firefighter or a law enforcement officer prior to City employment, and up to an additional six percent (6%) multiplier on the additional creditable service years being purchased, upon completion of 20 years of creditable service with the City. Most employees in IAFF and FOP take advantage of these two provisions. With the new Agreement, any current or future Fire or Police employee that retires on or after September 30, 2010 can make these purchases upon completion of ten (10) years of creditable service (when they vest). The purchase of additional creditable service and the purchase of the additional multiplier must be completed within thirty-six (36) months following September 30, 2010, or within thirty-six (36) months following a member's completion of ten (10) years of creditable service under the pension plan, whichever occurs later for the member. If a member does not complete the purchase of additional creditable service within the thirty-six (36) month period, he/she shall not be eligible for such purchase in the future. Since most employees take advantage of these provisions, there is a benefit to the pension plan to change the eligibility for these buy-backs. As the pension plan will receive the funds earlier and thus be able to invest the funds sooner, it is anticipated that the investment earnings on the funds will be larger since the collection of the funds will be earlier. The Fire and Police pension actuary estimates the savings to the ARC with this change to be approximately $33,000 next year, with a recurring savings year after year.

Overtime Cap - The Fire and Police Pension Plan currently has provisions in place regarding how overtime is to be used in the calculation of a member's retirement benefits. The current calculation is that overtime earned by a member of the IAFF and FOP bargaining units is added to the retirement benefit with a cap of "70% of the next highest rank". As part of the terms and conditions of the ratified 2009-2012 IAFF Collective Bargaining Agreement, the City and the IAFF have agreed to replace the "70% of the next highest rank" calculation with an easier formula of overtime not exceeding eleven percent (11%) of the salary of a member of the IAFF bargaining unit's salary at the time of retirement. The existing language will remain in effect for members of the FOP.

In addition to the change in the overtime calculation, IAFF and FOP employees will be able to reach their defined overtime caps (eleven (11%) cap mentioned above for IAFF and seventy percent (70%) of the next highest rank for FOP) by using the following two (2) alternatives:

- Employees will be able to apply unused sick and/or vacation time for inclusion in the member's salary for pension purposes as follows: for each one hundred dollars ($100) of unused sick and/or vacation time (at the member's hourly rate), one hundred dollars ($100) shall be applied toward the member's current final average monthly salary and ten percent of the value (ten dollars ($10)) shall be contributed to the pension fund. However, in no event will the value of unused sick and/or vacation time applied to a member's salary for pension purposes, when added to any overtime pay and/or off-duty pay, exceed the defined caps (eleven percent (11%) of the highest annualized pay rate for IAFF members and seventy percent (70%) of the next highest rank for FOP members). This should encourage members to not use sick and/or vacation time, which could drive overtime costs down for the City. As such, savings in overtime expenses are expected.

- Off-duty services will also be pensionable as another means to reach the defined caps (eleven percent (11%) for IAFF members and seventy percent (70%) of the next highest rank for FOP members). Currently, the City receives no employee contribution for off-duty, as it is not pensionable. Once it becomes pensionable, the IAFF and FOP employees will be required to make a ten percent (10%) pension contribution on all off-duty worked. This will provide additional revenue into the pension system for investment. However, in no event will the value of off-duty pay applied to a member's salary for pension purposes, when added to any overtime pay and/or unused sick and/or vacation, exceed the caps of eleven percent (11%) for IAFF or seventy percent (70%) of the next highest rank for FOP. Based on current off-duty amounts paid it is estimated that the City will collect approximately $330,000 per year from the FOP and IAFF toward the pension. While this is not anticipated to reduce the City's annual required contribution in the short term, it will assist in reducing the City's unfunded liability in future years.

Future Employees - For future employees, there are additional pension changes, including:

- Retiree COLA (including while in the DROP) will change from 2.5% to 1.5%;
- Rule of 70 retirement eligibility will change from having no minimum age to having a minimum age of 48;
- Final Average Monthly Earnings (FAME) changing from two (2) to three (3) years; and
- Benefit Multiplier will change from three percent (3%) for each year of creditable service for the first 15 years of service and four percent (4%) thereafter to three percent (3%) for each year of creditable service for the first 20 years of service and four percent (4%) thereafter.

Buck Consultants, the actuary for the Fire and Police Pension Plan, has stated that the implementation of the pension changes for any employee hired after the amendment to the City's pension ordinance will not generate any immediate savings. However, future savings will be realized in future fiscal years resulting in savings towards the City's ARC.

Wages- Effective October 1, 2009 through September 30, 2010; October 1, 2010 through September 30, 2011; and October 1, 2011 through March 31, 2012, there will be no across-the-board wage increases (COLA) for this period for any FOP or IAFF bargaining unit members. It was initially estimated that the impact to the City's Annual Required Contribution (ARC) for the Fire and Police Pension Plan due on October 1, 2010 would be a reduction of approximately $1.4 million if no

Cost of Living increases were provided to any active plan participants for FY 2009/2010 and FY 2010/2011 (both Fire and Police). The savings from no COLA in year one (1) have already been reflected in the calculation provided to the City for the City's ARC due on October 1, 2010. Due to subsequent assumption revisions, it is estimated that the savings from COLA in year two (2) will be approximately $400,000.

CONCLUSION

The IAFF and FOP Unions have agreed to the pension changes described above. The City estimates that the three (3) year Collective Bargaining Agreements for both FOP and IAFF to generate a total combined savings of approximately $8,270,512 for FY2009/2010, FY2010/2011 and FY2011/2012. Of this $8.2M, over this three (3) year period, approximately $5,008,701 of the savings are realized from the negotiated changes for both current and future members of the Fire Fighters and Police Officers Pension Plan over the three (3) year term. In addition, these proposed changes to the City's Fire and Police pension will result in additional long-term, recurring savings in future fiscal years as well. At the time of this writing, Buck Consultants is in the process of preparing an Actuarial Impact Statement, which will be provided to the City once it is finalized. The Administration recommends that the City Commission adopt the ordinance on second reading.

JMG/HMF/RI/kt/ys

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ORDINANCE IMPLEMENTING PENSION PROVISIONS OF 2009-2012 IAFF AND FOP COLLECTIVE BARGAINING AGREEMENTS

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING PART I, SUBPART B, ARTICLE IX, RELATED SPECIAL ACTS, OF THE MIAMI BEACH CITY CODE ENTITLED "PENSION SYSTEM FOR DISABILITY AND RETIREMENT OF MEMBERS OF POLICE AND FIRE DEPARTMENTS"; IMPLEMENTING PROVISIONS OF THE 2009-2012 COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE CITY AND FIRE FIGHTERS OF MIAMI BEACH, IAFF LOCAL 1510, AND MIAMI BEACH FRATERNAL ORDER OF POLICE, WILLIAM NICHOLS LODGE NO. 8; AMENDING SECTION 65 ENTITLED "COMPUTATION OF CREDITABLE SERVICE; SERVICE RECORD", PROVIDING FOR THE PURCHASE OF ADDITIONAL CREDITABLE SERVICE UPON COMPLETION OF TEN YEARS OF SERVICE WITH THE CITY; AMENDING SECTION 66 ENTITLED "SERVICE AND DISABILITY BENEFITS GENERALLY", PROVIDING FOR THE INCLUSION OF COMPENSATION FOR CERTAIN OFF DUTY SERVICES IN A MEMBER'S SALARY FOR PENSION PURPOSES, AND PROVIDING FOR THE SALE OF UNUSED SICK AND/OR VACATION TIME FOR INCLUSION IN A MEMBER'S FINAL AVERAGE MONTHLY EARNINGS, SUBJECT TO CERTAIN LIMITATIONS; REVISING THE LIMITATION ON OVERTIME PAY INCLUDED IN SALARY FOR PENSION PURPOSES; AMENDING SECTION 67, ENTITLED "COST-OF-LIVING ADJUSTMENT", PROVIDING FOR AN ANNUAL ADJUSTMENT ON THE ANNIVERSARY DATE OF A MEMBER'S RETIREMENT; "AMENDING SECTION 79 ENTITLED "DEFERRED RETIREMENT OPTION PLAN", PROVIDING FOR A MAXIMUM DROP PERIOD OF SIXTY MONTHS AND A MODIFIED COST OF LIVING ADJUSTMENT DURING THE DROP PERIOD; CREATING A NEW SECTION 87 ENTITLED "BENEFITS FOR EMPLOYEES HIRED ON OR AFTER JULY 14, 2010"; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Section 1. Effective September 30, 2010 for members who retire on or after that date, Section 65 of Part 1, Subpart B, Article IX, Related Special Acts of the Miami Beach City Code, is amended to read:

Sec. 65. - Computation of creditable service; service record.

(a) A member's Creditable Service shall include all periods of time of actual work for which wages or salaries were received by the member in the service of the fire or police department and, notwithstanding anything to the contrary in this article, all time served in the unclassified service of the City as provided in section 70, whether it be provisional, probationary or regular work or employment, and whether or not such periods are interrupted, together with all service in the uniformed services of the United States required to be included under section 82; provided, however, that only periods of service in the uniformed services of the United States for which the member makes the member contributions as provided for in section 82 shall be Creditable Service for purposes of computing the amount of the member's benefit from the System. Notwithstanding any provision to the contrary, in no event shall the same period of service be counted more than once as Creditable Service under this System.

(b) Members who become members of this System in order to receive credit for service rendered prior to their becoming a member shall make contributions to the Fund in the amount such member would have contributed had he been a member during the period of service for which credit is being purchased. In order to receive such credit, members shall make payment within six months after becoming a member or within such other period as may be provided in a bargaining agreement covering the member. Notwithstanding the foregoing, any member who transfers to this System whereby the accumulated total credit in any other pension system of the City is transferred to this System, then and in that event, all of the creditable service time in such other system shall be considered Creditable Service time under this System, and such member need make no additional contribution for time credited.

(c) The Board shall establish the service record of all members who may be entitled to participate in the benefits of this System, and shall keep a record thereof.

(d) Members with ten (10)~~20~~ or more years of creditable service ~~who are eligible to receive normal or early retirement benefits under the System~~ may purchase additional creditable service under the System for up to two (2) years of full-time public safety service as a law enforcement officer or firefighter prior to City employment, provided the member is not entitled to receive a benefit for such service under another pension plan, and further provided that the member may not purchase a combined total of more than four (4) years of creditable service for prior public safety service and prior military service, and further subject to limitations contained in sec. 66 (j). The cost for each year of creditable service for prior public safety service purchased shall be the same rate as provided in sec. 82(b) for the purchase of prior military service, with the cost prorated for fractional years of service. For purposes of this purchase, a member may use the value of accrued sick and/or annual leave, valued at the member's hourly rate at the time of purchase. The purchase of additional creditable service provided in this subsection (d), must be completed within ~~twenty-four (24)~~ thirty-six (36) months following September 30, 2010, or within ~~twenty-four (24)~~ thirty-six (36) months following a member's completion of ten (10) years of creditable service under the pension plan, whichever occurs later for the member. If a member does not complete the purchase of additional creditable service provided in this subsection (d) within the ~~twenty-four (24)~~ thirty-six (36) month period, he/she shall not be eligible for such~~the~~ purchase in the future.

(e) Notwithstanding the provisions of section 65(d) and section 82(b), the purchase of additional creditable service for prior public safety service pursuant to section 65(d), and the purchase of additional creditable service for years of active military service prior to City employment pursuant to section 82(b), must be completed within thirty-six (36) months following September 30, 2010, or within

thirty-six (36) months following a member's completion of ten (10) years of creditable service under the pension plan, whichever occurs later for the member. If a member does not complete the purchase of additional creditable service as provided in section 65(d) or section 82(b) within the thirty-six (36) month period, he/she shall not be eligible for such purchase in the future.

Section 2. Effective September 30, 2010 for members who retire after that date, except as otherwise specifically provided below, Section 66 of Part 1, Subpart B, Article IX, Related Special Acts of the Miami Beach City Code, is amended to read:

Sec. 66. - Service and disability benefits generally.

(a) The Board shall, upon application retire members meeting any one of the following requirements:

(1) The attainment of age 50.

(2) Permanent and total disability incurred in line of duty in the police or fire department, or in the unclassified service as provided in section 70, irrespective of the number of years of Creditable Service.

(3) Permanent and total disability incurred other than in the line of duty, after five years of Creditable Service.

(4) The sum of the member's age and Creditable Service equals at least 70 and the member retires on or after October 1, 1998.

(5) Only for periods prior to October 1, 2000 and only in the case of a May 1993 Member, the attainment of age 55 with at least 10 years of Creditable Service.

(b) A member, other than a May 1993 Member who retires prior to October 1, 2000, shall be entitled to receive upon retirement under subsection (a), a monthly pension payable for life equal to:

(1) Three percent of the member's average monthly Salary for each year of the member's first 15 years of Creditable Service, being computed as to a part of a year on a pro rata basis to the nearest month; plus

(2) Four percent of the member's average monthly Salary for each year of the member's Creditable Service in excess of 15 years, being computed as to a part of a year on a pro rata basis to the nearest month.

(c) A May 1993 Member who retires prior to October 1, 2000, shall be entitled to receive upon retirement under subsection (a) a monthly pension payable for life equal to three percent of the member's average monthly Salary for each year of the member's Creditable Service, being computed as to part of a year on a pro rata basis to the nearest month.

(d) For purposes of determining a member's benefit, the average monthly Salary of the member shall be based on the average of the two highest-paid years of the member prior to the date of retirement or termination, or the average of the last two paid years of the member prior to the date of retirement or termination, whichever produces the greater benefit for members employed by the City before May 19, 1993, and shall be based on the average of the three highest paid years of the member prior to the date or retirement or termination for May 1993 Members. For purposes of such calculation, Salary shall be the Salary upon which the member's contribution to the System was computed, as provided in paragraphs (1) and (2) below: ~~However,~~

(1) With respect to a firefighter member employed before May 19, 1993, and retiring on or after October 1, 1994, the inclusion of overtime in the member's Salary for the two highest-paid years or last two years, as the case may be, shall be limited in each year to an amount which, when combined with compensation for off duty services and the value of any accrued sick and/or vacation leave that is included in a member's Salary for

pension contribution and benefit purposes, is equal to 11% of the highest annualized pay rate for the same salary rank that the member is in at time of retirement ~~70% of the difference between the member's annualized pay rate at retirement and the highest annualized pay rate for the next higher salary rank; but in no event shall such member's accrued benefit on his date of retirement be less than the benefit he had accrued as of September 30, 1994, determined under the terms of the System in effect on that date~~. Effective July 14, 2010, all compensation received by a firefighter member who is eligible for overtime pay and who receives pay for off duty services performed after that date for which compensation is received through the City shall be included in ~~a~~ such member's Salary for pension contribution and benefit purposes; provided, in no event shall such compensation for off duty services, in combination with any overtime pay and the value of any accrued sick and/or vacation leave included in a member's Salary for pension contribution and benefit purposes, ~~a member's benefit~~ exceed 11% of the highest annualized pay rate for the same salary rank that the member is in at time of retirement ~~the maximum benefit provisions and limitations contained in this section 66~~. For firefighter members who are eligible for overtime pay and who retire on or after September 30, 2010, upon reaching eligibility for normal retirement ~~or at the time of retirement~~, a member may elect to apply unused sick and /or vacation leave for inclusion in the member's Salary for pension contribution and benefit purposes, at a cost of 10% of the value of the ~~as follows: For each $100.00 of~~ unused sick and/or vacation leave (at the member's current hourly rate)~~, $90.00 shall be applied toward the member's final average monthly salary, and $10.00 shall be contributed to the pension fund~~. Provided, in no event shall the value of such unused sick and/or vacation time, when combined with any overtime pay and compensation for off duty services included in a member's Salary for pension contribution and benefit purposes, exceed 11% of the highest annualized pay rate for the same salary rank that the member

is in at time of retirement ~~a member may sell all or a portion of his/her accrued sick and/or vacation leave, valued at the member's hourly rate at that time, and apply the proceeds of such sale to the member's average monthly Salary; provided, the proceeds of any such sale shall be subject to the member contribution set forth in sec. 63; and further provided, in no event shall a member's benefit exceed the maximum benefit provisions and limitations contained in this section 66.~~

(2) With respect to a police officer member employed before May 19, 1993, and retiring on or after October 1, 1994, the inclusion of overtime in the member's Salary for the two highest-paid years or last two years, as the case may be, shall be limited in each year to an amount which, when combined with compensation for off duty services and the value of any accrued sick and/or vacation leave that is included in a member's Salary for pension contribution and benefit purposes, is equal to 70% of the difference between the member's annualized pay rate at retirement and the highest annualized pay rate for the next higher salary rank; but in no event shall such member's accrued benefit on his date of retirement be less than the benefit he had accrued as of September 30, 1994, determined under the terms of the System in effect on that date. Effective July 14, 2010, all compensation received by a police officer member who is eligible for overtime pay and who receives pay for off duty services performed after that date for which compensation is received through the City, shall be included in such member's Salary for pension contribution and benefit purposes; provided, in no event shall such compensation for off duty services, in combination with any overtime pay and the value of any accrued sick and/or vacation leave included in a member's Salary for pension contribution and benefit purposes, ~~a member's benefit~~ exceed 70% of the difference between the member's annualized pay rate at retirement and the highest annualized pay rate for the next higher salary rank; but in no event shall such member's accrued benefit on his date of retirement be less than the benefit he had

accrued as of September 30, 1994, determined under the terms of the System in effect on that date. For police officer members who are eligible for overtime pay and who retire on or after September 30, 2010, upon reaching eligibility for normal retirement, a member may elect to apply unused sick and /or vacation leave for inclusion in the member's Salary for pension contribution and benefit purposes, at a cost of 10% of the value of the unused sick and/or vacation leave (at the member's current hourly rate). Provided, in no event shall the value of such unused sick and/or vacation time, when combined with any overtime pay and compensation for off duty services included in a member's Salary for pension contribution and benefit purposes, exceed 70% of the difference between the member's annualized pay rate at retirement and the highest annualized pay rate for the next higher salary rank; but in no event shall such member's accrued benefit on his date of retirement be less than the benefit he had accrued as of September 30, 1994, determined under the terms of the System in effect on that date.

(e) Notwithstanding anything in this section to the contrary, the benefits provided in this section shall not exceed 90% of the member's average monthly Salary as defined in subsection (d) of this section; provided, however, that the benefits for May 1993 Members shall not exceed 80% of such Salary.

(f) The minimum pension for a member retiring for permanent and total disability under subsection (a)(2) of this section shall be 85% of the member's Salary at the time of disability retirement; provided, however, that the minimum pension for a May 1993 Member shall be 75% of such Salary. The minimum pension for a May 1993 Member retiring for permanent and total disability under subsection (a)(3) of this section shall be 50% of the member's Salary at the time of the disability retirement.

(g) If any member eligible for benefits under this article shall terminate his employment after having completed at least 10 years of Creditable Service

but prior to attaining age 50 years (or after having completed one year of Creditable Service but before attaining age 55 and completing 10 years of Creditable Service for a May 1993 Member), and does not withdraw his accumulated contributions in the System, such member shall be entitled to receive upon attaining age 50 (age 55 or his termination of employment, if later, for a May 1993 Member) a monthly pension payable for life in accordance with the provisions of subsection (b) (or subsection (c) for a May 1993 Member) of this section; provided, however, the benefit so determined shall be reduced for a May 1993 Member by 10% multiplied by the difference between the member's years of Creditable Service at his date of termination and 10. If the member dies prior to attaining age 50 (age 55 or his termination of employment, if later, for a May 1993 Member), no benefit shall be payable under subsection (b) (or subsection (c) for a May 1993 Member); instead, the member's estate shall be entitled to all moneys contributed by the member to this System together with accumulated interest on that sum at the rate of three percent per annum computed until the date of payment to the member's estate.

(h) (1) Notwithstanding anything in this section to the contrary, the minimum monthly pension payable for the life of any member who was employed prior to July 1, 1976 and who retires after attaining age 50 and completing at least 15 years of Creditable Service or after meeting the requirements of subsection (a)(3) or (a)(4) of this section 66 shall be equal to:

(A) Three percent of the member's average monthly Salary for each of the first 20 years of his Creditable Service, being computed as to a part of a year on a pro rata basis to the nearest month; plus

(B) Two and three-quarters percent of the member's average monthly Salary for each of his years of Creditable Service in

excess of 20, being computed as to a part of a year on a pro rata basis to the nearest month.

(2) For purposes of this subsection (h) the member's average monthly Salary shall be the Salary upon which the member's contribution to the System was computed for the two highest paid years of the member prior to his date of retirement.

(3) Notwithstanding anything to the contrary, benefits provided under this subsection (h) shall not be more than 85% of the average monthly Salary used to compute the benefit under this subsection.

(4) The minimum pension for a member retiring under this subsection (h) for permanent and total disability shall be 75% of the member's Salary at the time of his disability retirement.

(i) Nothing in this section shall be construed to prevent the City manager or the Board from initiating action for the compulsory retirement of a member eligible for retirement, prior to such age, where such member is considered to be unfit for the proper performance of his duties because of physical or mental incapacity. Upon certification by the medical board designated by the Board pursuant to section 76(j) that such member is mentally or physically incapable of proper performance of duties, the member shall be automatically retired. Any member who is compulsorily retired by an act of the Board shall have the right to appeal such retirement to a court of proper jurisdiction. The member shall defray his own expense in his appeal of such compulsory retirement.

(j) Members with ten (10)~~20~~ or more years of creditable service ~~who are eligible to receive normal or early retirement benefits under the System~~ may also purchase up to an additional six percent (6%) benefit multiplier in accordance with this subsection. A member may purchase up to an additional six percent (6%) benefit multiplier if the additional creditable service for prior public safety purchased pursuant to sec. 65(d) or prior military service pursuant to sec. 82(b)

does not exceed a combined total of two (2) years; and a member may purchase an additional three percent (3%) benefit multiplier if the additional creditable service for prior public safety service purchased pursuant to sec. 65(d) or prior military service pursuant to sec. 82(b) does not exceed a combined total of three (3) years. The cost for each additional three percent (3%) benefit multiplier purchased shall be the same as the cost for each year of prior military service purchased in accordance with sec. 82 (b). For the purpose of this purchase, a member may use the value of accrued sick and/or annual leave, valued at the member's hourly rate at the time of purchase. The purchase of an additional benefit multiplier provided in this subsection (j), must be completed within thirty-six (36)~~twenty-four (24)~~ months following September 30, 2010, or within thirty-six (36)~~twenty-four (24)~~ months following a member's completion of ten (10) years of creditable service under the System, whichever occurs later for the member. If a member does not complete the purchase of an additional benefit multiplier as provided in this subsection (d) within the thirty-six (36)~~twenty-four (24)~~ month period, he/she shall not be eligible for such purchase in the future.

Section 3. Section 67 of Part 1, Subpart B, Article IX, Related Special Acts of the Miami Beach City Code, is amended to read:

Sec. 67. Cost-of-living adjustment.

* * *

(g) Effective September 30, 2010 for members who retire on or after that date, the cost of living adjustment provided in this Section 67 shall be applied annually on the anniversary date of the member's retirement.

* * *

Section ~~43~~. Effective September 30, 2010, Section 79 of Part 1, Subpart B, Article IX, Related Special Acts of the Miami Beach City Code, is amended to read:

Sec. 79. - Deferred Retirement Option Plan (DROP).

(a) Eligibility - Any active member member of the System may enter into the DROP on the first day of any month following the date upon which the member first becomes eligible for a normal service retirement, subject to the provisions of this section 79.

(b) Conditions of Eligibility - Upon becoming eligible to participate in the DROP, a member may elect to enter that program for a period not to exceed 36 months. Notwithstanding, DROP participation may not continue beyond the date when the member's combined years of creditable service and time in the DROP equals 352 months (387 months for members who were members prior to July 1, 1976). Members who enter the DROP on or after September 1, 2012 shall be eligible to participate for a period not to exceed sixty (60) months. Notwithstanding, for those members who enter the DROP on or after September 1, 2012, participation may not continue beyond the date when the member's combined years of creditable service and time in the DROP equals 376 months (390 months for members hired after July 14, 2010). Provided also that participation in DROP shall require the member to complete and submit the following prior to start of DROP payments.

1. Such forms as may be required by the Board or Plan Administrator. Election of the DROP is irrevocable once DROP payments begin.

2. A waiver and an irrevocable resignation from employment with the actual date of termination being the date designated by the member as the end of his/her DROP participation. The administration and timing of execution and delivery of the waiver and resignation forms shall meet the requirements of the Age Discrimination in Employment Act and the Older

Worker's Benefits Protection Act, as same may be amended from time to time.

(c) Conditions of Employment for DROP Participants - Members shall be subject to termination of employment while in DROP to the same extent as they were in their pre-DROP status. A member who has elected the DROP remains an employee during the DROP period and receives all the benefits of being an employee during the DROP period, except any form of pension contribution.

(d) Effect of DROP Participation.

1. A member's creditable service and his/her accrued benefit under the System shall be determined on the date of his/her election to participate in the DROP first becomes effective.
2. The member shall not accrue any additional creditable service while he/she is a participant in the DROP, or after termination of participation in the DROP.
3. A DROP participant is not eligible for disability benefits from the Plan.
4. A member may participate in the DROP only once.
5. Effective with the start date of a member's DROP participation, contributions to the Pension Plan by the member and the normal cost contribution to the Pension Plan by the City, on behalf of the member, shall cease.

(e) Payments to DROP Account - A DROP account shall be created for each member who elects to participate in the DROP. A DROP account shall consist of amounts transferred to the DROP from the Plan, which include the monthly retirement benefits, including any future cost of living increases, that would have been payable had the member elected to cease employment and receive a normal retirement benefit upon commencing participation in the DROP, and earnings on those

amounts. Provided, members who enter the DROP on or after September 1, 2012, shall receive a zero percent (0%) cost of living adjustment for the third (3rd) and fourth (4th) annual adjustment dates, regardless of whether the member remains in the DROP for the maximum five (5) year period. Provided further, any member who exits the DROP within six (6) months following the date of DROP entry, shall be eligible for the cost of living adjustment as otherwise provided in sec. 67.

(f) DROP Account Earnings

1. Members may direct their DROP account balance to any of the investment options offered and approved by the Board. Any losses incurred by the participant shall not be made up by the City or the Pension Plan. The selection of these programs shall be made by the participant on forms provided by the Board. Any and all interest and or earnings shall be credited to the participant's DROP account.

2. A member's DROP account shall only be credited or debited with earnings while the member is a participant in the DROP and, depending on the DROP Account Payment Options selected, after the member dies, retires, or terminates employment with the City of Miami Beach.

(g) Payment of DROP Account Funds - Upon termination of a member's employment (for any reason, whether by retirement, resignation, discharge, disability, or death), the retirement benefits payable to the member or to the member's beneficiary shall be paid to the member or beneficiary and shall no longer be paid to the member's DROP account. No payments will be made from the DROP account until the member terminates employment.

(h) DROP Account Payment Options - Following the termination of a member's employment, the member shall select one of the following options to begin to receive payment from his/her DROP account. Said selection shall occur no later than 30 days prior to the end of the DROP participation period or within 30 days following the termination of a member's employment if said termination of employment occurs prior to the end of the DROP participation period:

1. *Lump Sum* - All accrued DROP benefits, plus interest, shall be paid from the DROP in a single lump sum payment.
2. *Partial Lump Sum* - A member designated portion of accrued DROP benefits, plus interest, shall be paid from the DROP in a partial lump sum payment with the remainder being directly rolled over into an eligible retirement plan.
3. *Direct Rollover* - All accrued DROP benefits, plus interest, shall be paid from the DROP directly to the custodian of an eligible retirement plan.
4. Other method(s) of payment that are in compliance with the Internal Revenue Code and adopted by the Board.

(i) Death of DROP Participant - If a DROP participant dies before his/her account balances are paid out in full, the participant member's designated beneficiary shall have the same rights as the member to elect and receive the pay-out options set forth in Paragraph (h), above. DROP payments to a beneficiary shall be in addition to any other retirement benefits payable to the beneficiary.

(j) Administration of DROP Accounts.

1. The Board shall make such administrative rules as are necessary for the efficient operation of DROP, but shall neither create any rule that is inconsistent with the this section 79, nor any rule that would be a mandatory subject of collective bargaining.

2. At all times, the DROP will be administered so that the System remains qualified under the Internal Revenue Code and is in compliance with the Internal Revenue Code and applicable laws and regulations.

~~A Deferred Retirement Option Plan ("DROP") shall be adopted and administered by the Board. The DROP shall contain such terms and provisions as may be necessary to reflect the terms of the bargaining agreements between the City and the International Association of Firefighters (IAFF) ratified by the City Commission on September 23, 1998 and between the City and the Fraternal Order of Police (FOP) ratified by the City Commission on July 15, 1998, and any amendments to those agreements. The DROP shall also contain such other terms and provisions as the Board deems necessary and appropriate for the proper administration of the DROP. The terms and provisions of the DROP shall be incorporated into this article by reference and shall be deemed to be a part of the System.~~

Section 5 4. Effective July 14, 2010, a new section 87 of Part 1, Subpart B, Article IX, Related Special Acts of the Miami Beach City Code, is created to read:

Sec. 87. Benefits for employees hired on or after July 14, 2010.

The pension benefits for employees hired on or after July 14, 2010 shall be as provided in the sections 61 through 86, except as follows:

(a) The benefit multiplier shall be three percent (3%) for each year of creditable service for the first 20 years of service, and four percent (4%) for each year of creditable service after 20 years of creditable service.

(b) The normal retirement date shall be as provided in sec. 66, except that a member must attain age 48 to be eligible for "Rule of 70" retirement.

(c) Final average monthly salary shall be based on the three (3) highest paid years or last three (3) years as the case may be, prior to retirement or separation from employment.

(d) The cost of living adjustment shall be one and one-half percent (1.5%) annually.

(e) Members who enter the DROP shall receive a zero percent (0%) cost of living adjustment for the third (3rd) and fourth (4th) annual adjustment dates, regardless of whether the employee remains in the DROP for the maximum five (5) year period. Provided, any member who exits the DROP within six (6) months following the date of DROP entry, shall be eligible for the cost of living adjustment as otherwise provided in paragraph (d) above.

Section 65. Conflicts and Severability.

(a) All Ordinances, and parts of ordinances, in conflict herewith shall be and the same, are hereby repealed.

(b) In the event any article, section, paragraph, sentence, clause, or phrase of this Ordinance shall be adjudicated invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, paragraphs, sentences, clauses or phrases of this Ordinance, which shall be and remain in full force and effect as fully as if the item so adjudged invalid or unconstitutional was not originally a part hereof.

Section 76. Effective Date. This Ordinance shall take effect ten days following adoption, except as otherwise specified herein.

PASSED and ADOPTED by the City Commission of the City of Miami Beach this ____ day of _____, 2010.

_____

Mayor

Attest:

_____

(Seal)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/8/10
Date

1st Reading –
2nd Reading –

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MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:15 a.m.
Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 3 Entitled "Lobbyists", Section 2-482 Thereof Entitled "Registration" So As To Clarify That The Annual Lobbyist Registration Fee Is Required To Be Paid For Each Twelve Month Period Commencing October 1 Of Each Year; And Amending City Code Section 2-485 Thereof Entitled "List Of Expenditures; Fee Disclosure; Reporting Requirements", So As To Change Annual Reporting Date For Lobbyist Expenditure And Fee Disclosure From October 1 To February 28, And Changing Corresponding Annual Date For Post-Delinquency Lobbbyist Suspension Due To Failure To File Report After Imposition Of Penalty From December 1 To April 30, 2010.

Inquiries may be directed to the City Clerk's Office (305) 673-7411

10:20 a.m.
Ordinance Amending The Code Of The City Of Miami Beach, Florida; Amending Chapter 82, "Public Property," Article II, "Sale Or Lease Of Public Property," Sections 82-36 Through 82-40, Amending The Procedures For Sale Or Lease Of City Property; Providing For Inclusion In The Code Of The City Of Miami Beach.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:40 a.m.
Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division I, Entitled "Generally," By Amending Section 106-55, Entitled "Parking Rates, Fees, And Penalties," By Amending Subsection (N), Entitled "Hybrid/ILEV (Inherently Low Emissions Vehicles) Vehicles Incentive," By Amending Vehicle Participation Criteria For The Hybrid/ILEV Vehicles Incentive Program To Include Vehicles With An EPA (Environmental Protection Agency) Rating Of Six "6" Or Higher ("Smartway" Designation) And Street Legal Electric Vehicles, Increasing The Number Of Reserved Hybrid Vehicle Spaces At The 42nd Street Garage From One Percent (1%) To Two Percent (2%), Establishing One Percent (1%) Of The Parking Spaces At The 7th Street Garage And 13th Street As Reserved For Hybrid Vehicles Only, And Establishing An Automatic Review Of All Hybrid Vehicle Incentives Upon Reaching A Hybrid Permit Sales Threshold Of Five Percent (5%) Of Total Permit Sales.

Inquiries may be directed to the Parking Department (305) 673-7275

11:50 a.m.
Ordinance Amending Ordinance No. 1335, The Classified Employees' Leave Ordinance, By Amending The Provisions For Accumulation And Payment Of Annual Leave For The American Federation Of State, County And Municipal Employees/Local No. 1554 (AFSCME).

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:51 a.m.
Ordinance Amending The Miami Beach Employees' Retirement Plan; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And The American Federation Of State, County And Municipal Employees, Local 1554 (AFSCME), And Government Supervisors Association Of Florida/OPEIU Local 100 (GSA); Implementing Similar Retirement Plan Amendments For Members Who Are Not Included In Any Bargaining Unit; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing An Effective Date

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:52 a.m.
Ordinance Amending Part I, Subpart B, Article IX, Related Special Acts, Of The Miami Beach City Code Entitled "Pension System For Disability And Retirement Of Members Of Police And Fire Departments"; Implementing Provisions Of The 2009-2012 Collective Bargaining Agreements Between The City And Fire-Fighters Of Miami Beach, IAFF Local 1510, And The Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Amending Section 65 Entitled "Computation Of Creditable Service; Service Record", Providing For The Purchase Of Additional Creditable Service Upon Completion Of Ten Years Of Service With The City; Amending Section 66 Entitled "Service And Disability Benefits Generally", Providing For The Inclusion Of Compensation For Certain Off Duty Services In A Member's Salary For Pension Purposes, And Providing For The Sale Of Unused Sick And/Or Vacation Time For Inclusion In A Member's Final Average Monthly Earnings, Subject To Certain Limitations; Amending Section 79 Entitled "Deferred Retirement Option Plan", Providing For A Maximum Drop Period Of Sixty Months And A Modified Cost Of Living Adjustment During The Drop Period; Creating A New Section 87 Entitled "Benefits For Employees Hired On Or After July 14, 2010"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

11:53 a.m.
Ordinance Implementing Provisions Of The 2009-2012 Collective Bargaining Agreement Between The City And Fire Fighters Of Miami Beach, IAFF Local 1510, And Miami Beach Fraternal Order Of Police, William Nichols Lodge No. 8; Creating A New Article IV Of Chapter 78, Miami Beach City Code Entitled "Health Benefits For Firefighters And Police Officers.

Inquiries may be directed to the Human Resources Department (305) 673- 7520

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).
Ad #613

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Condensed Title:

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Implementing Provisions Of The 2009-2012 Collective Bargaining Agreement Between The City And The IAFF And FOP, Creating A New Article IV Of Chapter 78, Of The City Code Entitled "Health Benefits For Firefighters And Police Officers"; Providing For Severability; Repealing All Ordinances In Conflict Therewith; And Providing For An Effective Date.

Key Intended Outcome Supported:

Control costs of payroll including salary and fringes/ minimize taxes/ ensure expenditure trends are sustainable over the long term.

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Issue:

Should the City Commission adopt the ordinance to amend Chapter 78, Article II, of the Miami Beach City Code in accordance with the negotiated contract provisions?

Item Summary/Recommendation:

SECOND READING PUBLIC HEARING

As part of the City's request to all employees for employee givebacks, the FOP and IAFF have made a concession toward the retiree health benefit for future employees. Employees hired after the ratification of the Agreements will receive a retiree healthcare stipend instead of the current formula based contribution. The stipend shall be a monthly payment equal to twenty-five dollars ($25) per month for each year of service tied to a Consumer Price Index (CPI). This Ordinance was approved on first reading on July 14, 2010. The Administration recommends approving the ordinance on second reading.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:

Gallagher Benefits Service, Inc. (Gallagher), the City's consultant for health care issues, has indicated that there will be no immediate savings by revising the City's contribution for retiree health for only future employees. However, there will be long-term savings with a fixed rate instead of a fluctuating contribution methodology. Gallagher has estimated that the City's long-term expenses (both the annual required contribution and the unfunded liability) could be reduced by as much as 70%.

City Clerk's Office Legislative Tracking:

Ramiro Inguanzo, Human Resources Director

Sign-Offs:

Department Director	Assistant City Manager	City Manager
Ramiro Inguanzo	Hilda Fernandez	Jorge M. Gonzalez

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MIAMIBEACH

AGENDA ITEM R5J
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **SECOND READING PUBLIC HEARING**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, IMPLEMENTING PROVISIONS OF THE 2009-2012 COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY AND FIRE FIGHTERS OF MIAMI BEACH, IAFF LOCAL 1510, AND MIAMI BEACH FRATERNAL ORDER OF POLICE, WILLIAM NICHOLS LODGE NO. 8; CREATING A NEW ARTICLE IV OF CHAPTER 78, MIAMI BEACH CITY CODE ENTITLED "HEALTH BENEFITS FOR FIREFIGHTERS AND POLICE OFFICERS"; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

This Ordinance was approved on first reading on July 14, 2010. The Administration recommends that the City Commission approve the ordinance on second reading.

BACKGROUND

During the July 2009 Finance and Citywide Projects Committee (Committee) budget preparation meetings for the FY2009/2010 Budget, the Committee requested that all City of Miami Beach employees make certain financial concessions to help address the challenges being faced during the FY2009/2010 budget cycle and beyond. The Committee requested the Administration to budget for specific employee givebacks for FY2009/2010, which would in turn effectuate a cost savings of approximately $4.3 million (approximately $3.5 million savings attributed to the General Fund and $800,000 from various enterprise funds). Furthermore, in 2010 the City Commission directed the Administration to secure and budget for an additional $11 million in savings attributed to employee givebacks for FY2010/2011. Therefore, the total amount of employee givebacks for both the FY2009/2010 and FY2010/2011 is $15.3 million.

The International Association of Fire Fighters, Local 1510 (IAFF) three (3) year Collective Bargaining Agreement (Agreement) (covering the period of October 1, 2006 through September 30, 2009) expired on September 30, 2009. In anticipation of the Agreement expiring, negotiators for the City and IAFF began negotiating for a successor three (3) year Agreement in August 2009. After eleven (11) formal negotiation sessions and several discussions away from the negotiation table, the City and IAFF successfully concluded negotiations and reached a tentative three (3) year labor agreement covering the time period of October 1, 2009 through September 30, 2012. The IAFF membership ratified the

Agreement with 70.8 percent of the members voting in favor of the Agreement, (the certified results were submitted to the City on July 13, 2010). Subsequently, the City Commission adopted a resolution to ratify the Agreement at the July 14, 2010 City Commission meeting.

The Fraternal Order of Police, William Nichols Lodge No. 8 (FOP) three (3) year Collective Bargaining Agreement (Agreement) for FOP (covering the period of October 1, 2006 through September 30, 2009) also expired on September 30, 2009. In anticipation of the Agreement expiring, negotiators for the City and FOP began negotiating for a successor three (3) year Agreement in August 2009. After fifteen (15) formal negotiation sessions and several discussions away from the negotiation table, the City and FOP successfully concluded negotiations and reached a tentative three (3) year labor agreement covering the time period of October 1, 2009 through September 30, 2012. The City Commission adopted a resolution to ratify the Agreement at the July 14, 2010 City Commission meeting pending the outcome of the results of the ratification vote of the FOP membership. Subsequently, on August 6, 2010, the FOP membership ratified the Agreement with 77.6 percent of the members voting in favor of the Agreement.

ANALYSIS

As part of the City's request to all employees for employee givebacks, the FOP and IAFF have made a concession toward the retiree health benefit for future employees. Employees hired after the ratification of the Agreements will receive a retiree healthcare stipend instead of the current formula based contribution. The stipend shall be a monthly payment equal to twenty-five dollars ($25) per month for each year of service tied to a Consumer Price Index (CPI). It should be noted that the City has a similar provision in place for general employees (those in the AFSCME, CWA, GSA, "Others" and Unclassified salary groups) hired after March 2006.

FINANCIAL IMPACT

Gallagher Benefits Service, Inc. (Gallagher), the City's consultant for health care issues, has indicated that there will be no immediate savings by revising the City's contribution for retiree health for only future employees. However, there will be long-term savings with a fixed rate instead of a fluctuating contribution methodology. Gallagher has estimated that the City's long-term expenses (both the annual required contribution and the unfunded liability) could be reduced by as much as 70%.

CONCLUSION

The IAFF and FOP Unions have agreed to the retiree health stipend changes discussed herein for future employees. The Administration recommends that the City Commission adopt the Ordinance on second reading.

JMG/RI/kt

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, IMPLEMENTING PROVISIONS OF THE 2009-2012 COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY AND FIRE FIGHTERS OF MIAMI BEACH, IAFF LOCAL 1510, AND MIAMI BEACH FRATERNAL ORDER OF POLICE, WILLIAM NICHOLS LODGE NO. 8; CREATING A NEW ARTICLE IV OF CHAPTER 78, MIAMI BEACH CITY CODE ENTITLED "HEALTH BENEFITS FOR FIREFIGHTERS AND POLICE OFFICERS"; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

Section 1. A new Article IV of Chapter 78, Miami Beach City Code, entitled "Health benefits for Firefighters and Police Officers" is created to read:

Article IV. Health Benefits for Firefighters and Police Officers.

Sec. 78-181. Health Trusts.

(a) Pursuant to the collective bargaining agreements between the City and Fire Fighters of Miami Beach, IAFF Local 1510 ("IAFF"), and Miami Beach Fraternal Order of Police, William Nichols Lodge No. 8 ("FOP"), health benefits for firefighters and police officers, and retired firefighters and police officers, are provided through health trusts established by the IAFF and FOP, except as provided in susection (d) below. The health benefits provided are established by the boards of trustees of the health trusts. The City makes monthly contributions to the health trusts on behalf of active and retired firefighters and police officers, in the amounts specified in its collective bargaining agreements with the IAFF and FOP; and the City's contributions are subject to annual adjustment in accordance with the collective bargaining agreements. The City has no obligation for the health benefits of firefighters and police officers, and retired firefighters and police officers, other than making the monthly contributions specified in its collective bargaining agreements with the IAFF and FOP.

(b) For all active firefighters and police officers on the City payroll as of July 14, 2010 (including DROP participants), all retired firefighters and police officers on that date, and all eligible dependents under the eligibility rules in effect on that date, the City

contributions to the health trusts on behalf of such employees following their retirement, and on behalf of such retirees and dependents, shall be equal to the City's health trust contribution formula for active employees as set forth in the 2009-2012 IAFF and FOP collective bargaining agreements. Furthermore, the City contributions on behalf of such employees following their retirement, and on behalf of such retirees and dependents, shall be no less than the contributions for active employees and their eligible dependents as set forth in the 2009-2012 IAFF and FOP collective bargaining agreements. The provisions of this subsection (b) shall be reflected in individual contracts to be signed by the City and each eligible person, and the City contributions set forth in this subsection (b) shall be a vested benefit of throughout the retirement of each eligible person who executes an individual contract.

(c) Firefighters and police officers hired after July 14, 2010 who elect to be covered by the IAFF or FOP health trust to the extent they choose to have medical benefits provided to them and their dependents during retirement shall receive a health insurance stipend in lieu of any City contribution to the health trusts on their behalf, as provided in this subsection (c). The stipend shall be a monthly payment by the City equal to twenty-five dollars ($25.00) per month for each year of creditable service under the City pension system for police officers and firefighters. The monthly stipend shall be subject to an annual increase each year following an employee's retirement based on the Miami-Ft. Lauderdale all urban consumer CPI as of September 30th of each fiscal year.

(d) Firefighters and police officers who have worked at least ninety (90) days from date of appointment will not be covered by City-provided medical and dental benefits and will instead be covered by the health trusts. Non-bargaining unit State certified firefighters and police officers shall have the option of coverage under City employees' benefit plan or the health trusts, but not both, provided they meet the eligibility requirements set forth in the plan document.

Section 2. Conflicts and Severability.

(a) All Ordinances, and parts of ordinances, in conflict herewith shall be and the same, are hereby repealed.

(b) In the event any article, section, paragraph, sentence, clause, or phrase of this Ordinance shall be adjudicated invalid or unconstitutional, such adjudication shall in no manner affect the other articles, sections, paragraphs, sentences, clauses or phrases of this Ordinance, which shall be and remain in full force and effect as fully as if the item so adjudged invalid or unconstitutional was not originally a part hereof.

Section 3. Effective Date. This Ordinance shall take effect ten days following adoption, except as otherwise specified herein.

PASSED and ADOPTED by the City Commission of the City of Miami Beach this ____ day of _____, 2010.

_____

Mayor

Attest:

_____

(Seal)

1st Reading –
2nd Reading –

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 7/3/10
Date

Condensed Title:

First and Only Reading Public Hearing - Proposed Designation of the Miami Beach Rod & Reel Club Historic Site

Key Intended Outcome Supported:

Designation and retention of historically significant properties.

Supporting Data (Surveys, Environmental Scan, etc.): In the 2009 Survey, all respondents were asked to indicate if they felt the effort put forth by the City of Miami Beach on historic preservation was too little, too much or about the right amount. 77.1% of respondents reported that the effort put forth by the City of Miami Beach on historic preservation is "about the right amount."

Issue:

The Administration is requesting that the Mayor and City Commission open and continue the proposed designation of the Miami Beach Rod & Reel Club Historic Site.

Item Summary/Recommendation:

FIRST AND ONLY READING PUBLIC HEARING
Open and continue the first and only reading public hearing to consider designating the Miami Beach Rod & Reel Club Historic Site to the October 27, 2010 Commission Meeting.

Advisory Board Recommendation:

On May 11, 2010, the Historic Preservation Board reviewed a Designation Report relative to the historic designation of the Miami Beach Rod & Reel Club as a local historic site and unanimously approved a motion (7 to 0) to recommend approval of the designation of the proposed Miami Beach Rod & Reel Club Historic Site to the City Commission.

On August 24, 2010, the Planning Board reviewed a Designation Report relative to the historic designation of the Miami Beach Rod & Reel Club as a local historic site and approved a motion (5 to 2) to recommend against the designation to the City Commission.

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

William H. Cary, Assistant Planning Director; Debbie Tackett, Senior Planner.

Sign-Offs:

Department Director	Assistant City Manager	City Manager

MIAMIBEACH

AGENDA ITEM R5K
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager for JMG

DATE: September 15, 2010

SUBJECT: **FIRST AND ONLY READING PUBLIC HEARING - HISTORIC DESIGNATION**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE MIAMI BEACH CITY CODE; AMENDING SECTION 118-593, "HISTORIC PRESERVATION DESIGNATION"; AMENDING SECTION 118-593(E), "DELINEATION ON ZONING MAP"; AMENDING SECTION 118-593(E)(1), "HISTORIC PRESERVATION SITES (HPS)" BY DESIGNATING THE MIAMI BEACH ROD & REEL CLUB AT 218 SOUTH HIBISCUS DRIVE, AS AN HISTORIC SITE, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING THAT THE CITY'S ZONING MAP SHALL BE AMENDED TO INCLUDE THE MIAMI BEACH ROD & REEL CLUB HISTORIC SITE; ADOPTING THE DESIGNATION REPORT ATTACHED HERETO AS APPENDIX "A"; PROVIDING FOR INCLUSION IN THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration is requesting that the Mayor and City Commission open and continue the first and only reading public hearing regarding the adoption of the proposed amending ordinance designating the **Miami Beach Rod & Reel Club** as an individual local historic site. This is based on the length of the September 15, 2010 agenda and the number of time certain hearings schedule for after 5:00 p.m.

BACKGROUND

On June 16, 2009, the Chairman of the Historic Preservation Board directed the Planning Department to schedule a special meeting of the board for the purpose of hearing and acting upon the possible designation of the Miami Beach Rod and Reel Club as a local historic site. Accordingly, the Planning Department contacted all board members and scheduled a special meeting for June 29, 2009. Further, Planning staff prepared a Preliminary Evaluation and Recommendation Report for submission to the board relative to this possible designation.

Pursuant to Section 118-591(e) of the City Code, the Historic Preservation Board, may, by motion of the Board, instruct the planning department to prepare a designation report

and implement interim procedures for demolition permits. The planning director, or designee, may prepare and submit to the historic preservation board an evaluation and recommendation for designation at a meeting noticed in a newspaper of general circulation at least five business days in advance of the hearing. The property owner shall be notified in writing, by regular mail sent to the address of the owner on the Miami-Dade County Property Appraiser's tax records, and postmarked at least five business days in advance of the hearing. The city commission shall also then be notified.

On Sunday, June 21, 2009, the public advertisement for this special meeting appeared in the Neighbors Section of the *Miami Herald.*

On June 22, 2009, an LTC was sent to the Mayor and Commissioners notifying them that the Chairman of the Historic Preservation Board called a Special Meeting of the Board to be held on Monday, June 29, 2009, at 6:00 PM for the Board to consider directing staff to prepare a Designation Report for the Miami Beach Rod and Reel Club, located at 218 South Hibiscus Drive, on Hibiscus Island.

On June 29, 2009, the Historic Preservation Board held a special meeting to review the preliminary evaluation and recommendation report with recommendations prepared by the Planning Department relative to the proposed designation of 218 (aka 208) S. Hibiscus Drive as the Miami Beach Rod & Reel Club Historic Site. The Board approved a motion (3-1-3 absent) to direct staff to prepare a designation report and schedule a public hearing to consider the proposed historic designation.

Pursuant to Section 118-591 of the City Code, when the Historic Preservation Board directs staff to prepare a designation report for a proposed new historic district or site, the Mayor and City Commission shall be notified of the board's decision and the initial boundaries proposed for designation. Within 60 days of the vote of the Historic Preservation Board to direct the Planning Department to prepare a designation report, the City Commission may, by a five-sevenths vote, deny or modify the proposed request for designation, as well as establish specific timeframes for the completion of the evaluation and recommendation and/or designation report. Within this 60 day period the City Commission may also, by a five-sevenths vote, deny or modify the proposed designation boundaries. An LTC was issued on June 30, 2009, and no requests were made to modify the proposed designation within the ensuing 60 day period or thereafter.

On February 3, 2010, an LTC was sent to the Mayor and Commissioners updating them on the zoning issues associated with the non-conforming use of the Rod & Reel Club.

On May 11, 2010, the Historic Preservation Board reviewed the designation report and unanimously approved a motion (7 to 0) to recommend approval of the designation of the proposed Miami Beach Rod & Reel Club Historic Site.

On August 24, 2010, the Planning Board reviewed a Designation Report relative to the historic designation of the Miami Beach Rod & Reel Club as a local historic site and approved a motion (5 to 2) to recommend against the designation to the City Commission. The Planning Board expressed concern that the historic designation of the structure would result in too much of a financial burden to the owner with regards to a successful historic adaptive reuse of a clubhouse to a single family home.

DESIGNATION PROCESS

The designation report for a proposed historic district is required to be presented to the Historic Preservation Board and the Planning Board at separate public hearings. Following public input, the Historic Preservation Board votes on whether or not the proposed historic district meets the criteria listed in the Land Development Regulations of the City Code and transmits a recommendation on historic designation to the Planning Board and City Commission. If the Historic Preservation Board votes against the designation, no further action is required. If the Historic Preservation Board votes in favor of designation, the Planning Board reviews the designation report and formulates its own recommendation. The recommendations of both Boards, along with the designation report, are presented to the City Commission. Because in this instance the proposed ordinance involves an area less than ten (10) contiguous acres, the City Commission must hold one public hearing on the designation. Upon conclusion of the hearing, the City Commission can immediately adopt the ordinance with a 5/7 majority vote.

RELATION TO ORDINANCE CRITERIA

1. In accordance with Section 118-592 in the Land Development Regulations of the City Code, eligibility for designation is determined on the basis of compliance with the listed criteria set forth below.

   (a) The Historic Preservation Board shall have the authority to recommend that properties be designated as historic buildings, historic structures, historic improvements, historic landscape features, historic interiors (architecturally significant public portions only), historic sites or historic districts if they are significant in the historical, architectural, cultural, aesthetic or archeological heritage of the city, the county, state or nation. Such properties shall possess integrity of location, design, setting, materials, workmanship, feeling or association and meet at least one of the following criteria:

      (1) Association with events that have made a significant contribution to the history of the city, the county, state or nation;

      (2) Association with the lives of persons significant in the city's past history;

      (3) Embody the distinctive characteristics of an historical period, architectural or design style or method of construction;

      (4) Possesses high artistic values;

      (5) Represent the work of a master, serve as an outstanding or representative work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;

      (6) Have yielded, or are likely to yield information important in pre-history or history;

(7) Be listed in the National Register of Historic Places;

(8) Consist of a geographically definable area that possesses a significant concentration of sites, buildings or structures united by historically significant past events or aesthetically by plan or physical development, whose components may lack individual distinction.

(b) A building, structure (including the public portions of the interior), improvement or landscape feature may be designated historic even if it has been altered if the alteration is reversible and the most significant architectural elements are intact and repairable.

2. **Staff finds that the proposed Miami Beach Rod & Reel Historic Site possesses integrity of location, design, setting, materials, workmanship, feeling, or association for the following reasons:**

Satisfied; *The construction of Club Lido on Hibiscus Island in 1925, only one year following the 1924 completion of Hibiscus Island by the Biscayne Bay Islands Company, was clearly significant in the successful development history of both Hibiscus and Palm Islands, as well as in the history of the City of Miami Beach. Not only was the Club Lido one of the very first buildings to be constructed on the Hibiscus Island, it was also the first social club ever to be established there, where it provided an almost immediate social and visual focal point in the center of Biscayne Bay. Furthermore, the design and construction of the Club Lido brought an architectural style of high aesthetic appeal and stature to the islands, as well as prominent local architects who were qualified to execute it. The proposed historic site, known since 1935 as the Miami Beach Rod & Reel Club, still possess the integrity of its original location on Hibiscus Island, despite more than eighty years of hurricanes, storms, and economic crises. Further, the original building still retains many of its historic materials, details, and workmanship as well as the feeling of its 1920s period of construction in Miami Beach.*

(a) Staff finds the proposed historic district to be eligible for historic designation and in conformance with the designation criteria for the following reasons:

(1) **Association with events that have made a significant contribution to the history of the city, the county, state or nation;**

Satisfied; *The Club Lido was directly associated with the first major land development "boom" period in Miami Beach, following World War One. It was further associated with the early successful creation of "man-made" islands in Biscayne Bay by dredging up the Bay bottom which yielded land fill for new islands as well as created deep channels for navigation in between.*

(2) **Association with the lives of persons significant in the city's past history;**

Satisfied; *The proposed historic site is associated with the life of Mr. L. T. Highleyman, the President of the Biscayne Islands Company that created and developed Palm and Hibiscus Islands by purchasing the submerged (bay bottom) lands from the Trustees of the (State) Internal Improvement Fund, on January 18. 1918.*

(3) **Embody the distinctive characteristics of an historical period, architectural or design style or method of construction;**

Satisfied; *The original 1925 structure on the proposed historic site embodies the distinctive characteristics of the Mediterranean Revival Style of architecture, the style of choice used by successful developers in the mid-1920s period in Miami Beach as well as other areas of South Florida. The structure, incorporates wood frame construction with a smooth stucco finish, typical of the historical period, as well as robust corner towers (originally with three copper domes), multi-lite windows with original decorative moldings, a largely intact (but now concealed within the interior of the building) main entrance portico with four Tuscan style columns supporting a frieze panel, and a south porch overlooking the waterway, as well as several original interior decorative features in the main social hall, including columns with ornamental brackets and beams, raised center ceiling (originally a large retractable sky light for viewing the stars at night), a projecting balcony, and original stairs leading to a mezzanine level above.*

(4) **Possess high artistic values;**

Satisfied; *The remaining original 1925 building, with its robust corner towers transitioning from a square pedestals to the octagonal bases needed to support the former domes, together with the original Mediterranean Revival style decorative window moldings and the pleasing architectural proportions of the south elevation of the building, with its expansive porch and terrace overlooking the waterway, possess high artistic value. This value could be even more greatly enhanced by sensitive restoration of the missing domes as well as re-opening the original front entrance portico, with its Classical columns, and the removal of later inappropriate additions on the north side.*

(5) **Represent the work of a master, serve as an outstanding or representative work of a master designer, architect or builder who contributed to our historical, aesthetic or architectural heritage;**

Satisfied; *The original Club Lido, constructed in 1925, was designed by E.L. Robertson and L.R. Patterson, two very prominent local architects who also designed the Washington Storage Company (now known as the Wolfsonian) on Washington Avenue as well as the Netherlands Hotel on Ocean Drive.*

(6) **Have yielded, or are likely to yield information important in pre-history or history;**

Satisfied; *The proposed Miami Beach Rod and Reel Club historic site yields important information in the history of development in Miami Beach and Hibiscus Island by preserving one of the earliest structures to be built on the newly created manmade island. The unique wood frame structure is informative of how a relatively low cost building, through the use of skillful design, could enhance the visual image of a neighborhood and attract adjacent development.*

Further, the existing original 1925 building informs us of the history of a "social club" operating during the time of Prohibition, as well as of the history of one of the oldest and most important sport fishing clubs in the United States; The Rod & Reel Club, which relocated from its temporary original site on Purdy Avenue in 1935, only six years after it was founded.

(7) **Be listed in the National Register of Historic Places;**

Partially satisfied; *If its domes and original front entrance portico were to be restored, staff believes the original 1925 structure would be eligible for listing on the National Register of Historic Places.*

(8) **Consist of a geographically definable area that possesses a significant concentration of sites, buildings or structures united by historically significant past events or aesthetically by plan or physical development, whose components may lack individual distinction;**

Not Applicable

(b) **A building, structure (including the public portions of the interior), improvement or landscape feature may be designated historic even if it has been altered if the alteration is reversible and the most significant architectural elements are intact and repairable.**

Satisfied; *Many of the original significant architectural features of the 1925 club house structure remain substantially intact today, albeit some are concealed behind later layers of construction. Others could be accurately reconstructed based on historical documentation.*

ANALYSIS OF THE AMENDING ORDINANCE

In reviewing a request for an amendment to the Land Development Regulations of the City Code or a change in land use, the Planning Board shall consider the following:

1. Whether the proposed change is consistent and compatible with the comprehensive plan and any applicable neighborhood or redevelopment plans.

   Partially Consistent - The proposed historic designation is consistent with the Comprehensive Plan, specifically with the Historic Preservation Element of the Comprehensive Plan's Objective No. 1, which states: "...increase the total number of structures designated as historically significant from that number of structures designated in 1988, either individually or as a contributing structure within a National Register Historic Preservation District or a local Historic Preservation District." The building which is located within the RS-3, residential single family zoning district was constructed in 1925 as a social club and retained its non-conforming use until 2010. Adaptive rehabilitation of the existing clubhouse to a single family residence is required to be consistent with the surrounding neighborhood.

2. Whether the proposed change would create an isolated district unrelated to adjacent or nearby districts.

   Not Applicable

3. Whether the change suggested is out of scale with the needs of the neighborhood or the city.

   Partially Consistent - The designation of this structure as a local historic site may encourage further rehabilitation that is compatible with the scale, characteristics, and needs of the surrounding neighborhood.

4. Whether the proposed change would tax the existing load on public facilities and infrastructure.

   Consistent - The LOS for the area public facilities and infrastructure should not be negatively affected, if at all, by the proposed amending ordinance. The building was built in 1925 as a social club. The non-conforming clubhouse use has since expired and the only permitted use for the property is single family residential.

5. Whether existing district boundaries are illogically drawn in relation to existing conditions on the property proposed for change.

   Not Applicable

6. Whether changed or changing conditions make the passage of the proposed change necessary.

   Partially Consistent - The nonconforming, 'social club' use of the property located at 218 South Hibiscus Drive has been idle since July of 2009, when the

club membership vacated the structure. Changing economic and social priorities have created an environment in which this type of low intensity, non for profit club use at this location may no longer be viable. The Rod and Reel Club building, however, possesses a special historic character and its retention is important in maintaining Miami Beach's exceptional leadership in preserving and building upon the inherent social, cultural and economic value of its unique 20th Century historic resources. Past demolition of historic structures demonstrates the desirability of this amendment to maintain the historical integrity of the area.

7. Whether the proposed change will adversely influence living conditions in the neighborhood.

   Partially Consistent - The proposed amendment should not adversely influence living conditions or the quality of life for the surrounding properties. An independent architectural analysis of the structure and site has determined that a wide variety of development schemes exist. According to the study conducted by Shulman + Associates, there are several viable options for converting the existing clubhouse into a single family home, including a single residence on the entire lot, or two separate residences if a Lot Split should be granted. Although the later north and east additions to the 1925 building have a serious adverse aesthetic as well as functional impact upon the immediate residential neighborhood as well as a highly negative impact on the original club building, the additions would not be considered historic features and could be removed and replaced by appropriately designed and sited new additions in association with the renovation and restoration of the original 1925 structure. The adaptive reuse of the structure with new additions as a single family home would likely positively influence living conditions in the neighborhood.

8. Whether the proposed change will create or excessively increase traffic congestion beyond the levels of service as set forth in the comprehensive plan or otherwise affect public safety.

   Consistent - As historic designation does not change the permitted land uses, the levels of service set forth in the Comprehensive Plan will not be affected. Likewise, public safety will not be affected by historic designation. The existing structure can no longer be used as a nonconforming social club and any rehabilitation of the building would result in a single family use.

9. Whether the proposed change will seriously reduce light and air to adjacent areas.

   Consistent - Historic designation normally results in the retention, rather than the reduction of light and air to adjacent properties.

10. Whether the proposed change will adversely affect property values in the adjacent area.

    Partially Consistent - As property values and value of construction have historically increased in the existing historic sites and districts, there is no evidence to suggest that designation would adversely affect property values in

the area surrounding the proposed historic site. The adaptive reuse of the structure with new additions as a single family home would likely enhance property values in the immediately adjacent areas.

11. Whether the proposed change will be a deterrent to the improvement or development of adjacent property in accordance with existing regulations.

    Consistent - The proposed amendment will not change the development regulations for adjacent properties, which must comply with their own site specific development regulations. Furthermore, the proposed ordinance should not affect the ability for an adjacent property to be developed in accordance with said regulations.

12. Whether there are substantial reasons why the property cannot be used in accordance with existing zoning.

    Consistent - The permitted land uses are not affected since the proposed amendment does not change the underlying zoning district for this property. It should be noted that the existing structure was built as a social club in 1925 and has its use as a legal, nonconforming clubhouse has expired. Currently the only permitted use for the structure is single family residential.

13. Whether it is impossible to find other adequate sites in the city for the proposed use in a district already permitting such use.

    Not Applicable-

ZONING/SITE DATA:
Section 118-394 of the City Code states: No building, structure, equipment, fixtures or land, or portion thereof, used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of six months, or for 18 months during any three-year period whether or not the equipment or fixtures are removed, shall again be used, except in conformity with the regulations of the district in which such building or land is located.

Since its construction in 1925, the structure located at 218 South Hibiscus Drive had operated as a social club, a legally non-conforming use. In early July 2009, the Rod &Reel Club closed its operations and completely vacated the building, hence, discontinuing its legally non-conforming 'club' use in the RS-3 single family residential zoning district. After the non-conforming use is vacated for more than six months it cannot be resumed. Therefore, if the Rod & Reel Club property has not been used as a club since July of 2009, the permitted zoning use has reverted back to 'single family residential' for this site as of January 2010.

Legal Description: Lots 29 and 30, Block 3, Hibiscus Island, According to the Plat Thereof, as Recorded in Plat Book 8, Page 75, of the Public Records of Miami-Dade County, Florida.

Zoning: RS-3 Single Family Residential

Land Uses: Single family homes

ANALYSIS

The parcel located at 208 (aka 218) S. Hibiscus Dr. is currently zoned RS-3, Residential Single Family. The only permitted main use within the RS-3 zoning district is single-family detached dwelling. Since its construction in 1925, the structure located at 208 (aka 218) S. Hibiscus Dr. has been operated as a private club, a legally non-conforming use. Pursuant to Sec. 118-394, No building, structure, equipment, fixtures or land, or portion thereof, used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of six months, or for 18 months during any three-year period whether or not the equipment or fixtures are removed, shall again be used, except in conformity with the regulations of the district in which such building or land is located.

The Rod & Reel Club closed its operations and completely vacated the building in early July 2009, when the membership held an auction and sold the contents of the building, hence, discontinuing its legally non-conforming private club use in the RS-3 single family residential zoning district. After the non-conforming use is vacated for more than six months it cannot be resumed. Therefore, if the Rod & Reel Club property has not been used as a club since July of 2009, the only permitted zoning use for this property is 'single family residential' as of January 2010.

An independent architectural analysis of the structure and site has determined that a variety of development schemes exist. According to the study prepared by Shulman + Associates, there are viable options for converting the existing clubhouse into an upscale single family residence, including a single home on the entire lot, or two separate residences if a Lot Split should be granted. Additionally, a structural analysis prepared for the historic structure by Douglas Wood & Associates, has concluded that it is feasible to restore the structure in a manner consistent with the Florida Building Code. Finally, the consultants noted that while the restoration will be extensive and costly in order to bring the original 1925 structure up to current Florida Building Code, the consultant has noted that the cost of doing so is consistent with the construction of new high end single family residential development of similar design quality and character. In fact, many of Miami Beach's newest grand private residences directly mimic Mediterranean Revival design styles in the beach at similar and larger scale than the original Rod & Reel Club. Adaptive reuse of the building in combination with appropriately designed modern additions, should provide the opportunity to maximize the allowable square footage and height permitted on this unique, waterfront historic property.

Based upon the historic design significance of the original surviving 1925 structure as well as its extraordinary history in the early development years of Miami Beach, the building is clearly worthy of designation as an historic site. The adaptive reuse of the original 1925 portion of the Rod & Reel Club as an upscale single family residence would completely consistent with the surrounding island neighborhoods on Hibiscus, Palm and Star Islands, thereby preserving a part of these islands most significant history while lending new value.

On August 24, 2010, the Planning Board reviewed the Designation Report and approved a motion (5 to 2) to recommend against the designation to the City Commission. The

Planning Board expressed concern that the historic designation of the structure would result in too much of a financial burden to the owner with regards to a successful historic adaptive reuse of a clubhouse to a single family home.

FISCAL IMPACT

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action. The proposed ordinance, if enacted, would not diminish the economic value of this property.

According to the Miami-Dade County Property Appraiser, 218 S. Hibiscus Drive has a lot area of 31,500 square feet and an adjusted square footage of 11,443. The total City of Miami Beach property tax due for the Miami Beach Rod & Reel Club at 218 S. Hibiscus Drive is $32,743.79. The Property Appraiser has classified this property as land use category '0015 Entertainment.'

If converted to a single family residence the property would be allowed a maximum of 22,050 square feet with Design Review Board approval. An evaluation of a comparable size lot on Hibiscus Island suggests that if the property is adaptively reused, including the restoration of the original 1925 building, along with substantial additions, the taxable value would increase. For example according to Miami-Dade County property records the single family home located at 55 N. Hibiscus Drive has a lot area of 31,500 square feet and an adjusted square footage of 12,036. This total City of Miami Beach property tax for this property for 2009 is $38,959.15.

The Administration would note that the property has lost its legal nonconforming use as institutional (clubhouse) and the only current permitted use for the site is single family residential. This is the case whether the structure is historically designated or not. Therefore, the Administration believes the fiscal impact is neutral.

RECOMMENDATION

Based upon the lengthy September 15, 2010 Commission agenda, the Administration recommends that the Mayor and City Commission adopt the open and continue the first and only reading public hearing regarding the proposed amending ordinance designating Miami Beach Rod & Reel Club Historic Site to the October 27, 2010 Commission Meeting.

RGL

JMG:JGG:RGL:WHC:DJT

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE MIAMI BEACH CITY CODE; AMENDING SECTION 118-593, "HISTORIC PRESERVATION DESIGNATION"; AMENDING SECTION 118-593(E), "DELINEATION ON ZONING MAP"; AMENDING SECTION 118-593(E)(1), "HISTORIC PRESERVATION SITES (HPS)" BY DESIGNATING THE MIAMI BEACH ROD & REEL CLUB AT 218 SOUTH HIBISCUS DRIVE, AS AN HISTORIC SITE, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING THAT THE CITY'S ZONING MAP SHALL BE AMENDED TO INCLUDE THE MIAMI BEACH ROD & REEL CLUB HISTORIC SITE; ADOPTING THE DESIGNATION REPORT ATTACHED HERETO AS APPENDIX "A"; PROVIDING FOR INCLUSION IN THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, on May 11, 2010, the City's Historic Preservation Board held a public hearing and voted unanimously (7-0) in favor of recommending that the City Commission designate the Miami Beach Rod & Reel Club as an Historic Site; and

WHEREAS, on August 24, 2010, the City's Planning Board held a public hearing and voted (5-2) against recommending the proposed designation; and

WHEREAS, the City of Miami Beach Planning Department has recommended this amendment to the Land Development Regulations of the City Code; and

WHEREAS, these recommendations of approval for the designation of the Miami Beach Rod & Reel Club as an Historic Site were based upon the information documented in the Designation Report prepared by the City of Miami Beach Planning Department attached hereto as Appendix "A."

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. DESIGNATION OF THE MIAMI BEACH ROD & REEL CLUB AS AN HISTORIC SITE.

That the certain area located on Lots 29 and 30, in Block 3, HIBISCUS ISLAND, as recorded in Plat Book 3, at Page 75, Public Records of Miami-Dade County, Florida; and having the legal description as described herein, is hereby designated as an Historic Site of the City of Miami Beach and shall be known as "Miami Beach Rod & Reel Club." That the Designation Report attached hereto as Appendix "A" is hereby adopted.

SECTION 2. AMENDMENT OF SUBSECTION 118-593(E).

That Subsection (e), entitled "Delineation on Zoning Map," of Section 118-593, entitled "Historic Preservation Designation," of Division 4, entitled "Designation," of Article X, entitled "Historic Preservation," of Chapter 118, entitled "Administration and Review Procedures," of Subpart B of the Land Development Regulations of the City Code is hereby amended to read as follows:

* * *

Subpart B. Land Development Regulations

* * *

Chapter 118. Administration and Review Procedures

* * *

Article X. Historic Preservation

* * *

Division 4. Designation

* * *

Section 118-593. Historic Preservation Designation.

* * *

(e) *Delineation on zoning map.* All sites and districts designated as historic sites and districts shall be delineated on the city's zoning map, pursuant to section 142-71, as an overlay district. Such sites and districts include:

* * *

(7) RS-3/HPS-14: The Miami Beach Rod & Reel Club Site, 218 South Hibiscus Drive, more particularly described as Lots 29 and 30, in Block 3, HIBISCUS ISLAND, according to the Plat thereof, recorded in Plat Book 8, at Page 75, of the Public Records of Miami-Dade County, Florida.

* * *

SECTION 3. INCLUSION IN THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Land Development Regulations of the Code of the City of Miami Beach as amended; and that the sections of this Ordinance may be renumbered or relettered to accomplish such intention.

SECTION 4. AMENDMENT OF ZONING MAP.

That the Mayor and City Commission hereby amend the Zoning Map of the City of Miami Beach as contained in the Land Development Regulations of the City Code by identifying the area described herein as HPS-14, Historic Preservation Site 14.

SECTION 5. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 6. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall take effect on the _____ day of _____, 2010.

PASSED and **ADOPTED** this _____ day of _____, 2010.

ATTEST:

_____
MAYOR

_____
CITY CLERK

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION:

8/26/10

CITY ATTORNEY **DATE**

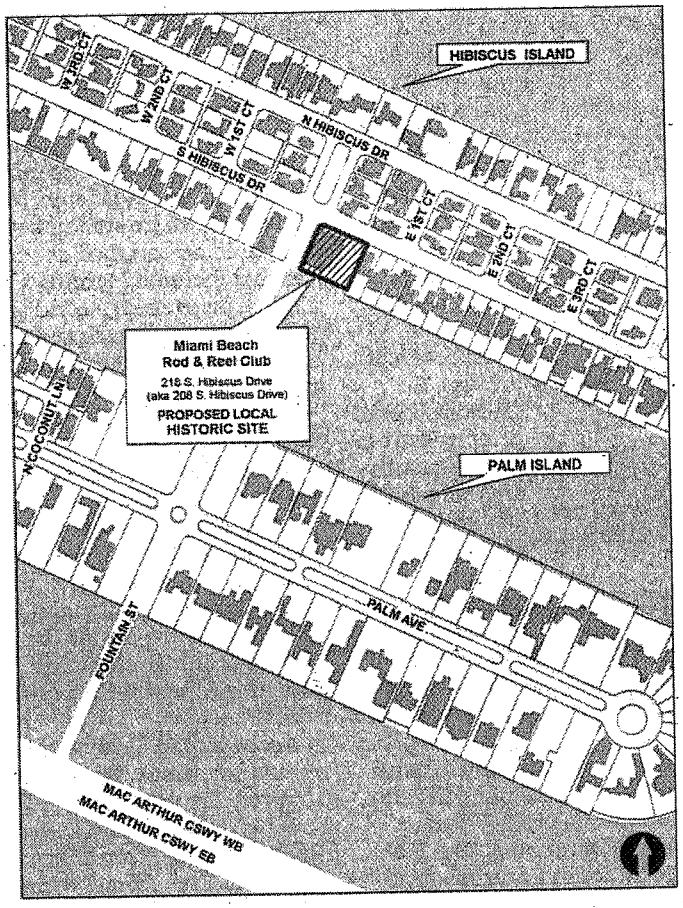
T:\AGENDA\2010\SEPTEMBER 15\REGULAR\ROD & REEL CLUB_HISTORIC DESIGNATION.ORD REV.DOC

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARING
HISTORIC DESIGNATION

The City of Miami Beach proposes to adopt the following Ordinance:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE MIAMI BEACH CITY CODE; AMENDING SECTION 118-593, "HISTORIC PRESERVATION DESIGNATION"; AMENDING SECTION 118-593(E), "DELINEATION ON ZONING MAP"; AMENDING SECTION 118-593(E)(1), "HISTORIC PRESERVATION SITES (HPS)" BY DESIGNATING THE MIAMI BEACH ROD & REEL CLUB AT 218 SOUTH HIBISCUS DRIVE, AS AN HISTORIC SITE, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING THAT THE CITY'S ZONING MAP SHALL BE AMENDED TO INCLUDE THE MIAMI BEACH ROD & REEL CLUB HISTORIC SITE; ADOPTING THE DESIGNATION REPORT ATTACHED HERETO AS APPENDIX "A"; PROVIDING FOR INCLUSION IN THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.



PUBLIC NOTICE IS HEREBY GIVEN that a first and only reading public hearing on the Ordinance will be held by the City Commission on **Wednesday, September 15, 2010, at 5:15 P. M. in the City Commission Chambers,** Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida.

All persons are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the Miami Beach City Commission c/o the City Clerk, 1700 Convention Center Drive, First Floor, City Hall, Miami Beach, Florida 33139.

The Ordinance and other related materials regarding the proposed historic district are available for public inspection during normal business hours in the City Clerk's Office. Inquiries may be directed to the Planning Department at (305) 673-7550. The hearing on this Ordinance may be continued at this meeting and, under such circumstances, additional legal notice would not be provided. Any person may contact the City Clerk's Office at (305) 673-7411 for information as to the status of the Ordinance as a result of the meeting.

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: If a person decides to appeal any decision made by this Board with respect to any matter considered at its meeting or its hearing, such person must insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City of the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305-604-2489 (voice) or 305-673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service) **(AD 618)**

Condensed Title:

An Ordinance establishing regulations and criteria for commercial loading in areas that are in close proximity to residential areas; providing for civil fines, appeal process, repealer, severability, and an effective date..

Key Intended Outcome Supported:

Improve Parking Availability; Maintain Financial Health and Overall Bond Rating.

Supporting Data (Surveys, Environmental Scan, etc.): 74% of residents and 72% of businesses rate the availability of parking across the City as too little or much too little. Availability of parking was one of the changes residents identified to Make Miami Beach better to live, work or play.

Issue:

Whether to approve on first reading an ordinance establishing commercial loading regulations in areas that are in close proximity to resident uses?

Item Summary/Recommendation:

Commercial loading zones are typically 30 feet in length and are intended to provide loading areas for medium sized or smaller trucks. These loading zones are posted with specific restrictions, typically 7:00 AM to 6:00 PM and with a maximum time limit of 30 minutes. The City Attorney's Office and the Administration met and drafted the following proposed amendments to the City Code, creating a new section restricting commercial deliveries in areas where residents live in close proximity to commercial operations with late hour deliveries and similar habitual sources of noise. The proposed ordinance contain the following provisions:
(a) The city manager and the parking director are hereby authorized to designate any street freight, commercial and passenger curb loading zones as permissible automobile parking areas during such hours as such officials, in their discretion, may direct; (b) Freight, commercial and passenger curb loading zone regulations, including as posted by sign, may be enforced, in addition to the procedures provided in this chapter, against property owners and/or businesses which accept services or deliveries from vehicles violating such regulations; (c) Civil fine for violators. The following civil fines shall be imposed for a violation of this section: First offense $ 250.00, Second offense (within one year of the first offense) $500.00, Third or more offenses (within one year of the first offense) $1,000.00. (d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal, (1) violator who has been served with a notice of violation shall elect either to: a. Pay the civil fine in the manner indicated on the notice of violation; or (b) Request an administrative hearing before a special master to appeal notice of violation within 10 days of the issuance of the notice of violation. (2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73.
(3) If the named violator after notice fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly. (4) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

Approve on First Reading and Schedule a Second Reading and Final Public Hearing

Advisory Board Recommendation:

The Land Use and Development Committee endorsed the proposed ordinance at its July 26, 2010 meeting.

Financial Information:

Source of Funds:		Amount	Account	Approved
OBPI	Total			

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Saul Frances, Parking Director

Sign-Offs:

Department Director	Assistant City Manager	City Manager
SF RL	JGG	JMG

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MIAMIBEACH

AGENDA ITEM R5L
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

FIRST READING

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 106, ENTITLED "TRAFFIC AND VEHICLES," BY AMENDING ARTICLE II, ENTITLED "METERED PARKING," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 106-47, ENTITLED "FREIGHT, COMMERCIAL, AND PASSENGER CURB LOADING ZONES; HOURS, DELIVERIES" BY AMENDING COMMERCIAL DELIVERY REGULATIONS AND PROVIDING RELIEF TO RESIDENTIAL AREAS IN CLOSE PROXIMITY TO COMMERCIAL OPERATIONS WITH LATE HOUR DELIVERIES AND SIMILAR HABITUAL SOURCES OF NOISE; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION:

The Administration recommends that the Mayor and Commission approve the amendment of the ordinance and schedule a second reading and final public hearing.

BACKGROUND:

Commercial loading zones are typically 30 feet in length and are intended to provide loading areas for medium sized or smaller trucks. These loading zones are posted with specific restrictions, typically 7:00 AM to 6:00 PM and with a maximum time limit of 30 minutes.

Freight loading zones are typically 60 to 80 feet in length and are intended to accommodate medium sized or larger trucks, including tractor trailers. These loading zones are posted with specific restrictions, typically 7:00 AM to 11:00 AM on weekdays only and with a maximum time limit of 30 minutes.

Land Use and Development Committee (LUDC)

A discussion of potential sources of relief for residents living in close proximity to commercial operations with late hour deliveries and similar habitual sources of noise was referred to the LUDC by the City Commission on May 12, 2010, at the request of Mayor Matti Herrera Bower.

City staff met with the Mayor and residents of the North Ocean Drive area. Concerns were raised by residents about restaurants that have late night deliveries and the negative impact that this causes to nearby residents.

The LUDC met on May 27, 2010 and held extensive discussion on the item and directed the City Attorney's Office and the Administration to develop a municipal ordinance relating to commercial deliveries in areas where residents live in close proximity to commercial operations with late hour deliveries and similar habitual sources of noise. On July 26, 2010, the Administration presented the following recommendations to the LUDC. The LUDC held discussions and approved the following draft ordinance.

PROPOSED COMMERCIAL AND FREIGHT LOADING ZONE USES

Pursuant to the direction received from the LUDC, the following parameters are recommended for commercial and freight loading zones uses in areas where residents live in close proximity to commercial operations with late hour deliveries and similar habitual sources of noise.

Commercial and freight curb loading zones be operational between the hours of 7:00 AM and 6:00 PM. In other words, any and all commercial and freight loading activities would be prohibited between the hours of 6:00 PM and 7:00 AM.

The Parking and Police Departments would be charged with enforcing these proposed commercial and freight loading zone regulations. Additionally, the City's Code Enforcement Division would be charged with enforcing the proposed ordinance if and when a property owner accepts any deliveries when prohibited.

PROPOSED ORDINANCE FOR COMMERCIAL LOADING

The City Attorney's Office and the Administration met and drafted the following proposed amendments to the City Code, creating a new section restricting commercial deliveries in areas where residents live in close proximity to commercial operations with late hour deliveries and similar habitual sources of noise.

Sec. 106-47. **Freight, commercial and passenger curb loading zones; hours, deliveries.**

(a) The city manager and the parking director are hereby authorized to designate any street freight, commercial and passenger curb loading zones as permissible automobile parking areas during such hours as such officials, in their discretion, may direct.

(b) Freight, commercial and passenger curb loading zone regulations, including as posted by sign, may be enforced, in addition to the procedures provided in this chapter, against property owners and/or businesses which accept services or deliveries from vehicles violating such regulations.

(c) Civil fine for violators. The following civil fines shall be imposed for a violation of this section:

(1)	First offense.....	$ 250.00.
(2)	Second offense (within one year of the first offense)	$ 500.00.
(3)	Third or more offenses (within one year of the first offense)	$1,000.00

(d) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal.

(1) A violator who has been served with a notice of violation shall elect either to:
a. Pay the civil fine in the manner indicated on the notice of violation; or

b. Request an administrative hearing before a special master to appeal the notice of violation within 10 days of the issuance of the notice of violation.

(2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forthin sections 30-72 and 30-73.

(3) If the named violator after notice fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.

(4) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

(e) Enforcement. The code enforcement department or parking department shall enforce the provisions of this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a parking enforcement specialist or a code compliance officer finds a violation of this article, the parking enforcement specialist or the code compliance officer shall issue a notice of violation to the violator as provided in chapter 30 of this Code, as may be amended from time to time. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation and that failure to appeal the violation within the ten days, shall constitute an admission of the violation and a waiver of the right to a hearing.

FISCAL IMPACT

The Parking Department and Code Compliance Division are charged with the enforcement provision of this proposed City Code amendment. There is an estimated fiscal impact of $12,679.38. This estimate is comprised of $7,204.82 by Code Compliance and $5,474.56 for the Parking Department. This estimate is based on a formula utilizing four (4) hours of Code Compliance personnel and four (4) hours of Parking Enforcement personnel weekly (and then annualized) utilizing their mid-point salary range. This shall likely be partially offset by revenues generated from parking citations; code violations; and special master hearings/assessments.

CONCLUSION

The City Attorney's Office and the Administration recommend that the Mayor and Commission approve the ordinance on first reading and schedule a second reading and final public hearing.

JMG/JGGSF
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ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 106, ENTITLED "TRAFFIC AND VEHICLES," BY AMENDING ARTICLE II, ENTITLED "METERED PARKING," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 106-47, ENTITLED "FREIGHT, COMMERCIAL, AND PASSENGER CURB LOADING ZONES; HOURS, DELIVERIES" BY AMENDING COMMERCIAL DELIVERY REGULATIONS AND PROVIDING RELIEF TO RESIDENTIAL AREAS IN CLOSE PROXIMITY TO COMMERCIAL OPERATIONS WITH LATE HOUR DELIVERIES AND SIMILAR HABITUAL SOURCES OF NOISE; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, residents of the North Ocean Drive area and other areas of the City have expressed concerns about businesses that have late night commercial deliveries and the negative impact that this causes to nearby residents; and

WHEREAS, the Land Use and Development Committee met on May 27, 2010 and subsequently on July 26, 2010 and held extensive discussion on the item and directed the City Attorney's Office and the Administration to develop a municipal ordinance relating to commercial deliveries in areas where residents live in close proximity to commercial operations with late hour deliveries and similar habitual sources of noise; and

WHEREAS, the Parking Department and Code Compliance Division would be charged with enforcing these proposed commercial delivery regulations when a property owner accepts any deliveries in violation of the posted commercial delivery regulations.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Chapter 106, "Traffic and Vehicles," Article II, "Metered Parking," Division 1, "Generally," Section 106-47, "Freight and passenger curb loading zones," of the Code of the City of Miami Beach, Florida, is hereby amended as follows:

CHAPTER 106

TRAFFIC AND VEHICLES

* * *

ARTICLE II. METERED PARKING

DIVISION I. GENERALLY

* * *

Sec. 106-47. **Freight, commercial and passenger curb loading zones; hours, deliveries.**

(a) The city manager and the parking director are hereby authorized to designate any street freight, commercial and passenger curb loading zones as permissible automobile parking areas during such hours as such officials, in their discretion, may direct.

(b) Freight, commercial and passenger curb loading zone regulations, including as posted by sign, may be enforced, in addition to the procedures provided in this chapter, against property owners and/or businesses which accept services or deliveries from vehicles violating such regulations.

(c) Civil fine for violators. The following civil fines shall be imposed for a violation of this section:

(1)	First offense.....	$ 250.00.
(2)	Second offense (within one year of the first offense)	$ 500.00.
(3)	Third or more offenses (within one year of the first offense)	$1,000.00

(d) Enforcement. The code enforcement department or parking department shall enforce the provisions of this section. This shall not preclude other law enforcement agencies or regulatory bodies from any action to assure compliance with this section and all applicable laws. If a parking enforcement specialist or a code compliance officer finds a violation of this article, the parking enforcement specialist or the code compliance officer shall issue a notice of violation to the violator as provided in chapter 30 of this Code, as may be amended from time to time. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation and that failure to appeal the violation within the ten days, shall constitute an admission of the violation and a waiver of the right to a hearing.

(e) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal.

(1) A violator who has been served with a notice of violation shall elect either to:

a. Pay the civil fine in the manner indicated on the notice of violation; or

b. Request an administrative hearing before a special master to appeal the notice of violation within 10 days of the issuance of the notice of violation.

(2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73.

(3) If the named violator after notice fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master, and be treated as an admission of the violation, and fines and penalties may be assessed accordingly.

(4) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

SECTION 2. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other

appropriate word.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten (10) days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2010.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____ 9/8/10
CITY ATTORNEY DATE

Underline denotes new language

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R7

Condensed Title:

A Resolution approving, on second reading, following a duly noticed public hearing, a lease agreement between the City and David L. Wrubel, CPA, PA, for use of 1,518 SF of City-owned property located at 1130 Washington Avenue, 5th Floor, for a term of three years, with two additional three year renewal terms.

Key Intended Outcome Supported:

Increase resident satisfaction with the level of services and facilities.

Supporting Data (Surveys, Environmental Scan, etc.):
Approximately 40% of retail businesses surveyed, rank Miami Beach as one of the best places to do business and 61% of the same group would recommend Miami Beach as a place to do business.

Issue:

Should the City Commission approve the lease agreement?

Item Summary/Recommendation:

SECOND READING & PUBLIC HEARING
On October 21, 2008, the Finance & Citywide Projects Committee (F&CPC) acknowledged that the City-owned Historic City Hall building (the "Building") was not needed for City offices and instructed the Administration to advertise, market and negotiate leases for available spaces within the building at competitive market rates. The subject space, which is the only remaining vacant space in the Building, was never completely renovated by the City and requires extensive tenant improvements. Subsequently, the City and David L. Wrubel have negotiated a proposed lease for renovation and use of office space at Historic City Hall, 1130 Washington Avenue, with the following terms:

- Square Footage: 1,518 per updated 2009 survey;
- Term: Three years, with two additional three year renewal terms;
- Rent: $23.30 PSF, $35,369.40 annually;
  - Base Rent: $16,075.62 annually, payable monthly @ $1,339.63, with 3% annual increase;
  - Additional Rent: $19,293.78 annually, payable monthly @ $1,607.82 to offset City's operating expenses and insurance costs;
- Security Deposit: Prior to execution of the lease, the Tenant will furnish the City a Security Deposit in the sum of $5,894.90 (equal to two months of Rent and Additional Rent costs).

A prior appraisal found comparable per square foot (psf) rents in the nearby area at approximately $25 psf. However, in light of current economic conditions, the Commission has previously approved a $23.30 PSF rent for the 6th Floor. A tenant credit is provided in light of the tenant improvements that will be required for this unfinished space.

Section 82-39 provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions. At the March 10, 2009 meeting of the F&CPC, the Committee determined that it was in the public's best interest to forgo competitive bidding and staff should proceed in leasing available space in the Building according to market rates and industry standards.

On July 14, 2010, pursuant to Resolution No. 2010-27452, the Mayor and City Commission approved the lease agreement on first reading; waived by 5/7ths vote, the competitive bidding and appraisal requirements; and set the public hearing on September 15, 2010, for second reading and final approval of the lease agreement. Subsequently, on July 29, 2010, the F&CPC discussed the proposed lease agreement and recommended its approval.

Advisory Board Recommendation:

Finance & Citywide Projects Committee, October 21, 2008, March 10, 2009, and July 29, 2010.

Financial Information:

Source of Funds:		Amount	Account
n/a	1	n/a	
Financial Impact Summary:			

City Clerk's Office Legislative Tracking:

Anna Parekh, extension 7193

Sign-Offs:

Anna Parekh, Department Director	Hilda M. Fernandez, Assistant City Manager	Jorge M. Gonzalez, City Manager
AP	HF Hilda M. Fernandez	JMG

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MIAMIBEACH

AGENDA ITEM R7A
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **SECOND READING & PUBLIC HEARING**

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, A LEASE AGREEMENT BETWEEN THE CITY AND DAVID A. WRUBEL, CPA, PA, FOR USE OF APPROXIMATELY 1,518 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1130 WASHINGTON AVENUE, 5TH FLOOR, MIAMI BEACH, FLORIDA; SAID LEASE HAVING AN INITIAL TERM OF THREE YEARS, WITH TWO ADDITIONAL THREE YEAR RENEWAL TERMS, AT THE CITY'S SOLE DISCRETION; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTED THE LEASE AGREEMENT**

ADMINISTRATION RECOMMENDATION
Adopt the Resolution.

KEY INTENDED OUTCOMES SUPPORTED
Increase resident satisfaction with the level of services and facilities.

BACKGROUND
At the October 21, 2008 meeting of the Finance & Citywide Projects Committee (F&CPC), and subsequently at their meeting of March 10, 2009, and following a comprehensive review of the City's office space use, it was determined that Historic City Hall would not be fully re-occupied by City offices, resulting in leasable space availability for non-City uses. The Committee directed the Administration to advertise and market the available leasable space, a total of approximately 14,194 square feet, including the ground floor, but exclusive of the second floor space utilized by the Clerk of the Courts.

At the meeting, the Committee also approved the Administration's recommendation that the process of developing lease agreements based on supply and demand be utilized for the leasing and occupancy of these available spaces, and that any future commercial leases (including renewals and/or extensions) for use of space at Historic City Hall be handled as it is in the private sector and not through a competitive bid process, with the Administration ensuring that market rates are negotiated and operating expenses included. All leases would continue to require City Commission approval per City Code.

ANALYSIS
Staff marketed the location using typical real estate marketing tools. However, based on the fluctuations of the real estate market in this economic environment, the City requested an appraisal, which was performed by Bondarenko & Associates, Inc. to determine the market rent value; with a revised appraisal provided on July 7, 2009 to reflect changing conditions. The resulting market rental rates of $25-$30 PSF were determined to be based on gross rent, full service. The $25 PSF market rent for floors 1 – 7 was set as an average, with a premium for the 8th Floor penthouse set at $30 PSF. The highest and best use for the entire building was deemed to be "office", with the notation

that the ground floor potential use as retail commercial is not practical due to the restrictions of the historic designation of the building.

On May 25, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with a Letter of Intent (LOI) on behalf of David L. Wrubel, CPA, PA., a Miami Beach certified public accounting firm, who expressed an interest in the 5th Floor that is currently vacant and available. Koniver Stern recommended that the City consider the proposed lease terms based on the City's ability to secure a viable tenant during this economic time and at a competitive PSF rate. Because the subject space, which is the sole remaining vacant space in the building, was never renovated by the City and requires extensive tenant improvements, the Tenant is also investing a minimum of $35,370 in tenant improvements (in exchange for a rent credit). Property Management has estimated that it would cost the City approximately $37,600 to build out the 5th Floor. Staff recommended that the build-out of the space be handled and permitted by the prospective tenant.

The Administration proceeded to negotiate a proposed lease agreement for City Commission approval. A summary of the proposed lease terms are as follows:

TENANT: David L. Wrubel, CPA, PA, a Florida corporation.

DEMISED PREMISES: 1,518 SF on the 5th Floor of Historic City Hall, located at 1130 Washington Avenue.

TERM: Initial term of three (3) years, with two (2) additional three (3) year renewal options, at the City's sole discretion.

LEASE COMMENCEMENT DATE: October 1, 2010.

RENT COMMENCEMENT DATE: October 1, 2011.

RENT: $23.30 PSF; $35,369.40 annually;

BASE RENT: $16,075.62 annually, payable in monthly installments of $1,339.63. Base Rent shall be increased annually, commencing on the third anniversary of the Commencement Date of the Lease and on each anniversary Commencement Date thereafter, in increments of three (3%) percent per year.

ADDITIONAL RENT: $19,293.78 annually, payable in monthly installments of $1,607.82. Any increase in Operating Expenses and Insurance will result in an increase to Tenant's proportionate share.

PARKING: Tenant may request, from the City's Parking Department, the use of no more than four (4) parking spaces. Rates for said spaces are subject to change, and are currently $70 per month plus applicable sales tax.

SECURITY DEPOSIT: Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of $5,894.90 (equal to two months Rent and Additional Rent costs).

USES: The Demised Premises shall be used by the Tenant as office for providing accounting, consulting and income tax preparation services. The Demised

Premises shall be open a minimum of five days a week (Monday-Friday) from 9:00AM to 5:00PM.

IMPROVEMENTS: Tenant agrees to make certain improvement to the Demised Premises in the minimum amount of $35,370.00 (an amount equal to, and in exchange for, one year's Rent).

INSURANCE: Tenant shall comply with the following insurance requirements throughout the Term:

Comprehensive General Liability in the minimum amount of $1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach must be named as additional insured parties on this policy, subject to adjustment for inflation.

Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant, subject to adjustment for inflation.

PROPERTY TAXES: Property taxes for Property Tax Year 2009 are estimated at Zero Dollars ($0.00). Notwithstanding, the City makes no warranty or representation, that the Historic City Hall building, the Land, and/or the proposed lease premises will not be subject to ad valorem (or other) taxes in subsequent years. In the event Miami-Dade County assesses the property, Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be payable by Tenant immediately upon receipt of notice from the City.

Tax Stop.
Notwithstanding the preceding, in the event the property is subject to Miami-Dade County property taxes, the City shall be responsible for payment of the Property Tax Payment up to an amount not to exceed Three Dollars ($3.00) per square foot (Tax Stop Amount), with Tenant to be responsible for anything in excess of that amount. Tenant shall promptly reimburse the City for its portion of the Property Tax Payment (if any) upon receipt of the City's invoice for same.

UTILITIES: Tenant retains sole responsibility for all utilities (not included as part of Operating Expenses) including janitorial, internet and telephone services.

MAINTENANCE AND REPAIR: Tenant shall be responsible for day-to-day maintenance and repairs of the Demised Premises, including, without limitation, all fixtures, appurtenances, equipment and furnishings.

CONCLUSION

Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, provides that the lease of any City-owned property, including renewal option periods, requires the following:

1) a public bidding process;
2) Planning Department analysis;
3) an independent appraisal to determine the value of the leasehold interest
4) two (2) readings of the proposed lease; and
5) a public hearing to obtain citizen input.

Section 82-39 further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7^{ths} vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions.

A Planning Department analysis finds that the use of this area as office space is consistent with the land use designation contained in the Comprehensive Plan.

On July 14, 2010, the Mayor and City Commission adopted Resolution No. 2010-27452, approving the proposed lease agreement on first reading; waived by 5/7^{ths} vote, the competitive bidding and appraisal requirements; and set a public hearing on September 15, 2010, for second reading (and final approval) of the lease agreement. Additionally, the City Commission referred the proposed lease agreement to the F&CPC for discussion. Subsequently, on July 29, 2010, the F&CPC discussed the proposed agreement and recommended that the City Commission approve the lease.

The proposed lease terms are within the range of comparable spaces in the area, and reflect the current economic reality. This tenant's use is consistent with the uses envisioned for Historic City Hall.

Based on the aforementioned, the Administration recommends that the Mayor and City Commission approve on second and final reading, following a duly noticed public hearing, the lease agreement between the City and David L. Wrubel, CPA, PA, for use of the 5th Floor with the proposed terms, as delineated herein.

Should the City Commission approve this Lease, Historic City Hall will be fully occupied with no space remaining available for lease.

JMG/HMF/AP/RR

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KONIVER STERN GROUP
RETAIL REAL ESTATE & BROKERAGE

July 8, 2010

Ms. Hilda M. Fernandez
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Re: 1130 Washington Avenue office space for David Wrubel

Dear Hilda:

Koniver Stern endorses the City of Miami Beach moving forward with the above referenced lease. The reasons are: 1) the space cannot be expanded or contracted which limits the number of tenants that the space is appropriate for; 2) the tenant is willing to pay for their required tenant specific build-out since no cash tenant improvement allowance is offered and the space currently needs to be built out; 3) the office space is Class B/C space and currently the general office market is not robust. We are recommending the 5th floor space to be leased at $23.30 based upon the space having a more desirable view that the lower floors. We are also recommending a 12 month rent abatement based upon the City's estimate of $37,600 to complete the space. We have been showing the space since January and have been negotiating this proposal for three months. Additionally, the tenant is currently leasing space in Miami Beach.

Based on all these factors, Koniver Stern recommends that the City lease the office space at 1130 Washington Avenue to David Wrubel.

Thank you.

Lyle B. Stern

1665 Washington Avenue, Penthouse
Miami Beach, Florida 33139
T (305) 532-6100 F (305) 532-6101

www.koniversterngroup.com

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, A LEASE AGREEMENT BETWEEN THE CITY AND DAVID A. WRUBEL, CPA, PA, FOR USE OF APPROXIMATELY 1,518 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1130 WASHINGTON AVENUE, 5TH FLOOR, MIAMI BEACH, FLORIDA; SAID LEASE HAVING AN INITIAL TERM OF THREE YEARS, WITH TWO ADDITIONAL THREE YEAR RENEWAL TERMS, AT THE CITY'S SOLE DISCRETION; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTED THE LEASE AGREEMENT

WHEREAS, on October 21, 2008, the Finance & Citywide Projects Committee (F&CPC) acknowledged that the City-owned Historic City Hall building (the "Building") was not needed for City offices and instructed the Administration to advertise, market and negotiate leases for available spaces within the Building; and

WHEREAS, David L. Wrubel, CPA, PA, has expressed interest in leasing office space on the 5th Floor of the Building; and

WHEREAS, the City and Tenant have negotiated the proposed Lease Agreement, said proposed Lease Agreement having an initial term of three (3) years, commencing October 1, 2010 and ending September 30, 2013, with two (2) additional three (3) year renewal terms, at the City's sole discretion; and

WHEREAS, Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, requires a competitive bidding process, a Planning Department analysis, and an independent appraisal to determine the value of the leasehold interest, as well as two (2) readings of the proposed lease, with the second (and final) reading followed by an advertised public hearing to obtain citizen input; and

WHEREAS, on July 14, 2010, pursuant to Resolution No. 2010-27452, the Mayor and City Commission approved the Lease Agreement on first reading; waived by 5/7ths vote, the competitive bidding and appraisal requirements; and set the public hearing on September 15, 2010, for second reading and final approval of the Lease Agreement; and

WHEREAS, said public hearing was held on September 15, 2010.

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 approve on second reading (and final approval), following a duly noticed public hearing, a Lease Agreement between the City and David L. Wrubel, CPA, PA, for use of approximately 1,518 square feet of City-owned property, located at 1130 Washington Avenue, 5th Floor, Miami Beach, Florida for an initial term of three years, with two additional three year renewal terms, at the City's sole discretion; authorizing the Mayor and City Clerk to execute the Lease Agreement.

PASSED and ADOPTED this 15th day of September, 2010.

ATTEST:

Robert Parcher, CITY CLERK	**Matti Herrera Bower, MAYOR**

JMG\HMF\AP\rlr

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney — 8/6/10 Date

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day of September, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **DAVID L. WRUBEL, CPA, PA**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.
The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

Approximately 1,518 square feet of City-owned property (the "Building" a.k.a. "Historic City Hall"), located at 1130 Washington Avenue, 5th Floor, Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of three (3) years, commencing on the 1st day of October, 2010 (the "Commencement Date"), and ending on the 30th day of September, 2013. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1st day of October, and ending on the 30th day of September.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for two (2) additional three (3) year renewal terms. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Lease Agreement (upon expiration of the initial term or any renewal term), the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.

3. Rent.

Tenant's payment of Rent, as defined in this Section 3, shall commence on October 1, 2011 (the "Rent Commencement Date") and, thereafter, on each first day of subsequent months.

3.1 Base Rent:

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Sixteen Thousand Seventy Five Dollars and 62/100 ($16,075.62) per year, payable in monthly installments of One Thousand Three Hundred Thirty Nine Dollars and 63/100 ($1,339.63).

3.1.2 The Base Rent amount pursuant to this Section 3.1 shall be increased annually, commencing on the third anniversary of the Commencement Date of the Lease and each anniversary Commencement Date thereafter, in increments of three (3%) percent per year.

3.2 Additional Rent:

In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Operating Expenses:

Throughout the Term herein, the Operating Expenses for the Demised Premises shall be Sixteen Thousand Eight Hundred Nineteen Dollars and 44/100 ($16,819.44) per year, payable in monthly installments of One Thousand Four Hundred One Dollars and 62/100 ($1,401.62) per month, for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, electric service, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by

the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

"Common Facilities" shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

3.2.2 Property Taxes:
The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The Property Tax Payment for Property Tax Year 2009 is estimated at Zero Dollars ($0.00). Notwithstanding the preceding sentence, the City makes no warranty or representation, whether express or implied, that the Historic City Hall building, the Land, and/or the Demised Premises will not be subject to ad valorem (or other) taxes in subsequent years.

3.2.3 Insurance:
The Additional Rent shall also include Tenant's pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of Two Hundred Six Dollars and 20/100 ($206.20). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility.

3.3 Sales Taxes:
Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4 Enforcement.
Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.
All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Revenue Manager
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.
Tenant may request, from the City's Parking Department, the use of no more than four (4) parking spaces, if available, at Municipal Parking Garage G-2 located at the intersection of 12th Street and Drexel Avenue. Rates for said spaces are subject to change, and are currently Seventy Dollars ($70.00) per month, plus applicable sales and use tax per space.

6. Security Deposit.
Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Five Thousand Eight Hundred Ninety Four Dollars and 90/100 ($5,894.90). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the aforestated, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant as office space for providing accounting, consulting and income tax preparation services. Said Premises shall be open for operation a minimum of five (5) days a week, with minimum hours of operation being as follows:

Monday - Friday: 9:00 AM to 5:00 PM

Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit

(nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

8.1 Tenant accepts the Demised Premises in their present **"AS IS"** condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred ($500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

8.4 Tenant Improvements.
Tenant agrees to make certain improvements (Tenant Improvements) to the

Demised Premises (valued by the parties at approximately Thirty Five Thousand Three Hundred Seventy Dollars and 00/100 ($35,370.00), as delineated in "Exhibit 8.4", attached hereto and incorporated herein (the Tenant Improvements). The Tenant Improvements shall be made in accordance with the following timeline:

- Tenant shall obtain a building permit no later than ninety (90) days from the Commencement Date of this Agreement;

- Tenant shall commence making the Tenant Improvements no later than forty five (45) days from the date the building permit is issued (the "Building Permit Date"); and

- Tenant Improvements shall be completed, and Tenant shall obtain final approval by the City's Building Department for said Tenant Improvements, no later than ninety (90) days from the Building Permit Date.

Failure to comply with this timeline and complete the Tenant Improvements within the time period specified shall constitute an event of default hereunder. Notwithstanding the preceding sentence, the above referenced timelines for Tenant Improvements may be extended for good cause shown, upon request in writing to the City Manager, which extension(s) by the City Manager shall not be unreasonably withheld.

9. <u>City's Right of Entry.</u>

9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.

9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability, in the minimum amount of One Million ($1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.

10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

11. Property Taxes and Assessments.
For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

11.4 Tax Stop.
Notwithstanding the preceding Section 11.3, the City shall be responsible for payment of the Property Tax Payment up to an amount not to exceed Three Dollars ($3.00) per square foot (Tax Stop Amount) with Tenant to be responsible for anything in excess of that amount. Tenant shall promptly reimburse the City for its portion of the Property Tax Payment (if any) upon receipt of the City's invoice for same.

12. Assignment and Subletting.
Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

13. Operation, Maintenance and Repair.

13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of

the Building, all heating/ventilation/air conditioning (HVAC) equipment servicing the Demised Premises, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.

13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.

13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses). Tenant is solely responsible for, and shall promptly pay when due, all charges and impact fees for any and all utilities for the Demised Premises **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations.

Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such

compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:
At the City's option, any of the following shall constitute an Event of Default under this Agreement:

18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;

18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;

18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;

18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;

18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;

18.1.6 Tenant shall become insolvent;

18.1.7 Tenant shall make an assignment for benefit of creditors;

18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or

18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

19.1 Rights on Default:
In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;

19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.

19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.

19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.

19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. In addition, there will be a late charge of Fifty ($50.00) Dollars for any payments submitted after the due date.

19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.

19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by City:

The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this

Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.

21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

22. Signs and Advertising.
Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.

23. Effect of Conveyance.
The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenantable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenantable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

24.2 If the Demised Premises shall be rendered wholly untenantable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the

Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenantable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.

24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

25. Quiet Enjoyment.
Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.

26. Waiver.

26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

26.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

26.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by the City.

27. Notices.
The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD: City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With copy to: Director
City of Miami Beach
Office of Real Estate, Housing & Community Development
1700 Convention Center Drive
Miami Beach, Florida 33139

TENANT: David L. Wrubel, CPA, P.A.
1130 Washington Avenue, 5th Floor
Miami Beach, Florida 33139

With copy to: David L. Wrubel
1063 West 47th Street
Miami Beach, Florida 33140

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.
This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

29. Provisions Severable.
If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

30. Captions.
The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

31. Number and Gender.
Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

32. Limitation of Liability.
The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand ($10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum

amount of $10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of $10,000.00 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

33. Surrender of the Demised Premises.
Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.
Time is of the essence in every particular and particularly where the obligation to pay money is involved.

35. Venue:
This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS

AGREEMENT.

36. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

37. No Dangerous Materials.
Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

Attest:

DAVID L. WRUBEL, CPA, PA

WITNESS

Dona Sharmat

(PRINT NAME)

, as president

David L. Wrubel, President

F:\RHCD\$ALL\ECON\$ALL\ASSET\OLDCITY\David L. Wrubel\Wrubel Lease Agreement.FINAL.doc

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

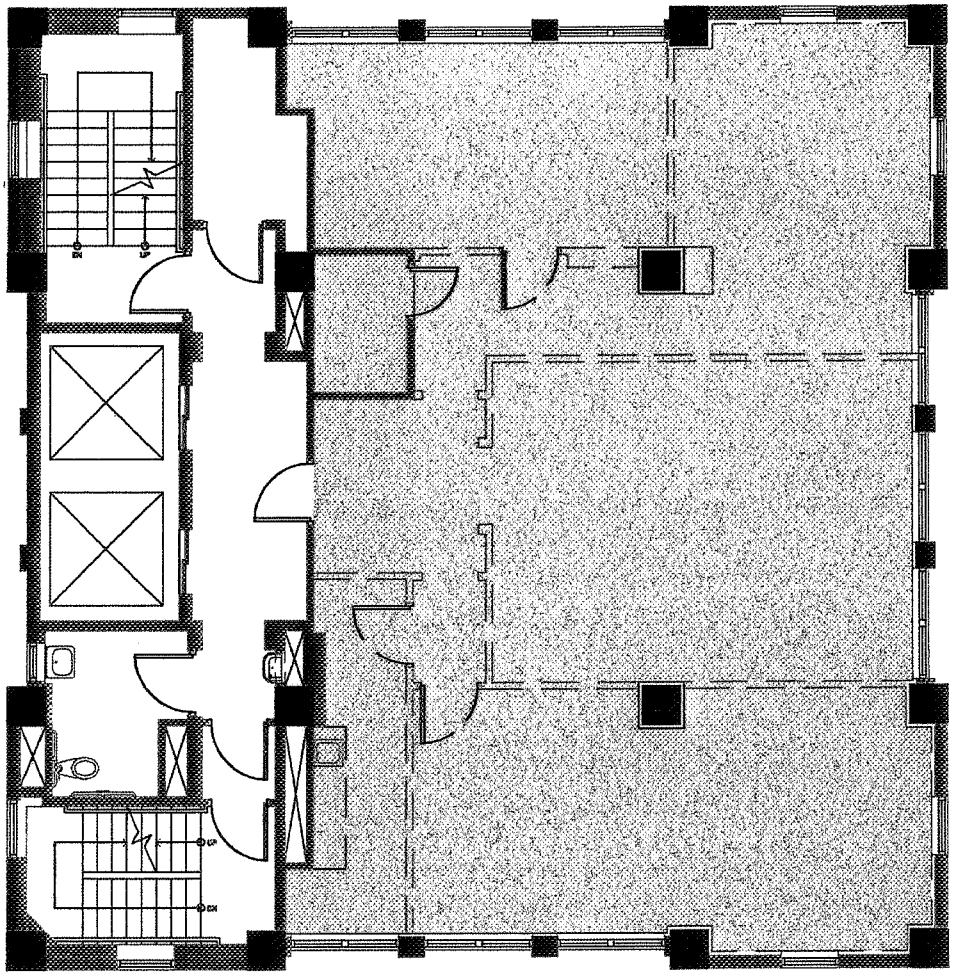
City Attorney

8/6/10

Date

EXHIBIT 1

5th Floor



Scale 1/8" = 1'

0 4 8

SH - 1

5th fl Area - 1,518 SF
Floor Common Area - 713 SF

EXHIBIT 8.4

Tenant Improvement(s)
(page 1 of 3)

AMICON CONSTRUCTION SERVICES

2400 NE 2nd Avenue, Studio B
Miami, FL 33137
(305) 573-8030
(305) 573-9777 fax
www.amicondevelopment.com

Wrubel Offices
1130 Washington Ave
5th Floor
Miami Beach, FL 33139

PRELIMINARY SCHEDULE OF VALUES PRESENTATION

EXHIBIT 8.4

Tenant Improvement(s)
(page 2 of 3)

Date: [illegible]

Project: [illegible]

Architect: [illegible]

AMICON CONSTRUCTION SERVICES

[illegible]

PRELIMINARY SCHEDULE OF VALUES

	DIVISION	COMMENTS	QTY	RATE	TOTAL
[illegible]					
[illegible]	Supervision / Project Management / Admin / Overhead				$ 3,225.00
[illegible]	General Labor				$ 600.00
[illegible]	Final Clean				$ 550.00
[illegible]	Site Protection				$ 700.00
[illegible]	Jobsite Debris Hauling	LEED approved rolloff containers	2	$425.00	$ 850.00
[illegible]	Permitting Fees / Plans Processing	By others			NIC
[illegible]	General Liability Insurance Premium				$ 650.00
[illegible]					
[illegible]	Demolition				$ 2,950.00
[illegible]					
[illegible]	Laminated Plastics	Break Room - allowance (per sketch)			$ 1,800.00
[illegible]	Additional storage	floor to ceiling / 18" depth)			$ 1,000.00
[illegible]	Reception				$ 1,400.00
[illegible]	Finish Carpentry	New wood base in common areas			$ 750.00
[illegible]					
[illegible]	Insulation	Exiting to remain			NIC
[illegible]					
[illegible]	Interior Wood Doors and Frames / hardware	Hollow metal frames, paint grade solid core doors	4	$950.00	$ 3,800.00
[illegible]	Entry Door	Existing to remain			NIC
[illegible]	Glass & Glazing	Glass panel at east office			$ 750.00
[illegible]					
[illegible]	Framing & Drywall	Hang new drywall over existing studs, exterior walls			$ 4,550.00
[illegible]	Acoustical Ceiling	Allowance - Patching due to demo			$ 600.00
[illegible]	Stone/Tile Flooring				NIC
[illegible]	Carpet, VCT Flooring and Vinyl Base	Allowance	1518	$2.75	$ 4,174.50
[illegible]	Painting	Repaint entire suite and new base			$ 2,420.00
[illegible]					
[illegible]	Signs				NIC
[illegible]	Fire Extinguishers	no cabinets included			$ 350.00
[illegible]					
[illegible]	Appliances	Refrigerator / Dishwasher By Others			NIC
[illegible]					
[illegible]	Window Treatments	Allowance			$ 2,500.00
[illegible]					
[illegible]	HVAC	Existing to remain			NIC
[illegible]	Plumbing Labor				$ 2,500.00
[illegible]	Plumbing Fixtures	New sink and faucet			Included
[illegible]	Fire Sprinklers	Existing to remain			NIC
[illegible]					
[illegible]	Electrical Labor	Allowance			$ 10,000.00
[illegible]	Low Voltage Wiring	Allowance			$ 5,000.00
[illegible]	Lighting Fixtures	Allowance 2' x 4' Parabolic louvers	25	$110.00	$ 2,750.00
[illegible]	Fire Alarm	Existing to remain			NIC
	Subtotal				[illegible]
	Contractor Fee		7.50%		[illegible]
					[illegible]

EXHIBIT 8.4

Tenant Improvement(s)
(page 3 of 3)

Alternatives/Exclusions:

1 No corridor work included
2 Permit fees / architecture / engineering
3 GC not responsible for existing systems installed by previous contractor

Notes:

1 **This pricing is based on site vist walkthrough (6/23/10) and layout sketch provided**
2 Soundproofing NIC. Specification required
3 Upon receipt of final approved, permitted Construction Documents, pricing may require adjustments.
4 Pricing assumes existing construction and conditions are in compliance with all current applicable construction codes unless otherwise noted in above pricing.
5 Asbestos / hazardous materials survey / abatement is not included.
6 Environmental / governmental / water / sewer impact fees are not included.
7 All work is priced during normal business hours in a single phase vacant space (i.e. all furniture, equipment, FF & E) personnel / staff are not on site.
8 All furniture / equipment moving, installation and coordination by others.
9 All telephone, computer, security and television, audio / visual equipment / wiring removal, relocation and installation by other.
10 If x-raying of the slab for floor outlets and plumbing lines is required, pricing is based on one (1) set of x-rays. If additional x-rays are required due to conflicts or obstructions they will be priced accordingly.
11 It is assumed that all materials and equipment can be delivered on site through loading docks / service elevators and no additional hoisting equipment is required.
12 All existing Mechanical, Electrical, Plumbing and Fire suppression systems are assumed to be in good working order and code worthy. Refurbishment or repair if required is not included. Any additional tests or balanced required are not included.
13 The base cost proposal does NOT include special ventilation requirements such as removing exterior glass and installing exhaust fans, rerouting fresh air / return ductwork, etc..
14 The base proposal does NOT include provisions / funds for security, elevator, building management or tenant personnel time / coordination that may be required to complete the scope of work. If these persons involvement is required, the cost of such time / coordination that may be required to complete the scope of work. If these persons involvement is required, the cost of such
15 This cost proposal is based on completing the scope of work in a standard time frame. Accelerated / compressed scheduling due to lead times, permitting, contract execution, work stoppages etc. may result in additional cost such as overtime and quick shipment of materials to be paid by the tenant / owner.
16 This cost proposal is based on the quantities and scope of work shown. Changes in the quantities / scope of work may result in the unit costs changing.
17 The ceiling space on the floors below are assumed to be accessible and to have sufficient space to accommodate the new under slab electrical work or piping lines and allow adequate slope as will be required. Relocation of any obstructions / rerouting of the plumbing lines or patching of hard ceilings, if required will be priced on a case by case basis.
18 Normal floor preparations and ramping for carpet is included. Leveling of the floor slab if required is NIC.
19 This cost proposal is valid for 30 days from the date of the proposal.
20 This cost proposal is based on the execution of a standard AIA document A111 (Standard Form of Agreement between Owner and Contractor) or other standard AIA documents prior to commencement of work.
21 It is assumed that all samples, submittals, shop drawings etc.. will be reviewed by the Architect and / or Engineer with a timeframe that coincides with the project schedule at no charge to AMICON Construction Services. It is also assumed that CAD files and / or PDF files will be provided to AMICON Construction Services as needed at no additional charge.
22 Change Orders will be billed at a cost of the work which includes additional General Conditions related to the changes in the scope of work (excluding supervision) and a 10% fee which covers supervision, overhead and profit.
23 Change Orders resulting in a reduction in the scope of work / contract amount will be credited back at the cost of the work as credited back to AMICON Construction Services by its suppliers and vendors. No fees or general conditions will be credited back for items that reduce the scope of work / contract amount.
24 All applicable sales taxes are included

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:25 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And David A. Wrubel, CPA, P.A., For Use Of Approximately 1,518 Square Feet Of City-Owned Property, Located At 1130 Washington Avenue, 5th Floor, Miami Beach, Florida; Said Lease Having An Initial Term Of Three Years, With Two Additional Three Year Renewal Terms, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:30 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And Leonardo Salon, Inc., For Use Of Approximately 1,326.78 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 1 (A/K/A 765 17th Street), Miami Beach, Florida; Said Lease Having An Initial Term Of Four Years And 364 Days, With One Additional Five Year Renewal Term, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:35 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And Jon Krutchik, For Use Of Approximately 1,802.89 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 2 (A/K/A 767 17th Street), Miami Beach, Florida; Said Lease Having An Initial Term Of Four Years And 364 Days, With One Additional Five Year Renewal Term, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #614

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Condensed Title:

A Resolution approving, on second reading, following a duly noticed public hearing, a lease agreement between the City and Leonardo Salon, Inc., for use of 1,326.78 SF of City-owned property located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street), for a term of 4 years and 364 days, with one additional five year renewal term.

Key Intended Outcome Supported:

Increase resident satisfaction with the level of services and facilities.

Supporting Data (Surveys, Environmental Scan, etc.):
Approximately 40% of retail businesses surveyed, rank Miami Beach as one of the best places to do business and 61% of the same group would recommend Miami Beach as a place to do business.

Issue:

Should the City Commission approve the lease agreement?

Item Summary/Recommendation:

SECOND READING & PUBLIC HEARING
On October 17, 2001, the City Commission adopted Resolution No. 2001-24661, authorizing the purchase of the 1701 Meridian Avenue Building with the intention of preserving the retail environment on the ground floor of the property.

On March 10, 2009, the Finance & Citywide Projects Committee (F&CPC) recommended that any commercial leases (including renewals and/or extensions) for use of space at the Building be handled as it is in the private sector and not through a competitive bid process. The City and Leonardo Salon have negotiated a proposed lease for renovation and use of ground floor retail space at 765 17th Street that recently became vacant. The terms are as follows:

- Square Footage: 1,326.78 per updated 2007 survey;
- Term: Four years and 364 days, with one additional five year renewal term;
- Rent: $43.00 PSF, $57,051.54 annually;
  - Base Rent: $40,600.86 annually, payable monthly @ $3,383.41, with 3% annual increase;
  - Additional Rent: $16,450.68 annually, payable monthly @ $1,370.89 to offset City's operating expenses and insurance costs;
- Security Deposit: Prior to execution of the lease, the Tenant will furnish the City a Security Deposit in the sum of $14,262.54 (equal to three months of Rent and Additional Rent costs).

The average PSF cost of other ground floor Tenants in the Building is $42.00.

Section 82-39 provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions. At the March 10, 2009 meeting of the F&CPC, the Committee determined that it was in the public's best interest to forgo competitive bidding and staff should proceed in leasing available space in the Building according to market rates and industry standards.

On July 14, 2010, pursuant to Resolution No. 2010-27453, the Mayor and City Commission approved the lease agreement on first reading; waived by 5/7ths vote, the competitive bidding and appraisal requirements; and set the public hearing on September 15, 2010, for second reading and final approval of the lease agreement. Subsequently, on July 29, 2010, the F&CPC discussed the proposed lease agreement and recommended its approval.

Advisory Board Recommendation:

Finance & Citywide Projects Committee, March 10, 2009, and July 29, 2010.

Financial Information:

Source of Funds:		Amount	Account
n/a	1	n/a	
Financial Impact Summary:			

City Clerk's Office Legislative Tracking:

Anna Parekh, extension 7193

Sign-Offs:

Anna Parekh, Department Director	Hilda M. Fernandez, Assistant City Manager	Jorge M. Gonzalez, City Manager
AP	HF	JMG

T:\AGENDA\2010\September 15\Regular\Leonardo Lease Agreement.2nd Reading.SUM.doc

MIAMIBEACH

AGENDA ITEM R7B
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **SECOND READING & PUBLIC HEARING**

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, A LEASE AGREEMENT BETWEEN THE CITY AND LEONARDO SALON, INC., FOR USE OF APPROXIMATELY 1,326.78 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1701 MERIDIAN AVENUE, UNIT 1 (A/K/A 765 17TH STREET), MIAMI BEACH, FLORIDA; SAID LEASE HAVING AN INITIAL TERM OF FOUR YEARS AND 364 DAYS, WITH ONE ADDITIONAL FIVE YEAR RENEWAL TERM, AT THE CITY'S SOLE DISCRETION; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE LEASE AGREEMENT**

ADMINISTRATION RECOMMENDATION
Adopt the Resolution.

KEY INTENDED OUTCOMES SUPPORTED
Increase resident satisfaction with the level of services and facilities.

BACKGROUND
On October 17, 2001, the City Commission passed Resolution No. 2001-24661 authorizing the purchase of the building at 1701 Meridian Avenue (a.k.a. 777 Building) in order to address the City's ongoing need for administrative office space expansion. At the time, the preservation of a retail environment on the ground floor of the property was considered and it was determined that retention of the retail space was conducive to maintaining and enhancing the pedestrian character of the linkage between Lincoln Road Mall and the Civic/Convention Center area.

At the October 21, 2008 meeting of the Finance & Citywide Projects Committee (F&CPC), and subsequently at their meeting of March 10, 2009, and following a comprehensive review of the City's office space use, the Committee agreed with City staff's recommendation that usage of the ground floor of 1701 Meridian Avenue Building remain a primary use for commercial retail space.Additionally, the Committee recommended that any commercial leases (including renewals and/or extensions) for use of space at the Building be handled as it is in the private sector and not through a competitive bid process

ANALYSIS
On June 8, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with a Letter of Intent (LOI) on behalf of Leonardo Salon, Inc., who expressed an interest in the ground floor retail space located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street), formerly occupied by Steve's Hair Salon which is currently vacant and available. Leonardo Salon is a Miami Beach based beauty salon established in 2001 and currently operating at 701 Lincoln Road, #109. Koniver Stern recommended that the City consider the proposed lease terms based on the City's ability to secure a viable tenant during this economic time and at a competitive PSF rate. The average PSF rate for ground floor retail in the Building is $42.00.

The Administration proceeded to negotiate a proposed lease agreement for City Commission approval. A summary of the proposed lease terms are as follows:

TENANT: Leonardo Salon, Inc., a Florida corporation.

DEMISED PREMISES: 1,326.78 SF on the ground floor of the 777 Building, located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street).

TERM: Initial term of four (4) years and 364 days, with one (1) additional five (5) year renewal option, at the City's sole discretion.

LEASE COMMENCEMENT DATE: October 2, 2010.

RENT COMMENCEMENT DATE: The earlier of (i) 60 days from Lease Commence Date or, (ii) the date Tenant opens for business.

RENT: $43.00 PSF; $57,051.54 annually;

BASE RENT: $40,600.86 annually, payable in monthly installments of $3,383.41. Base Rent shall be increased annually, on the anniversary of the Commencement Date of the Lease, in increments of three (3%) percent per year.

ADDITIONAL RENT: $16,450.68 annually, payable in monthly installments of $1,370.89. Any increase in Operating Expenses and Insurance will result in an increase to Tenant's proportionate share.

PARKING: Tenant may request from the City's Parking Department, the use of no more than three (3) parking spaces. Rates for said spaces are subject to change, and are currently $70 per month plus applicable sales tax.

SECURITY DEPOSIT: Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of $14,262.54 (equal to three months Rent and Additional Rent costs).

USES: The Demised Premises shall be used by the Tenant solely for the purposes of operating a beauty salon, including retail sales of related items. The Demised Premises shall be open a minimum of five days a week (Tuesday-Saturday) from 10:00AM to 7:00PM.

IMPROVEMENTS: No significant improvement and/or build-out are anticipated.

INSURANCE: Tenant shall comply with the following insurance requirements throughout the Term:

Comprehensive General Liability in the minimum amount of $1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach must be named as additional insured parties on this policy, subject to adjustment for inflation.

Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation,

inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant, subject to adjustment for inflation.

PROPERTY TAXES: Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be payable by Tenant immediately upon receipt of notice from the City. Tenant's property taxes payments are included within Additional Rent costs.

UTILITIES: Tenant retains sole responsibility for all utilities (not included as part of Operating Expenses) including electric, janitorial, internet and telephone services.

MAINTENANCE AND REPAIR: Tenant shall be responsible for day-to-day maintenance and repairs of the Demised Premises, including, without limitation, all fixtures, appurtenances, equipment, furnishings and HVAC system.

CONCLUSION

Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, provides that the lease of any City-owned property, including renewal option periods, requires the following:

1) a public bidding process;
2) Planning Department analysis;
3) an independent appraisal to determine the value of the leasehold interest
4) two (2) readings of the proposed lease; and
5) a public hearing to obtain citizen input.

Section 82-39 further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7^{ths} vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions.

A Planning Department analysis finds that the use of this area as commercial retail space is consistent with the land use designation contained in the Comprehensive Plan.

On July 14, 2010, the Mayor and City Commission adopted Resolution No. 2010-27453, approving the proposed lease agreement on first reading; waived by 5/7^{ths} vote, the competitive bidding and appraisal requirements; and set a public hearing on September 15, 2010, for second reading (and final approval) of the lease agreement. Additionally, the City Commission referred the proposed lease agreement to the F&CPC for discussion. Subsequently, on July 29, 2010, the F&CPC discussed the proposed agreement and recommended that the City Commission approve the lease.

The proposed lease terms are within the range of comparable spaces in the area, and reflect the current economic reality. Tenant's use is consistent with prior uses on the ground floor of the Building and the surrounding commercial area. Based on the aforementioned; the Administration recommends that the Mayor and City Commission approve on second and final reading, following a duly noticed public hearing, the lease agreement between the City and Leonardo Salon, Inc., for use of theground floor commercial retail space with the proposed terms, as delineated herein.

JMG/HMF/AP/RR

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KONIVER STERN GROUP
RETAIL REAL ESTATE & BROKERAGE

July 8, 2010

Ms. Hilda M. Fernandez
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Re: 777 17th Street retail space for Leonardo Salon

Dear Hilda:

Koniver Stern endorses the City of Miami Beach moving forward with the above referenced lease. The reasons are: 1) the tenant is able to move in and start operating with limited renovations; 2) the tenant is an established tenant on Miami Beach for 10 years; 3) the retail space is B/C space and currently the general retail market is not robust. We are recommending the space to be leased at $43.00 per square foot based upon the location being an end-cap and also being smaller in size.

Based on all these factors, Koniver Stern recommends that the City lease the retail space at 777 17th Street to Leonardo Salon.

Thank you.

Lyle B. Stern

1665 Washington Avenue, Penthouse
Miami Beach, Florida 33139
T (305) 532-6100 F (305) 532-6101

www.koniversterngroup.com

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, A LEASE AGREEMENT BETWEEN THE CITY AND LEONARDO SALON, INC., FOR USE OF APPROXIMATELY 1,326.78 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1701 MERIDIAN AVENUE, UNIT 1 (A/K/A 765 17TH STREET), MIAMI BEACH, FLORIDA; SAID LEASE HAVING AN INITIAL TERM OF FOUR YEARS AND 364 DAYS, WITH ONE ADDITIONAL FIVE YEAR RENEWAL TERM, AT THE CITY'S SOLE DISCRETION; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE LEASE AGREEMENT

WHEREAS, on October 17, 2001, the City Commission adopted Resolution No. 2001-24661, authorizing the purchase of 1701 Meridian Avenue Building (a/k/a 777 Building) with the intention of preserving the retail environment on the ground floor of the property; and

WHEREAS, on March 10, 2009, the Finance & Citywide Projects Committee (F&CPC) recommended that any commercial leases (including renewals and/or extensions) for use of space at the Building be handled as it is in the private sector and not through a competitive bid process; and

WHEREAS, Leonardo Salon, Inc. has expressed interest in leasing ground floor retail space in the Building; and

WHEREAS, the City and Tenant have negotiated the proposed Lease Agreement, said proposed Lease Agreement having an initial term of four (4) years and 364 days, commencing October 2, 2010 and ending September 30, 2015, with one additional five (5) year renewal term, at the City's sole discretion; and

WHEREAS, Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, requires a competitive bidding process, a Planning Department analysis, and an independent appraisal to determine the value of the leasehold interest, as well as two (2) readings of the proposed lease, with the second (and final) reading followed by an advertised public hearing to obtain citizen input; and

WHEREAS, on July 14, 2010, pursuant to Resolution No. 2010-27453, the Mayor and City Commission approved the Lease Agreement on first reading; waived by 5/7ths vote, the competitive bidding and appraisal requirements; and set the public hearing on September 15, 2010, for second reading and final approval of the Lease Agreement; and

WHEREAS, said public hearing was held on September 15, 2010.

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 approve on second reading (and final approval), following a duly noticed public hearing, a Lease Agreement between the City and Leonardo Salon, Inc., for use of approximately 1,326.87 square feet of City-owned property, located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street), Miami Beach, Florida for an initial term of four years and 364 days, with one additional five year renewal term, at the City's sole discretion; authorizing the Mayor and City Clerk to execute the Lease Agreement.

PASSED and ADOPTED this 15th day of September, 2010.

ATTEST:

Robert Parcher, CITY CLERK	**Matti Herrera Bower, MAYOR**

JMG\HMF\AP\rlr

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 8/6/10 Date

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day of September, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **LEONARDO SALON, INC.**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.
The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

> 1,326.78 square feet of City-owned property (the "Building"), located at 1701 Meridian Avenue, Unit 1 (a.k.a. 765 17th Street), Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of four (4) years and 364 days, commencing on the 2nd day of October, 2010 (the "Commencement Date"), and ending on the 30th day of September, 2015. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1st day of October, and ending on the 30th day of September.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for one (1) additional five (5) year renewal term. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Lease Agreement (upon expiration of the initial term or any renewal term), the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.

3. Rent.

3.1 Base Rent:
Tenant's payment of Rent, as defined in this Section 3, shall commence on the earlier of (i) the date Tenant opens for business, or (ii) 60 days after the Commencement Date (the "Rent Commencement Date" and, thereafter, on each first day of subsequent months.

Notwithstanding the preceding sentence, Tenant agrees to prepay the first month's Rent payment (the "Prepaid Rent") prior to the Commencement Date.

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Forty Thousand Six Hundred Dollars and 86/100 ($40,600.86) per year, payable in monthly installments of Three Thousand Three Hundred Eighty Three Dollars and 41/100 ($3,383.41).

3.1.2 The Base Rent amount pursuant to this Section 3.1 shall be increased annually, on the anniversary of the Commencement Date of the Lease, in increments of three (3%) percent per year.

3.2 Additional Rent:
In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Operating Expenses:
Throughout the Term herein, the Operating Expenses for the Demised Premises shall be Five Thousand Three Hundred Seven Dollars and 12/100 ($5,307.12) per year, payable in monthly installments of Four Hundred Forty Two Dollars and 26/100 ($442.26), for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to

employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

"Common Facilities" shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

Tenant agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Tenant's pro-rata share of Operating Expenses shall increase or decrease accordingly.

3.2.2 Property Taxes:
The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The 2009 Property Tax Payment is Nine Thousand Nine Hundred Forty Nine Dollars and 46/100 ($9,949.46), payable in monthly installments of Eight Hundred Twenty Nine Dollars and 12 /100 ($829.12).

3.2.3 Insurance:
The Additional Rent shall also include Tenant's pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of Ninety Nine Dollars and 51/100 ($99.51). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility.

3.3 Sales Taxes:
Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4 Enforcement.
Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.
All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Revenue Manager
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.
Tenant may request, from the City's Parking Department, the use of no more than three (3) parking spaces, if available, within the Municipal Parking Garage. Rates for said spaces are subject to change, and are currently Seventy ($70.00) Dollars per month, plus applicable sales and use tax per space.

6. Security Deposit / Guaranty.

6.1 Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Fourteen Thousand Two Hundred Sixty Two Dollars and 54/100 ($14,262.54). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the aforestated, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

6.2 Upon execution of this Agreement, Tenant shall execute and deliver to City the Guaranty, in the form attached as Exhibit 6.2 hereto.

7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant solely for the purpose(s) of operating a beauty salon, including retail sales of related items. Said Premises shall be open for operation a minimum of five (5) days a week, with minimum hours of operation being as follows:

Tuesday - Friday:	10:00 AM to 7:00 PM
Saturday	10:00 AM to 7:00 PM

Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be

construed to authorize hours contrary to the laws governing such operations.

7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

8.1 Tenant accepts the Demised Premises in their present **"AS IS"** condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific

contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred ($500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.

9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability, in the minimum amount of One Million ($1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.

10.1.2 Workers Compensation and Employers Liability coverage in

accordance with Florida statutory requirements.

10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

11. Property Taxes and Assessments.
For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

12. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

13. Operation, Maintenance and Repair.

13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Building, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

If the City provides a separate air-conditioning unit for the Demised Premises, Tenant agrees and understands that Tenant shall be solely responsible for the maintenance, repair and replacement of the heating/ventilation/air-conditioning (HVAC) equipment servicing the Demised Premises, at Tenant's sole expense.

Tenant further agrees and understands that, if the City provides a separate HVAC unit for the Demised Premises, the City, at its sole discretion, may require that Tenant obtain, at any time during the Term of this Agreement, and continuously maintain in good standing, at Tenant's expense, throughout the Term of this Agreement, a maintenance and repair contract, approved by the City, with a service company previously approved in writing by the City, providing for the preventative maintenance and repair of all HVAC equipment servicing the Demised Premises. In the event that the City notifies Tenant that it will require Tenant to contract for said maintenance and repair services, Tenant shall provide to the City, in writing, within ten (10) business days, the name(s) and telephone number(s) of service company(ies) for the City's review and approval. Tenant shall provide a copy of a current, enforceable and fully executed maintenance and repair contract, no later than ten (10) business days after receipt of the City's approval of the service company, as proof of Tenant's compliance with this provision.

13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.

13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.

13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses). Tenant is solely responsible for, and shall promptly pay when due all charges for electricity, gas, cable, telephone, internet, janitorial garage service and any other utility service provided to the Demised Premises, including, without limitation, all hook-up fees and impact fees, **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations.
Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the

Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:
At the City's option, any of the following shall constitute an Event of Default under this Agreement:

18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;

18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;

18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;

18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;

18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;

18.1.6 Tenant shall become insolvent;

18.1.7 Tenant shall make an assignment for benefit of creditors;

18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or

18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

19.1 Rights on Default:
In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;

19.1.1 Terminate this Agreement, in which event Tenant shall immediately

surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.

19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.

19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.

19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of

this provision with respect to future accruals of past due rent. In addition, there will be a late charge of Fifty ($50.00) Dollars for any payments submitted after the due date.

19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.

19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by City:

The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 Tenant shall be liable to the City for all costs and charges, expenses,

reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.

21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

22. Signs and Advertising.
Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with

signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.

23. Effect of Conveyance.
The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenantable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenantable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

24.2 If the Demised Premises shall be rendered wholly untenantable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenantable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.

24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30)

days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

25. Quiet Enjoyment.
Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.

26. Waiver.

26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

26.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

26.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by the City.

27. Notices.
The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD:
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With copy to:
Director
City of Miami Beach
Office of Real Estate, Housing and Community Development
1700 Convention Center Drive
Miami Beach, Florida 33139

TENANT: Leonardo Salon, Inc.
765 17th Street
Miami Beach, Florida 33139

With copy to: Giuseppa Tantino, President
1818 SW 1st Avenue, Apt. 1905
Miami, Florida 33129

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.
This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

29. Provisions Severable.
If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

30. Captions.
The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

31. Number and Gender.
Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

32. Limitation of Liability.
The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand ($10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of $10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of $10,000.00 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation

placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

33. Surrender of the Demised Premises.
Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.
Time is of the essence in every particular and particularly where the obligation to pay money is involved.

35. Venue:
This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.

36. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines

have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

37. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest: **CITY OF MIAMI BEACH, FLORIDA**

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

Attest: **LEONARDO SALON, INC.**

Signature/Secretary

Giuseppa Tantino, President

Print Name

CORPORATE SEAL
(affix seal here)

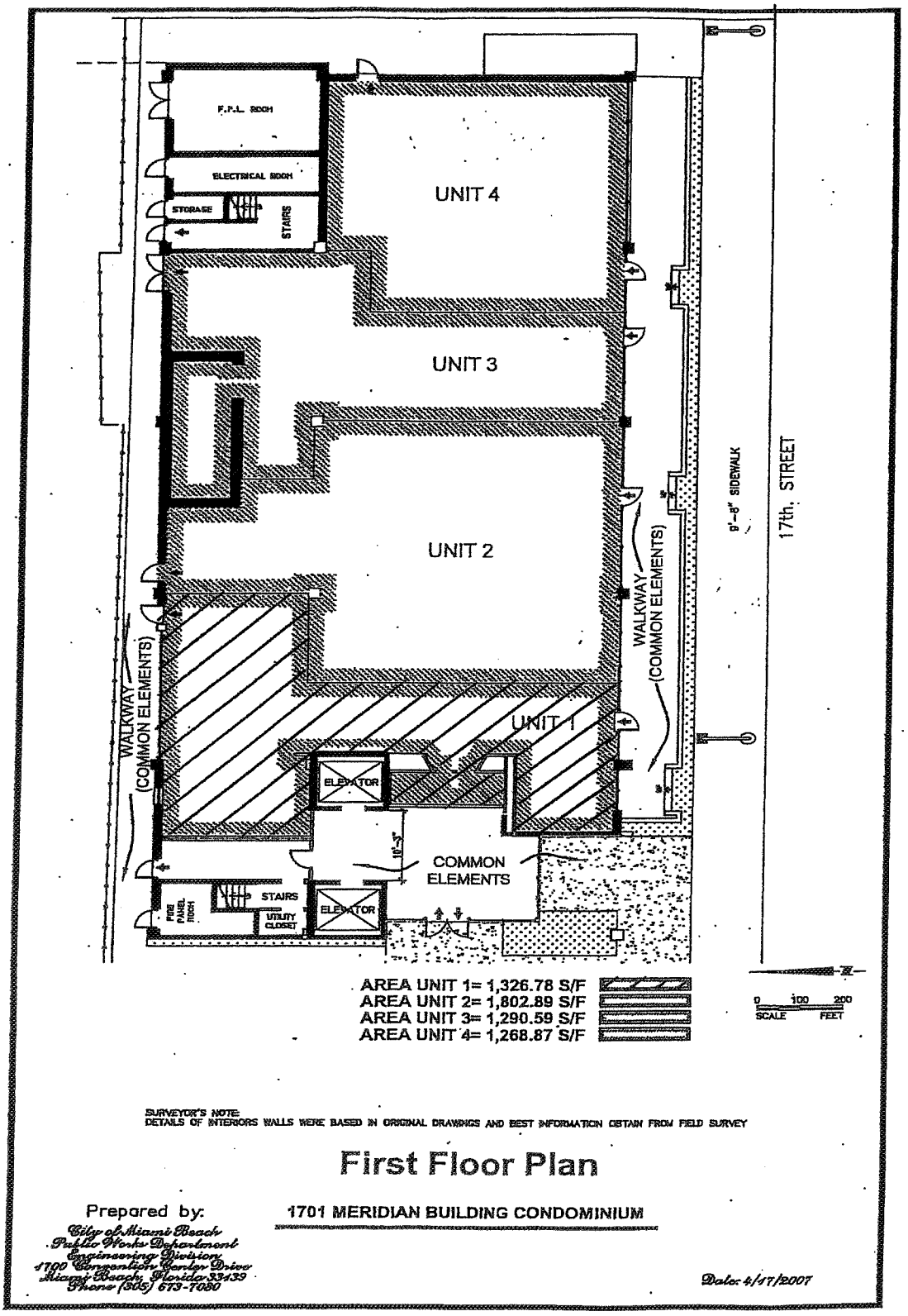
APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 8/6/10 Date

F:\RHCD\$ALL\ECON\$ALL\ASSET\777-17th Street\Leonardo Salon\Leonardo Lease Agreement.FINAL.doc

EXHIBIT 1

Demised Premises



SURVEYOR'S NOTE:
DETAILS OF INTERIORS WALLS WERE BASED IN ORIGINAL DRAWINGS AND BEST INFORMATION OBTAIN FROM FIELD SURVEY

First Floor Plan

Prepared by:

City of Miami Beach
Public Works Department
Engineering Division
1700 Convention Center Drive
Miami Beach, Florida 33139
Phone (305) 673-7080

1701 MERIDIAN BUILDING CONDOMINIUM

Date: 4/17/2007

EXHIBIT 6.2

Lease Guaranty

"Lease is herein defined to be that certain Lease Agreement dated September 15, 2010, and entered into by Leonardo Salon, Inc., as Tenant, and the City of Miami Beach, as Landlord with respect to certain Demised Premises located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street), Miami Beach, Florida, 33139.

In order to induce the Landlord to enter into the Lease, and for the Ten Dollars ($10.00) in hand paid and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the undersigned, individually, hereby irrevocably guarantees prompt payment when and as due of all rents and other monetary obligations, and the performance of all other obligations, required to be paid or performed by the Tenant pursuant to the Lease for the entire Term and all extensions and renewals thereof and agrees to pay and perform as a primary obliger all liabilities, obligations and duties of Tenant pursuant to the Lease, including, without limitation, payment of Rent.

The undersigned expressly agrees that the validity and enforceability of this Guaranty and the obligations and liability of the Guarantor hereunder shall in no way be terminated, affected or impaired by reason of any modification, indulgence, compromise, settlement, variation of terms, renewal ore extension of the Lease and the undersigned hereby consents to any such modification, renewal and extension and shall not be affected by any termination of the Lease. Action or suit may be brought against the undersigned and reduced to final judgment with or without first concurrently proceeding against the Tenant under the Lease. This Guaranty creates, joint and several, personal liability to all the undersigned for payment and performance as herein before stated, and the undersigned hereby waives and renounces any and all exemption rights under or by virtue of the Laws of any state or the United States and further waives all notice, demand, protest, presentment, notice of demand, notice of default, diligence, protest, presentment and nonpayment. Any notices or communications to the Tenant under the Lease shall be deemed to constitute notice or communication to the undersigned individually. Landlord and Tenant, without notice to or consent by the undersigned, may at any time and from time to time, enter into modifications, extensions, amendments or other covenants respecting the Lease and the undersigned shall not be released thereby, but shall continue to be fully liable for the payment and performance of all liabilities, obligations, and duties of Tenant pursuant to the Lease as so modified, extended or amended. The force and effect of this Guaranty shall not be affected by the execution of other guaranties securing the same obligations, liabilities and duties. This Guaranty shall be cumulative of any such guaranties and the liability of all the guarantors of the Lease shall be joint and several. The Landlord in its sole discretion shall be entitled to release, compromise or settle the obligations, liabilities, and duties of any one or more of such guarantors and such action shall not affect the right of Landlord, to enforce the Lease against the Tenant and any other guarantors. If any party executing the Guarantee is a corporation or partnership, then the undersigned officer or partner hereby represents and warrants that the Board of Directors of such corporation or the partners of such partnership, have authorized the execution on its behalf and acknowledge the benefit and consideration to the undersigned.

The undersigned agree to pay reasonable attorney's fees, plus expenses incurred by Landlord in the enforcement of any right of Landlord hereunder or in the defense of any action against Landlord hereunder.

This instrument shall inure to the benefit of the Landlord under the Lease, its successors and assigns, and shall bind the undersigned, and heirs, successors and assigns. If more than one party has executed this Guaranty, then the liability of all such parties who have signed below shall be joint and several.

This Guaranty is made and entered into this 15th day of September, 2010.

By: Giuseppa Tantino
Giuseppa Tantino

SS # 770 28 0742

By: _____

SS # _____

22NE THURSDAY, AUGUST 19, 2010

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:25 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And David A. Wrubel, CPA, P.A., For Use Of Approximately 1,518 Square Feet Of City-Owned Property, Located At 1130 Washington Avenue, 5th Floor, Miami Beach, Florida; Said Lease Having An Initial Term Of Three Years, With Two Additional Three Year Renewal Terms, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:30 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And Leonardo Salon, Inc., For Use Of Approximately 1,326.78 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 1 (A/K/A 765 17th Street), Miami Beach, Florida; Said Lease Having An Initial Term Of Four Years And 364 Days, With One Additional Five Year Renewal Term, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:35 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And Jon Krutchik, For Use Of Approximately 1,802.89 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 2 (A/K/A 767 17th Street), Miami Beach, Florida; Said Lease Having An Initial Term Of Four Years And 364 Days, With One Additional Five Year Renewal Term, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #614

Condensed Title:

A Resolution approving, on second reading, following a duly noticed public hearing, a lease agreement between the City and Massage Partners, Inc., for use of 1,802.89 SF of City-owned property located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), for a term of 9 years and 364 days.

Key Intended Outcome Supported:

Increase resident satisfaction with the level of services and facilities.

Supporting Data (Surveys, Environmental Scan, etc.):
Approximately 40% of retail businesses surveyed, rank Miami Beach as one of the best places to do business and 61% of the same group would recommend Miami Beach as a place to do business.

Issue:

Should the City Commission approve the lease agreement?

Item Summary/Recommendation:

SECOND READING & PUBLIC HEARING

On October 17, 2001, the City Commission adopted Resolution No. 2001-24661, authorizing the purchase of the 1701 Meridian Avenue Building with the intention of preserving the retail environment on the ground floor of the property. On March 10, 2009, the Finance & Citywide Projects Committee (F&CPC) recommended that any commercial leases (including renewals and/or extensions) for use of space at the Building be handled as it is in the private sector and not through a competitive bid process. The City and Massage Partners, Inc. have negotiated a proposed lease for use of ground floor retail space at 767 17th Street, with the following terms:

- Square Footage: 1,802.89 per updated 2007 survey;
- Term: Nine years and 364 days;
- Rent: $40.00 PSF, $72,115.60 annually;
  - Base Rent: $49,763.08 annually, payable monthly @ $4,146.92, with 3% annual increase;
  - Additional Rent: $22,352.52 annually, payable monthly @ $1,862.71 to offset City's operating expenses and insurance costs;
- Security Deposit: Prior to execution of the Lease, the Tenant will furnish the City a Security Deposit in the sum of $18,028.89 (equal to three months of Rent and Additional Rent costs).

The average PSF cost of other ground floor Tenants in the Building is $42.00. Because of a sizeable tenant improvement that will be required that exceeds the tenant credit the City and the proposed tenant have agreed to, and in light of current retail market conditions, the proposed psf is recommended.

Section 82-39 provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions. At the March 10, 2009 meeting of the F&CPC, the Committee determined that it was in the public's best interest to forgo competitive bidding and staff should proceed in leasing available space in the Building according to market rates and industry standards.

On July 14, 2010, pursuant to Resolution No. 2010-27454, the Mayor and City Commission approved the lease agreement on first reading; waived by 5/7ths vote, the competitive bidding and appraisal requirements; and set the public hearing on September 15, 2010, for second reading and final approval of the lease agreement. Subsequently, on July 29, 2010, the F&CPC discussed the proposed lease agreement and recommended its approval.

Advisory Board Recommendation:

Finance & Citywide Projects Committee, March 10, 2009, and July 29, 2010.

Financial Information:

Source of Funds:		Amount	Account
n/a	1	n/a	
Financial Impact Summary:			

City Clerk's Office Legislative Tracking:

Anna Parekh, extension 7193

Sign-Offs:

Anna Parekh, Department Director	Hilda M. Fernandez, Assistant City Manager	Jorge M. Gonzalez, City Manager
AP	HF	JMG

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MIAMIBEACH

AGENDA ITEM R7C
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010 **SECOND READING & PUBLIC HEARING**

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, A LEASE AGREEMENT BETWEEN THE CITY AND MASSAGE PARTNERS, INC., FOR USE OF APPROXIMATELY 1,802.89 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1701 MERIDIAN AVENUE, UNIT 2 (A/K/A 767 17TH STREET), MIAMI BEACH, FLORIDA; SAID LEASE HAVING A TERM OF NINE YEARS AND 364 DAYS; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE LEASE AGREEMENT**

ADMINISTRATION RECOMMENDATION
Adopt the Resolution.

KEY INTENDED OUTCOMES SUPPORTED
Increase resident satisfaction with the level of services and facilities.

BACKGROUND
On October 17, 2001, the City Commission passed Resolution No. 2001-24661 authorizing the purchase of the building at 1701 Meridian Avenue (a.k.a. 777 Building) in order to address the City's ongoing need for administrative office space expansion. At the time, the preservation of a retail environment on the ground floor of the property was considered and it was determined that retention of the retail space was conducive to maintaining and enhancing the pedestrian character of the linkage between Lincoln Road Mall and the Civic/Convention Center area.

At the October 21, 2008 meeting of the Finance & Citywide Projects Committee (F&CPC), and subsequently at their meeting of March 10, 2009, and following a comprehensive review of the City's office space use, the Committee agreed with City staff's recommendation that usage of the ground floor of 1701 Meridian Avenue Building remain a primary use for commercial retail space. Additionally, the Committee recommended that any commercial leases (including renewals and/or extensions) for use of space at the Building be handled as it is in the private sector and not through a competitive bid process.

ANALYSIS
On April 30, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with the first of several Letters of Intent (LOI) on behalf of Jon Krutchik, a potential Massage Envy Spa franchisee, who expressed an interest in the ground floor retail space located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), formerly occupied by Permit Doctor which is currently vacant and available. Koniver Stern recommended that the City consider the proposed lease terms based on the City's ability to secure a viable tenant during this economic time and at a competitive PSF

rate. The average PSF rate for ground floor retail in the Building is $42.00. The prospective tenant has offered to pay $40.00 PSF, which the Administration and the City's Broker are recommending due to the fact that the prospective tenant will be undertaking significant renovations to upgrade the current condition of the retail space. The proposed tenant improvement rent credit is less than the cost of the build-out which the proposed tenant will be ultimately responsible to perform in order to comply with its master franchisor agreement. While preliminary estimates of the franchisee's requirements for start-up costs are $296,000, the Administration recommends that a one year rent abatement credit ($72,115.60) be granted. The minimum projected hard construction costs are $81,000.

The subject lease was contingent on the proposed tenant securing and producing a fully executed franchise agreement with Massage Envy. The proposed tenant has provided the City with a copy of a fully executed franchise agreement which is dated June 2, 2010. Additionally, while the draft lease agreement approved on first reading identified the tenant as an individual (Jon Krutchik), it was anticipated that prior to second and final reading of the lease, the tenant would be a corporate entity. The proposed tenant incorporated on June 30, 2010, as Massage Partners, Inc., whose President is Jon Krutchik and whose Vice President is Michael Muskat.

The Administration proceeded to negotiate a proposed lease agreement for City Commission approval. A summary of the proposed lease terms are as follows:

TENANT: Massage Partners, Inc.

DEMISED PREMISES: 1,802.89 SF on the ground floor of the 777 Building, located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street).

TERM: Nine (9) years and 364 days.

LEASE COMMENCEMENT DATE: October 2, 2010.

RENT COMMENCEMENT DATE: October 1, 2011.

RENT: $40.00 PSF; $72,115.60 annually;

BASE RENT: $49,763.08 annually, payable in monthly installments of $4,146.92. Base Rent shall be increased annually, commencing on the third anniversary of the Commencement Date of the Lease and on each anniversary Commencement Date thereafter, in increments of three (3%) percent per year.

ADDITIONAL RENT: $22,352.52 annually, payable in monthly installments of $1,862.71. Any increase in Operating Expenses and Insurance will result in an increase to Tenant's proportionate share.

PARKING: Tenant may request from the City's Parking Department, the use of no more than four (4) parking spaces. Rates for said spaces are subject to change, and are currently $70 per month plus applicable sales tax.

SECURITY DEPOSIT: Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of $18,028.89 (equal to three months Rent and Additional Rent costs).

CONSTRUCTION DEPOSIT: Tenant shall be required to establish an escrow account in the amount of $81,000 in order to guarantee the hard costs of those certain improvements to the Demised Premises.

USES: The Demised Premises shall be used by the Tenant only for the purpose(s) of providing therapeutic massage services, facials, and any other products or services authorized pursuant to Tenant's franchise agreement, dated June 2, 2010, attached hereto as Exhibit 7.1. Any additionally uses shall be subject to the prior written approval of the City Manager, in his sole and reasonable discretion.

The Demised Premises shall be open for operation as follows:

Monday - Friday:	8:00 AM to 10:00 PM
Saturday & Sunday:	9:00 AM to 9:00 PM

IMPROVEMENTS: Tenant agrees to make certain improvement to the Demised Premises in the minimum amount of $81,000.00 (an amount greater than one year's Rent) in exchange for a one year credit against Rent.

INSURANCE: Tenant shall comply with the following insurance requirements throughout the Term:

Comprehensive General Liability in the minimum amount of $1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach must be named as additional insured parties on this policy, subject to adjustment for inflation.

Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant, subject to adjustment for inflation.

PROPERTY TAXES: Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be payable by Tenant immediately upon receipt of notice from the City. Tenant's property taxes payments are included within Additional Rent costs.

UTILITIES: Tenant retains sole responsibility for all utilities (not included as part of Operating Expenses) including electric, janitorial, internet and telephone services.

MAINTENANCE AND REPAIR: Tenant shall be responsible for day-to-day maintenance and repairs of the

Demised Premises, including, without limitation, all fixtures, appurtenances, equipment, furnishings and HVAC system.

CONCLUSION

Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, provides that the lease of any City-owned property, including renewal option periods, requires the following:

1) a public bidding process;
2) Planning Department analysis;
3) an independent appraisal to determine the value of the leasehold interest;
4) two (2) readings of the proposed lease; and
5) a public hearing to obtain citizen input.

Section 82-39 further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7^{ths} vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions.

A Planning Department analysis finds that the use of this area as office space is consistent with the land use designation contained in the Comprehensive Plan.

On July 14, 2010, the Mayor and City Commission adopted Resolution No. 2010-27454, approving the proposed lease agreement on first reading; waived by 5/7^{ths} vote, the competitive bidding and appraisal requirements; and set a public hearing on September 15, 2010, for second reading (and final approval) of the lease agreement. Additionally, the City Commission referred the proposed lease agreement to the F&CPC for discussion.

Subsequently, on July 29, 2010, the F&CPC discussed the proposed agreement and recommended that the City Commission approve the lease with two recommended changes. The lease term on first reading was for four (4) years and 364 days, with one five (5) year renewal term at the City's sole option. It was recommended that the lease term be increased to nine (9) years and 364 days, with no renewal term, which is consistent with the franchise agreement term. Additionally, the F&CPC approved the incorporation of an escrow requirement to ensure that funds are available to cover the minimum projected hard costs, estimated to be $81,000.00

The proposed lease terms are within the range of comparable spaces in the area, and reflect the current economic reality. Tenant's use is consistent with prior uses on the ground floor of the Building and the surrounding commercial area. Based on the aforementioned; the Administration recommends that the Mayor and City Commission approve on second and final reading, following a duly noticed public hearing, the lease agreement between the City and Massage Partners, Inc., for use of the ground floor commercial retail space with the proposed terms, as delineated herein.

JMG/HMF/AP/RR

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, A LEASE AGREEMENT BETWEEN THE CITY AND MASSAGE PARTNERS, INC., FOR USE OF APPROXIMATELY 1,802.89 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1701 MERIDIAN AVENUE, UNIT 2 (A/K/A 767 17TH STREET), MIAMI BEACH, FLORIDA; SAID LEASE HAVING A TERM OF NINE YEARS AND 364 DAYS; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE LEASE AGREEMENT

WHEREAS, on October 17, 2001, the City Commission adopted Resolution No. 2001-24661, authorizing the purchase of 1701 Meridian Avenue Building (a/k/a 777 Building) with the intention of preserving the retail environment on the ground floor of the property; and

WHEREAS, on March 10, 2009, the Finance & Citywide Projects Committee (F&CPC) recommended that any commercial leases (including renewals and/or extensions) for use of space at the Building be handled as it is in the private sector and not through a competitive bid process; and

WHEREAS, Massage Partners, Inc. has expressed interest in leasing ground floor retail space in the Building; and

WHEREAS, the City and Tenant have negotiated the proposed Lease Agreement, said proposed Lease Agreement having an initial term of nine (9) years and 364 days, commencing October 2, 2010 and ending September 30, 2020; and

WHEREAS, Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, requires a competitive bidding process, a Planning Department analysis, and an independent appraisal to determine the value of the leasehold interest, as well as two (2) readings of the proposed lease, with the second (and final) reading followed by an advertised public hearing to obtain citizen input; and

WHEREAS, on July 14, 2010, pursuant to Resolution No. 2010-27454, the Mayor and City Commission approved the Lease Agreement with Jon Krutchik, a married man, on first reading; waived by 5/7ths vote, the competitive bidding and appraisal requirements; and set the public hearing on September 15, 2010, for second reading and final approval of the Lease Agreement; and

WHEREAS, Jon Krutchik has since incorporated as Massage Partners, Inc, a Florida corporation; and

WHEREAS, said public hearing was held on September 15, 2010.

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 approve on second reading (and final reading), following a duly noticed public hearing), a Lease Agreement between the City and Massage Partners, Inc., for use of approximately 1,802.89 square feet of City-owned property, located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), Miami Beach, Florida for a term of nine years and 364 days; authorizing the Mayor and City Clerk to execute the Lease Agreement.

PASSED and ADOPTED this 15th day of September, 2010.

ATTEST:

Robert Parcher, CITY CLERK	**Matti Herrera Bower, MAYOR**

JMG\HMF\AP\rlr

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 8/13/10
Date

KONIVER STERN GROUP
RETAIL REAL ESTATE & BROKERAGE

July 8, 2010

Ms. Hilda M. Fernandez
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

Re: 777 17th Street retail space for Massage Envy

Dear Hilda:

Koniver Stern endorses the City of Miami Beach moving forward with the above referenced lease. The reasons are: 1) the tenant must be willing to pay for their required tenant specific build-out since no cash tenant improvement allowance is offered; 2) the retail space is B/C space and currently the general retail market is not robust; 3) to better protect the City we have outlined a construction deposit guaranty with staff. We are recommending the space to be leased at $40 per square foot based upon the space size and location. We also recommend a 12 month rent abatement based upon the improvements the tenant will be making for the space. We have been showing the space since January and have been negotiating this proposal for four months. Additionally, the tenant is currently leasing space in Miami Beach.

Based on all these factors, Koniver Stern recommends that the City lease the retail space at 777 17th Street to Massage Envy.

Thank you.

Lyle B. Stern

1665 Washington Avenue, Penthouse
Miami Beach, Florida 33139
T (305) 532-6100 F (305) 532-6101

www.koniversterngroup.com

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day of September, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **MASSAGE PARTNERS, INC.**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.
The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

> 1,802.89 square feet of City-owned property (the "Building"), located at 1701 Meridian Avenue, Unit 2 (a.k.a. 767 17th Street), Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.
Tenant shall be entitled to have and to hold the Demised Premises for a term of nine (9) years and 364 days, commencing on the 2nd day of October, 2010 (the "Commencement Date"), and ending on the 30th day of September, 2020. For purposes of this Lease Agreement a "contract year" shall be defined as that certain period commencing on the 1st day of October, and ending on the 30th day of September.

3. Rent.

3.1 Base Rent:
Tenant's payment of Rent, as defined in this Section 3, shall commence on October 1, 2011 (the "Rent Commencement Date") and, thereafter, on each first day of subsequent months.

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Forty Nine Thousand Seven Hundred Sixty Three Dollars and 08/100 ($49,763.08) per year, payable in monthly installments of Four Thousand One Hundred Forty Six Dollars and 92/100 ($4,146.92).

3.1.2 The Base Rent amount pursuant to this Section 3.1 shall be increased annually, commencing on the third anniversary of the Commencement Date of the Lease and each anniversary Commencement Date thereafter, in increments of three (3%) percent per year.

3.2 Additional Rent:

In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Operating Expenses:

Throughout the Term herein, the Operating Expenses for the Demised Premises shall be Seven Thousand Two Hundred Eleven Dollars and 56/100 ($7,211.56) per year, payable in monthly installments of Six Hundred Dollars and 96/100 ($600.96), for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

"Common Facilities" shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

Tenant agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Tenant's pro-rata share of Operating Expenses shall increase or decrease accordingly.

3.2.2 Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The 2009 Property Tax Payment is Thirteen Thousand Five Hundred Eighteen Dollars and 36/100 ($13,518.36), payable in monthly installments of One Thousand One Hundred Twenty Six Dollars and 53 /100 ($1,126.53).

3.2.3 Insurance:
The Additional Rent shall also include Tenant's pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of One Hundred Thirty Five Dollars and 22/100 ($135.22). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility.

3.3 Sales Taxes:
Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4 Enforcement:
Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.
All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Revenue Manager
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.
Tenant may request, from the City's Parking Department, the use of no more than five (5) parking passes, if available, within the Municipal Parking Garage. City will make reasonable efforts to obtain the five parking passes for Tenant's use. Tenant may request additional parking passes directly from the City's Parking Department. Rates for said spaces are subject to change, and are currently Seventy ($70.00) Dollars per month, plus applicable sales and use tax per space.

6. Security Deposit / Guaranty / Construction Deposit.

6.1 Security Deposit:
Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Eighteen Thousand Twenty Eight Dollars and 89/100 ($18,028.89). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

6.2 Guaranty:
Upon execution of this Agreement, Tenant shall execute and deliver to City the Guaranty, in the form attached as Exhibit 6.2 hereto.

6.3 Construction Deposit:
Landlord has requested, and Tenant has agreed, to secure Tenant's construction obligations under this Lease in an amount and upon the terms and conditions hereinafter set forth. On or before the Commencement Date, Tenant shall deposit with its attorney as Escrow Agent ("Escrow Agent"), a cash construction deposit in the sum of Eighty One Thousand ($81,000) Dollars ("Construction Deposit"). The Construction Deposit shall be held as security for Tenant's construction obligations under this Lease including, but not limited to, Tenant's obligation to commence and complete construction of the Tenant Improvements within the time and in the manner herein set forth. Tenant shall only use a licensed and insured general contractor. Tenant shall have the right to draw against the Construction Deposit for hard construction costs only, based upon draw requests executed by Tenant's architect and certifying to Landlord that the work set forth in the draw request has been substantially completed. The draw request shall be accompanied by lien waivers or releases of lien from the persons or entities performing the work or furnishing the materials referred to therein. In no event shall the Construction Deposit be reduced to less than $10,000 until such time as the Tenant Improvements have been substantially completed, as determined by Landlord, in its sole and reasonable discretion. The Construction Deposit shall be released upon receipt by Landlord of the final Certificate of Occupancy (CO), with proof that all permits have been closed, together with final lien waivers and contractor's affidavit reflecting that all contractors, subcontractors, laborers and materialmen have been paid in full. In the event Tenant fails to substantially complete the Tenant Improvements in accordance with the final plans and as required herein, such failure shall constitute a default. In the event of default and in addition to any and all other rights of the Landlord hereunder, Escrow Agent shall deliver the Construction Deposit to the Landlord who shall have the right, in addition to and not in limitation of any and all rights of Landlord hereunder, to retain such Construction Deposit in the same manner as in the case of the Security Deposit. Further, in the event Tenant fails or refuses to deliver to Escrow Agent, the Construction Deposit simultaneously with the delivery of possession of the Demised Premises, Tenant shall be deemed in default hereunder and in addition to all other rights and remedies of Landlord hereunder, In such event, Tenant shall not be entitled to retain possession of the Demised Premises and Landlord shall retain the Security Deposit

as partial consideration for the damages sustained by Landlord resulting from such default.

The parties agree and acknowledge that the foregoing conditions are intended to be conditions subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the aforestated, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant only for the purpose(s) of providing therapeutic massage services, facials, and any other products or services authorized pursuant to Tenant's franchise agreement, dated June 2, 2010, attached hereto as Exhibit 7.1. Any additionally uses shall be subject to the prior written approval of the City Manager, in his sole and reasonable discretion.

Said Premises shall be open for operation as follows:

Monday - Friday:	8:00 AM to 10:00 PM
Saturday & Sunday:	9:00 AM to 9:00 PM

Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

8.1 Tenant accepts the Demised Premises in their present **"AS IS"** condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7;

provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and reasonable discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred ($500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

8.4 Tenant Improvements:
Tenant agrees to make certain improvements (Tenant Improvements) to the Demised Premises (valued by the parties at approximately Eight One Thousand Dollars and 00/100 ($81,000.00), as delineated in "Exhibit 8.4", attached hereto and incorporated herein (the Tenant Improvements). The Tenant Improvements shall be made in accordance with the following timeline:

- Tenant shall apply for a building permit no later than sixty (60) days from the Commencement Date of this Agreement;

- Tenant shall commence making the Tenant Improvements no later than forty five (45) days from the date the building permit is issued (the "Building Permit Date"); and

- Tenant Improvements shall be completed, and Tenant shall obtain

final approval by the City's Building Department for said Tenant Improvements, no later than one hundred eighty (180) days from the Building Permit Date.

Failure to comply with the timeline and complete the Tenant Improvements within the time period specified shall constitute an event of default hereunder.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.

9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability, in the minimum amount of One Million ($1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.

10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

11. Property Taxes and Assessments.
For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

12. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and reasonable discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

13. Operation, Maintenance and Repair.

13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Building, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

If the City provides a separate air-conditioning unit for the Demised Premises, Tenant agrees and understands that Tenant shall be solely responsible for the maintenance, repair and replacement of the heating/ventilation/air-conditioning (HVAC) equipment servicing the Demised Premises, at Tenant's sole expense.

Tenant further agrees and understands that, if the City provides a separate HVAC unit for the Demised Premises, the City, at its sole discretion, may require that Tenant obtain, at any time during the Term of this Agreement, and continuously maintain in good standing, at Tenant's expense, throughout the Term of this Agreement, a maintenance and repair contract, approved by the City, with a service company previously approved in writing by the City, providing for the preventative maintenance and repair of all HVAC equipment servicing the Demised Premises. In the event that the City notifies Tenant that it will require Tenant to contract for said maintenance and repair services, Tenant shall provide to the City, in writing, within ten (10) business days, the name(s) and telephone number(s) of service company(ies) for the City's review and approval. Tenant shall provide a copy of a current, enforceable and fully executed maintenance and repair contract, no later than ten (10) business days after receipt of the City's approval of the service company, as proof of Tenant's compliance with this provision.

13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.

13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.

13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses): Tenant is solely responsible for, and shall promptly pay when due all charges for electricity, gas, cable, telephone, internet, janitorial garage service and any other utility service provided to the Demised Premises, including, without limitation, all hook-up fees and impact fees, **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations.
Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the

Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:
At the City's option, any of the following shall constitute an Event of Default under this Agreement:

18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;

18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;

18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;

18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;

18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;

18.1.6 Tenant shall become insolvent;

18.1.7 Tenant shall make an assignment for benefit of creditors;

18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or

18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

19.1 Rights on Default:
In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;

19.1.1 Terminate this Agreement, in which event Tenant shall immediately

surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.

19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.

19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.

19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of

this provision with respect to future accruals of past due rent. In addition, there will be a late charge of Fifty ($50.00) Dollars for any payments submitted after the due date.

19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.

19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by City:

The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 Tenant shall be liable to the City for all costs and charges, expenses,

reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.

21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

22. Signs and Advertising.

Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and reasonable discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall

comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.

23. Effect of Conveyance.
The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenantable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenantable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

24.2 If the Demised Premises shall be rendered wholly untenantable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenantable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.

24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30)

days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

25. Quiet Enjoyment.
Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.

26. Waiver.

26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

26.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

26.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by the City.

27. Notices.
The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD:
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With copy to:
Director
City of Miami Beach
Office of Real Estate, Housing and Community Development
1700 Convention Center Drive
Miami Beach, Florida 33139

TENANT:
Massage Partners, Inc.
767 17th Street
Miami Beach, Florida 33139

With copies to:

Jon Krutchik, President
5780 Stone Creek Way
Southwest Ranches, Florida 33330

Michael Muskat, Vice President
10775 SW 133rd Terrace
Miami, FL 33176

Dave Crisalli, CFO
Massage Envy Franchising, LLC
14350 North 87th Street, Suite 200
Scottsdale, Arizona 85260

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.
This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

29. Provisions Severable.
If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

30. Captions.
The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

31. Number and Gender.
Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

32. Limitation of Liability.
The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Seventy Two Thousand ($72,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of $72,000.00. Accordingly, and notwithstanding any other term

or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of $72,000.00 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

33. Surrender of the Demised Premises.
Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.
Time is of the essence in every particular and particularly where the obligation to pay money is involved.

35. Venue:
This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS

AGREEMENT.

36. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

37. No Dangerous Materials.
Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest: **CITY OF MIAMI BEACH, FLORIDA**

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

Attest: **MASSAGE PARTNERS, INC.**

Michael Muskat, Vice President

Jon Krutchik, President

CORPORATE SEAL
(affix seal here)

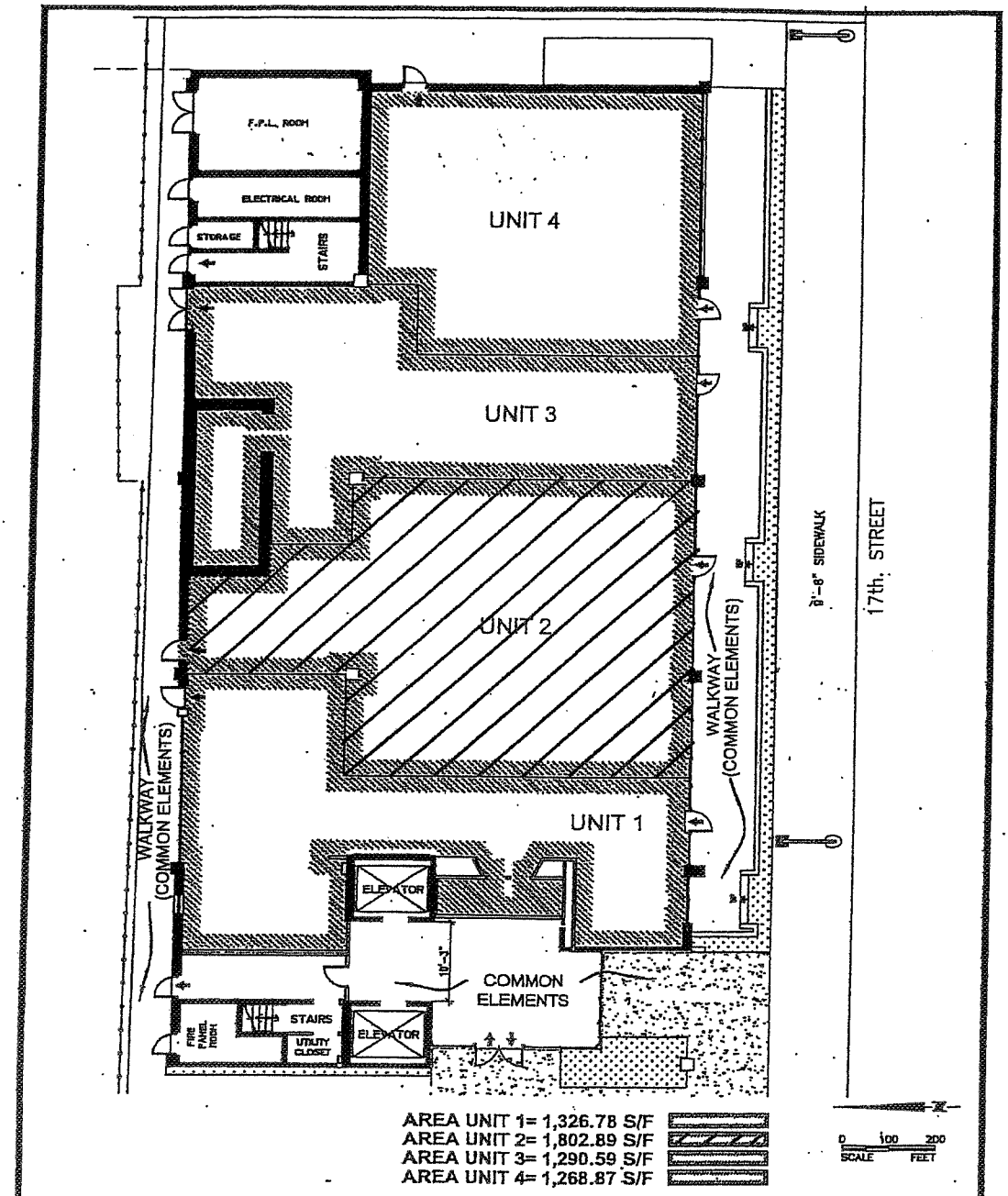
APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/2/10
Date

F:\RHCD\$ALL\ECON\$ALL\ASSET\777-17th Street\Massage Envy\Massage Partners Lease Agreement.FINAL.doc

EXHIBIT 1

Demised Premises



SURVEYOR'S NOTE:
DETAILS OF INTERIORS WALLS WERE BASED IN ORIGINAL DRAWINGS AND BEST INFORMATION OBTAIN FROM FIELD SURVEY

First Floor Plan

Prepared by:
City of Miami Beach
Public Works Department
Engineering Division
1700 Convention Center Drive
Miami Beach, Florida 33139
Phone (305) 673-7080

1701 MERIDIAN BUILDING CONDOMINIUM

Page 4 of 9
Exhibit "B"

Date: 4/17/2007

EXHIBIT 6.2

Lease Guaranty

"Lease is herein defined to be that certain Lease Agreement dated September 15, 2010, and entered into by Massage Partners, Inc., as Tenant, and the City of Miami Beach, as Landlord with respect to certain Demised Premises located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), Miami Beach, Florida, 33139.

In order to induce the Landlord to enter into the Lease, and for the Ten Dollars ($10.00) in hand paid and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the undersigned, hereby irrevocably guarantees prompt payment when and as due of all rents and other monetary obligations, and the performance of all other obligations, required to be paid or performed by the Tenant pursuant to the Lease for the entire Term and all extensions and renewals thereof and agrees to pay and perform as a primary obliger all liabilities, obligations and duties of Tenant pursuant to the Lease, including, without limitation, payment of Rent.

The undersigned expressly agrees that the validity and enforceability of this Guaranty and the obligations and liability of the Guarantor hereunder shall in no way be terminated, affected or impaired by reason of any modification, indulgence, compromise, settlement, variation of terms, renewal ore extension of the Lease and the undersigned hereby consents to any such modification, renewal and extension and shall not be affected by any termination of the Lease. Action or suit may be brought against the undersigned and reduced to final judgment with or without first concurrently proceeding against the Tenant under the Lease. This Guaranty creates, joint and several, liability to all the undersigned for payment and performance as herein before stated, and the undersigned hereby waives and renounces any and all exemption rights under or by virtue of the Laws of any state or the United States and further waives all notice, demand, protest, presentment, notice of demand, notice of default, diligence, protest, presentment and nonpayment. Any notices or communications to the Tenant under the Lease shall be deemed to constitute notice or communication to the undersigned individually. Landlord and Tenant, without notice to or consent by the undersigned, may at any time and from time to time, enter into modifications, extensions, amendments or other covenants respecting the Lease and the undersigned shall not be released thereby, but shall continue to be fully liable for the payment and performance of all liabilities, obligations, and duties of Tenant pursuant to the Lease as so modified, extended or amended. The force and effect of this Guaranty shall not be affected by the execution of other guaranties securing the same obligations, liabilities and duties. This Guaranty shall be cumulative of any such guaranties and the liability of all the guarantors of the Lease shall be joint and several. The Landlord in its sole discretion shall be entitled to release, compromise or settle the obligations, liabilities, and duties of any one or more of such guarantors and such action shall not affect the right of Landlord, to enforce the Lease against the Tenant and any other guarantors. If any party executing the Guarantee is a corporation or partnership, then the undersigned officer or partner hereby represents and warrants that the Board of Directors of such corporation or the partners of such partnership, have authorized the execution on its behalf and acknowledge the benefit and consideration to the undersigned.

The undersigned agree to pay reasonable attorney's fees, plus expenses incurred by Landlord in the enforcement of any right of Landlord hereunder or in the defense of any action against Landlord hereunder.

This instrument shall inure to the benefit of the Landlord under the Lease, its successors and assigns, and shall bind the undersigned, and heirs, successors and assigns. If more than one party has executed this Guaranty, then the liability of all such parties who have signed below shall be joint and several.

This Guaranty is made and entered into this 15th day of September, 2010.

Attest: **MASSAGE PARTNERS, INC.**

Jon Krutchik, President

Michael Muskat, Vice President

EXHIBIT 7.1

Franchise Agreement

MASSAGE ENVY FRANCHISING, LLC
FRANCHISE AGREEMENT

Jon Krutchik
FRANCHISEE

June 2, 2010
DATE OF AGREEMENT

TBD – South Beach –
Miami Region #1
ADDRESS OF CLINIC

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EXHIBITS

A. Territory, Site, Term
B. ACH Authorization Form

MASSAGE ENVY
FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (the "Agreement") is made and entered into as of this 2nd day of June, 2010 (the "Effective Date"), by and between MASSAGE ENVY FRANCHISING, LLC, a Delaware limited liability company, with its principal business address at 14350 North 87th Street, Suite 200, Scottsdale, Arizona 85260 ("we," "us" or "our"), and Jon Krutchik, a married man, whose principal business address is 5780 Stone Creek Way, Southwest Ranches, FL 33330 ("you" or "your").

1. PREAMBLES, ACKNOWLEDGEMENTS AND GRANT OF FRANCHISE.

A. PREAMBLES.

(1) We and our affiliates have designed and developed valuable and proprietary formats and systems for the development and operation of personal health clinics that offer massage therapy and hot stone therapy under the name "Massage Envy" as well as clinics that offer both massage therapy and customized facial services under the name "Massage Envy Spa" (both collectively referred to in this Agreement as "Massage Envy Clinics").

(2) We have developed and use, promote and license certain trademarks, service marks and other commercial symbols in operating Massage Envy Clinics, including "Massage Envy®" and "Massage Envy Spa®" and we may create, use and license other trademarks, service marks and commercial symbols for use in operating Massage Envy Clinics (collectively, the "Marks").

(3) We offer franchisees who meet our minimum standards for character, skill, aptitude, attitude, English language proficiency (to ensure you can effectively communicate with your staff, your customers and us) business ability and financial capacity) the right to own and operate a Massage Envy Clinic offering the products and services we authorize (and only the products and services we authorize) and using our business system, business formats, methods, procedures, signs, designs, layouts, standards, specifications, retail products and Marks, all of which we may improve, further develop and otherwise modify from time to time (collectively, the "Franchise System").

(4) You have applied for a franchise to own and operate a Massage Envy Clinic, and we have approved your application relying on all of your representations, warranties and acknowledgments contained in the application and this Agreement. If you choose to operate a Massage Envy Spa clinic, you will execute both this Agreement and a Spa Addendum.

B. GRANT OF FRANCHISE.

Grant of Franchise. You have applied for a franchise to own and operate a Massage Envy Clinic within a geographic area mutually agreed upon by the parties (the "Territory"). The approximate size and shape of the Territory will be an area that complies with our current general Territory profile criteria for minimum population, number of qualified households, age range and therapist availability as well as the specific market variables of your

Site, such as population density, market and development trends, traffic flow and natural and man-made boundaries. Unless the geographic area comprising the Territory is identified on Exhibit A attached to this Agreement at the time you sign this Agreement, the Territory shall be determined after you sign this Agreement, but prior to our approval of your proposed Site (as defined below). Once agreed upon, Exhibit A shall be modified to identify the exact geographic area comprising the Territory. The actual Territory description will consist of street map landmarks and compass directions. Subject to the terms of this Agreement, we grant you a franchise (the "**Franchise**") to operate a Massage Envy Clinic (the "**CLINIC**") at a location we approve within the Territory (the "**Site**"), and to use the Franchise System in its operation, for a term beginning on the execution date of your real estate lease for the CLINIC and expiring ten (10) years from that date (the "**Initial Term**"), unless sooner terminated. You may not relocate the CLINIC to a different site without our prior written approval which shall not be unreasonably withheld provided that you comply with our then-current clinic location standards.

C. TERRITORIAL RIGHTS.

So long as you are in compliance with the terms and conditions of this Agreement, and except as expressly provided herein, neither we nor any affiliates we may have from time to time will establish, or grant rights to other persons to establish, another Massage Envy Clinic the physical premises of which are located within the Territory.

Notwithstanding the foregoing, if we determine, based on changes in circumstances which include, but are not limited to, changes in the population, demographics, usage of massage services, drive times, or other market or economic conditions in the geographic area that includes all or part of the Territory, that the Territory could support an additional Massage Envy Clinic, then we will offer you a thirty (30) day first right of refusal to purchase and operate the additional Massage Envy Clinic. The right of first refusal may not be exercised, and we may establish or grant rights to another person to establish a Massage Envy Clinic within your Territory if any one of the following conditions is satisfied:

(1) You are not then in compliance with any material term of this Agreement and cannot cure the non-compliance within thirty (30) days of written notice;

(2) We determine, in our sole discretion, that you do not meet our then current standards for new franchisees of Massage Envy Clinics;

(3) We determine, in our sole discretion, that you lack the financial resources to develop and operate an additional Massage Envy Clinic;

(4) You fail to sign a franchise agreement (containing our then-current terms and conditions) for the additional Massage Envy Clinic within thirty (30) days of the date we deliver a franchise agreement for signature; or

(5) You notify us that you do not wish to develop and operate an additional Massage Envy Clinic within your Territory.

D. RIGHTS MAINTAINED BY US.

We (and any affiliates that we might have from time to time) shall at all times have the right to engage in any activities we deem appropriate that are not expressly prohibited by this Agreement, whenever and wherever we desire, including, but not limited to:

(1) establishing and operating Massage Envy Clinics, and granting rights to other persons to establish and operate Massage Envy Clinics, on any terms and conditions we deem appropriate and at any locations other than within the Territory;

(2) providing, and granting rights to other persons to provide goods and services similar to and/or competitive with those provided at Massage Envy Clinics to customers located within the Territory (identified by other than those Marks licensed by this Agreement) through any distribution channel other than a Massage Envy Clinic located within the Territory (including, but not limited to, sales of products via mail order, gift cards, catalogs, toll free telephone numbers and electronic means including the Internet);

(3) acquiring the assets or ownership interests of one or more businesses providing products and services similar to those provided at Massage Envy Clinics, and franchising, licensing or creating similar arrangements with respect to these businesses once acquired, wherever these businesses (or the franchisees or licensees of these businesses) are located or operating (including within the Territory); and

(4) being acquired (regardless of the form of transaction) by a business providing products and services similar to those provided at Massage Envy Clinics, or by another business, even if such business operates, franchises and/or licenses competitive businesses within the Territory.

With respect to the acquisitions referenced in number 3 and number 4 above, you acknowledge and agree that the competitive businesses that are acquired (or that are operated by a company that acquires us) may be converted into Massage Envy Clinics that operate under the Marks, regardless of their location, including competitive businesses that are located within your Territory on the date of the acquisition.

2. SITE SELECTION, LEASE OF SITE AND DEVELOPMENT AND OPENING OF CLINIC.

A. SITE SELECTION.

We will assist you in finding you a site for your Clinic by providing assistance and guidance in your selection of a real estate broker, demographic data, site search and approval, municipal code review and lease review and approval. You shall submit to us a complete site report (containing such demographic, commercial, and other information, photographs and video tapes as we may reasonably require) for a site you propose for the CLINIC and which you reasonably believe to conform to certain minimum site selection criteria we establish from time to time. We shall have the right to accept or reject all proposed sites. In accepting or rejecting a proposed site, we will consider such matters as we deem material, including, without limitation, demographic characteristics of the proposed site, traffic patterns, parking, the predominant character of the neighborhood, competition from other businesses

providing similar services within the area, the proximity to other businesses (including other Massage Envy Clinics), the nature of other businesses in proximity to the site, and other commercial characteristics (including the purchase price or rental obligations and other lease terms for the proposed site) and the size of premises, appearance, and other physical characteristics of the premises. We shall have thirty (30) days after receipt of the requisite materials to approve or disapprove a proposed site. Our approval of a site will be by delivery of written notice to you. If you do not receive a written notice of approval within thirty (30) days from us, your proposed site is considered disapproved. You acknowledge and agree that our approval of the Site does not constitute a representation or warranty of any kind, express or implied, of the suitability of the Site for a Massage Envy Clinic or any other purpose. Our approval of the Site indicates only that we believe that the Site meets our then acceptable criteria. We are not responsible if the Site fails to meet your or our expectations.

B. LEASE OF SITE.

You must present to us for our approval any lease for the Site. Any lease for the Site shall, in form satisfactory to us: (1) provide for concurrent, written notice to us of any default under the lease; (2) provide for our right, but not the obligation, to cure any such default; (3) provide for our right to assign your interest in the lease to us, at our option, without the lessor's consent; (4) provide that we will have the right, but not the obligation, to assume said lease upon termination or expiration of this Agreement without the lessor's consent; (5) provide that the lease may not be materially modified without our consent; and (6) allow us to enter the premises upon termination or expiration of this Agreement to assure compliance with the de-identification and other provisions of this Agreement.

C. DEVELOPMENT OF THE CLINIC.

Prior to any construction or renovation of the Site, we shall provide you with copies of our standard specifications for the design and layout of a typical Massage Envy Clinic and required leasehold improvements (the "**Design Standards**"). You shall, in all respects, comply with the Design Standards unless we shall, in writing, agree to modifications thereof. You shall employ a licensed architect, at your sole cost and expense, to prepare all necessary architectural, engineering and construction drawings and site plans (collectively referred to as the "**Construction Documents**"). To ensure the consistent design of Massage Envy Clinics, you must use an architect designated or approved by us. You shall obtain all permits required to construct, remodel, renovate, and/or equip the Site. You shall be solely responsible for ensuring that the construction of the Site complies with all applicable laws including, without limitation, local building codes and the Americans with Disabilities Act. All such Construction Documents, and all modifications and revisions thereto, shall be submitted to us for our prior review and approval before you commence construction.

D. FIXTURES, EQUIPMENT, STOREFRONT AND SIGNS.

You agree to use in the operation of the CLINIC the fixtures, furniture, items of equipment, furnishings and signs (collectively, "Operating Assets") that we have approved for Massage Envy Clinics as meeting our specifications and standards for appearance, function, design, quality and performance. You further agree to place or display at the CLINIC (interior and exterior) only such signs, emblems, lettering, logos and display materials specified in the Operations Manual (defined in Section 4.C of this Agreement) or otherwise approved by us in

writing. If you propose to purchase, lease or otherwise use any Operating Asset which is not then approved by us, you shall first notify us in writing and shall submit to us sufficient specifications, photographs, drawings and/or other information or samples for our determination of whether such Operating Asset complies with our specifications and standards, which determination shall be made and communicated in writing to you within a reasonable time.

E. PRODUCTS.

Prior to opening the CLINIC, you shall purchase from our approved supplier an opening inventory of products, materials and supplies which we have approved for use and/or sale at Massage Envy Clinics (**"Products"**).

F. COMPUTER SYSTEM.

You agree to use in operating the CLINIC the computer equipment, operating software and communications equipment (collectively, the **"Computer System"**) that we specify from time to time. You further agree to comply with the policies relating to the Computer System that we specify from time to time. You must obtain the Computer System, software licenses, maintenance and support services and other services related to the Computer System from the suppliers we specify (which may be limited to us or our affiliates). We may periodically modify specifications for and components of the Computer System. These modifications and/or other technological developments or events may require you to purchase, lease and/or license new or modified computer hardware and/or software and to obtain service and support for the Computer System. Although we cannot estimate the future costs of the Computer System, you agree to incur the costs of obtaining the computer hardware and software comprising the Computer System (or additions or modifications) and required service or support. We have no obligation to reimburse you for any Computer System costs. Within sixty (60) days after you receive notice from us, you agree to obtain the components of the Computer System that we designate and ensure that your Computer System, as modified, is functioning properly.

We may charge you a reasonable fee if we develop or have developed (and, once developed, for supporting, modifying and enhancing) proprietary software that we license to you and for other Computer System maintenance and support services that we or our affiliates provide to you. We may also enter into a license agreement with a third party licensor of software and then sublicense the software to you. If we or our affiliates license proprietary software or sublicense other software to you, or otherwise allow you to use similar technology we develop, maintain or sublicense, you agree to sign any software license agreement or similar document that we or our affiliates prescribe to regulate your use of, and our and your respective rights and responsibilities with respect to, the software.

Notwithstanding the fact that you must buy, use and maintain the Computer System under our standards and specifications, you will have sole and complete responsibility for: (1) the acquisition, operation, maintenance and upgrading of the Computer System; (2) the manner in which your Computer System interfaces with our computer system and those of other third parties; and (3) any and all consequences that may arise if the system is not properly operated, maintained and upgraded.

G. OPENING.

Within the earlier of one hundred eighty (180) days after we approve the Site or two hundred forty (240) days after the Effective Date, you must open the CLINIC for business utilizing the Franchise System; provided, however, you may not open the CLINIC for business or sell memberships in the CLINIC until: (1) We have inspected and approved the CLINIC as developed in accordance with our specifications and standards (as an alternative, or in addition, to our physical inspection of the CLINIC, we may require you to send us video tapes and/or photographs of the CLINIC); (2) Pre-opening training described in Section 4.A of this Agreement has been completed to our satisfaction; (3) You have satisfied all bonding, licensing, and other legal requirements for the lawful operation of your CLINIC and given us satisfactory evidence of compliance; (4) All amounts due to us have been paid; and (5) We have received the required evidence that you have obtained the insurance required by this Agreement.

BY VIRTUE OF COMMENCING OPERATIONS OF YOUR CLINIC, YOU ACKNOWLEDGE THAT WE HAVE FULFILLED ALL OF OUR OBLIGATIONS TO YOU THAT WE ARE REQUIRED TO FULFILL PRIOR TO YOUR COMMENCING OPERATIONS UNDER YOUR MASSAGE ENVY CLINIC BUSINESS.

H. GRAND OPENING MARKETING PROGRAM.

You must, at your expense, and with our prior written approval, execute a grand opening marketing program for the CLINIC in accordance with the System Standards (as defined below) for grand openings of Massage Envy Clinics in varying market conditions. You agree to spend a minimum of Five Thousand Dollars ($5,000.00) on the grand opening marketing program. You agree to use only the media, materials, methods and formats we develop or approve according to Section 9.C below.

In connection with your obligations under Section 2.A through H above, we will provide to you site location services, lease review and guidance services, program management services for the construction of your facility, and occupancy management services regarding equipment and design standards and guidelines.

3. FEES.

A. INITIAL FRANCHISE FEE.

You agree to pay us a nonrecurring and nonrefundable initial franchise fee of Thirty Nine Thousand Dollars ($39,000.00). If you are a veteran who qualifies under our VetFran program, you agree to pay us a discounted initial franchise fee in the amount of Thirty Five Thousand Dollars ($35,000.00). This fee is due and is fully earned by us when you sign this Agreement. If you desire to receive a license to establish and operate additional Massage Envy Clinics, we may, in our sole discretion, grant you a license to establish and operate those extra Massage Envy Clinics if you meet the following minimum conditions: (1) you satisfy our then-current qualifications and training requirements; (ii) you execute our then-current form of clinic franchise agreement; and, (iii) you pay to us a fee equivalent to Twenty-Nine Thousand Dollars ($29,000.00) for each additional Massage Envy Clinic.

B. ROYALTY.

You agree to pay us, on the day of each week that we periodically specify (the "Payment Day"), a weekly royalty ("Royalty") equal to five percent (5%) of the CLINIC'S Gross Sales during the previous week. In this Agreement, "Gross Sales" means the total of all revenue and receipts derived from the operation of the CLINIC, including, but not limited to, all amounts received at or away from the site of the CLINIC, or through or by means of the business the CLINIC conducts, such as fees for massage services, facial services (if applicable), membership fees, fees for optional member services and charges, gift card sales, and revenue derived from products sales, whether in cash or by check, credit card, debit card, barter or exchange, or other credit transactions, but excluding only (1) sales taxes collected from customers and paid to the appropriate taxing authority, (2) all customer refunds and credits the CLINIC actually makes, and (3) tips received by massage therapists and aestheticians (if applicable).

You must execute and deliver to us an ACH Authorization Form allowing us to electronically debit a banking account that you designate (your "Account") for (i) all fees payable to us under this Agreement and (ii) any amounts that you owe to us or any of our affiliates for the purchase of goods or services. Our current form of ACH Authorization Form is attached to this Agreement as Exhibit B. You further agree to sign and deliver to us any other documents that we or your bank may require from time to time to authorize us to debit your Account for such amounts. You must deposit into the Account all Gross Sales generated by your Clinic. We will debit your account for the Royalty on or after the Payment Day, based on Gross Sales for the previous week. You agree to make the funds available for withdrawal by electronic transfer before each due date. If you fail to report the CLINIC'S Gross Sales for any week, we may debit your account for one hundred twenty percent (120%) of the Royalty that we debited for the previous week. If the Royalty we debit from your account is less than the Royalty you actually owe us (once we have determined the CLINIC'S true and correct Gross Sales for the week), we will debit your account for the balance of the Royalty due on the day we specify. If the Royalty we debit from your account is greater than the Royalty you actually owe us for the week (once we have determined the CLINIC'S true and correct Gross Sales for the week), we will credit the excess against the amount we otherwise would debit from your account during the following week, without interest.

C. MINIMUM PERFORMANCE REQUIREMENTS.

You agree that you will conduct your business so as to generate minimum Gross Sales of not less than Three Hundred Fifty Thousand Dollars ($350,000.00) during the first twelve (12) months after the CLINIC opens for business. Your failure to generate such level of Gross Sales within the first twelve (12) months of operation shall afford us the right to terminate this Agreement, or, in lieu of such termination, to reduce the size of your Territory or terminate the territorial rights described in Section 1.C of this Agreement.

D. INTEREST ON LATE PAYMENTS; DISHONORED CHECKS.

All amounts which you owe us (including Royalty payments), if not paid on the due date, will bear interest at the rate of fifteen percent (15%) per annum or the highest commercial contract interest rate the law allows, whichever is less. We will calculate the interest

that we charge you on the basis of monthly compounding and the actual number of days elapsed divided by 365. If we institute an automatic debit program for the CLINIC, we may debit your account automatically for these amounts. You shall pay us a fee of One Hundred Dollars ($100.00) each time a check you write to us is dishonored by your bank. You acknowledge that this Section 3.D does not reflect any agreement by us to accept any payments after they are due or our commitment to extend credit to, or otherwise finance your operation of, the CLINIC. You further acknowledge that your failure to pay all amounts that you owe us when due constitutes grounds for our terminating this Agreement under Section 14 of this Agreement, notwithstanding this Section 3.D.

E. APPLICATION OF PAYMENTS AND RIGHT OF SET-OFF.

Despite any designation you make, we may apply any of your payments to any of your past due indebtedness to us (or our affiliates). We may set-off any amounts you owe us or our affiliates against any amounts we or our affiliates might owe you.

F. SUCCESSOR FEE.

You agree to pay us a nonrecurring and nonrefundable Successor Fee of twenty-five percent (25%) of the then current initial franchise fee. The Successor Fee is due and is fully earned by us when you sign the Successor Agreement.

4. TRAINING AND ASSISTANCE.

A. TRAINING.

Before the CLINIC opens, we will provide approximately two (2) weeks of training (approximately ten (10) training days) for you on the operation of a Massage Envy Clinic for you and up to three (3) of your management personnel. The initial training program will include approximately one (1) week of classroom training at our corporate headquarters and approximately one (1) week of on-site training at an operating Massage Envy Clinic. Training may also be conducted at other locations we designate. If the CLINIC is located in an area serviced by a Regional Developer (defined in Subsection 12.A of this Agreement), then the Regional Developer shall provide the on-site training to you. You, your CLINIC Administrator (defined in Section 8.A of this Agreement) and the number of additional management personnel we designate must complete the initial training to our satisfaction and participate in all other activities we require before opening the CLINIC. Although we provide this training at no additional fee, you must pay all travel and living expenses which you and your personnel incur.

In the event that you fail to satisfactorily complete and pass the required initial training class, then we reserve the right, in our sole discretion, to require you or your designee approved by us to attend additional training and we will charge you an additional training fee of Two Hundred Fifty Dollars ($250.00) per day per person. If you are unable to satisfactorily complete and pass that training class, we reserve the right, in our sole discretion, to terminate this Agreement. If we determine that your CLINIC Administrator or any of your employees has failed to satisfactorily complete the training program, you agree to immediately hire a substitute and promptly arrange for such person to complete the training program to our satisfaction. You shall pay the additional training fee for training programs furnished to individuals who replace a manager of employee who has previously attended the training program. You are responsible for all travel and living expenses.

We may require you and/or previously trained and experienced employees at the CLINIC to attend up to seven (7) days of additional or refresher training courses each year and a national business convention up to three (3) days per year at the times and locations we designate. We may charge a fee of Two Hundred Fifty Dollars ($250.00) per day per person for these courses, conventions and programs. In the event that you fail to attend the annual convention, we may charge you a penalty of up to $400 per person per day for the duration of the convention or program. You are responsible for all travel and living expenses.

B. ON-SITE ASSISTANCE.

We will provide, at no additional cost to you, on-site advice, guidance and support for a period of no more than ten (10) days, in connection with the opening and initial operations of the CLINIC; provided, however, that if you are a Regional Developer under a Regional Development Agreement with us, and this Agreement is not for your first Massage Envy Clinic, then you will not receive this on-site assistance. We shall determine, in our sole discretion, the composition of the on-site assistance team. If we determine, in our sole discretion, that additional on-site assistance is necessary or beneficial, we have the right, at our option, to provide such additional on-site assistance. You will be required to pay reasonable fees for any such additional on-site assistance and will also be responsible for the reasonable travel or living expenses incurred by our personnel in providing such additional on-site assistance.

C. GENERAL GUIDANCE.

We will advise you from time to time regarding the CLINIC'S operation based on your reports or our inspections. We will provide guidance to you in our operating manual and other technical manuals ("**Operations Manual**"); in bulletins or other written materials; by electronic media; by telephone consultation; and/or at our office or the CLINIC. If you request and we agree to provide additional or special guidance, assistance or training, you must pay our then applicable charges, including our personnel's per diem charges and any reasonable travel and living expenses.

D. OPERATIONS MANUAL.

We will loan you, to use in operating the CLINIC during this Agreement's term, one (1) copy of our Operations Manual, which might be or include audiotapes, videotapes, computer disks, compact disks and/or written or intangible materials and which may be available to you by various means, including access through the Internet. The Operations Manual contains mandatory and suggested specifications, standards, operating procedures and rules that we periodically prescribe for operating a Massage Envy Clinic ("System Standards") and information on your other obligations under this Agreement. The Operations Manual is incorporated by reference into this Agreement and is a binding part of this Agreement. We may modify the Operations Manual periodically to reflect changes in System Standards. You agree to keep your copy of the Operations Manual current and in a secure location at the CLINIC. If there is a dispute over its contents, our master copy of the Operations Manual controls. You agree that the contents of the Operations Manual are confidential and that you will not disclose the Operations Manual to any person other than CLINIC employees who need to know its contents. You may not at any time copy, duplicate, record or otherwise reproduce any part of the Operations Manual. If your copy of the Operations Manual is lost, destroyed or significantly damaged, you agree to obtain a replacement copy at our then applicable charge. Any personnel

policies or procedures which are made available in the Operations Manual are for your optional use and are not mandatory. You shall determine to what extent, if any, such personnel policies and procedures may be applicable to your operations at the CLINIC in your jurisdiction. You and we recognize that we neither dictate nor control labor and employment matters for you and your employees.

E. DELEGATION OF PERFORMANCE.

You agree that we have the right to delegate the performance of any portion or all of our obligations under this Agreement to third party designees, whether these designees are our agents or independent contractors with whom we contract to perform these obligations.

5. MARKS.

A. OWNERSHIP AND GOODWILL OF MARKS.

Your right to use the Marks is derived only from this Agreement and is limited to your operating the CLINIC according to this Agreement and all System Standards we prescribe during its term. Your unauthorized use of the Marks is a breach of this Agreement and infringes our rights in the Marks. You acknowledge and agree that your use of the Marks and any goodwill established by that use are for our exclusive benefit and that this Agreement does not confer any goodwill or other interests in the Marks upon you (other than the right to operate the CLINIC under this Agreement). All provisions of this Agreement relating to the Marks apply to any additional and substitute trademarks and service marks we authorize you to use.

B. LIMITATIONS ON YOUR USE OF MARKS.

You agree to use the Marks as the CLINIC'S sole identification (subject to the notices of independent ownership we designate). You may not use any Mark (1) as part of any corporate or legal business name; (2) with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos we have licensed to you); (3) in selling any unauthorized services or products; (4) as part of any domain name, electronic address or search engine you maintain on any "website" (defined as an interactive electronic document contained in a network of computers linked by communications software, including the Internet, the World Wide Web and any similar successor technology) without our consent; or (5) in any other manner we have not expressly authorized in writing. You may not use any Mark in advertising the transfer, sale or other disposition of the CLINIC or an ownership interest in you (if a corporation, partnership, limited liability company or another business entity (an "**Entity**") holds the Franchise at any time during this Agreement's term) without our prior written consent, which we will not unreasonably withhold. You agree to display the Marks prominently as we prescribe at the CLINIC and on forms, advertising, supplies, employee uniforms and other materials we designate. You agree to give the notices of trademark and service mark registrations that we specify and to obtain any fictitious or assumed name registrations required under applicable law.

C. NOTIFICATION OF INFRINGEMENTS AND CLAIMS.

You agree to notify us immediately of any apparent infringement of or challenge to your use of any Mark, or of any person's claim of any rights in any Mark, and not to communicate with any person other than us and our attorneys, and your attorneys, regarding any such infringement, challenge or claim. We may take the action we deem appropriate (including

no action) and control exclusively any litigation, U.S. Patent and Trademark Office proceeding or other administrative proceeding arising from any infringement, challenge or claim or otherwise concerning any Mark. You agree to sign any documents and take any actions that, in the opinion of our attorneys, are necessary or advisable to protect and maintain our interests in any litigation or Patent and Trademark Office or other proceeding or otherwise to protect and maintain our interests in the Marks.

D. DISCONTINUANCE OF USE OF MARKS.

If we believe at any time that it is advisable for us and/or you to modify or discontinue using any Mark and/or use one or more additional or substitute trademarks or service marks, you agree to comply with our directions within a reasonable time after receiving notice. We need not reimburse you for your expenses in complying with these directions (such as costs you incur in changing the CLINIC'S signs or replacing supplies), for any loss of revenue due to any modified or discontinued Mark, or for your expenses of promoting a modified or substitute trademark or service mark.

E. INDEMNIFICATION FOR USE OF MARKS.

We agree to reimburse you for all damages and expenses you incur in any trademark infringement proceeding disputing your authorized use of any Mark under this Agreement if you have timely notified us of the proceeding, have complied with this Agreement, and comply with our directions in responding to the proceeding. At our option, we may defend and control the defense of any proceeding relating to any Mark.

6. CONFIDENTIAL INFORMATION.

We possess (and will continue to develop and acquire) certain confidential information relating to the development and operation of Massage Envy Clinics (the "**Confidential Information**"), which includes (without limitation):

(1) site selection criteria;

(2) methods, formats, specifications, standards, systems, procedures, sales and marketing techniques, knowledge and experience used in developing and operating Massage Envy Clinics;

(3). marketing research and promotional, marketing and advertising programs for Massage Envy Clinics;

(4) knowledge of specifications for and suppliers of, and methods of ordering, certain Operating Assets and Products that Massage Envy Clinics use;

(5) knowledge of the operating results and financial performance of Massage Envy Clinics other than the CLINIC;

(6) customer communication and retention programs, along with data used or generated in connection with those programs;

(7) graphic designs and related intellectual property;

(8) information generated by, or used or developed in, the CLINIC'S operation, including customer names, addresses, telephone numbers and related information and any other information contained from time to time in the CLINIC'S Computer System; and

(9) any other information designated as confidential or proprietary by us.

You acknowledge and agree that by entering into this Agreement and/or acquiring the CLINIC you will not acquire any interest in Confidential Information, other than the right to use certain Confidential Information in operating the CLINIC during this Agreement's term and according to the System Standards and this Agreement's other terms and conditions, and that your use of any Confidential Information in any other business would constitute an unfair method of competition with us and our franchisees. You further acknowledge and agree that the Confidential Information is proprietary, includes our trade secrets, and is disclosed to you only on the condition that you agree, and you do agree, that you:

(a) will not use any Confidential Information in any other business or capacity;

(b) will keep the Confidential Information absolutely confidential during and after this Agreement's term;

(c) will not make unauthorized copies of any Confidential Information disclosed via electronic medium or in written or other tangible form;

(d) will adopt and implement all reasonable procedures that we periodically prescribe to prevent unauthorized use or disclosure of Confidential Information, including, without limitation, restricting its disclosure to CLINIC personnel and others needing to know such Confidential Information to operate the CLINIC, and using confidentiality and non-disclosure agreements with those having access to Confidential Information. We have the right to regulate the form of agreement that you use and to be a third party beneficiary of that agreement with independent enforcement rights; and

(e) will not sell, trade or otherwise profit in any way from the Confidential Information, except using methods approved by us.

All ideas, concepts, techniques or materials relating to a Massage Envy Clinic, whether or not protectable intellectual property and whether created by or for you or your employees, must be promptly disclosed to us and will be deemed to be our sole and exclusive property, part of the Franchise System, and works made-for-hire for us. To the extent any item does not qualify as a "work made-for-hire" for us, by this paragraph you assign ownership of that item, and all related rights to that item, to us and agree to sign whatever assignment or other documents we request to evidence our ownership or to help us obtain intellectual property rights in the item.

"Confidential Information" does not include information, knowledge or know-how which is or becomes generally known in the massage and personal health industry or which you knew from previous business experience before we provided it to you (directly or indirectly) or before you began training or operating the CLINIC. If we include any matter in

Confidential Information, anyone who claims that it is not Confidential Information must prove that the exclusion in this paragraph is fulfilled.

7. EXCLUSIVE RELATIONSHIP.

You acknowledge that we have granted you the Franchise in consideration of and reliance upon your agreement to deal exclusively with us in the massage and personal health industry. You therefore agree that, during this Agreement's Term, neither you nor any of your shareholders or partners (if you are doing business as a corporation or partnership) nor any member of your immediate family will:

(a) have any direct or indirect, controlling or non-controlling interest as an owner - whether of record, beneficial or otherwise - in a Competitive Business (defined below), wherever located or operating;

(b) perform services as a director, officer, manager, employee, consultant, representative or agent, or in any other capacity, for a Competitive Business, wherever located or operating;

(c) directly or indirectly loan any money or other thing of value to, or guarantee any other person's loan to, any Competitive Business or any owner, director, officer, manager, employee or agent of any Competitive Business, wherever located or operating;

(d) employ or seek to employ any person who is, or within six (6) months of such employment or solicitation was, an employee of us, our affiliates or our or their franchisees or licensees, or otherwise directly or indirectly induce that person to leave such employment, without obtaining our or the employer's prior written permission; or

(e) divert or attempt to divert any actual or potential business or customer of the CLINIC to a Competitive Business.

The term "Competitive Business" means (i) any business that derives more than Fifty Thousand Dollars ($50,000.00) of revenue per year from any combination of the sale of massage, massage-related services, facial services, skincare services and/or skincare-related products or (ii) any business which grants franchises or licenses to others to operate such a business, other than a Massage Envy Clinic operated under a franchise agreement with us.

8. CLINIC OPERATION AND SYSTEM STANDARDS.

A. CLINIC ADMINISTRATOR.

Concurrently with the execution of this Agreement, you shall designate a general manager (the "CLINIC Administrator") of your business as described in this Agreement. The CLINIC Administrator may be you (if you are not an Entity). The CLINIC Administrator will exert full-time efforts to fulfill your obligations under this Agreement and will not engage in any other business or other activity, directly or indirectly, that requires any significant management responsibility or time commitments, or that may otherwise conflict with your obligations under this Agreement. If the relationship of the CLINIC Administrator to you terminates or materially

changes, you agree to promptly designate a replacement. The CLINIC Administrator must successfully complete our initial training program before the CLINIC opens for business. Any replacement CLINIC Administrator must also complete our initial training program. You shall pay the charges that we establish for training programs furnished to any individual who replaces a previously trained CLINIC Administrator.

B. CONDITION AND APPEARANCE OF CLINIC.

You agree that you will not use the CLINIC or any part of the Site for any purpose other than operating a Massage Envy Clinic in compliance with this Agreement, and that you will place or display at the Site (interior and exterior) only those signs, emblems, designs, artwork, lettering, logos and display and advertising materials that we from time to time approve during this Agreement's term. You further agree to maintain the condition and appearance of your CLINIC and the Site in accordance with our System Standards and consistent with the image of a Massage Envy Clinic as a professionally operated business offering high quality services and products and observing the highest standards of professionalism, cleanliness and courteous service. In that connection you agree to take, without limitation, the following actions during this Agreement's term at your expense: (1) thorough cleaning, repainting and redecorating of the interior and exterior of the Site at intervals that we may prescribe; (2) interior and exterior repair of the Site as needed; and (3) repair or replacement, at our direction, of damaged, worn-out or obsolete equipment at intervals that we may prescribe (or, if we do not prescribe an interval for replacing any equipment, as that equipment needs to be repaired or replaced).

In addition to your obligations described above, we may periodically require you to substantially alter the CLINIC'S and the Site's appearance, layout and/or design, and/or replace a material portion of your equipment, in order to meet our then current requirements for new Massage Envy Clinics. You acknowledge that this obligation could result in your making extensive structural changes to, and significantly remodeling and renovating, the CLINIC, and you agree to incur any capital expenditures required in order to comply with this obligation and our requirements. We will not require you to make a fundamental and material change to your CLINIC design within the first three (3) years of its operation. Within sixty (60) days after receiving written notice from us, you must have plans prepared according to the standards and specifications we prescribe and, if we require, using architects and contractors we designate or approve, and you must submit those plans to us for our approval. You must complete all work according to the plans we approve within the time period that we specify. However, nothing in this paragraph in any way limits your obligation to comply with all mandatory System Standards we specify.

C. SERVICES AND PRODUCTS YOUR CLINIC OFFERS.

You agree that: (1) your CLINIC will offer all services and products that we periodically specify; (2) you will not offer, sell, give away or otherwise provide at the CLINIC, the Site or any other location any services or products we have not authorized; (3) you shall not sell any products at wholesale or through any channel of distribution other than retail sales at the CLINIC (including, without limitation, sales of products via mail order, catalogs, toll free telephone numbers and electronic means including the Internet); (4) you shall not perform massage services at any location other than at the CLINIC; and (5) you will discontinue selling and offering for sale any services or products that we at any time disapprove in writing.

D. APPROVED PRODUCTS, DISTRIBUTORS AND SUPPLIERS.

We reserve the right to periodically designate and approve standards, specifications, suppliers and/or distributors of the Operating Assets, Products and support services we periodically authorize for use at the CLINIC. During this Agreement's term you must acquire all Operating Assets and Products for the CLINIC only according to our standards and specifications and, if we require, only from suppliers or distributors that we designate or approve (which may include or be limited to us and/or our affiliates). You acknowledge and agree that we and/or our affiliates may derive revenue based on your purchases and leases (including, without limitation, from charging you for products and services we or our affiliates provide to you and from promotional allowances, volume discounts and other payments made to us by suppliers that we designate or approve for some or all of our franchisees).

If you want to use any Operating Assets, Products or support services that we have not yet evaluated or purchase any item from a supplier or distributor that we have not yet approved (for items that we require you to purchase from designated or approved suppliers or distributors), you first must submit sufficient information, specifications and samples for us to determine whether the item complies with our standards and specifications or the supplier or distributor meets our criteria. We may condition our approval of a supplier or distributor on requirements relating to product quality, prices, consistency, warranty, reliability, financial capability, labor relations, customer relations, frequency of delivery, concentration of purchases, standards of service (including prompt attention to complaints) or other criteria. We have the right to inspect the proposed supplier's or distributor's facilities and to require the proposed supplier or distributor to deliver product samples or items, at our option, either directly to us or to any independent, certified laboratory which we designate for testing. Either you or the proposed supplier or distributor must pay us a fee (not to exceed the reasonable cost of the inspection and the actual cost of the test) to make the evaluation. We reserve the right periodically to re-inspect the facilities and products of any approved supplier or distributor and to revoke our approval if the supplier or distributor does not continue to meet our criteria.

E. COMPLIANCE WITH LAWS AND GOOD BUSINESS PRACTICES.

It is your sole and absolute obligation to research all applicable federal, state and local laws and regulations governing the operation of your CLINIC and to ensure that such operation does not violate any federal, state or local law or regulation. You must secure and maintain in force throughout this Agreement's term all required licenses, permits and certificates relating to the CLINIC'S operation and operate the CLINIC in full compliance with all applicable laws, ordinances and regulations. All massage therapists providing services at the CLINIC must also maintain all required licenses at all times. The CLINIC must, in all dealings with its customers, suppliers, us and the public, adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business or advertising practice which might injure our business or the goodwill associated with the Marks or other Massage Envy Clinics. You must notify us in writing within five (5) days of: (1) the commencement of any action, suit or proceeding relating to the CLINIC; (2) the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality which might adversely affect your operation or financial condition or that of the CLINIC (including, without limitation, the revocation or threatened revocation of any license,

permit or certification applicable to the CLINIC); and (3) any notice of violation of any law, ordinance or regulation relating to the CLINIC.

F. INSURANCE.

At your sole cost and expense, you must procure and maintain in full force and effect at all times during the Initial Term and the Successor Term, if applicable, insurance policies in the minimum amounts required below, and shall provide us with proof of coverage on demand.

Insurance Policies. You shall maintain the following insurance policies issued by carriers approved by us:

Comprehensive general liability insurance and umbrella insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of your CLINIC, containing minimum liability protection of One Million Dollars ($1,000,000.00) combined single limit per occurrence, and Two Million Dollars ($2,000,000.00) in the aggregate (unless greater amounts are required by your landlord, local governmental authority, etc.), with a maximum deductible of One Thousand Dollars ($1,000.00) per claim.

Worker's compensation insurance and employer's liability insurance as required by law;

Automobile liability and property damage insurance covering all loss, liability, claim or expense of any kind whatsoever resulting from the use, operation, or maintenance of any automobiles or motor vehicles, owned, leased, or used by you, or your officers, directors, employees, partners or agents, in the conduct of your CLINIC, containing minimum liability protection of Five Hundred Thousand Dollars ($500,000.00) per claim.

Professional liability insurance coverage liability due to errors or omissions in the performance of Services under this Agreement, with limits not less than One Million Dollars ($1,000,000.00) per claim and Three Million Dollars ($3,000,000.00) annual aggregate. This must include sexual abuse coverage of One Hundred Thousand Dollars ($100,000.00) per occurrence with a Three Hundred Thousand Dollars ($300,000.00) aggregate coverage.

Any other insurance that we specify in the Manual or otherwise require from time to time.

Carriers. All insurance policies shall be issued by insurance carriers rated A-VIII or better by Alfred M. Best & Company, Inc. (or similar criteria as we periodically specify). All carriers must be licensed and admitted in the state(s) where you operate your CLINIC.

Waiver of Subrogation; Notification by Carrier. All insurance policies required in this Section shall name us (and our members, officers, directors, and employees) as additional insureds, contain a waiver by the insurance carrier(s) of all subrogation rights against us, and shall provide that we receive thirty (30) days prior written notice of termination, expiration, cancellation or modification of any such policy. Should any of your insurance companies fail to give us notice as required in this Section, then the policy of that company may be disapproved by

us. In that event, you will be required to immediately find additional coverage satisfactory to us with an alternative carrier.

Modification of Coverage by Us. Upon ten (10) days notice to you, we may increase the minimum protection requirement as of the renewal date of any policy, and require different or additional types of insurance at any time, including excess liability (umbrella) insurance, to reflect inflation, identification of special risks, changes in law or standards or liability, higher damage awards or other relevant changes in circumstances.

Certificate of Insurance; Coverage by Us. You shall furnish to us annually a copy of the certificate of insurance or other evidence of the renewal or extension of each such insurance policy. If you at any time fail or refuse to maintain in effect any insurance coverage required by us, or to furnish satisfactory evidence thereof, we, at our option and in addition to our other rights and remedies in this Agreement, may, but need not, obtain such insurance coverage on behalf of you, and you shall promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs and premiums incurred by us and we may, at our option, debit your account for the amount of such costs or premiums. Your failure to provide insurance coverage as indicated will be considered a material event of default of this Agreement. Your obligation to obtain and maintain the insurance described in this Section shall not be limited in any way by reason of any insurance maintained by us, nor shall your performance of such obligations relieve you of any indemnification obligations contained in this Agreement.

G. MAXIMUM AND MINIMUM PRICES.

To the extent permitted by applicable law, we may periodically establish maximum and/or minimum prices for services and products that the CLINIC offers, including, without limitation, prices for promotions in which all or certain Massage Envy Clinics participate. If we establish such prices for any product or service, you agree not to exceed or reduce that price, but will charge the price for the product or service that we establish.

H. NATIONAL MEMBERSHIP ACCOUNTS.

We have the exclusive right, but not the obligation, to negotiate agreements with National Membership Accounts (defined below) for the provision of goods and services by all Massage Envy Clinics. If we agree to terms with any National Membership Account, you must provide products and services to all valid members of the National Membership Account on those terms. If those terms include maximum prices, you may charge any prices you wish to the National Membership Account's members up to and including the maximum prices. If any National Membership Accounts contacts you regarding goods or services to be provided by you and/or other Massage Envy Clinics, you must forward all relevant information regarding the National Membership Account to us. In this Agreement, a "**National Membership Account**" is any entity that would reasonably require the services of two (2) or more Massage Envy Clinics to serve the persons such entity represents (for example, a large employer, an employer with multiple offices, or a health plan).

I. RECIPROCITY.

During the Term, upon proof of a valid and current Massage Envy Clinic membership, you must allow any member of another Massage Envy Clinic to receive massage

services at the CLINIC at or below the reciprocity rates we specify from time to time in the Operations Manual. Members of the CLINIC will have similar reciprocal rights with all other Massage Envy Clinics.

J. COMPLIANCE WITH SYSTEM STANDARDS.

You acknowledge that compliance with the entirety of the System Standards is essential for the success of the CLINIC. In addition, you acknowledge and agree that operating and maintaining the CLINIC according to System Standards are essential to preserve the goodwill of the Marks and all Massage Envy Clinics. Therefore, you agree at all times to operate and maintain the CLINIC according to each and every System Standard, as we periodically modify and supplement them. Except as otherwise specifically described in Section 4.D. of this Agreement, System Standards may regulate any aspect of the CLINIC'S operation and maintenance, including but not limited to any one or more of the following:

(1) sales, marketing, advertising and promotional programs and materials and media used in these programs;

(2) staffing levels for the CLINIC, dress, appearance and uniforms for your massage therapists and employees (although you have sole responsibility and authority for your employees' terms and conditions of employment);

(3) minimum licensing, certifications, educational background, credentials and skill levels of massage therapists performing services at the CLINIC;

(4) specification of required and authorized products and services;

(5) use and display of the Marks;

(6) days and hours of operation;

(7) customer service standards and policies;

(8) issuing and honoring gift cards, gift cards and similar items and participating in other promotions. You agree not to issue any gift cards, gift cards or similar items except in accordance with our procedures relating to gift cards;

(9) participation in market research and testing and product and service development programs;

(10) accepting credit and debit cards, other payment systems and check verification services;

(11) bookkeeping, accounting, data processing and record keeping systems and forms; formats, content and frequency of reports to us of sales, revenue, and financial reports and condition; and giving us copies of tax returns and other operating and financial information concerning the Franchise;

(12) the terms and format of membership agreements; and

(13) any other aspects of operating and maintaining the CLINIC that we determine to be useful to preserve or enhance the efficient operation, image or goodwill of the Marks and Massage Envy Clinics.

You agree that all mandatory System Standards we prescribe in the Operations Manual, or otherwise communicate to you in writing or another form, are part of this Agreement. All references to this Agreement include all mandatory System Standards as periodically modified. Subject to your rights under Section 8.B of this Agreement relating to substantial alterations to the CLINIC'S appearance, layout and/or design and/or replacement of a material portion of your Operating Assets, you acknowledge that our periodic modification of our System Standards (including, without limitation, changes to the Computer System's components), which may accommodate regional and/or local variations, may obligate you to invest additional capital in the CLINIC and incur higher operating costs, and you agree to comply with those obligations within the time period we specify.

9. MARKETING.

A. BY YOU.

You agree to spend a total of at least four percent (4%) of the CLINIC'S annual Gross Sales on advertising, marketing and promotional programs for the CLINIC (the "**Marketing Spending Requirement**"). We will credit your Marketing Fund contributions and Cooperative contributions (described below), amounts spent for telephone directory advertising, and any other amounts you spend to advertise, market or promote your CLINIC. You must spend the amount by which the Marketing Spending Requirement exceeds the total of your Marketing Fund and Cooperative contributions on other marketing programs. We may review your books and records from time to time and/or require you to submit reports periodically to determine your advertising, marketing and promotion expenses.

You agree to list and advertise the CLINIC in each classified telephone directory covering the Site (in the business classifications we prescribe from time to time) and, if we require, to use our standard form of classified telephone directory advertisement. If there are other Massage Envy Clinics located within the distribution area of one or more of those directories, and we require, you agree to participate in a collective advertisement with those other Massage Envy Clinics and pay your share of that collective advertisement. You may credit the cost of telephone directory advertising toward your minimum Marketing Spending Requirement.

You agree that your advertising, promotion and marketing will be completely clear, factual and not misleading and conform to the highest standards of ethical advertising and marketing and the advertising and marketing policies that we prescribe from time to time. Before you use them, you must send us for approval samples of all advertising, promotional and marketing materials which we have not prepared or previously approved during the last twelve (12) months. If we do not disapprove the materials within five (5) days of our receipt of them, they shall be deemed approved. You may not use any advertising, promotional or marketing materials that we have disapproved.

B. MARKETING FUND.

Recognizing the value of advertising and marketing to the goodwill and public image of Massage Envy Clinics, we have established a marketing fund (the "**Marketing Fund**")

for the advertising, marketing and public relations programs and materials we deem appropriate. You agree to contribute to the Marketing Fund the amounts that we periodically prescribe, not to exceed one percent (1%) of the CLINIC'S Gross Sales, payable in the same manner as the Royalty (or in such other manner as we periodically prescribe). Massage Envy Clinics that we or our affiliates own will contribute to the Marketing Fund on the same basis as our franchisees.

We will designate all programs that the Marketing Fund finances, with sole control over the creative concepts, materials and endorsements used and their geographic, market and media placement and allocation. The Marketing Fund may pay for preparing and producing video, audio and written materials and electronic media; administering regional and multi-regional marketing and advertising programs, including, without limitation, purchasing trade journal, direct mail, radio and other media advertising and using advertising, promotion and marketing agencies and other advisors to provide assistance; and supporting public relations, market research and other advertising, promotion and marketing activities. The Marketing Fund periodically will give you samples of advertising, marketing and promotional formats and materials at no cost and will sell you multiple copies of these materials at its direct cost of producing them, plus any related shipping, handling and storage charges.

We will account for the Marketing Fund separately from our other funds and not use the Marketing Fund for any of our general operating expenses, except to compensate the reasonable salaries, administrative costs, travel expenses and overhead we incur in administering the Marketing Fund and its programs, including, without limitation, conducting market research, preparing advertising, promotion and marketing materials, and collecting and accounting for Marketing Fund contributions. The Marketing Fund will not be our asset. The Marketing Fund is not a trust, and we do not owe you fiduciary obligations because of our maintaining, directing or administering the Marketing Fund or any other reason. The Marketing Fund may spend in any fiscal year more or less than the total Marketing Fund contributions in that year, borrow from us or others (paying reasonable interest) to cover deficits, or invest any surplus for future use. We will use all interest earned on Marketing Fund contributions to pay costs before using the Marketing Fund's other assets. We will prepare an annual, unaudited statement of Marketing Fund collections and expenses and give you the statement upon written request. We may incorporate the Marketing Fund or operate it through a separate entity whenever we deem appropriate. The successor entity will have all of the rights and duties specified in this Subsection.

We intend the Marketing Fund to maximize recognition of the Marks and patronage of Massage Envy Clinics. Although we will try to use the Marketing Fund to develop advertising and marketing materials and programs, and to place advertising and marketing, that will benefit all Massage Envy Clinics, we need not ensure that Marketing Fund expenditures in or affecting any geographic area are proportionate or equivalent to the Marketing Fund contributions by Massage Envy Clinics operating in that geographic area or that any Massage Envy Clinic benefits directly or in proportion to its Marketing Fund contribution from the development or placement of advertising and marketing materials. We have the right, but no obligation, to use collection agents and institute legal proceedings to collect Marketing Fund contributions at the Marketing Fund's expense. We also may forgive, waive, settle and compromise all claims by or against the Marketing Fund. Except as expressly provided in this Subsection, we assume no direct or indirect liability or obligation to you for collecting amounts due to, maintaining, directing or administering the Marketing Fund.

We may at any time defer or reduce the Marketing Fund contributions of a Massage Envy Clinic franchisee (and can later reinstate the Marketing Fund contributions at any time) and, upon thirty (30) days' prior written notice to you, reduce or suspend Marketing Fund contributions and operations for one or more periods of any length and terminate (and, if terminated, reinstate) the Marketing Fund. If we terminate the Marketing Fund, we will distribute all unspent monies to our franchisees, and to us and our affiliates, in proportion to their, and our, respective Marketing Fund contributions during the preceding twelve (12) month period.

C. ADVERTISING COOPERATIVES.

You agree that we may designate a geographic area in which two (2) or more Massage Envy Clinics are located as a region in order to establish an advertising cooperative (a "**Cooperative**"). The Cooperative's members in any area will include all of the Massage Envy Clinics operating in that area (including us or our affiliates, if applicable). Each Cooperative will be organized and governed in a form and manner, and begin operating on a date, that we determine in advance. We may change, dissolve, or merge Cooperatives. Each Cooperative's purpose is, with our approval, to administer advertising programs and develop advertising, marketing and promotional materials for the area that the Cooperative covers. If, as of the time you sign this Agreement, we have established a Cooperative for the geographic area in which the CLINIC is located, or if we establish a Cooperative in that area during this Agreement's term, you agree to sign the documents we require to become a member of the Cooperative and to participate in the Cooperative as those documents require.

In addition to your Marketing Fund contribution in Subsection B above, you agree to contribute to the Cooperative the amounts determined by the Cooperative, subject to our approval and the Marketing Spending Requirement. All material decisions of the Cooperative, including contribution levels, will require the affirmative vote of fifty-one percent (51%) of all Massage Envy Clinics operating within the Cooperative's area (including, if applicable, those operated by us and our affiliates), with each Massage Envy Clinic receiving one (1) vote.

You agree to submit to us and the Cooperative any reports that we or it requires. The Cooperative will operate solely to collect and spend Cooperative contributions for the purposes described above. The Cooperative and its members may not use any advertising, marketing or promotional plans or materials without our prior written consent.

D. WEBSITES.

You specifically acknowledge and agree that any Website (as defined below) shall be deemed "advertising" under this Agreement, and will be subject to (among other things) our approval under Section 9.C of this Agreement. As used in this Agreement, the term "Website" means an interactive electronic document, contained in a network of computers linked by communications software that refers to the CLINIC, Massage Envy Clinics or the Marks. The term Website includes, but is not limited to, Internet and World Wide Web home pages. In connection with any Website, you agree to the following:

(1) You shall not establish a separate Website without our prior written consent. We shall have the right, but not the obligation, to designate one or more web page(s) to describe you and/or the CLINIC, such web page(s) to be located within our Website; and

(2) If we approve, in writing, a separate Website for you, then each of the following provisions shall apply:

(a) You shall not establish or use the Website without our prior written approval.

(b) Before establishing the Website, you shall submit to us, for our prior written approval, a sample of the proposed Website domain name, format, visible content (including, but not limited to, proposed screen shots), and non-visible content (including, but not limited to, meta tags) in the form and manner we may reasonably require; and you shall not use or modify such Website without our prior written approval as to such proposed use or modification.

(c) In addition to any other applicable requirements, you shall comply with our standards and specifications for Websites as we prescribe from time to time in the Operations Manual or otherwise in writing.

(d) If we require, you shall establish such hyperlinks to our Website and others as we may request in writing.

(e) We may revoke our approval at any time, in writing, and require that you discontinue use of a separate Website.

10. RECORDS, REPORTS AND FINANCIAL STATEMENTS.

You agree to establish and maintain at your own expense a bookkeeping, accounting and recordkeeping system conforming to the requirements and formats we prescribe from time to time, including by completing our standard Chart of Accounts in the manner we specify. We may require you to use a Computer System to maintain certain sales and expense data and other information, in such formats as we periodically prescribe, and to transmit that data and information to us on a schedule we periodically prescribe. You also must maintain the Computer System in order to allow us unlimited independent access to, and the ability to download, all information in your Computer System at any time. In addition to our ability to access and download information in your Computer System, you agree to give us and your Regional Developer in the manner and format that we periodically prescribe:

(a) on or before the Payment Day, a report on the CLINIC'S Gross Sales during the previous week;

(b) within five (5) days after the end of each month, the operating statements, financial statements, statistical reports and other information we request regarding you and the CLINIC covering that month;

(c) by February 28th of each year, the operating statements, financial statements, statistical reports and other information we request regarding you and the CLINIC for the previous calendar year; and

(d) within ten (10) days after our request, exact copies of federal and state income and other tax returns and any other forms, records, books and other information we periodically require relating to the CLINIC or the Franchise

You agree to verify and sign each report and financial statement in the manner we prescribe. We may disclose data derived from these reports, although we will not (without your consent) disclose your identity in connection with that data in any materials that we circulate publicly. If you ever receive formal notice from us of your failure to comply with your reporting or payment obligations under this Agreement, we may require you to have audited financial statements prepared annually during the remainder of the term of this Agreement.

11. INSPECTIONS AND AUDITS.

A. OUR RIGHT TO INSPECT THE CLINIC.

To determine whether you and the CLINIC are complying with this Agreement and all System Standards, we and our designated agents and representatives may at all times and without prior notice to you:

(1) inspect the CLINIC;

(2) observe, photograph, and videotape the CLINIC'S operation (including so called "mystery shopping") for consecutive or intermittent periods we deem necessary;

(3) remove samples of any Products;

(4) interview the CLINIC'S personnel and customers; and

(5) inspect and copy any books, records and documents relating to the CLINIC'S operation.

You agree to cooperate with us fully. If we exercise any of these rights, we will use our best efforts not to interfere unreasonably with the CLINIC'S operation. You agree to present to your customers the evaluation forms that we periodically prescribe and to participate and/or request your customers to participate in any surveys performed by or for us.

B. OUR RIGHT TO AUDIT.

We may at any time during your business hours, and without prior notice to you, examine the CLINIC'S business, bookkeeping and accounting records, sales and income tax records and returns, and other records. You agree to cooperate fully with our representatives and independent accountants in any inspection or audit. If any inspection or audit discloses an understatement of the CLINIC'S Gross Sales, you must pay us, within fifteen (15) days after receiving the inspection or audit report, the Royalty and the Marketing Fund and Cooperative contributions due on the amount of the understatement, plus interest (in the amount described in Section 3.D above) from the date originally due until the date of payment. Further, if an inspection or audit is necessary due to your failure to furnish reports, supporting records or other information as required, or to furnish these items on a timely basis, or if our examination reveals a Royalty or Marketing Fund contribution understatement exceeding two percent (2%) of the amount that you actually reported to us for the period examined, you agree to reimburse us for the cost of our examination, including, without limitation, the charges of attorneys and independent accountants and the travel expenses, room and board, and compensation of our employees. These remedies are in addition to our other remedies and rights under this Agreement and applicable law.

12. TRANSFER.

A. DELEGATION TO REGIONAL DEVELOPER.

You acknowledge that we may delegate some or all of our obligations under this Agreement relating to sales, training, site assistance, and supervisory services to any person identified as a "Regional Developer" in the Franchise Disclosure Document that was provided to you. You agree in advance to any such delegation and assignment by us of any portion or all of our obligations and rights under this Agreement. You also acknowledge that you are not a third party beneficiary of any Regional Development Agreement or other agreement between us and any Regional Developer.

B. TRANSFER BY US.

We may change our ownership or form and/or assign this Agreement and any other agreement without restriction. This Agreement and any other agreement will inure to the benefit of any transferee or other legal successor to our interest in it.

C. TRANSFER BY YOU.

You understand and acknowledge that the rights and duties this Agreement creates are personal to you and that we have granted you the Franchise in reliance upon our perceptions of your character, skill, aptitude, attitude, English language proficiency, business ability and financial capacity. Accordingly, neither: (i) this Agreement (or any interest in this Agreement); (ii) your or any Entity's interest in the CLINIC or its assets (or any right to receive all or a portion of the CLINIC'S profits or losses or any capital appreciation relating to the CLINIC); nor (iii) any ownership interest in any Entity holding the Franchise may be transferred without our prior written approval. A transfer of your (or the Entity's) interest in the CLINIC or its assets may be made only with a transfer of this Agreement. Any transfer without our approval is a breach of this Agreement and has no effect. In this Agreement, the term "transfer" includes any voluntary, involuntary, direct or indirect assignment, sale, gift or other disposition and includes the following events:

(1) transfer of record or beneficial ownership of capital stock (if the Entity holding the Franchise is a corporation), a partnership or membership interest (if the Entity holding the Franchise is a partnership or limited liability company), or any other ownership interest or right to receive all or a portion of your profits or losses;

(2) a merger, consolidation or exchange of shares or other ownership interests, or issuance of additional ownership interests or securities representing or potentially representing shares or other ownership interests, or a redemption of shares or other ownership interests;

(3) any sale or exchange of voting interests or securities convertible to voting interests, or an agreement granting the right to exercise or control the exercise of the voting rights of any owner or to control your operations or affairs;

(4) transfer of an interest in you, this Agreement, or the CLINIC or its assets (or any right to receive all or a portion of your or the CLINIC'S profits or losses or any

capital appreciation relating to the CLINIC) in a divorce, insolvency or entity dissolution proceeding, or otherwise by operation of law;

(5) if you or an owner of the Entity holding the Franchise dies, transfer of an interest in the Entity, this Agreement, or the CLINIC or its assets (or any right to receive all or a portion of your or the CLINIC'S profits or losses or any capital appreciation relating to the CLINIC) by will, declaration of or transfer in trust, or under the laws of intestate succession; or

(6) pledge of this Agreement (to someone other than us) or of an ownership interest in the Entity holding the Franchise as security, foreclosure upon the CLINIC, or your transfer, surrender or loss of the CLINIC'S possession, control or management.

D. CONDITIONS FOR APPROVAL OF TRANSFER.

If you and your owner(s) are in full compliance with this Agreement, we shall not unreasonably withhold our approval of a sale, provided that the proposed buyer(s) are, in our opinion, individuals of good moral character who have sufficient business experience, English language proficiency, aptitude and financial resources to own and operate the Clinic and otherwise meet our then applicable standards for franchisees, and further provided that the following conditions are met prior to, or concurrently with, the effective date of the sale:

(1) all your obligations incurred in connection with this Agreement have been discharged or assumed by the buyer(s); and

(2) you shall have paid such Royalty Fees, Marketing Fund Fees and Cooperative contributions, and amounts owed for purchases by you from us which are then due and unpaid; and

(3) the buyer(s) shall have completed the training program required of new franchisees; and

(4) the buyer(s) shall have proven to us its or their financial viability to undertake and perform the requirements of this Agreement; and

(5) the lessor shall have consented to your assignment of the lease to the buyer(s), or the buyer(s) shall have secured substitute premises for the CLINIC which are approved by us; and

(6) the buyer(s) and its or their owner shall have executed an assignment agreement and personal guaranty and agreed to be bound by the existing franchise agreement and such ancillary agreements that accompanied the grant the grant of the franchise for transferred Clinic (or execute new ancillary agreements at our option); and

(7) you or the buyer(s) shall have paid a training and assignment fee to us in the amount equal to two-thirds (2/3's) of our then current initial franchise fee for new Massage Envy Clinics to defray expenses incurred by us in connection with the transfer, including, without limitation, legal and accounting fees, credit and other investigation charges and evaluation of buyer(s) and the terms of the transfer; and

(8) the buyer(s) shall have replaced or refurbished fixtures, signs, equipment, furniture and furnishings, and otherwise modified the CLINIC'S methods and operations in compliance with specifications and standards then applicable to new franchises for Massage Envy Clinics; and

(9) you and the owner(s) shall have executed a general release, in a form satisfactory to us, of any and all claims against us and our members, managers, officers, directors, employees and agents; and

(10) we shall have approved the material terms and conditions of such transfer, including, without limitation, that the price and terms of payment are not so burdensome as to adversely affect the future operations of the CLINIC by the buyer(s) in compliance with our then standard franchise agreement and ancillary agreements; and

(11) you and the owner(s) shall reaffirm a covenant not to compete in favor of us and the buyer(s), all as contained within this Agreement; and

(12) you and the owner(s) shall have entered into an agreement with us to subordinate the buyer(s)' obligations to you or your owner(s) to those obligations owed to us; and

(13) we have not exercised our right of first refusal under this Agreement.

If the proposed transfer is to or among immediate family members (defined as parent, spouse or child), or to an entity described in Subsection (E) below, then Subsection (7) above will not apply, although you must reimburse us for the costs we incur in the transfer. We may review all information regarding the CLINIC that you give the transferee and give the transferee copies of any reports that you have given us or we have made regarding the CLINIC.

E. ASSIGNMENT TO ENTITY PRINCIPALLY CONTROLLED BY YOU.

The franchise and its assets and liabilities may be assigned to a newly-formed corporation or other legal entity that conducts no business other than the operation of the franchise and in which you and any of your principals own and control in the aggregate not less than sixty-seven percent (67%) of the equity and voting power of all outstanding capital stock or ownership interest, provided as follows:

(1) that the proposed transferee complies with the provisions of this Agreement; and

(2) that you are empowered to act for said corporation or other legal entity; and

(3) that you shall submit to us documentation that we may reasonably request to effectuate the transfer, including the approving and acknowledging execution of this Agreement; and

(4) that you shall submit to us a true and complete list of the shareholders, members or partners, showing number of shares or interests owned, and a list of the

officers and directors if a corporation, or managers if a limited liability company, or managing partners if a partnership. We shall be promptly notified of any changes in said lists; and

(5) that all certificates of shares or interests issued by transferee at any time shall have endorsed thereon an appropriate legend to conform with state law, referring to this Agreement by date and name of parties hereto, and stating "Transfer of This Certificate is Limited by the Terms and Condition of a Franchise Agreement Dated **June 2, 2010;**" and

(6) that a copy of this Agreement shall be given to every shareholder, member or partner of the legal entity, all of whom shall execute an Assignment Agreement in the form prepared by us to effect this assignment and who, along with their respective spouses, shall also execute the Guaranty and Assumption of Obligations; and

(7) that a copy of the organizational documents and any corporate resolutions, and a Certificate of Good Standing, will be furnished to us at our reasonable request, and prompt notification in writing of any amendments thereto will be provided to us; and

(8) That the number of shares or interests issued or outstanding in the transferee will not be increased or decreased without prior written notice to us, which notice will in its terms guarantee compliance with this Agreement. In addition, new shareholders, members or partners must agree to be bound by this entire Agreement. Shareholders, members or partners may make a separate agreement among them providing for purchase by the survivors among them of the shares of any shareholders or interests of any members or partners upon death, or other agreements affecting ownership or voting rights, so long as voting control and a majority representation of the board of directors or members or partners remains with those individuals who initially applied for and were approved as franchisees under this Agreement. Shareholders, members or partners must notify us in writing of any such agreement which affects control of the transferee.

F. **DEATH OR DISABILITY.**

(1) Transfer Upon Your Death or Disability.

Upon your death or disability, your executor, administrator, conservator, guardian or other personal representative must transfer your interest in this Agreement, the Lease, the CLINIC and its assets, or your ownership interest in the Entity holding the Franchise, to a third party. That transfer (including, without limitation, transfer by bequest or inheritance) must occur, subject to our rights under Subsection (2) below, within a reasonable time, not to exceed nine (9) months from the date of death or disability, and is subject to all of the terms and conditions in Section 12.D.(1) through (5) of this Agreement. A failure to transfer such interest within this time period is a breach of this Agreement. The term **"disability"** means a mental or physical disability, impairment or condition that is reasonably expected to prevent or actually does prevent you from supervising the CLINIC'S management and operation for ninety (90) or more consecutive days.

(2) Operation Upon Your Death or Disability.

If, upon your death or disability, a trained manager who we approve is not managing the CLINIC'S day-to-day operations, then your executor, administrator, conservator, guardian or other personal representative must within a reasonable time, not to exceed thirty (30) days from the date of death or disability, appoint a CLINIC Administrator we approve to operate the CLINIC. The CLINIC Administrator must at your estate's expense satisfactorily complete the training that we designate within the time period we specify.

G. EFFECT OF CONSENT TO TRANSFER.

Our consent to any transfer is not a representation of the fairness of the terms of any contract between you and the transferee, a guarantee of the CLINIC'S or transferee's prospects of success, or a waiver of any claims we have against you or of our right to demand the transferee's full compliance with this Agreement's terms or conditions.

H. OUR RIGHT OF FIRST REFUSAL.

If you at any time determine to sell or transfer for consideration an interest in this Agreement and the CLINIC or a controlling ownership interest in the Entity holding the Franchise, you agree to obtain from a responsible and fully disclosed buyer, and send us, a true and complete copy of a bona fide, executed written offer relating exclusively to an interest in you or this Agreement and the CLINIC. The offer must include details of the payment terms of the proposed sale and the sources and terms of any financing for the proposed purchase price. To be a valid, bona fide offer, the proposed purchase price must be in a fixed dollar amount and without any contingent payments of purchase price (such as earn-out payments).

We may, by delivering written notice to you within fifteen (15) days after we receive both an exact copy of the offer and all other information we request, elect to purchase the interest for the price and on the terms and conditions contained in the offer, provided that: (1) we may substitute cash for any form of payment proposed in the offer; (2) our credit will be deemed equal to the credit of any proposed buyer; (3) the closing will be not less than thirty (30) days after notifying you of our election to purchase or, if later, the closing date proposed in the offer; and (4) we must receive, and you agree to make, all customary representations and warranties given by the seller of the assets of a business or ownership interests in a legal entity, as applicable, including, without limitation, representations and warranties regarding ownership and condition of, and title to, assets and (if applicable) ownership interests and validity of contracts and the liabilities, contingent or otherwise, relating to the assets or ownership interests being purchased. If we exercise our right of first refusal, you agree that, for eighteen (18) months beginning on the closing date, you and members of your immediate family will be bound by the non-competition covenant contained in Section 15.D below.

If we do not exercise our right of first refusal, you may complete the sale to the proposed buyer on the original offer's terms, subject to our approval of the transfer as provided in Subsections C and D above. If you do not complete the sale to the proposed buyer within sixty (60) days after we notify you that we do not intend to exercise our right of first refusal, or if there is a material change in the terms of the sale (which you must tell us promptly), we will have an additional right of first refusal during the thirty (30) day period following either the expiration of the sixty (60) day period or our receipt of notice of the material change(s) in the sale's terms, either on the terms originally offered or the modified terms, at our option.

13. EXPIRATION OF THIS AGREEMENT.

A. YOUR RIGHT TO ACQUIRE A SUCCESSOR FRANCHISE.

Upon expiration of the Initial Term, if you (and each of your Owners) have substantially complied with this Agreement during the term of this Agreement, are then in compliance with this Agreement, and:

(a) you maintain possession of and agree to remodel and/or expand the Facility, add or replace improvements, equipment, fixtures, furnishings, and signs, and otherwise modify the Facility as we require to bring it into compliance with specifications and standards then applicable for new Facilities; or

(b) if you are unable to maintain possession of the Site, or if in our judgment the Facility should be relocated, you: (i) secure a substitute Site we approve; (ii) develop the substitute Site in compliance with specifications and standards then applicable for new Facilities; and (iii) continue to operate the Facility at the original Site until operations are transferred to the substitute Site;

(c) if you pay us a successor fee equal to twenty-five percent (25%) of the then current franchise fee (the "Successor Fee") and execute our then current form of Successor Agreement. The Successor Agreement shall supersede in all respects this Agreement, and may differ from the terms of this Agreement, including, without limitation, the requirement of a higher percentage royalty fee and/or advertising contributions; and

(d) if, prior to the date that you give us notice, we have not indicated to you our intent to withdraw from the market serviced by you under this Agreement and cease the offer and sale of Massage Envy Clinics in such market;

then, subject to the terms and conditions in this Section, you will have the right to acquire another Franchise (the "Successor Franchise") to operate the Facility on the terms and conditions of the Franchise Agreement we are then using in granting Successor Franchises, any and all of the terms of which may differ materially from those contained in this Agreement (including fees and the boundaries of your Territory). If you are not granted a Successor Franchise under Subsection (d) above, you shall retain the right to operate your CLINIC as an independent business provided that you agree to comply with Sections 15.A, 15.B, 15.C and 15.F of this Agreement.

B. GRANT OF A SUCCESSOR FRANCHISE.

You agree to give us notice of your election to acquire a Successor Franchise at least twelve (12) months prior to the expiration of the Term. We may require you to provide certain financial information relating to the Facility's operation along with (and after delivering) your notice. We will advise you within ninety (90) days after we receive your notice of any deficiencies which must be corrected by you before we will grant you a Successor Franchise or the reason why we will not grant you a Successor Franchise.

C. AGREEMENTS/RELEASES.

If you satisfy all of the other conditions to the grant of a Successor Franchise, you and your Owners must, at least six (6) months prior to the expiration of the Term, execute and return to us the form of Franchise Agreement and any ancillary agreements we are then using in connection with the grant of Successor Franchises (modified as permitted in Section 13.A above). As a further condition to the grant of a Successor Franchise, you and each Owner must also execute and deliver to us (together with delivery of the signed Franchise Agreement) general releases, in form satisfactory to us, of any and all claims against us, our Affiliates, and our and our Affiliates' respective subsidiaries, shareholders, officers, directors, employees, agents, successors, and assigns. Subject to the terms and conditions contained herein, you shall be entitled to a total of one (1) Successor Franchise which shall have a term of ten (10) years.

14. TERMINATION OF AGREEMENT.

We may terminate this Agreement, effective upon delivery of written notice of termination to you, if:

(a) you fail to comply with any mandatory System Standard and do not correct the failure within thirty (30) days after we deliver written notice of the failure to you.

(b) you have made or make a material misrepresentation or omission in acquiring the Franchise or operating the CLINIC;

(c) you knowingly breach Section 8.C(2) of the Agreement;

(d) you do not satisfactorily complete initial training;

(e) you abandon or fail actively to operate the CLINIC for three (3) or more consecutive calendar days, unless you close the CLINIC for a purpose we approve;

(f) you surrender or transfer control of the CLINIC'S operation without our prior written consent;

(g) you are convicted by a trial court of, or plead no contest to, a felony;

(h) you fail to maintain the insurance we require from time to time and do not cure such failure within ten (10) days of the expiration of your insurance policy(ies);

(i) you interfere with our right to inspect the CLINIC or observe its operation, as provided in Section 11 of this Agreement;

(j) you engage in any dishonest, unethical or illegal conduct or any other conduct which, in our opinion, adversely affects the CLINIC'S reputation, the reputation of other Massage Envy Clinics or the goodwill associated with the Marks;

(k) you make an unauthorized transfer of (1) an ownership interest in the Entity holding the Franchise, (2) this Agreement, (3) your (or the Entity's) interest in the CLINIC or its assets, or (4) the right to receive all or any part of your or the CLINIC'S profits or losses or any capital appreciation relating to the CLINIC;

(l) the lease for the Site is terminated for any reason or you otherwise lose possession of the Site and you do not find another site approved by us and sign a lease which meets our standards within ninety (90) days of such termination;

(m) any license or permit necessary for the CLINIC'S proper operation is suspended, revoked or not renewed;

(n) you knowingly make any unauthorized use or disclosure of any part of the Operations Manual or any other Confidential Information;

(o) you violate any health, safety, or sanitation law, ordinance or regulation, or operate the CLINIC in an unsafe manner, and do not begin to cure the violation immediately, and correct the violation within seventy-two (72) hours, after you receive notice;

(p) you fail to pay when due any federal, state or local income, service, sales or other taxes due on the CLINIC'S operation, or repeatedly fail to make or delay making payments to your suppliers or lenders, unless you are in good faith contesting your liability for these taxes or payments;

(q) you understate the CLINIC'S Gross Sales three (3) times or more during this Agreement's term or by more than five percent (5%) on any one occasion;

(r) you (a) fail on three (3) or more separate occasions within any twenty four (24) consecutive month period to submit when due reports or other data, information or supporting records, pay when due any amounts due to us (or our affiliates), or otherwise comply with this Agreement, whether or not you correct any of these failures after we deliver written notice to you; or (b) fail on two (2) or more separate occasions within any twelve (12) consecutive month period to comply with the same obligation under this Agreement, whether or not you correct either of the failures after we deliver written notice to you;

(s) you make an assignment for the benefit of creditors or admit in writing your insolvency or inability to pay your debts generally as they become due; you consent to the appointment of a receiver, trustee or liquidator of all or the substantial part of your property; the CLINIC is attached, seized, subjected to a writ or distress warrant, or levied upon, unless the attachment, seizure, writ, warrant or levy is vacated within thirty (30) days; or any order appointing a receiver, trustee or liquidator of you or the CLINIC is not vacated within thirty (30) days following the order's entry;

(t) you fail to pay us (or our affiliates) any amounts due and do not correct the failure within ten (10) days after we deliver written notice of that failure to you; or

(u) you fail to comply with any other provision of this Agreement and do not correct the failure within thirty (30) days after we deliver written notice of the failure to you.

In the event that we are entitled to terminate this Agreement in accordance with this Section 14, we may, but need not, assume the CLINIC'S management. All funds from the CLINIC'S operation while we assume its management will be kept in a separate account, and all of the CLINIC'S expenses will be charged to this account. We may charge you (in addition to the Royalty and Marketing Fund contributions due under this Agreement) a reasonable management fee we specify, up to eight percent (8%) of the CLINIC'S Gross Sales, plus our direct out-of-pocket costs and expenses, if we assume the CLINIC'S management under this Section. We have a duty to utilize only reasonable efforts and will not be liable to you for any debts, losses or obligations the CLINIC incurs, or to any of your creditors for any products or services the CLINIC purchases, while we manage it.

15. OUR AND YOUR RIGHTS AND OBLIGATIONS UPON TERMINATION OR EXPIRATION OF THIS AGREEMENT.

A. PAYMENT OF AMOUNTS OWED.

You agree to pay within fifteen (15) days after this Agreement expires or is terminated, or on any later date that we determine the amounts due to us, the Royalties, Marketing Fund and Cooperative contributions, interest and all other amounts owed to us, our affiliates or our or their franchisees which then are unpaid.

B. DE-IDENTIFICATION.

When this Agreement expires or is terminated for any reason:

(1) you shall not directly or indirectly at any time thereafter or in any manner (except in connection with other Massage Envy Clinics you own and operate): (a) identify yourself or any business as a current or former Massage Envy Clinic or as one of our franchisees; (b) use any Mark, any colorable imitation of a Mark, any trademark, service mark or commercial symbol that is confusingly similar to any Mark, or other indicia of a Massage Envy Clinic in any manner or for any purpose; or (c) use for any purpose any trade name, trademark, service mark or other commercial symbol that indicates or suggests a connection or association with us;

(2) you agree to take the action required to cancel all fictitious or assumed name or equivalent registrations relating to your use of any Mark;

(3) you agree to deliver to us within thirty (30) days all advertising, marketing and promotional materials, forms, and other materials containing any Mark or otherwise identifying or relating to a Massage Envy Clinic that we request and allow us, without liability to you or third parties, to remove these items from the CLINIC;

(4) if applicable, notify all search engines of the termination or expiration of your right to use all domain names, Websites and other search engines associated directly or indirectly with the CLINIC and authorize those search engines to transfer to us or our designee all rights to the domain names, Websites and search engines relating to the

Marks or your CLINIC. We have the absolute right and interest in and to all domain names, Websites and search engines associated with the Marks or the CLINIC, and you hereby authorize us to direct all applicable parties to transfer your domain names, Websites and search engines to us or our designee if this Agreement expires or is terminated for any reason whatsoever. All parties may accept this Agreement as conclusive of our right to such domain names, Websites and search engines and this Agreement will constitute the authority from you for all parties to transfer all such domain names, Websites and search engines to us;

(5) you agree to notify the telephone company and all telephone directory publishers of the termination or expiration of your right to use any telephone, telecopy or other numbers and telephone directory listings associated with any Mark, authorize the transfer of these numbers and directory listings to us or at our direction, and/or instruct the telephone company to forward all calls made to your numbers to numbers we specify. If you fail to do so, we may take whatever action and sign whatever documents we deem appropriate on your behalf to effect these events; and

(6) you agree to give us, within thirty (30) days after the expiration or termination of this Agreement, evidence satisfactory to us of your compliance with these obligations.

C. CONFIDENTIAL INFORMATION AND CUSTOMER INFORMATION.

You agree that, when this Agreement expires or is terminated, you will immediately cease using any of our Confidential Information in any business or otherwise and return to us all copies of the Operations Manual and any other confidential materials that we have loaned you. You further acknowledge and agree that we are the exclusive owner of all customer accounts and information. Upon the expiration, termination or transfer of your franchise, you must transfer all customer agreements, accounts and related information to us or to the person that we specify.

D. COVENANT NOT TO COMPETE.

Upon our termination of this Agreement according to its terms and conditions, your termination of this Agreement without cause or the expiration of this Agreement, you agree that, for eighteen (18) months beginning on the effective date of termination or expiration or the date on which all persons restricted by this Subsection begin to comply with this Subsection, whichever is later, no member, shareholder or partner (if you are doing business as a corporation or partnership) and neither you nor any member of your immediate family will have any direct or indirect interest (e.g., through a spouse) as a disclosed or beneficial owner, investor, partner, director, officer, employee, consultant, representative or agent, or in any other capacity, in any Competitive Business (as defined in Section 7 above) operating at the Site or within twenty-five (25) miles of any other Massage Envy Clinic in operation or under construction on the later of the effective date of the termination or expiration or the date on which all persons restricted by this Subsection begin to comply with this Subsection.

These restrictions also apply after transfers, as provided in Section 12.C above. You expressly acknowledge that you possess skills and abilities of a general nature and have

other opportunities for exploiting these skills. Consequently, our enforcing the covenants made in this Subsection will not deprive you of your personal goodwill or ability to earn a living.

Notwithstanding anything to the contrary contained in this Section, in the event that a court of competent jurisdiction determines that the eighteen (18) month non-compete period is unenforceable, such non-compete period shall mean the Initial Term and the Successor Term, and for a period of twelve (12) months after the termination, expiration or transfer of this Agreement for any reason; provided, however, that in the event that a court of competent jurisdiction determines that the twelve (12) month non-compete period is unenforceable, such non-compete period shall mean the Initial Term and the Successor Term, and for a period of six (6) months after the termination, expiration or transfer of this Agreement for any reason.

E. OUR RIGHT TO PURCHASE CLINIC.

(1) Exercise of Option.

Upon our termination of this Agreement according to its terms and conditions, your termination of this Agreement without cause, or the expiration of this Agreement, we have the option, exercisable by giving you written notice within thirty (30) days after the date of termination or expiration, to purchase your (or the Entity's) interest in the CLINIC and those Operating Assets and Products that we designate. We have the unrestricted right to assign this option to purchase.

(2) Purchase Price.

The purchase price for the interest in CLINIC and any Operating Assets and Products we choose to acquire will be their fair market value, provided that these items will not include any value for the Franchise or any rights granted by this Agreement or the Lease, goodwill attributable to the Marks, our brand image, and other intellectual property or participation in the network of Massage Envy Clinics. For purposes of determining the fair market value of all equipment (including the Computer System) used in operating the CLINIC, the equipment's useful life shall be determined to be no more than three (3) years.

(3) Appraisal.

If we and you cannot agree on fair market value, fair market value will be determined by three (3) independent appraisers, each of whom in doing so will be bound by the criteria specified in subparagraph (2). We will appoint one appraiser, you will appoint one appraiser, and these two appraisers will appoint the third appraiser. You and we agree to select our respective appraisers within fifteen (15) days after we deliver our notice of exercise to you (if you and we have not agreed on fair market value before then), and the two appraisers so chosen are obligated to appoint the third appraiser within fifteen (15) days after the last of them is appointed. You and we will bear the costs of our own appraisers and share equally the fees and expenses of the third appraiser. Within thirty (30) days after we deliver our notice of exercise to you, each party shall submit its respective calculation of fair market value to the appraisers in such detail as the appraisers request and according to the criteria specified in subparagraph (2). Within fifteen (15) days after receiving both calculations, the appraisers shall determine, by a majority vote, and notify you and us which of the calculations is the most correct. The appraisers must choose either your or our calculation, and may not develop their own fair market value calculation. The appraisers' choice shall be the purchase price.

(4) Closing.

We (or our assignee) will pay the purchase price at the closing, which will take place not later than thirty (30) days after the purchase price is determined, although we (or our assignee) may decide after the purchase price is determined not to exercise our purchase option. We may set off against the purchase price, and reduce the purchase price by, any and all amounts you owe us or our affiliates. At the closing, you agree to deliver instruments transferring to us (or our assignee): (a) good and merchantable title to the assets purchased, free and clear of all liens and encumbrances (other than liens and security interests acceptable to us), with all sales and transfer taxes paid by you; and (b) all of the CLINIC'S licenses and permits which may be assigned or transferred.

If you cannot deliver clear title to all of the purchased assets, or if there are other unresolved issues, we and you will close the sale through an escrow. You further agree to execute general releases, in a form satisfactory to us, of any and all claims against us and our affiliates and our and their respective shareholders, officers, directors, employees, agents, representatives, successors and assigns. If we exercise our rights under this Subsection E, you agree that, for eighteen (18) months beginning on the closing date, you and members of your immediate family will be bound by the non-competition covenant contained in Subsection 15.D above.

F. CONTINUING OBLIGATIONS.

All of our and your obligations hereunder which expressly or by their nature survive this Agreement's expiration or termination will continue in full force and effect subsequent to and notwithstanding its expiration or termination and until these obligations are satisfied in full or by their nature expire.

16. RELATIONSHIP OF THE PARTIES/INDEMNIFICATION.

A. INDEPENDENT CONTRACTORS.

You and we understand and agree that this Agreement does not create a fiduciary relationship between you and us. You have no authority, express or implied, to act as agent of us or any of our affiliates for any purpose. You are, and shall remain, an independent contractor responsible for all obligations and liabilities of the CLINIC and its business, and for all claims or demands based on injury, illness or death of any person or persons, directly or indirectly, resulting from the operation of the CLINIC. Further, we and you are not and do not intend to be partners, associates, or joint employers in any way, and we shall not be construed to be jointly liable for any of your acts or omissions under any circumstances. We have no relationship with your employees and you have no relationship with our employees. You agree to identify yourself conspicuously in all dealings with customers, suppliers, public officials, CLINIC personnel and others as the CLINIC'S operator under a franchise we have granted and to place notices of independent ownership on the forms, business cards, stationery, advertising and other materials we require from time to time.

B. NO LIABILITY FOR ACTS OF OTHER PARTY.

We and you agree not to make any express or implied agreements, warranties, guarantees or representations, or incur any debt, in the name or on behalf of the other or

represent that our respective relationship is other than franchisor and franchisee. We will not be obligated for any damages to any person or property directly or indirectly arising out of the CLINIC'S operation or the business you conduct under this Agreement.

C. TAXES.

We will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon you or the CLINIC, due to the business you conduct (except any taxes we are required by law to collect from you for purchases from us and our income taxes). You are responsible for paying these taxes.

D. INDEMNIFICATION.

To the fullest extent permitted by law, you agree to indemnify, defend and hold harmless us, our affiliates, and our and their respective shareholders, directors, officers, employees, agents, representatives, successors and assigns (the **"Indemnified Parties"**) from and against, and to reimburse any one or more of the Indemnified Parties for, any and all claims, obligations and damages directly or indirectly arising out of: (1) the CLINIC'S operation, (2) the business you conduct under this Agreement, (3) your breach of this Agreement, or (4) noncompliance or alleged noncompliance with any law, ordinance, rule or regulation concerning the CLINIC'S construction, design or operation, including, without limitation, the Americans with Disabilities Act and other laws regarding public accommodations for persons with disabilities. For purposes of this indemnification, **"claims"** include all obligations, damages (actual, consequential, punitive or otherwise) and costs that any Indemnified Party reasonably incurs in defending any claim against it, including, without limitation, reasonable accountants', arbitrators', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, travel and living expenses and other expenses of litigation, arbitration or alternative dispute resolution, regardless of whether litigation, arbitration or alternative dispute resolution is commenced. Each Indemnified Party may defend and control the defense of any claim against it which is subject to this indemnification at your expense, and you may not settle any claim or take any other remedial, corrective or other actions relating to any claim without our consent. This indemnity will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination. An Indemnified Party need not seek recovery from an insurer or other third party, or otherwise mitigate its losses and expenses, in order to maintain and recover fully a claim against you. You agree that a failure to pursue a recovery or mitigate a loss will not reduce or alter the amounts that an Indemnified Party may recover from you.

17. ENFORCEMENT.

A. SEVERABILITY AND SUBSTITUTION OF VALID PROVISIONS.

Except as expressly provided to the contrary in this Agreement, each Section, paragraph, term and provision of this Agreement is severable, and if, for any reason, any part is held to be invalid or contrary to or in conflict with any applicable present or future law or regulation in a final, unappealable ruling issued by any court, agency or tribunal with competent jurisdiction, that ruling will not impair the operation of, or otherwise affect, any other portions of this Agreement, which will continue to have full force and effect and bind the parties. If any covenant which restricts competitive activity is deemed unenforceable by virtue of its scope in

terms of area, business activity prohibited, and/or length of time, but would be enforceable if modified, you and we agree that the covenant will be enforced to the fullest extent permissible under the laws and public policies applied in the jurisdiction whose law determines the covenant's validity. If any applicable and binding law or rule of any jurisdiction requires more notice than this Agreement requires of this Agreement's termination or of our refusal to enter into a successor franchise agreement, or if, under any applicable and binding law or rule of any jurisdiction, any provision of this Agreement or any System Standard is invalid, unenforceable or unlawful, the notice and/or other action required by the law or rule will be substituted for the comparable provisions of this Agreement, and we may modify the invalid or unenforceable provision or System Standard to the extent required to be valid and enforceable or delete the unlawful provision in its entirety. You agree to be bound by any promise or covenant imposing the maximum duty the law permits which is subsumed within any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement.

B. WAIVER OF OBLIGATIONS.

We and you may by written instrument unilaterally waive or reduce any obligation of or restriction upon the other under this Agreement, effective upon delivery of written notice to the other or another effective date stated in the notice of waiver. But, no interpretation, change, termination or waiver of any of this Agreement's provisions hereof shall be binding upon us unless in writing and signed by one of our officers or our Franchising Director, and which is specifically identified as an amendment to this Agreement. No modification, waiver, termination, rescission, discharge or cancellation of this Franchise shall affect the right of any party hereto to enforce any claim or right hereunder, whether or not liquidated, which occurred prior to the date of such modification, waiver, termination, rescission, discharge or cancellation. Any waiver we grant will be without prejudice to any other rights we have, will be subject to our continuing review, and may be revoked at any time and for any reason, effective upon delivery to you of ten (10) days' prior written notice.

We and you will not be deemed to waive or impair any right, power or option this Agreement reserves (including, without limitation, our right to demand exact compliance with every term, condition and covenant or to declare any breach to be a default and to terminate this Agreement before its term expires) because of any custom or practice at variance with this Agreement's terms; our or your failure, refusal or neglect to exercise any right under this Agreement or to insist upon the other's compliance with this Agreement, including, without limitation, any System Standard; our waiver of or failure to exercise any right, power or option, whether of the same, similar or different nature, with other Massage Envy Clinics; the existence of franchise agreements for other Massage Envy Clinics which contain provisions different from those contained in this Agreement; or our acceptance of any payments due from you after any breach of this Agreement. No special or restrictive legend or endorsement on any check or similar item given to us will be a waiver, compromise, settlement or accord and satisfaction. We are authorized to remove any legend or endorsement, and they shall have no effect.

C. COSTS AND ATTORNEYS' FEES.

If we incur expenses due to your failure to pay when due amounts owed to us, to submit when due any reports, information, or supporting records, or otherwise to comply with this Agreement, you agree, whether or not we initiate a legal proceeding, to reimburse us for any

costs and expenses which we incur, including, without limitation, reasonable accounting, attorneys', arbitrators' and related fees.

D. YOU MAY NOT WITHHOLD PAYMENTS DUE TO US.

You agree that you will not withhold payment of any amounts owed to us on the grounds of our alleged nonperformance of any of our obligations under this Agreement.

E. RIGHTS OF PARTIES ARE CUMULATIVE.

Our and your rights under this Agreement are cumulative, and our or your exercise or enforcement of any right or remedy under this Agreement will not preclude our or your exercise or enforcement of any other right or remedy under this Agreement which we or you are entitled by law to enforce.

F. ARBITRATION.

We and you agree that, except for controversies, disputes, or claims related to or based on your use of the Marks or the enforcement of non-competition provisions, and except for any issues pertaining to your lease for the premises of the CLINIC, with respect to which we and you may seek judicial remedies, all controversies, disputes, or claims between us and our affiliates, and our and our affiliates' respective shareholders, officers, directors, agents, and/or employees, and you (and/or your owners, guarantors, affiliates, and/or employees) arising out of or related to:

(1) this Agreement or any other agreement between you and us;

(2) our relationship with you;

(3) the validity of this Agreement or any other agreement between you and us;

or

(4) any System Standard relating to the CLINIC'S establishment or operation;

must be submitted for binding arbitration to the Phoenix, Arizona office of the American Arbitration Association. The arbitration proceedings will be conducted in Phoenix, Arizona by one arbitrator and, except as this Subsection otherwise provides, according to the then current commercial arbitration rules of the American Arbitration Association. All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). The arbitrator will have the right to award or include in the arbitrator's award any relief which the arbitrator deems proper in the circumstances, including without limitation, money damages (with interest on unpaid amounts from due date), specific performance, injunctive relief, and attorneys' fees and costs in accordance with Section 17.C of this Agreement. Judgment upon the arbitrator's award may be entered in any court of competent jurisdiction.

We and you agree that, in any arbitration proceeding, each must submit or file any claim which would constitute a compulsory counterclaim (as defined by the Federal Rules of Civil Procedure) within the same proceeding as the claim to which it relates. Any claim which is not submitted or filed as required is forever barred. The arbitrator may not consider any settlement discussions or offers that might have been made by either you or us.

We and you agree that arbitration will be conducted on an individual, not a class-wide, basis and that we (and/or our affiliates and our respective shareholders, officers, directors, agents, and/or employees) and you (and/or your owners, guarantors, affiliates, and/or employees) shall be the only parties to any arbitration proceeding described in this Section and that no such arbitration proceedings may be consolidated with any other arbitration proceeding, nor shall any other person be joined as a party to such arbitration proceeding.

Despite our and your agreement to arbitrate, we and you each have the right in a proper case to seek temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction as described in Subsection J below; but we and you must contemporaneously submit our dispute for arbitration on the merits as provided in this Subsection.

The provisions of this Subsection are intended to benefit and bind certain third party non-signatories and will continue in full force and effect subsequent to and notwithstanding this Agreement's expiration or termination.

Unless prohibited by applicable law, any dispute must be brought by filing a written demand for arbitration within two (2) years following the conduct, act or other event or occurrence first giving rise to the claim; otherwise, the right to any remedy shall be deemed forever waived and lost.

G. GOVERNING LAW.

All matters relating to arbitration will be governed by the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.). Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. sections 1051 et seq.), or other federal law, this Agreement, the Franchise, and all claims arising from the relationship between us and you will be governed by the laws of the State of Arizona, without regard to its conflict of laws rules, except that any Arizona law regulating the sale of franchises or governing the relationship of a franchisor and its franchisee will not apply unless its jurisdictional requirements are met independently without reference to this Section 17.G.

H. CONSENT TO JURISDICTION.

Subject to Section 17.F above and the provisions below, you and your owners agree that all actions arising under this Agreement or otherwise as a result of the relationship between you and us must be commenced in Phoenix, Arizona, and you (and each Owner) irrevocably submit to the jurisdiction of the state and federal courts of general jurisdiction in the County of Maricopa in the State of Arizona. Nonetheless, you and your Owners agree that we may enforce this Agreement and any arbitration orders and awards in the courts of the state or states in which you are domiciled or the clinic is located.

I. WAIVER OF PUNITIVE DAMAGES AND JURY TRIAL.

Except for your obligation to indemnify us under Section 16.D above and except where authorized by federal statute, we and you and your respective Owners waive to the fullest extent permitted by law any right to or claim for any punitive or exemplary damages against the other and agree that, in the event of a dispute between us and you, the party making a claim will be limited to equitable relief and to recovery of any actual damages it sustains.

We and you irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of us.

J. INJUNCTIVE RELIEF.

Nothing in this Agreement bars our right to obtain preliminary orders of specific performance of the provisions of this Agreement and temporary or preliminary injunctive relief against threatened conduct that will cause us, the Marks, or the Franchise System loss or damage, under customary equity rules, including applicable rules for obtaining restraining orders and preliminary injunctions (subject to our obligation to arbitrate the underlying claims if required under Section 17.F above). You agree that we may obtain such injunctive relief in addition to such further or other relief as may be available at law or in equity. You agree that we will not be required to post a bond to obtain injunctive relief and that your only remedy if an injunction is entered against you will be the dissolution of that injunction, if warranted, upon due hearing (all claims for damages by injunction being expressly waived hereby).

K. BINDING EFFECT.

This Agreement is binding upon us and you and our and your respective executors, administrators, heirs, beneficiaries, permitted assigns and successors in interest. Subject to our rights to modify the Operations Manual and the System Standards under Sections 4.D and 8.I of this Agreement, this Agreement may not be modified except by a written agreement signed by both you and us.

L. LIMITATIONS OF CLAIMS.

Except for claims arising from your non-payment or underpayment of amounts you owe us, any and all claims arising out of or relating to this Agreement or our relationship with you will be barred unless a judicial or arbitration proceeding is commenced within two (2) years from the date on which the party asserting the claim knew or should have known of the facts giving rise to the claims.

M. CONSTRUCTION.

The preambles and exhibits are a part of this Agreement which, together with the Operations Manual, the Lease and any riders or addenda signed at the same time as this Agreement, constitutes our and your entire agreement and supercedes all prior and contemporaneous oral or written agreements and understandings between us and you. There are no other oral or written understandings or agreements between us and you, relating to the subject matter of this Agreement. Except as provided in Section 17.D of this Agreement, nothing in this Agreement is intended nor deemed to confer any rights or remedies upon any person or legal entity not a party to this Agreement. Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the franchise disclosure document.

Except where this Agreement expressly obligates us reasonably to approve or not unreasonably to withhold our approval of any of your actions or requests, we have the absolute right to refuse any request you make or to withhold our approval of any of your proposed, initiated or completed actions that require our approval.

The headings of the sections and paragraphs are for convenience only and do not define, limit or construe the contents of these sections or paragraphs.

References in this Agreement to "**we**" "**us**" and "**our**," with respect to all of our rights and all of your obligations to us under this Agreement, include any of our affiliates with whom you deal in connection with the CLINIC. The term "**affiliate**" means any person or entity directly or indirectly owned or controlled by, under common control with, or owning or controlling us. "**Control**" means the power to direct or cause the direction of management and policies.

If two or more persons are at any time the owners of the Franchise and the CLINIC, whether as partners or joint venturers, all of those persons must sign this Agreement and their obligations and liabilities to us will be joint and several. References to "**you**" mean each of those persons. If you are an Entity, "**you**" includes that Entity and each of the Entity's owners. "**Owner**" means any person holding a direct or indirect ownership interest (whether of record, beneficially, or otherwise) or voting rights in the Entity (or a transferee of this Agreement and the CLINIC or any interest in the Entity), including, without limitation, any person who has a direct or indirect interest in the Entity (or a transferee), this Agreement, the Franchise, or the CLINIC and any person who has any other legal or equitable interest, or the power to vest in himself or herself any legal or equitable interest, in their revenue, profits, rights, or assets. References to a "**controlling interest**" in the Entity mean the percent of the Entity's voting shares or other voting rights that results from dividing one hundred percent (100%) of the ownership interests by the number of the Entity's owners that would exist either immediately before or after the time the determination is made. "**Person**" means any natural person, corporation, limited liability company, general or limited partnership, unincorporated association, cooperative or other legal or functional entity. The term "CLINIC" includes all of the assets of the Massage Envy Clinic you operate under this Agreement, including its revenue and income.

This Agreement may be executed in multiple copies, each of which will be deemed an original.

N. INTERIM TERM.

If you do not execute a Successor Agreement after the expiration of the Initial Term, and you continue to accept the benefits of this Agreement after the expiration of the Initial Term, then at our option, this Agreement may be treated either as: (i) expired as of the date of the expiration with you then operating without a franchise to do so and in violation of our right; or (ii) continued on a month-to-month basis (the "Interim Term') until either party provides the other party with written notice of such party's intention to terminate the Interim Term. In the latter case, all of your obligations shall remain in full force and effect during the Interim Term as if this Agreement had not expired, and all obligations and restrictions imposed on you upon expiration of this Agreement shall be deemed to take effect upon termination of the Interim Term.

O. FORCE MAJEURE

(a) Subject to sub-clause (b) below, neither party to this Agreement shall be in breach of this Agreement or responsible for damages caused by delay or

failure to perform in full or in part its obligations under this Agreement, provided that there is due diligence in attempted performance under the circumstances and that such delay or failure is due to one of the following events of *force majeure:* fire, earthquake, unusually severe weather, strikes, government sanctioned embargo, flood, act of God, war, terrorism, act (or delay in acting) of any public authority or sovereign government, civil disorder, delay or destruction caused by public carrier, curtailment of transportation facilities or any other circumstance substantially beyond the control of the party to be charged, and which cannot be reasonably forecast or prevented.

(b) Each party agrees to notify the other promptly upon discovery of an event of *force majeure,* as described above, which may cause a failure or delay in performance under this Agreement.

18. NOTICES AND PAYMENTS.

All written notices, reports and payments permitted or required to be delivered by the provisions of this Agreement or the Operations Manual will be deemed so delivered:

(1) at the time delivered via computer transmission if the sender has confirmation of a successful transmission and, in the case of the Royalty, Marketing Fund contributions and other amounts due, at the time we actually debit your account (if we institute an automatic debit program for the CLINIC);

(2) one (1) business day after transmission by telecopy, facsimile or other electronic system if the sender has confirmation of successful transmission;

(3) one (1) business day after being placed in the hands of a commercial courier service for next business day delivery; or

(4) three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid;

and must be addressed to the party to be notified at its most current principal business address of which the notifying party has notice. However, if your check for payment of Royalties, Marketing Fund contributions, or other amounts due is dishonored by your bank, such payment will not be deemed to be made until your replacement check is cleared by your bank. Any required payment or report which we do not actually receive during regular business hours on the date due (or postmarked by postal authorities at least three (3) days before then) will be deemed delinquent.

19. ACKNOWLEDGMENTS.

To induce us to sign this Agreement and grant you the Franchise, you acknowledge:

(1) That you have independently investigated the Massage Envy Clinic franchise opportunity and recognize that, like any other business, the nature of a Massage Envy Clinic's business may, and probably will, evolve and change over time.

(2) That an investment in a Massage Envy Clinic involves business risks.

(3) That your business abilities and efforts are vital to your success.

(4) That retaining customers for your CLINIC will require a high level of customer service and strict adherence to the Franchise System and our System Standards and that you are committed to maintaining our System Standards.

(5) That except as described in our Franchise Disclosure Document you have not received or relied upon, and we expressly disclaim making, any representation, warranty or guaranty, express or implied, as to the revenues, profits or success of the CLINIC or any other Massage Envy Clinic.

(6) That any information you have acquired from other Massage Envy Clinic franchisees regarding their sales, profits or cash flows is not information obtained from us, and we make no representation about that information's accuracy.

(7) That you have no knowledge of any representations made about the Massage Envy Clinic franchise opportunity by us, our subsidiaries or affiliates or any of their respective officers, directors, shareholders or agents that are contrary to the statements made in our Franchise Disclosure Document or to the terms and conditions of this Agreement.

(8) That in all of their dealings with you, our officers, directors, employees and agents act only in a representative, and not in an individual, capacity and that business dealings between you and them as a result of this Agreement are only between you and us.

(9) That you have represented to us, to induce our entering into this Agreement, that all statements you have made and all materials you have given us in acquiring the Franchise are accurate and complete and that you have made no misrepresentations or material omissions in obtaining the Franchise.

(10) That you have read this Agreement and our Franchise Disclosure Document and understand and accept that the terms and covenants in this Agreement are reasonably necessary for us to maintain our high standards of quality and service, as well as the uniformity of those standards at each Massage Envy Clinic, and to protect and preserve the goodwill of the Marks.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement effective on the date stated on the first page above.

MASSAGE ENVY FRANCHISING, LLC, a Delaware limited liability company

By: _____

Name: Dave Crisalli

Title: Chief Operating Officer

FRANCHISEE(S)

By: _____

Jon Krutchik, a married man

EXHIBIT A

TO MASSAGE ENVY FRANCHISING, LLC FRANCHISE AGREEMENT

1. Exhibit A is added to the Agreement as follows:

Territory and Clinic Site. Franchisee's Clinic Site shall be located at TBD-South Beach-Miami Region. The Territory for this Site is described below or as described in the map contained in Attachment 1 which is attached to this Exhibit A and incorporated into this Exhibit A by reference.

MASSAGE ENVY FRANCHISING, LLC, a Delaware limited liability company	FRANCHISEE(S)
By:	By:
Name: Dave Crisalli	Jon Krutchik, a married man
Title: Chief Operating Officer	

EXHIBIT B
TO MASSAGE ENVY FRANCHISING, LLC FRANCHISE AGREEMENT

AUTOMATED CLEARING HOUSE PAYMENT AUTHORIZATION FORM

Franchisee Information:

JON KRUTCHIK — TBD
Franchisee Name — Business No.

5780 STONE CREEK WAY — 954-347-7705
Franchisee Mailing Address (street) — Franchisee Phone No.

SOUTHWEST RANCHES, FL 33330
Franchisee Mailing Address (city, state, zip)

Contact Name, Address and Phone number (if different from above)

954-990-1980 — KRUTCHIK@ME.COM
Franchisee Fax No. — Franchisee E-mail Address

Bank Account Information:

TBD
Bank Name

Bank Mailing Address (street, city, state, zip)

Bank Account No. — ☐Checking ☐Savings (check one) — Bank Routing No. (9 digits)

Bank Mailing Address (city, state, zip) — Bank Phone No.

Authorization: Franchisee hereby authorizes Massage Envy Franchising, LLC ("Massage Envy") to initiate debit entries to Franchisee's account with the Bank listed above and Franchisee authorizes the Bank to accept and to debit the amount of such entries to Franchisee's account. Each debit shall be made from time to time in an amount sufficient to cover any fees payable to Massage Envy pursuant to any agreement between Massage Envy and Franchisee as well as to cover any purchases of goods or services from Massage Envy or any affiliate of Massage Envy. Franchisee agrees to be bound by the National Automated Clearing House Association (NACHA) rules in the administration of these debit entries. Debit entries will be initiated only as authorized above. This authorization is to remain in full force and effect until Massage Envy has received written notification from Franchisee of its termination in such time and in such manner as to afford Massage Envy and the Bank a reasonable opportunity to act on it. Franchisee shall notify Massage Envy of any changes to any of the information contained in this authorization form at least 30 days before such change becomes effective.

Signature: _____ Date: 06/17/2010

Name: JON KRUTCHIK

Its: _____

Federal Tax ID Number: TBD

NOTE: FRANCHISEE MUST ATTACH A VOIDED CHECK RELATING TO THE BANK ACCOUNT.

GUARANTY AND ASSUMPTION OF OBLIGATIONS

NOTE: IF YOU ARE A CORPORATION, EACH OF YOUR SHAREHOLDERS AND THEIR SPOUSES MUST SIGN THE FOLLOWING UNDERTAKING. IF YOU ARE A PARTNERSHIP, EACH OF YOUR GENERAL PARTNERS AND THEIR SPOUSES MUST SIGN THE FOLLOWING UNDERTAKING. IF YOU ARE A LIMITED LIABILITY COMPANY, EACH OF YOUR MEMBERS/MANAGERS AND THEIR SPOUSES MUST SIGN THE FOLLOWING UNDERTAKING.

The undersigned persons hereby represent to Massage Envy Franchising, LLC that they are all of the shareholders of the Franchisee or the spouses of said shareholders, or all of the general partners of the Franchisee or the spouses of said general partners, or all of the members and managers of the Franchisee or the spouses of said members and managers, as the case may be. In consideration of the grant by Massage Envy Franchising, LLC to the Franchisee as provided in the Franchise Agreement of even date hereof, each of the undersigned hereby agrees, in consideration of the benefits received and to be received by each of them, jointly and severally, and for themselves, their heirs, legal representatives and assigns that they, and each of them, to be firmly bound by all of the terms, provisions and conditions of the Franchise Agreement, and any other agreements between the Franchisee and Massage Envy Franchising, LLC and/or its affiliates, that they and each of them do hereby unconditionally guarantee the full and timely payment and performance of the Franchisee of each and every obligation of the Franchisee under the Franchise Agreement or other agreements, including without limitation, any indebtedness of the Franchisee arising under or by virtue of the Franchise Agreement and that they and each of them will not permit or cause any change in the percentage of the franchise owned, directly or indirectly, by any person without first obtaining the written consent of Massage Envy Franchising, LLC.

The undersigned agree that this Guaranty is directly enforceable against each of them without first resorting to and exhausting remedies against the Franchisee, and any indulgences, forbearances or extensions of time for performance will not in any way release the undersigned from liability hereunder. The undersigned waive any and all notices and legal and equitable defenses to which the guarantor may be entitled, except as otherwise expressly provided in the Franchise Agreement. This is an absolute and continuing guaranty and shall remain in full force and effect during the term of the Franchise Agreement.

IN WITNESS WHEREOF, each of the undersigned has affixed his or her signature on the same day and year as the Franchise Agreement was executed.

GUARANTOR(S)

Jon Krutchik
and his spouse

Tammy Krutchik

MASSAGE ENVY SPA ADDENDUM

THIS SPA ADDENDUM (this "Addendum") is entered into this 2nd day of June, 2010 by and between Massage Envy Franchising, LLC, a Delaware limited liability company ("we" or "us"), and Jon Kratchik, a married man ("you" and, together with Franchisor, the "Parties").

WHEREAS, concurrently with the execution of this Addendum, the Parties are entering into a Massage Envy Franchise Agreement (the "Franchise Agreement"), pursuant to which we will grant you the right and license to open and operate a Massage Envy clinic (the "Clinic") that offers professional therapeutic massage services and other related goods and services; and

WHEREAS, you have elected to enter into this Addendum to enable you to offer facials and related products and services at your Clinic.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant. We hereby grant you the right and obligation to operate your Clinic as a Massage Envy Spa that provides both therapeutic massage services as well as facials and any other products or services that we authorize from time to time for a Massage Envy Spa. You agree that you may not offer or sell any goods or services at your Clinic that we have not previously approved in writing. Without limiting the generality of the foregoing, you understand that you may not offer or sell waxing, chemical peels, microdermabrasion or similar or other services at your Clinic. The grant of rights under this Addendum shall only apply with respect to your Clinic operated pursuant to the Franchise Agreement.

2. Initial Franchise Fee. Notwithstanding Section 3(A) of the Franchise Agreement, you will be required to pay an initial franchise fee equal to $45,000 if the Clinic is your first Clinic or $35,000 if the Clinic is your second or subsequent Clinic. If you are a veteran who qualifies under our VetFran program, you agree to pay us a discounted initial franchise fee in the amount of Forty Thousand Dollars ($40,000.00) if the Clinic is your first Clinic or Thirty Two Thousand Dollars ($32,000) if the Clinic is your second or subsequent Clinic.

3. Training. You and your aestheticians must successfully complete any initial and ongoing training that we require from time to time with respect to the operation of a Massage Envy Spa. The training may be provided by us, our affiliates, or certain of our designated or approved suppliers. At this time, our supplier, Murad, Inc., provides approximately 14 hours of training related to facials and related products and services at your Clinic. We may change this training program at any time.

4. Spa Equipment and Inventory. You agree to purchase all additional equipment, inventory and supplies that we require for the operation of a Massage Envy Spa. You must purchase these items only from the suppliers that we approve or designate from time to time.

5. Marks. You shall use the mark "Massage Envy Spa®" as the primary identification of your Clinic. You agree to purchase all signage, marketing materials and other items bearing the Marks that we designate from time to time. All references to Marks in the

Franchise Agreement shall be deemed to include a reference to Massage Envy Spa® together with any other marks that we authorize for a Massage Envy Spa.

6. **Construction and Layout.** Your Clinic must contain at least two (2) multi-purpose rooms with massage/aesthetic tables and appropriate fixtures and plumbing to support the practice of aesthetic facial treatments in accordance with any applicable laws, rules or regulations. We must approve the build-out and layout of your Clinic to ensure that it complies with our requirements for the operation of a Massage Envy Spa.

7. **Aestheticians.** You must hire at least two (2) licensed aestheticians before you open your Clinic. You agree that you will not allow any of your employees or other representatives to provide facials or related services unless: (i) they are licensed aestheticians; and (ii) they have successfully completed any training that we require aestheticians to complete from time to time.

8. **Standards, Specifications and Procedures.** You agree to comply with all standards, specifications and procedures that we prescribe from time to time with respect to the provision of facials and related products and services. We may provide such standards, specifications, and procedures in the Operations Manual or in any other written or electronic form.

9. **Compliance with Law.** You must ensure that your Clinic, your aestheticians, and your operations comply with all applicable laws, rules and regulations.

10. **Insurance.** You must ensure that your insurance policies that you are required to obtain pursuant to the Franchise Agreement cover any liability arising from the performance of all facial and related services and products that you offer at your Clinic.

11. **Miscellaneous.**

(a) Modification. This Addendum and the Franchise Agreement when executed constitute the entire agreement and understanding between the Parties with respect to the subject matter contained herein and therein. Any and all prior agreements and understandings between the Parties and relating to the subject matter contained in this Addendum and the Franchise Agreement, whether written or verbal, other than as contained within the executed Addendum and Franchise Agreement, are void and have no force and effect. In order to be binding between the Parties, any subsequent modifications must be in writing signed by the Parties.

(b) Effect on Agreement. Except as specifically modified or supplemented by this Addendum, all terms, conditions, covenants and agreements set forth in the Franchise Agreement shall remain in full force and effect.

(c) Inconsistency. In the event of any inconsistency between the executed Franchise Agreement and this Addendum, this Addendum shall prevail.

(d) Defined Terms. Any capitalized term that is not defined herein shall have the meaning ascribed to such term in the Franchise Agreement. Any reference to "Section" or "Sections" shall refer to the Section or Sections of the Franchise Agreement.

(e) Counterparts. This Addendum may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same document.

IN WITNESS WHEREOF, the Parties have executed this Addendum on the date first set forth above.

MASSAGE ENVY FRANCHISING, LLC, a Delaware limited liability company

By: _____

Name: Dave Crisalli

Title: Chief Operating Officer

FRANCHISEE(S)

By: _____

Jon Krutchik, a married man

MILLENNIUM SUBLICENSE AGREEMENT

THIS MILLENNIUM SUBLICENSE AGREEMENT ("Sublicense" or "Agreement") is made this 2nd **day of June, 2010** (the "Effective Date") by and between Massage Envy Franchising, L.L.C. ("ME"), a Delaware limited liability company having principal offices at 14350 North 87th Street, Suite 200, Scottsdale, Arizona 85260 and **Jon Krutchik, a married man** ("Franchisee" or "You"), having principal offices at **5780 Stone Creek Way, Southwest Ranches, FL 33330.**

WHEREAS, ME has entered into a certain License Agreement for Software Distribution and Use with Harms Software, Inc, (the "Main License"), pursuant to which it has acquired a license to distribute and use certain software products for employee management, point-of-sale functions, appointment booking, marketing, inventory control, and the integration and implementation of various internal business and reporting functions, which software products ("Millennium 2009") are proprietary to and owned by Harms Software, Inc. ("Harms"); and

WHEREAS, the franchise agreement entered into between ME and Franchisee requires that Franchisee use such Millennium 2009 in connection with the operation of its Massage Envy Clinic(s) ("ME Clinic(s)"); and

WHEREAS, each of the parties hereto desires to enter into a sublicense agreement pursuant to which Franchisee shall be permitted to use the Millennium 2009 in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual premises and covenants in this Agreement, Harms and Franchisee hereby agree as follows:

SECTION 1. LICENSE.

A. Provided that you have timely paid to us all fees required under this Agreement, ME hereby grants to Franchisee a non-exclusive, limited, non-transferable license (the "License" or the "Sublicense") to use the Millennium 2009 distributed to You by ME hereunder, along with associated documentation (the "Documentation"), solely in connection with the operation by you of your ME Clinic and subject to the terms and conditions in this Sublicense Agreement. Millennium 2009 shall also include any updates which ME distributes to Franchisee during the term of this Sublicense Agreement. Franchisee's rights to use the Millennium 2009 are limited to a single approved Clinic location.

B. ME and Harms specifically retain all right, title and interest in and to all proprietary and intellectual property rights in and to Millennium 2009, including without limitation, trade secrets, copyrights, trademarks, patents, functionality and business methodology embodied therein, and the like. All rights not expressly granted to Franchisee herein are specifically reserved to ME and Harms.

SECTION 2. LIMITATIONS ON USE.

A. You may not rent, lease, sell or otherwise transfer or distribute copies of Millennium 2009 or Documentation to any other person or entity for any reason.

B. You may not modify or translate Millennium 2009 or the Documentation for any reason. You may not reverse assemble, reverse compile or otherwise attempt to create the source code from Millennium 2009.

C. You may not use the name of Harms Software or its Millennium brand or refer to Harms Software directly or indirectly in any papers, articles, advertisements, sales presentations, news releases or releases to any third party without the prior written approval of ME for each such use.

D. You may not release the results of any performance or functional evaluation of any portion of Millennium 2009 to any third party without prior and express written approval of ME for each such release.

SECTION 3. THIRD PARTY BENEFICIARY. You understand, acknowledge, and agree with ME that Harms is an intended third party beneficiary of the terms and conditions of this Agreement.

SECTION 4. BACKUP AND TRANSFER.

A. You may obtain a copy of Millennium 2009 from ME for essential backup purposes, provided the copy is retained at Franchisee's approved location and further provided that no more than five (5) total workstations run Millennium 2009.

B. You may not sublicense, assign, delegate, rent, lease, time-share or otherwise transfer this license or any of the related rights or obligations to any person or entity for any reason. Any attempt to make any such sublicense, assignment, delegation or other transfer by you shall be void and of no legal effect and shall automatically be deemed a material breach of this Agreement, which breach shall trigger an automatic termination of this Agreement.

C. If ME authorizes a sale of your franchise and transfer of your rights under your Franchise Agreement to a third party (the "Transferee") you must notify the Transferee that it will be obligated to enter into a new Sublicense Agreement with ME, and that a "Re-License Fee" of $250.00 will be required to be paid to ME to secure ME's authorization to use Millennium 2009 and the Documentation and to receive technical support.

SECTION 5. FEES AND PAYMENT TERMS.

A. Fees. You shall pay ME the Fees described in EXHIBIT A ("Fees") in the manner and at such times as are set forth in EXHIBIT A. Any late payment of Fees may, at our option, be treated as a material breach of this Agreement for purposes of SECTION 7 ("TERM AND TERMINATION"), and shall in all cases be subject to the finance charge described in EXHIBIT A. You shall be responsible for, shall pay when due, and shall indemnify us against, all taxes or similar government payments due in connection with this Agreement except for taxes on our net income.

B. Expenses. You shall promptly reimburse us for all reasonable out-of-pocket expenses which are incurred by us in the performance of services hereunder, including but not limited to travel and lodging expenses, long distance telephone calls, and material and supply costs, within thirty (30) days after your receipt of expense statements including appropriate receipts or other evidence of the expense.

SECTION 6. OWNERSHIP. You own only the magnetic or other physical media on which Millennium 2009 and related Documentation are recorded or fixed. All content accessed through Millennium 2009 is the property of the applicable content owner and may be protected by applicable copyright law. This Sublicense gives you no rights whatsoever to such content.

SECTION 7. TERM AND TERMINATION.

A. The term of this Sublicense is concurrent with the term of your Massage Envy Franchise Agreement unless earlier terminated as provided herein, provided, however, that the term of this Sublicense shall not exceed the term of the Main License, and shall automatically terminate upon the termination or expiration of the Main License.

B. This Sublicense (and all of your rights hereunder) automatically terminates if you fail to comply with its material terms and conditions. You agree that, upon such termination, in accordance with ME's direction, you will either destroy (or permanently erase) all copies of Millennium 2009 and Documentation, or return the original Millennium 2009 and Documentation to ME, together with any other material you have received from ME or HARMS Software in connection with Millennium 2009.

SECTION 8. MAINTENANCE AND SUPPORT.

A. Level 1 Technical Support Services. During the term of this Sublicense, you will receive Level 1 technical support services from ME, and must look to ME for all Level 1 Support.

B. Level 2 and above Technical Support. During the term of this Sublicense, you will receive Level 2 and above technical support services from Harms during Harms standard support hours:

Monday thru Friday – 9:00 AM -8:00 PM EST
(Technical Support Phone Number - 1-973-402-8801)

Saturday - 10:00 AM-5:00 PM EST*
(Technical Support Phone Number - 1-973-402-8801)

*Saturday support is available via dispatch to the appropriate technicians working that day. Once you reach the technical support mailbox, leave your name, business name, telephone number, and the nature of your call. A Harms technician will return your call promptly.

Sunday Emergency Support Only

After Standard Hours Emergency Support**

**The telephone message center for the Technical Support Department will ask if this is an emergency and then prompt the caller to use the paging option in which a Harms technician will be dispatched to return your call. You will be required to leave information including business name, contact, phone number, and a credit card number. You are entitled to up to 45 technical support calls with Harms per year and will be charged $25.00 per 15 minute increment for each call in excess of 45 calls per year.

(i) Exclusions. Harms' technical support does not include software trainings, non-software related issues, provision of software upgrades, data recovery, after hours emergency support, and data restoration. If Harms determines that you have a problem with hardware such as a printer or computer, you may be required to contact the appropriate manufacturer directly. Warranties for hardware are provided by the hardware manufacturer, and not by Harms.

(ii) Data Backup. Certain locations may be susceptible to power outages and/or fluctuations that can cause a computer to crash or shut down. You are strongly recommended to install and maintain battery backups to keep computers from being shutdown improperly. WARNING: Shutting down your computer while Millennium 2009 is in use may damage the databases and potentially cause a loss of data. Harms is not responsible for any such losses of data, nor does Harms assume responsibility or liability for any losses or damages arising, directly, or indirectly, from your improper use or maintenance of the Software or your hardware. On occasion, data may be damaged to the extent that intervention by a Harms programmer is necessary to recover or fix the databases. These types of services are NOT included in this Sublicense and the fees for such services are subject to the discretion of Harms and ME.

SECTION 9. LIMITED WARRANTY. ME warrants the media on which the Millennium 2009 is furnished to be free from defects in materials and workmanship under normal use for 30 days from the date that you obtain the Millennium 2009. EXCEPT FOR THIS LIMITED WARRANTY, MILLENNIUM 2009 AND THE DOCUMENTATION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

SECTION 10. REPRESENTATIONS AND WARRANTIES BY FRANCHISEE. As a condition to the grant of this License to use Millennium 2009, Franchisee hereby represents, warrants and covenants as follows:

(i) That it will use Millennium 2009 only in conformance with the terms and conditions of this Sublicense Agreement;

(ii) That it will not rent, lease, sublicense, distribute, transfer or copy Millennium 2009 or any component(s) thereof except as explicitly authorized herein;

(iii) That it will only use Millennium 2009 for its own internal business use in connection with the operation of its Massage Envy Clinic and not for the benefit of any other person or entity; and

(iv) That it will not adapt, modify or reverse engineer Millennium 2009 in any way, or use it or them to create source code or a derivative work.

SECTION 11. LIMITATION OF REMEDIES. Your exclusive remedy in connection with Millennium 2009 and the Documentation is that you are entitled to return any defective media containing Millennium 2009 together with the Documentation to ME. IN NO EVENT WILL ME OR HARMS BE LIABLE FOR ANY INDIRECT DAMAGES OR OTHER RELIEF ARISING OUT OF YOUR USE OR INABILITY TO USE MILLENNIUM 2009 INCLUDING, BY WAY OF ILLUSTRATION AND NOT LIMITATION, LOST PROFITS, LOST BUSINESS OR LOST OPPORTUNITY, LOSS OF USE OR INTERRUPTION OF BUSINESS OR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING LEGAL FEES, ARISING OUT OF SUCH USE OR INABILITY TO USE MILLENNIUM 2009, EVEN IF ME AND HARMS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY.

SECTION 12. DISCLAIMER. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, ME AND HARMS DISCLAIM ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, ARISING OUT OF OR RELATED TO THIS AGREEMENT, MILLENNIUM 2009, OR ANY COMPONENT OF THE FOREGOING, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING QUALITY, CORRECTNESS, COMPLETENESS, COMPREHENSIVENESS, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE), OR ANY REPRESENTATION THAT THE SOFTWARE WILL MEET FRANCHISEE'S REQUIREMENTS OR THAT FRANCHISEE'S USE THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES.

SECTION 13. REMEDIES FOR THIRD PARTY INFRINGEMENT. In the event Millennium 2009 or any portion thereof is held by any court of competent jurisdiction to infringe the rights of a third party or to violate a patent, and its use is enjoined, your sole remedy shall be to be provided with (i) modified Millennium 2009, the functionality of which has not been impaired in any material respect and that is non-infringing or non-violative, or (ii) the right to continue to use the infringing Millennium 2009 for any remaining unexpired portion of the License Term, or (ii) equally suitable non-infringing software to replace the infringing Millennium 2009.

SECTION 14. INDEMNIFICATION. Franchisee shall indemnify and hold ME and Harms harmless from and against any and all losses, liabilities, obligations, damages, penalties, judgments, suits, costs, expenses or disbursements of any kind (including, without limitation, attorneys' fees and expenses) against, or incurred by, ME or Harms to the extent such claims, damages, liabilities or costs relate to, have arisen in connection with, or result directly or indirectly from the breach by Franchisee of any term or condition of this License.

SECTION 15. CONFIDENTIALITY.

A. Confidential Information. Franchisee acknowledges that it is the policy of ME and Harms to maintain as confidential all information that should reasonably be understood by Franchisee to be confidential or proprietary, including, without limitation, information relating to Millennium 2009 and the Documentation, the business methods, marketing strategies, tools, systems, procedures, products and services, customers, and potential customers of each of ME and Harms (the "Confidential Information"), and Franchisee further acknowledges that such Confidential Information is of great value to the respective party that disclosed it. Confidential Information shall not include information that (i) is now or subsequently becomes available to the public through no fault or breach of Franchisee, (ii) Franchisee rightfully possessed prior to disclosure to it, (iii) is independently developed or acquired by Franchisee without the use of any Confidential Information of the party disclosing it, or (iv) is rightfully obtained by Franchisee from a third party who has the right to disclose the information.

B. Nondisclosure of Confidential Information. Franchisee acknowledges that it has acquired and will acquire Confidential Information as a result of and in connection with the performance of its obligations under this Sublicense Agreement and that it is reasonably necessary to protect the goodwill of each of ME and Harms. Accordingly, it agrees not to directly or indirectly (except where authorized herein), disclose or divulge any Confidential Information to any third parties, or to use any Confidential Information for the furtherance of its own business or financial interests or those of anyone else. Franchisee further agrees that it will not permit, cause or authorize any third parties to divulge any Confidential Information that Franchisee lawfully disclosed to such third party.

C. Compelled Disclosure. In the event any Confidential Information is required to be disclosed by applicable law, subpoena or similar process or pursuant to a request by a government or regulatory agency, then, to the extent legally permitted, Franchisee shall, prior to any such disclosure, promptly notify ME and Harms, of such request for disclosure in order to give the appropriate party the opportunity to object to or seek to limit the scope of such disclosure. Notwithstanding any provision herein to the contrary, Franchisee may disclose any Confidential Information to any regulatory agency having jurisdiction over it without the prior written approval of ME or Harms to such disclosure.

D. Remedies for Breach of Confidentiality Obligations. Any breach or threatened breach by Franchisee of any confidentiality provision of this Sublicense Agreement may, because of the unique nature of the Confidential Information, cause irreparable harm to the party disclosing the Confidential Information and shall entitle that party, in addition to any other legal remedies, to apply to any court of competent jurisdiction to enjoin such breach or threatened breach.

SECTION 16. MISCELLANEOUS PROVISIONS

A. Assignment. The rights and obligations under this Agreement may not be assigned by Franchisee and any attempted assignment in violation of this

provision shall be null and void and of no force or effect. ME's right to assign its rights, obligations or performance hereunder shall not be restricted in any manner.

B. Successors and Assigns. This Agreement and your rights, duties and obligations hereunder are personal to you and may not be assigned, delegated, or otherwise transferred by you, or by operation of law, without our prior written consent, which consent may be withheld in our sole and absolute discretion. Notwithstanding the foregoing, this Agreement may be transferred by you in connection with a permitted transfer of your Massage Envy Franchise Agreement in accordance with the terms governing transfer in such Massage Envy Franchise Agreement. We may charge you a fee for such transfer. We may assign, transfer, delegate or grant all or any part of our rights pursuant to this Agreement to any person or entity upon notice. The parties' rights and obligations shall bind and inure to the benefit of their respective successors, heirs, executors and administrators and permitted assigns.

C. Notices. Any notice or other communication under this Agreement shall be in writing and shall be deemed given if delivered (i) personally or mailed by registered mail (return receipt requested) at the addresses set forth on the first page hereof, or at such other address as shall be specified by notice given pursuant hereto, (ii) by confirmed facsimile transmission, or (iii) by electronic mail for which a delivery receipt has been generated.

D. Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the remaining terms or provisions hereof, which shall remain in full force and effect.

E. No waiver. No failure or successive failures on the part of either party to enforce any covenant or agreement contained herein, and no waiver or successive waivers on its or their part of any condition of this Agreement shall operate as a discharge of such covenant, agreement, or condition, or render the same invalid, or impair the right of either party, its respective successors and permitted assigns, to enforce the same in the event of any subsequent breach or breaches by the other party, its successors or permitted assigns.

F. Governing Law. The parties agree that the laws of the United States and the State of Arizona (without giving effect to its conflicts of law principles) govern all matters and actions arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. The parties further agree to the personal jurisdiction by and venue in the state and federal courts with jurisdiction in Maricopa County, Arizona, and waive any objection to such jurisdiction or venue. The prevailing party in any action relating to this Agreement shall be entitled to payment of all costs, expenses, losses, damages and reasonable attorneys' fees incurred in defending or prosecuting any such claim, suit or proceeding. The determination of the "prevailing party" for these purposes shall be made by the court exercising jurisdiction over the matter.

G. Entire Agreement. This Sublicense Agreement constitutes the entire agreement

between the parties hereto with respect to the subject matter hereof and supersedes all previous agreements and understandings, whether oral or written, express or implied, with respect to its subject matter. Except as may be expressly authorized herein, this Agreement may not be altered, amended, or modified except by written instrument signed by the duly authorized representatives of both parties. Nothing in this Sublicense Agreement or in any related agreement is intended to disclaim the representations we made in the franchise disclosure document.

H. Definition of Franchisee. The defined term "Franchisee" as used in this Sublicense includes Franchisee's officers, directors, managers, members, employees, agents, and representatives.

I. Further Assurances. You agree to cooperate with ME, both during and after the Term of this Agreement, in the procurement and maintenance of our rights to intellectual property created hereunder and to execute, when requested, any documents deemed necessary by us to carry out the purposes of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

MASSAGE ENVY FRANCHISING, LLC, a Delaware limited liability company

By: _____

Name: Dave Crisalli

Title: Chief Operating Officer

FRANCHISEE(S)

By: _____

Jon Krutchik, a married man

EXHIBIT A
TO MILLENNIUM SUBLICENSE AGREEMENT

FEES

You agree to pay the following Fees in connection with this Agreement:

- A Configuration and Installation Fee of $95.00 for the hardware and software.
- A monthly Clinic Resource Fee of $375.00, the amount of which may be adjusted from time to time by ME upon at least 30 days notice.
- With respect to any Fee that is at least 30 days past due, a finance charge at the lesser of a periodic rate of 1.5% per month or the maximum amount permitted by applicable law. The amount of any finance charge will be added to the balance past due for purposes of computing additional finance charges.
- A Fee of $25.00 for each incidence of dishonored debits or instruments of payment for insufficient funds.

The Clinic Resource Fee will be electronically debited from your designated bank checking account on the 1st of every month.

You hereby authorize ME to debit your bank account for all Clinic Resource Fees incurred by the Clinic. This authorization will remain in effect until revoked.

Please provide:
Bank routing number: TBD
Account Number: TBD
Voided Check: _____

FRANCHISEE(S)

By: _____
Jon Krutchik, a married man

Massage Envy.

Acknowledgement of Required Vendors & Standard Specifications

Listed below are the Required Vendors that Massage Envy Franchising, LLC, has selected as part of the Massage Envy "Franchise System" as referenced in Massage Envy Franchise Agreement, page 1, Item 1.A.(3).

These are the only vendors you may use for the specified products and/or services. They have extended to us, as a group, competitive pricing and prompt service to meet our needs.

Massage Envy Franchising, LLC Real Estate Department	Contact:	Jessica Owens – National Director of Real Estate Development Phone: 480-366-4132 Fax: 480-366-4232 Email: jowens@massageenvy.com
	Product:	1. Site selection 2. Lease review 3. Municipality concerns 4. Co-tenant matters

Massage Envy Franchising, LLC Project Development Department	Contact:	Peter Voss – Director of Project Development Phone: 480-366-4170 Fax: 480-366-4270 Email: pvoss@massageenvy.com Kari Berry – Project Development Manager Phone: 480-366-4172 Fax: 480-366-4272 E-mail: kberry@massageenvy.com
	Product:	1. Clinic Design & Specification Questions 2. Clinic Space Plan approvals 3. Exterior sign criteria and approval 4. Any construction issues

Universal Background Screening	Contact:	Milan Sebesta Phone: 602-337-3083 Fax: 602-337-3076 Email: msebesta@universalbackground.com www.universalbackground.com/massageenvy
	Product:	Background Screening

Clayton Kendall Promotional Marketing	Contact:	Customer Service Phone: 1-888-799-4757 Website: www.claytonkendall.com
	Lead Time:	4 weeks prior to opening
	Product:	1. Staff Uniforms 2. All Massage Envy printed material: SOAP cards, surveys, business cards, appointment cards, post cards and printed promotional materials. 3. A-Frames & Banners, posters 4. Art Advertising 5. Vehicle Wraps ($2000-$2800 - installation extra)

	Price Range:	$1,500-$2,000

Massage Elements	Contact:	Cryssy Pierce Phone: 623-435-3657 Fax: 623-580-7234 Email: cpierce@massageelements.com
	Lead Time:	8 weeks prior to opening
	Product:	Therapy Room Furniture (not including chair) Massage Chairs Bolsters Cream, Gel & Lotion Table Warmers Fleece Pads Table blankets Face Cradle Covers Muscular System Posters Interior Signage Clinic Artwork Retail Products Veria Products

Harms **(Computer Hardware)**	Contact:	Stacey Arellano Phone: 480-366-4119 Email: sarellano@massageenvy.com
	Lead time:	6 weeks prior to opening
	Product:	Computer Hardware Packages 1. Workstation(s) 2. Monitors 3. Receipt Printer 4. Cash Drawer 5. Additional Peripherals Franchisee is responsible for sourcing out contract and all in-one printers locally (for recommendations contact Stacey Arellano)

Network Services Northwest **(Antivirus and Spyware Solution)**	Contact:	Stacey Arellano Phone: 480-366-4119 Email: sarellano@massageenvy.com
	Lead Time:	6 weeks prior to opening
	Product:	1. Comprehensive Gateway Security Suite ("CGSS") • Gateway Antivirus/Spyware • Content Filtering/Website Blocking • Reporting, 24/7 Support, Ext. Warranty24/7 Sonic wall Support 2. Client Antivirus/spyware

Tie National Accounts **(Computer Hardware Installation)**	Contact:	Stacey Arellano Phone: 480-366-4119 Email: sarellano@massageenvy.com
	Lead Time:	6 weeks prior to opening
	Product:	1. Network Equipment Necessary for Installation 2. Computer Hardware, Server, Network Installation

		3. Sonicwall Installation (new clinics)

Voice Solutions (Required for messaging on hold, recommended for music)	Contact:	Stacey Arellano Phone: 480-366-4119 Email: sarellano@massageenvy.com
	Lead Time:	6 weeks prior to opening
	Product:	Messaging on Hold

Element Payment Services	Contact:	Phone: 1-866-435-3636 ext. 1797 Email: massageenvy@elementps.com
	Lead Time:	5 weeks prior to opening
	Product:	Credit card/check processing
	Price:	$75 set-up charge

ADVO/Valassis	Contact:	Phone: 866-576-0523 Brett Morrow – Franchise Marketing Specialist Email: bamorrow@valassis.com Jason Gonsalves – Franchise Marketing Specialist Email: jjgonsalves@advo.com
	Lead Time:	4 weeks prior to opening or 4 weeks prior to media placement
	Product:	1. Direct Mail or Newspaper delivery options 2. Free Neighborhood Targeting and Data Analysis 3. Live web-based meetings 4. Corporate approved national pricing 5. Corporate approved artwork 6. ROI Calculator 7. Free local Internet advertising

Floor Essence Inc.	Contact:	Bart Woodworth Phone: 602-369-0818 Email: Flooressence@cox.net
	Lead Time:	Availability: Stock on hand Order 3 weeks prior to installation
	Product:	Base and Upgrade Carpet options

Westwind Products Inc.	Contact:	Jeff Walker Phone: 602-233-9191 Email: jeffwkr@yahoo.com
	Lead Time:	Availability: Stock on hand Order 2 weeks prior to installation
	Product:	Sconces and pendant lamps

These are the only vendors you may use for the specified products and/or services. They have extended to us competitive pricing and prompt service to meet our needs. The price ranges noted above are approximate ranges based on a 12-room clinic. You will be responsible for all prepayments and final payments to all Required Vendors.

You will be required to use the colors, finishes, and fixtures designated in the Prototype Clinic Specifications Manual. Any tile or granite upgrades must be approved by Massage Envy Franchising, LLC prior to ordering.

I hereby sign this acknowledgement stating that I have received the list of Required Vendors and I understand that I will be receiving my Prototype Clinic Specifications Manual in my Franchise Welcome Packet. I agree to comply with the Massage Envy Franchise System as referenced in Massage Envy Franchise Agreement,

page 1, Item 1.A.(3). This document is subject to change at the discretion of Massage Envy Franchising, LLC. You will be notified of any changes to this document.

Jon Krutchik, a married man

06/17/2010
Date

Massage Envy Franchising, LLC

FRANCHISEE DISCLOSURE QUESTIONNAIRE

As you know, Massage Envy Franchising, LLC ("we" or "us"), and you are preparing to enter into a Franchise Agreement for the operation of a *Massage Envy* franchise. The purpose of this Questionnaire is to determine whether any statements or promises were made to you that we have not authorized or that may be untrue, inaccurate or misleading, to be certain that you have been properly represented in this transaction, and to be certain that you understand the limitations on claims you may make by reason of the purchase and operation of your franchise. **You cannot sign or date this Questionnaire the same day as the Receipt for the Franchise Disclosure Document but you must sign and date it the same day you sign the Franchise Agreement and pay your franchise fee.** Please review each of the following questions carefully and provide honest responses to each question. If you answer "No" to any of the questions below, please explain your answer on the back of this sheet.

Yes X	No__	1.	Have you received and personally reviewed the Franchise Agreement and each exhibit or schedule attached to it?
Yes X	No__	2.	Have you received and personally reviewed the Franchise Disclosure Document we provided?
Yes X	No__	3.	Did you sign a receipt for the Franchise Disclosure Document indicating the date you received it?
Yes X	No__	4.	Do you understand all the information contained in the Franchise Disclosure Document and Franchise Agreement?
Yes X	No__	5.	Have you reviewed the Franchise Disclosure Document and Franchise Agreement with a lawyer, accountant or other professional advisor?
Yes X	No__	6.	Have you discussed the benefits and risks of developing and operating a *Massage Envy* franchise with an existing *Massage Envy* franchisee?
Yes X	No__	7.	Do you understand the risks of developing and operating a *Massage Envy* franchise?
Yes X	No__	8.	Do you understand the success or failure of your franchise will depend in large part upon your skills, abilities and efforts and those of the persons you employ as well as many factors beyond your control such as weather, competition, interest rates, the economy, inflation, labor and supply costs, lease terms and the marketplace?
Yes X	No__	9.	Do you understand all disputes or claims you may have arising out of or relating to the Franchise Agreement must be arbitrated in Arizona, if not resolved informally or by mediation?
Yes X	No__	10.	Do you understand that you (and any Manager employed by you) must satisfactorily complete the initial training course before we will allow your franchised business to open or consent to a transfer?
Yes X	No__	11.	Do you agree that no employee or other person speaking on our behalf made any statement or promise regarding the costs involved in operating a *Massage Envy* franchise that is not contained in the Franchise Disclosure Document or that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
Yes X	No__	12.	Do you agree that no employee or other person speaking on our behalf made any statement or promise or agreement, other than those matters addressed in your Franchise Agreement, concerning advertising, marketing, media support, marketing penetration, training, support service or assistance that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
Yes X	No__	13.	Do you agree that no employee or other person speaking on our behalf made any statement or promise regarding the actual, average or projected profits or earnings, the likelihood of success, the amount of money you may earn, or the total amount of revenue a *Massage Envy* franchise will generate, that is not contained in the Franchise Disclosure Document or that is contrary to, or different from, the information contained in the Franchise Disclosure Document?

Yes X No__ 14. Do you understand that the Franchise Agreement and exhibits to the Franchise Agreement contain the entire agreement between us and you concerning the franchise for the *Massage Envy* facility, meaning any prior oral or written statements not set out in the Franchise Agreement or the exhibits to the Franchise Agreement will not be binding?

YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.

ANY REPRESENTATIONS ABOVE WHICH REQUIRE YOU TO ASSENT TO ANY RELEASE, ESTOPPEL OR WAIVER OF LIABILITY AS A CONDITION OF PURCHASING A FRANCHISE ARE NOT INTENDED TO NOR SHALL THEY ACT AS A RELEASE, ESTOPPEL OR WAIVER OF ANY LIABILITY INCURRED UNDER THE MARYLAND FRANCHISE REGISTRATION AND DISCLOSURE LAW.

FRANCHISEE(S)

By: Jon Krutchik
Jon Krutchik, a married man

Any representations above which require you to assent to any release, estoppel or waiver of liability as a condition of purchasing a franchise are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and disclosure Law.

EXPLANATION OF ANY NEGATIVE RESPONSES [REFER TO QUESTION NUMBER]:

CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 1
APPLICATION DATE: 09.02.10
PERIOD TO: 09.02.10
ARCHITECT'S PROJECT NO: 480

Massage Envy Retail Location, 1701 Meridian, Miami Beach, FL

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	WORK COMPLETED THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
1000	Contractors Fee	$8,000.00						$8,000.00	
1011	Special Inspections	$1,000.00						$1,000.00	
1050	Surveys / plans / copies	$875.00						$875.00	
1100	Permits & Fees	TBD							
2351	Plumbing Fixtures (allowance)	$800.00						$800.00	
2361	Plumbing	$3,000.00						$3,000.00	
2440	Site Improvements/Demolition	$2,500.00						$2,500.00	
2441	Insulation	$3,500.00						$3,500.00	
2444	Roofing/ceiling	$2,500.00						$2,500.00	
2450	Wood Doors & Hardware	$7,500.00						$7,500.00	
2480	Mirrors, Shower, Enclosure	$600.00						$600.00	
2500	Stucco &/or Plaster	$4,500.00						$4,500.00	
2700	Drywall & Framing	$23,000.00						$23,000.00	
3150	Shell - Foundation & Slab Ground Floor	$1,500.00						$1,500.00	
3150	Flooring - Tile	$9,000.00						$9,000.00	
3150	Painting	$4,000.00						$4,000.00	
3150	Bath Accessories(allowance)	$350.00						$350.00	
3150	Wood framing and/or roof decking	$40,000.00						$40,000.00	
3175	Security - Cabling - Audio	$2,300.00						$2,300.00	
4422	Appliances & countertop (allowance)	$5,000.00						$5,000.00	
4424	Kitchen countertop	$1,575.00						$1,575.00	
5500	Closet Accessories(allowance)	$350.00						$350.00	
6190	HVAC	$2,750.00						$2,750.00	
6200	Finish Carpentry	$2,350.00						$2,350.00	
6220	Millwork	$1,765.00						$1,765.00	
6400	Electric	$5,400.00						$5,400.00	
6410	Cabinet Work	$3,500.00						$3,500.00	
	GRAND TOTALS	$137,615.00	$0.00	$0.00	$0.00	$0.00		$137,615.00	

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

AIA DOCUMENT G703 · CONTINUATION SHEET FOR G702 · 1992 EDITION · AIA · ©1992
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W. WASHINGTON, D.C. 20006-5232

EXHIBIT 8.4
Tenant Improvement(s)

22NE | THURSDAY, AUGUST 19, 2010

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, September 15th, 2010,** to consider the following:

10:25 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And David A. Wrubel, CPA, P.A., For Use Of Approximately 1,518 Square Feet Of City-Owned Property, Located At 1130 Washington Avenue, 5th Floor, Miami Beach, Florida; Said Lease Having An Initial Term Of Three Years, With Two Additional Three Year Renewal Terms, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:30 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And Leonardo Salon, Inc., For Use Of Approximately 1,326.78 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 1 (A/K/A 765 17th Street), Miami Beach, Florida; Said Lease Having An Initial Term Of Four Years And 364 Days, With One Additional Five Year Renewal Term, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

10:35 a.m.
Approving On Second Reading, Public Hearing, A Lease Agreement Between The City And Jon Krutchik, For Use Of Approximately 1,802.89 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 2 (A/K/A 767 17th Street), Miami Beach, Florida; Said Lease Having An Initial Term Of Four Years And 364 Days, With One Additional Five Year Renewal Term, At The City's Sole Discretion.

Inquiries may be directed to the Real Estate, Housing & Community Development Department (305) 673- 7260.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139 or via the City's web site at www.miamibeachfl.gov. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact (305) 604-2489 (voice), (305)673-7218(TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Ad #614

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Condensed Title:

A Resolution approving a two month extension and new lease agreement between the City, as Tenant, and Meridian Miami, LLC, as Landlord, for use of property located at 1680 Meridian Avenue, to be used as Administrative offices for the Fire Department.

Key Intended Outcome Supported:

Maximize efficient delivery of services.

Supporting Data (Surveys, Environmental Scan, etc.):

Approximately 75% of residents and 68% of businesses rated Miami Beach city government as excellent or good in meeting their needs and expectations.

Issue:

Should the City Commission approve the extension and new lease agreement?

Item Summary/Recommendation:

The City is moving forward with the construction and renovation of Fire Station No. 2. That work necessitated the relocation of the City's Fire Department personnel. Due to a lack of available space in City buildings at the time, in October 2006, the City Commission approved a three year lease agreement between the City and Meridian Center, LLC, for the Fire Department's use as office space for the Administrative and Fire Prevention staff. This lease was extended for an additional eight months in December 2009, and is scheduled to expire on September 30, 2010.

Subsequently, space has become available at the 777 building. In evaluating the current timeline for completion of the Fire Station 2 improvements, it is beneficial to move the Fire Administration and Prevention staff into the City-owned building.

The Landlord has agreed to permit the City to remain in the leased premises on a month-to-month basis for the months of October and November 2010, under the current terms and Rent payment schedule (8,300 SF @ $18,675.00 monthly). Prior to the end of November 2010, the Fire Department will relocate a portion of its staff to the 2nd floor of the 777 Building, thus reducing the space required to 5,311 SF. The balance of the Fire Department's staff will remain in the 1680 Meridian Avenue property until such time as 4th floor space at the 777 Building becomes available and modifications and improvements are completed next year. Both of the proposed City spaces require some modifications and improvements prior to occupancy by the Fire Department. A two month extension and a new lease agreement between the City and the new property owner, Meridian Miami, LLC, is being proposed to accommodate this renovation and moving schedule. The proposed lease terms are as follows:

	Lease Extension	New Lease
Square Footage	8,300 SF	5,311 SF
Term	Two months; 10/1/10 – 11/30/10	Nine months; 12/1/10 – 8/31/11
Rent	$27 PSF; $18,675/mo	$27 PSF; $11,949.75/mo
Security Deposit	N/A	N/A

The Administration recommends that the Mayor and City Commission adopt the Resolution approving the two month extension and lease agreement allowing for the Fire Department's continued use of office space at 1680 Meridian Avenue.

Advisory Board Recommendation:

n/a

Financial Information:

Source of Funds:		Amount	Account
n/a	1	$144,897.75	From proposed FY 2010/11 budget; Account No. 011.1210.000323

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Anna Parekh, extension 7193

Sign-Offs:

Anna Parekh, Department Director	Hilda M. Fernandez, Assistant City Manager	Jorge M. Gonzalez, City Manager
AP	HF	JMG

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MIAMIBEACH

AGENDA ITEM R7D
DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A TWO MONTH LEASE EXTENSION AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, AS TENANT, AND MERIDIAN MIAMI, LLC, AS LANDLORD, FOR USE OF APPROXIMATELY 5,311 RENTABLE SQUARE FEET OF PROPERTY, LOCATED AT 1680 MERIDIAN AVENUE, SUITES 201 AND 203, MIAMI BEACH, FLORIDA, TO BE USED AS ADMINISTRATIVE OFFICES FOR THE CITY'S FIRE DEPARTMENT; SAID LEASE HAVING A TERM OF NINE (9) MONTHS, COMMENCING ON DECEMBER 1, 2010, AND ENDING ON AUGUST 31, 2011**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

BACKGROUND

The planned construction of a new Fire Station No. 2, and the renovation of the existing historic building into administrative offices for the City's Fire Department, required the relocation of the Fire Department's Adminstration and Fire Prevention offices. At that time, there was no vacant City-owned property available that could accommodate the Fire Department's needs, and comparable market rent was approved to be paid in order to house the Fire Department's offices in a privately-owned building. Therefore, on October 11, 2006, the Mayor and City Commission adopted Resolution No. 2006-26344, approving a Lease Agreement between the City and Meridian Center, LLC, for the Fire Department's use of a portion of the property located at 1680 Meridian Avenue, for a three year term which commenced on February 1, 2007, and terminated on January 31, 2010.

In light of the current schedule for completion of the Station 2 project, at the March 10, 2009 meeting of the Finance & Citywide Projects Committee (F&CPC), and following a comprehensive review of the City's office space use, the Committee agreed with City staff's recommendation that the Fire Administration and Fire Prevention offices should be relocated to the second (2nd) floor and a portion of the forth (4th) floor of the City-owned property located at 1701 Meridian Avenue (a.k.a 777 Building). The 2nd floor and portion of the 4th floor require modifications and improvements prior to the relocation of the Fire Department into that space.

The commencement of the renovations was delayed and necessitated an extension to the Lease Agreement. Subsequently, on December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27280, extending the Lease Agreement for an additional eight (8) month term, commencing on February 1, 2010, and scheduled to end on September 30, 2010. City staff negotiated new terms at the time that reduced the City's monthly rent cost.

ANALYSIS

On January 13, 2010, the Mayor and City Commission adopted Resolution 2010-27298, approving funding for the renovation of the 2nd floor and a portion of the 4th floor of the 777 Building.

Renovation work has begun on the 2nd floor of the Building but it is not anticipated to be completed prior to the September 30, 2010 expiration of the current, extended lease term.

The Landlord has agreed to permit the City to remain in the leased premises on a month-to-month basis for the months of October and November 2010, under the current terms and Rent payment schedule (8300 SF @ $18,675.00 monthly). Prior to the end of November 2010, the Fire Department will relocate a portion of its staff to the 2nd floor of the 777 Building, thus reducing the space required to be rented to 5,311 SF. The balance of the Fire Department's staff will remain in the 1680 Meridian Avenue property until such time as the 4th floor modifications and improvements are completed and they are able to occupy that space. This is expected to occur within the new lease term.

The Administration has proceeded to negotiate an extension of the current lease, and a proposed lease agreement for City Commission approval. The terms of the two month extension, on a month-to-month basis remain the same as approved by the City Commission on December 9, 2010. The proposed lease terms for the space commencing on December 1, 2010 are as follows:

TENANT: City of Miami Beach, a Florida municipal corporation.

LANDLORD: Meridian Miami, LLC, a Florida limited liability company.

DEMISED PREMISES: 5,311 rentable SF located at 1680 Meridian Avenue, Suites 201 and 203.

TERM: nine (9) month term.

LEASE COMMENCEMENT DATE: December 1, 2010

LEASE EXPIRATION DATE: August 31, 2011

RENT: $27.00 PSF; $11,949.75 monthly. Rent includes Additional Rent (i.e. operating expenses, property taxes and insurance costs) and electric.

SECURITY DEPOSIT: None required.

USES: The Demised Premises shall be used by the Tenant as an office location for the City of Miami Beach Fire Department. The Demised Premises shall be generally open for Tenant's use Monday-Friday, from 6:00AM to 7:00PM.

CONCLUSION

The Administration recommends that the Mayor and City Commission adopt the Resolution approving the proposed two month lease extension and new Lease Agreement between the City and Meridian Miami, LLC, for office space located at 1680 Meridian Avenue to accommodate our Fire Department Administration and Fire Prevention office until such time as City-owned space is available for move-in.

JMG/HMF/AP/RR

T:\AGENDA\2010\September 15\Regular\Meridian Miami Lease.MEM.doc

RESOLUTION NO: _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING A TWO MONTH LEASE EXTENSION AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, AS TENANT, AND MERIDIAN MIAMI, LLC, AS LANDLORD, FOR USE OF APPROXIMATELY 5,311 RENTABLE SQUARE FEET OF PROPERTY, LOCATED AT 1680 MERIDIAN AVENUE, SUITES 201 AND 203, MIAMI BEACH, FLORIDA, TO BE USED AS ADMINISTRATIVE OFFICES FOR THE CITY'S FIRE DEPARTMENT; SAID LEASE HAVING A TERM OF NINE (9) MONTHS, COMMENCING ON DECEMBER 1, 2010, AND ENDING ON AUGUST 31, 2011

WHEREAS, on December 10, 2003, the Mayor and City Commission adopted Resolution No. 2003-25439, awarding a contract to the firm of Jasco Construction, for the construction of a new Fire Station No. 2, and the renovation of the existing historic building, into administrative offices for the City of Miami Beach Fire Department; and

WHEREAS, said construction and renovation necessitated the relocation of the Fire Department; and

WHEREAS, on October 11, 2006, the Mayor and City Commission adopted Resolution No. 2006-26344, approving a lease agreement between the City and Meridian Center, LLC, for the Fire Department's use of a portion of the property at 1680 Meridian Avenue, for a three year term; said term (the Lease Agreement), commencing on February 1, 2007, and terminating on January 31, 2010; and

WHEREAS, on December 9, 2009, the Mayor and City Commission adopted Resolution No. 2009-27280, extending the Lease Agreement for an additional eight (8) month term, said term commencing on February 1, 2010, and ending on September 30, 2010; and

WHEREAS, the Fire Department is programmed to be relocated into the 1701 Meridian Avenue building until such time as the construction and renovation of Fire Station No. 2 are completed; and

WHEREAS, the spaces programmed for the Fire Department's use in the 1701 Meridian Avenue building require modifications and improvements; and

WHEREAS, in the interim, the Administration has negotiated a two (2) month

extension to the current lease and a new Lease Agreement (attached hereto) with Meridian Miami, LLC, for the Fire Department's use of approximately 5,311 rentable square feet at 1680 Meridian Avenue, Suites 201 and 203, for a nine (9) month term, commencing on December 1, 2010, and ending on August 31, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve a two month lease extension and authorize the Mayor and City Clerk to execute a new Lease Agreement between the City of Miami Beach and Meridian Miami, LLC, for use of approximately 5,311 rentable square feet of property, located at 1680 Meridian, Suites 201 and 203, Miami Beach, Florida, to be used by the City for administrative offices for the City's Fire Department, for a nine month term, commencing on December 1, 2010, and ending on August 31, 2011.

PASSED and ADOPTED this 15th day of September, 2010.

ATTEST:

Robert Parcher, CITY CLERK	**Matti Herrera Bower, MAYOR**

JMG/HMF/AP/rlr

F:\RHCD\$ALL\ECON\$ALL\ASSET\1680 Meridian Fire Dept\Meridian Miami Lease.RES.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/8/10 Date

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day September, 2010, by and between **MERIDIAN MIAMI, LLC**, a Florida limited liability company, (hereinafter referred to as "Landlord"), and the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Tenant").

1. Demised Premises.
Landlord, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the Landlord, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

   Approximately 5,311 rentable square feet, located at 1680 Meridian Avenue, Suites 201 and 203, Miami Beach, Florida, 33139, and as more specifically delineated in Exhibit 1, attached hereto and incorporated herein.

2. Term.
The Tenant shall be entitled to have and to hold the Demised Premises for a term of nine (9) months, commencing on the 1st day of December, 2010 (the "Commencement Date"), and ending on the 31st day of August, 2011 (the "Termination Date").

3. Rent.
Tenant's paymenrt of Rent, as defined in this Section 3, shall commence on December 1, 2010 (the "Rent Commencement Date") and, thereafter, on the first day of subsequent months.

   3.1 Base Rent:
   Throughout the Term herein, the Base Rent for the Demised Premises shall be shall be Twenty Seven ($27.00) Dollars and 00/100 per rentable square foot, payable in monthly installments of One Thousand Nine Hundred Forty Nine Dollars and 75/100 ($11,949.75).

   Tenant and Landlord agree that the amounts set forth in in this Subsection 3.1 are "gross" rent payments. Accordingly, Tenant shall have no obligation during the Term to pay Landlord any proportionate share of Operating Expenses pursuant to Subsection 3.2 hereof.

DRAFT

3.2 Additional Rent:

3.2.1 Operating Expenses:
"Operating Expenses" shall mean the total cost and expenses, including property taxes and insurance, incurred by Landlord in operating, repairing, and maintaining the Common Facilities (hereinafter defined) actually used or available for use by the Tenant and its employees, agents, servants, customers and invitees.

"Common Facilities" shall mean all areas, space, equipment and special services, including without limitation, electrical (including service to the Demised Premises), water, and sewer service to the building, trash removal from the building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, basic janitorial services, lighting, cleaning, striping, policing, removing garbage and other refuse and trash, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the building common areas and the exterior and structural portions of the building, paving and repairing, management fees and the Landlord's employment expenses to employees furnishing and rendering any services to the common areas provided by the Landlord for the common or joint use and/or benefit of Tenant, and its employees, agents, servants, customers and invitees.

3.3 Sales Tax:
Landlord acknowledges that Tenant is exempt from the payment of Florida sales tax and Tenant shall provide all requisite exemption certification to Landlord which information shall be set forth in Exhibit 3.3 attached hereto and made part hereof.

4. Location for Payments.
All rents or other payments due hereunder shall be paid to Landlord at the following address:

Meridian Miami, LLC
101 South Eola Drive, #1205
Orlando, Florida 32801

5. Parking.
Intentionally Deleted.

6. Security Deposit.
Intentionally Deleted.

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7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant as an office location for the City of Miami Beach Fire Department's operations. Said Demised Premises shall generally be open for Tenant's use Monday through Friday, from 6:00 AM until 7:00 PM. Nothwithstanding the preceding use, Tenant reserves the right to utilize the Demised Premises for any other public purpose, subject to the prior written approval by Landlord, which approval shall not be unreasonably witheld.

7.2 Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit waste on the Demised Premises, use the Demised Premises for any illegal purpose, or commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises for any purposes not expressly permitted herein, then the Landlord may declare this Lease in default pursuant to Section 18, or without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

Tenant accepts the Demised Premises in their present **"AS IS"** condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to Landlord for Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the Landlord upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed contractors. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

9. Landlord's Right of Entry.

The Landlord, or its authorized agent or agents, shall not have the right to enter upon the Demised Premises without the prior consent of Tenant and it is acknowledged that the Premises shall be secured by an alarm system to be installed by Tenant at Tenant's sole cost. Notwithstanding the preceding sentence, Landlord shall have access to the Premises in the event of an emergency at which time the alarm company or an emergency contact from the City of Miami Beach will

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be notified for assistance to gain entry to the Premises. Tenant agrees that it shall issue one key to the Leased Premises to Landlord. Tenant is allowed and shall be permitted to reasonably enjoy the Leased Premises and conduct its business without interruption or interference. If required, Landlord shall provide reasonable notice, in writing, to Tenant and shall enter the Leased Premises only when accompanied by an authorized representative of the Tenant (unless access is required during an emergency event). Nothing herein shall imply any duty on the part of the Landlord to do any work that under any provisions of this Lease the Tenant may be required to perform, and the performance thereof by the Landlord shall not constitute a waiver of the Tenant's default.

10. Tenant's Insurance.
Landlord acknowledges that Tenant is a Florida municipal corporation and is self-insured. Upon Landlord's written request, Tenant shall have its Risk Manager provide Landlord with written confirmation of Tenant's self-insurance.

11. Property Taxes and Assessments.
For the purposes of this Section and other provisions of this Lease:

11.1 The term "Property Taxes" shall mean (i) the real estate taxes, assessments, and special assessments of any kind which may be imposed upon the tax lot on which the Building is constructed (the "Land") and (ii) any expenses incurred by Landlord in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 The term "Tenant's Proportionate Share" shall mean the ratio that the square footage of the Demised Premises bears to the square footage of the leasable space in the entire Building. Tenant proportionate share shall be deemed to be thirteen and seventy-three one hundredths (13.73%) percent; however, Tenant's proportionate share may be subject to change in the event that Tenant exercises its Right of First Offer pursuant to Section 41 hereof.

12. Assignment and Subletting.

12.1 At any time during the Term, Tenant shall have the right to assign or sublet the Demised Premises, in whole or in part, with the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. If granted, the making of any assignment will release Tenant from any of its obligations under this Lease.

12.2 Any consent by the Landlord to any act of assignment shall apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Tenant or the legal representatives or assigns

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of the Tenant, to obtain from the Landlord consent to any other or subsequent assignment, or as modifying or limiting the rights of the Landlord under the foregoing covenants of the Tenant not to assign without such consent.

12.3 Any violation of the provisions of this Lease, whether by act or omissions, by a sub-tenant shall be deemed a violation of such provision by the Tenant, it being the intention and meaning of the parties hereto, that the Tenant shall assume and be liable to the Landlord for any and all acts and omissions of any and all sub-tenants.

13. Maintenance and Repair.

13.1 Tenant shall maintain the Demised Premises and the fixtures and appurtenances therein, and at its sole cost and expense shall make all repairs thereto as and when needed to preserve them in good working order and condition. Landlord shall be responsible for the maintenance of the roof, the exterior of the building, the structural electrical and plumbing, the common areas and the HVAC system (however Tenant shall be responsible for periodically changing the air filters for each air handling unit in the Demised Premises subject to the Landlord providing to Tenant a maintenance schedule and documentation of system requirements). Landlord shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition. Tenant shall also be responsible for all interior walls and the interior of all windows and interior and exterior of all doors.

13.2 All damage or injury of any kind to those fixtures and appurtenances in the Demised Premises that are Tenant's responsibility (as provided in Subsection 13.1), except damage caused by the wrongful acts or negligence of the Landlord, shall be the obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant at its sole cost and expense to the satisfaction of Landlord.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to the original work or installations and shall be done in good and workmanlike manner.

13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the Landlord, at the expense of Tenant, and all sums spent and expenses incurred by Landlord shall be collectable as Additional Rent and shall be paid by Tenant within ten (10) days after rendition of a bill or statement thereof.

14. Governmental Regulations.
The Tenant covenants and agrees to fulfill and comply with all statutes, ordinances,

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rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises.

15. Liens.

Tenant will not permit any mechanics, laborers, or material man's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said premises, or improvements by or at the direction or sufferance of the Tenant, provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the Landlord reasonable security as may be demanded by Landlord to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Demised Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from Landlord, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper cost and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Enforcement.

Tenant agrees to pay the Base Rent and any Additional Rent herein reserved at the time and in the manner aforesaid, and should said rents herein provided, at any time remain due and unpaid for a period of forty five (45) days after the same shall become due, the Landlord may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately or the Landlord may pursue any other remedies enforced by law.

17. Condemnation.

17.1 If at any time during the Term of this Lease, all or any part or portion of the Demised Premises are rendered untenantable, taken, appropriated, or condemned by reason of Eminent Domain proceedings (except if the Eminent Domain proceedings are initiated by the City of Miami Beach), then this Lease shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Lease or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and the Tenant shall pay any and all rents, additional rents, utility charges, or other costs including excess taxes for which it is liable under the terms of this Lease, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in

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the proceeds of any award made to the Landlord in any such Eminent Domain proceeding, excepting, however, the Tenant shall have the right to claim and recover from the condemning authority, but not from the Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:
At the Landlord's option, any of the following shall constitute an Event of Default under this Lease:

18.1.1 The Base Rent, Additional Rent, or any installment thereof is not paid promptly when and where due within ten (10) days of the due date (taking into consideration the grace period provided) and if Tenant shall not cure such failure within ten (10) business days thereafter;

18.1.2 Any other payment provided for under this Lease is not paid promptly when and where due;

18.1.3 The Demised Premises shall be deserted, abandoned, or vacated;

18.1.4 The Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure or commence to cure such failure within fifteen (15) days after the receipt of written notice from Landlord specifying any such default; or if such default(s) is of a nature that it cannot be reasonably cured within fifteen (15) days, provided Tenant has commenced and is continuing diligently to cure said default(s) beyond the initial fifteen (15) day period;

18.1.5 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a code, regulation, ordinance or the like, which remains uncured for a period of fifteen (15) days from its issuance, or if such default(s) is of a nature that it cannot be reasonably cured within fifteen (15) days, provided Tenant has commenced and is continuing diligently to cure said default(s) beyond the initial fifteen (15) day period.

19. Rights on Default.

19.1 Rights on Default:
In the event of any default by Tenant as provided herein, Landlord shall have

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the option to do any of the following in addition to and not in limitation of any other remedy permitted by law or by this Lease;

19.1.1 Terminate this Lease, in which event Tenant shall immediately surrender the Demised Premises to Landlord.

19.1.2 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Lease which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on Landlord's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five (5) days of the due date.

19.1.3 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, Landlord may pay such expense but Landlord shall not be obligated to do so. Tenant upon Landlord's paying such expense shall be obligated to forthwith reimburse Landlord for the amount thereof. All sums of money payable by Tenant to Landlord hereunder shall be deemed as rent for use of the Demised Premises and collectable by Landlord from Tenant as rent, and shall be due from Tenant to Landlord on the first day of the month following the payment of the expense by Landlord.

19.1.4 The rights of the Landlord under this Lease shall be cumulative but not restrictive to those given by law and failure on the part of the Landlord to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by Landlord:

The failure of Landlord to perform any of the covenants, conditions and agreements of the Lease which are to be performed by Landlord and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to Landlord (which notice shall specify the respects in which Tenant contends that Landlord failed to perform any such covenant, conditions and agreements) shall constitute a default by Landlord, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond Landlord's control, and Landlord within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

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However, in the event Landlord fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for the Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by Landlord.

20. Indemnity Against Claims, Costs and Charges:
Landlord acknowledges that Tenant is precluded from indemnifying against claims, costs and charges pursuant to Florida Statute 768.28.

21. Indemnification Against Claims.
Intentionally Deleted.

22. Signs and Advertising.
Without the prior written consent of Landlord, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All signage shall comply with signage standards established by Landlord and comply with all applicable building codes, and any other Municipal, County, State and Federal laws.

23. Effect of Conveyance.
The term "Landlord" as used in the Lease means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the Landlord shall be and hereby is entirely freed and relieved of all covenants and obligations of the Landlord hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the Landlord hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenantable, as determined by Landlord, in whole or in part, and such damage is covered by Landlord's insurance, if any, (hereinafter referred to as "such occurrence"), Landlord, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the rent shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenantable, as determined by Tenant, only in part, Landlord shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, if the Demised Premises are by reason of such occurrence, rendered more than 50% but less than 100%

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untenantable, as determined by Landlord, Landlord shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable. If such time exceeds sixty (60) days, the Tenant shall have the option of canceling this Lease, which option shall be exercised by Tenant in writing within ten (10) days of receipt of notice of same from Landlord.

24.2 If the Demised Premises shall be rendered wholly untenantable by reason of such occurrence, the Landlord shall utilize the insurance proceeds to cause such damage to be repaired and the rent meanwhile shall be abated in whole; provided, however, that Landlord shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Lease and the tenancy hereby created shall cease as of the date of said occurrence, the rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenantable, the Tenant shall have the right, to be exercised by notice in writing, delivered to Landlord within ten (10) days from and after said occurrence, to elect to terminate this Lease, the rent to be adjusted accordingly. Notwithstanding any clause contained in this Section, if Landlord becomes self insured or the damage is not covered by Landlord's insurance, then Landlord shall have no obligation to repair the damage, but Landlord shall advise Tenant in writing within ten (10) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate the Lease, and the rent shall be adjusted accordingly.

25. Quiet Enjoyment.

The Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Lease.

26. Waiver.

26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of Landlord to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Lease, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

26.2 A waiver of any term expressed herein shall not be implied by any neglect of Landlord to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

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26.3 The receipt of any sum paid by Tenant to Landlord after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as rent, unless such breach be expressly waived in writing by Landlord.

27. Notices.

The addresses for all notices required under this Lease shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD: Meridian Miami, LLC
Attn: John Page
101 South Eola Drive, #1205
Orlando, Florida 32801

TENANT: City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

With copy to: Director
City of Miami Beach
Office of Real Estate, Housing & Community Development
1700 Convention Center Drive
Miami Beach, Florida 33139

All notices shall be hand delivered and a receipt requested, or by certified mail with "Return Receipt" requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.

This Lease contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Lease.

29. Provisions Severable.

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

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30. Captions.
The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Lease or construed as in any manner limiting or amplifying the terms and provisions of this Lease to which they relate.

31. Number and Gender.
Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

32. Governing Law.
This Lease shall be governed by and construed in accordance with the law of the State of Florida.

33. Limitation of Liability.
Intentionally Deleted.

34. Attorneys Fees.
If it becomes necessary for Tenant or Landlord to enforce their respective rights under this Agreement or any part hereof through litigation, Tenant and Landlord agree that the prevailing party shall be entitled to recover from the other party all costs and expenses of such litigation, including a reasonable attorney's fee and costs, for all trial and appellate proceedings.

35. Surrender of the Demised Premises.
The Tenant shall, on or before the last day of the term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the Landlord the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Lease and is not so removed may, at the option of the Landlord, be deemed abandoned by the Tenant, and either may be retained by the Landlord as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the Landlord may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the term as provided in this Section, the Tenant shall make good the Landlord all damages which the Landlord shall suffer by reason thereof, so far as such delay is occasioned by the failure of the Tenant to surrender the Demised Premises as and when herein required.

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Notwithstanding the aforestated, Tenant agrees that upon vacating the Demised Premises it shall conduct the following schedule of services and maintenance with respect to preparing the Demises Premises for "turnover" back to Landlord: Painting of the Demised Premises; carpet cleaning for Demised Premises; replacement of any interior glass or other fixtures which may have been broken during Tenant's possession; replacement of any light fixtures which may have been broken (including bulbs); replacement of any locks which may have been changed, or in the alternative, Tenant shall provide keys and./or combinations to said locks; replacement and/or repair of any window treatments, shades and/or blinds which may have become damaged as a result of Tenant's use of same; the interior cleaning of all windows within the Demised Premises, the replacement of any ceiling tiles which may have broken during Tenant's possession of the Demised Premises and the replacement of any furniture, fixtures or equipment (if any) which Landlord has provided for Tenant's use of.

35.1 Holdover:
If the Tenant retains possession of the Demised Premises or any part thereof after the termination of this Lease, by lapse of time or otherwise, the Tenant shall pay the Landlord Rent at two (2) times the rate payable for the month immediately proceeding said holdover. The provisions of this paragraph do not waive the Landlord's rights of re-entry or any other right hereunder. Any retention of the Demised Premises after the termination of this Lease shall be considered as a month-to-month holdover unless otherwise agreed to in writing by both parties.

36. Time is of the Essence.
Time is of the essence in every particular and particularly where the obligation to pay money is involved.

37. Venue.
This Lease Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE LANDLORD AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE AGREEMENT.

38. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

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39. No Dangerous Materials.
Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest: **CITY OF MIAMI BEACH, FLORIDA**

Robert Parcher, CITY CLERK Matti Herrera Bower, MAYOR

Attest: **MERIDIAN MIAMI, LLC**

Print Name & Title Print Name & Title

CORPORATE SEAL
(affix seal here)

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Exhibit 1

DEMISED PREMISES

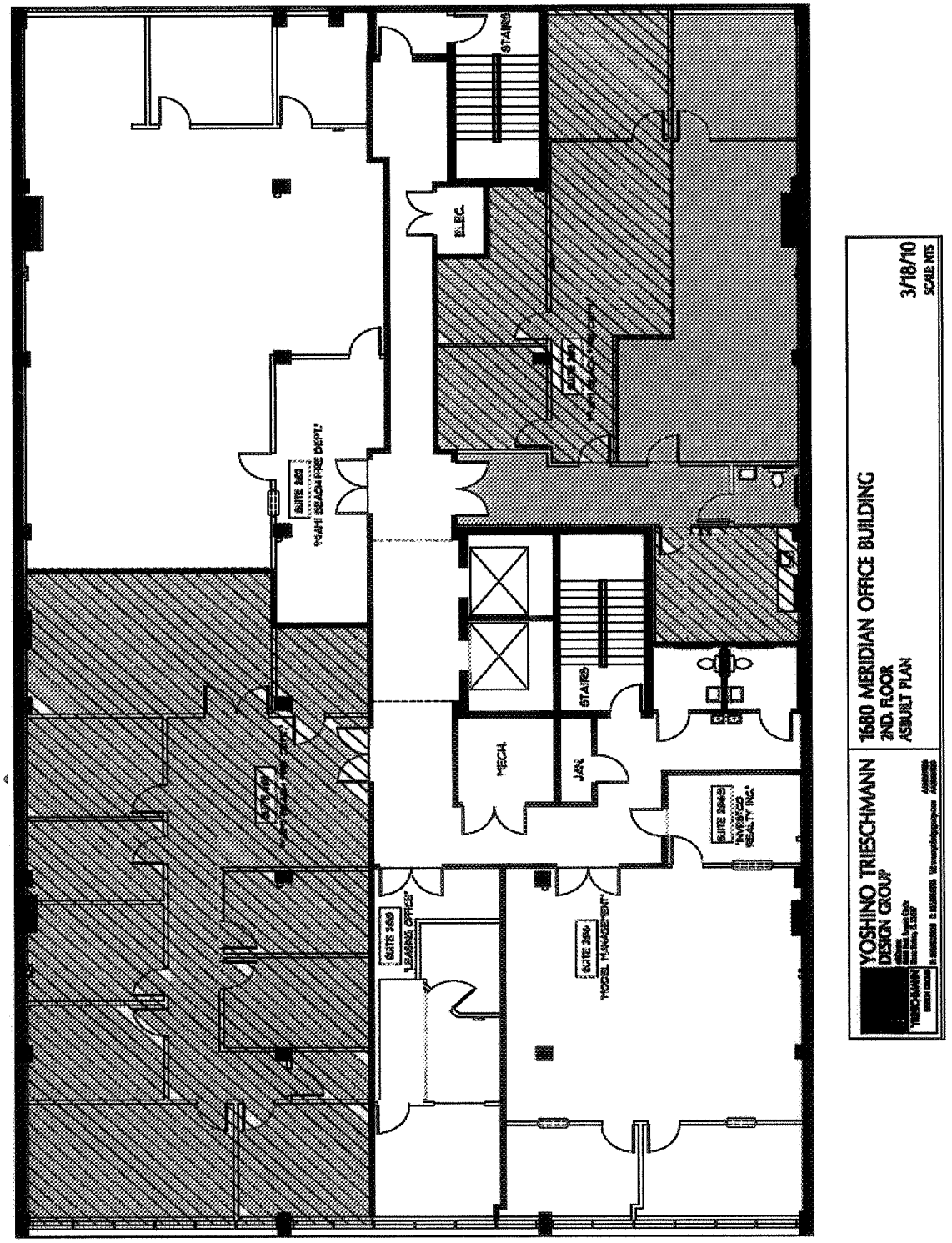

Exhibit 3.3

SALES TAX EXEMPTION NOTICE

DEPARTMENT OF REVENUE

Consumer's Certificate of Exemption

Issued Pursuant to Chapter 212, Florida Statutes

DR-14
R. 01/02

Certificate Number	Effective Date	Expiration Date	Exemption Category
23-09-329871-54C	07/15/02	07/15/07	MUNICIPAL GOVERNMENT

This certifies that

CITY OF MIAMI BEACH
1700 CONVENTION CENTER DR
MIAMI BEACH FL 33139-1819

is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.

DEPARTMENT OF REVENUE

Important Information for Exempt Organizations

DR-14
R. 01/02

1. You must provide all vendors and suppliers with an exemption certificate before making tax-exempt purchases. See Rule 12A-1.039, Florida Administrative Code (FAC).

2. Your *Consumer's Certificate of Exemption* is to be used solely by your organization for your organization's customary nonprofit activities.

3. Purchases made by an individual on behalf of the organization are taxable, even if the individual will be reimbursed by the organization.

4. This exemption applies only to purchases your organization makes. The sale or lease to others by your organization of tangible personal property, sleeping accommodations or other real property is taxable. Your organization must register, and collect and remit sales and use tax on such taxable transactions. Note: Churches are exempt from this requirement except when they are the lessor of real property (Rule 12A-1.070, FAC).

5. It is a criminal offense to fraudulently present this certificate to evade the payment of sales tax. Under no circumstances should this certificate be used for the personal benefit of any individual. Violators will be liable for payment of the sales tax plus a penalty of 200% of the tax, and may be subject to conviction of a third degree felony. Any violation will necessitate the revocation of this certificate.

6. If you have questions regarding your exemption certificate, please contact the Exemption Unit of Central Registration at 850-487-4130. The mailing address is 5050 West Tennessee Street, Tallahassee, FL 32399-0100.

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Condensed Title:

A Resolution approving, on second and final reading and public hearing, a development agreement between the City and the Housing Authority Of The City Of Miami Beach (HACMB) pertaining to projects located at 1231-1251 17th Street, Miami Beach, Florida: 1.) an affordable elderly housing project to be developed and constructed at HACMB's sole cost and expense; and 2.) a public right of way, including a bridge, for vehicular and pedestrian access, connecting West Avenue and Dade Boulevard, to be designed, developed, and constructed at the City's sole cost and expense over a perpetual easement over the property; which the city intends to purchase from HACMB and further approving, in substantial form, a purchase and sale agreement between the city and HACMB for purchase of the city easement, in the amount of $1,635,000.

Key Intended Outcome Supported:

Maintain or Improve Traffic Flow

Supporting Data (Surveys, Environmental Scan, etc.): Residents in the 2007 Community Satisfaction Survey cited traffic congestion as the second most import factor affecting their quality of life in the City.

Issue:

Should the City Commission approve the resolution?

Item Summary/Recommendation:

1. Purchase and Sale Agreement (highlights)
- City purchasing a perpetual easement for $1,635,000.
- City will have a one (1) year "Inspection Period
- City has the right to terminate the Purchase and Sale Agreement if it determines, in its sole opinion, that the property is not suitable or feasible for the Project.

2. Development Agreement (highlights)
- Provides for development and construction of the West Avenue Bridge Project, (over the acquired easement), at City's sole cost and expense; and an affordable elderly housing project with some ground level, neighborhood-oriented commercial space (HACMB Project), to be developed and constructed on Parcel C at HACMB's sole cost and expense.
- City staff will propose certain amendments to the City's land development regulations with respect to modifications to minimum average unit size and parking requirements for affordable housing projects. The proposed amendments are subject to City Commission approval.

The Administration recommends that the Mayor and City Commission adopt the resolution; approve the Purchase and Sale Agreement and Development Agreement (on Second and Final Reading).

Advisory Board Recommendation:

Finance and Citywide Projects Committee – March 25, 2010

Financial Information:

		Amount	Account	Approved
Source of Funds: OBPI				
Total				

City Clerk's Office Legislative Tracking:

Kevin Crowder, Jorge Gomez

Sign-Offs:

Department Director	Assistant City Manager	City Manager
	JGG	JMG

T:\AGENDA\2010\September 15\Regular\Housing Authoruty Agreements - Summary.docx

MIAMIBEACH

AGENDA ITEM R7E

DATE 9-15-10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SECOND READING PUBLIC HEARING

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND READING AND PUBLIC HEARING, A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH (HACMB) PERTAINING TO THE DESIGN, DEVELOPMENT, AND CONSTRUCTION OF THE FOLLOWING PROJECTS ON CERTAIN REAL PROPERTY OWNED BY HACMB, LOCATED AT 1231-1251 17TH STREET, MIAMI BEACH, FLORIDA: 1.) AN AFFORDABLE ELDERLY HOUSING PROJECT WITH GROUND LEVEL, NEIGHBORHOOD ORIENTED COMMERCIAL SPACE, TO BE DEVELOPED AND CONSTRUCTED AT HACMB'S SOLE COST AND EXPENSE; (THE "HACMB PROJECT") AND 2.) A PUBLIC RIGHT OF WAY, INCLUDING A BRIDGE, FOR VEHICULAR AND PEDESTRIAN ACCESS, CONNECTING WEST AVENUE AND DADE BOULEVARD, TO BE DESIGNED, DEVELOPED, AND CONSTRUCTED AT THE CITY'S SOLE COST AND EXPENSE (THE "WEST AVENUE BRIDGE PROJECT") OVER A PREPETUAL EASEMENT OVER THE PROPERTY; WHICH EASEMENT THE CITY INTENDES TO PURCHASE FROM HACMB (THE 'CITY EASEMENT"); AND FURTHER APPROVING, IN SUBSTANTIAL FORM, A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY AND HACMB FOR PURCHASE OF THE CITY EASEMENT, IN THE AMOUNT OF $1,635,000; AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY'S OFFICE TO FINALIZE SAID PURCHASE AND SALE AGREEMENT, AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FINAL AGREEMENT AND, THEREAFTER, AUTHORIZING THE MAYOR AND CITY CLERK, AND/OR THE CITY MANAGER AND CITY CLERK, TO EXECUTE ANY AND ALL DOCUMENTS, AS NECESSARY TO CLOSE ON THE SALE OF THE SUBJECT EASEMENT.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

In 1999, the City Commission approved the Municipal Mobility Plan (MMP). The West Avenue Bridge Project (the Project) was developed from MMP Project #30, which envisioned corridor improvements to the intersection of Dade Boulevard at 17th Street/Bay Road, to be combined with a connection between Dade Boulevard and West Avenue through the construction of a new bridge. The MMP suggested that this

crossing could serve to relieve congestion at nearby intersections.

The implementation of the Project requires that the City acquire a right-of-way through a parcel presently owned by the Housing Authority of the City of Miami Beach (HACMB). Current funding for the Project includes federal funds, the use of which requires an environmental impact study (EIS). The estimated cost of the Project, including land acquisition and the EIS, is approximately $6.5-7 million.

A companion item is being presented to the Mayor and City Commission to issue an RFQ for the design and engineering of the Project.

At the June 25, 2008, City Commission meeting, the City Commission referred Item C4E ("Discussion Regarding the Proposed West Avenue Bridge Project") to the Finance and Citywide Projects (FCWP) Committee for further review. The FCWPC discussed the Project at its meeting of July 10, 2008, and directed the Administration to try to negotiate the purchase of the land needed, as an easement, for a price of $2.5 million.

Appraisal
The Administration engaged Quinlivan Appraisal to estimate the market value of the easement (as of December 21, 2008). For the appraisal, the property was divided into three parcels. (Attachment A). The appraiser was requested to value a permanent surface easement over Parcels A and B. Based on the inspection of the property. and the investigation and analyses undertaken, the appraiser formed the opinion that, the entire property had a market value of $6,100,000 (full site; fee simple), and $1,635,000 for the permanent easement over Parcels A and B.

Potential Site Development Proposed HACMB Project
On November 10, 2008, the Administration prepared a preliminary site analysis to determine the impact of the proposed easement on the development rights of the entire HACMB property. This analysis was revised on January 6, 2009 indicating that Parcel C could be developed as a residential project.

The Administration has been meeting with representatives of the HACMB and its architect to further discuss the development options regarding Parcel C. The most recent meeting with the architect took place on June 21, 2010. Currently, the proposed HACMB Project contemplates 68 to 72 units of elderly affordable housing; along with 1,500 square feet of ground floor retail; and 36 parking spaces at ground level. The project will also provide for access to the canal walk on the rear of the property.

City's Offer to Purchase
On April 23, 2009, the Administration received a letter from the HACMB stating that, on April 14, 2009, its Board of Commissioners discussed the City's purchase of the proposed easement and determined that the proposal was not in the best interest of the HACMB. The Board further directed that the sale of the property be taken off the market, and that HACMB staff prepare an affordable housing development for the entire property. At the June 25, 2009 FCWP meeting, HACMB staff informed the Committee that, while the letter submitted to the City indicated that the HACMB would proceed with development of the site, the HACMB Board desired a written offer from the City. The Committee directed the Administration to submit a written offer for the purchase of the easement over Parcels A & B, in the amount of $1.635 million. Said written offer was

submitted to the HACMB on June 30, 2009.

On September 8, 2009, the Board met to consider the City's offer of June 30th. The HACMB Board voted to reject the offer and directed its staff to continue with plans to develop the entire property.

At the October 29, 2009 FCWP meeting, HACMB stated that an architect had been hired to work on an affordable housing design for the entire property. HACMB further stated that its Board discussed the City's proposal and deemed the price to not be acceptable. General counsel for the HACMB stated that although the Board rejected the offer, it was still be willing to negotiate further. The FCWP Committee recommended that the Administration continue discussions and also look into the possibility of initiating condemnation proceedings.

On February 18, 2010, the City received a letter (Attachment B) from the HACMB, transmitting its counter-offer to the City's June 30th offer to purchase the easement. The HACMB accepted the City's offer to purchase the easement for $1.6 million, but conditioned it on a number of items, including assignment rights; the additional provision of three consecutive annual appropriations of $200,000 each to the HACMB; expedited permitting, reimbursement of legal fees; contingency on completion of all regulatory approvals for the development of property project on Parcel C; a waiver of Payment In Lieu Of Taxes (PILOT) fees; and the waiver of all building permit and concurrency fees.

On February 23, 2010, the Administration sent a letter to the HACMB (Attachment C), stating that the counter-offer could not be accepted, and that the City's offer remained unchanged from that of June 30, 2009.

At the March 25, 2010 FCWP meeting, the Committee discussed the HACMB's counter-offer; and recommended a new offer be made (same purchase price, but different conditions); and recommended that the item be presented to the full City Commission. On May 11, 2010, the HACMB's Board reviewed the City's new offer (Attachment D); voted to accept the offer; and directed staff to work with the City to prepare the appropriate documents.

The Administration and City Attorney's Office have worked with the HACMB and its counsel to develop the attached Purchase and Sale Agreement and Development Agreements. On June 22, 2010, the HACMB's Board considered both agreements and passed a resolution approving same, in substantial form, (Attachment F).

On July 14, 2010, the Mayor and City Commission approved the Purchase and Sale Agreement in substantial form, and also held the first public hearing and approved the Development Agreement on first reading. At the Commission meeting, some concerns related to the project were raised by a resident of the area, Mr. Mark Wohl. The HACMB agreed to meet with Mr. Wohl between first and second reading to discuss his concerns. The parties met on July 29, 2010, and Mr. Wohl offered input on both the proposed bridge as well as the HACMB's concept for elderly housing. The comments related to the bridge project were provided to staff and will be addressed as part of the PD&E study. The comments regarding the elderly housing included emergency vehicle access, incorporating urban/pedestrian design, rooftop decoration, and green space, the parties agreed to meet again after Mr. Wohl reported back to his condominium association the

results of the first meeting.

Proposed Terms of Purchase and Sale Agreement and Development Agreement

1. Purchase and Sale Agreement
   - City purchasing a perpetual easement over Parcels A & B (the City Easement) for $1,635,000.
   - City will have a one (1) year "Inspection Period" (commencing upon execution of the Purchase and Sale Agreement) to do its due diligence, including whatever inspections and investigations it needs to make to determine whether or not it wants to proceed with the purchase of the City Easement, and/or whether or not the Easement is suitable for the development and construction of the proposed West Avenue Bridge Project.
   - City has the right to terminate the Purchase and Sale Agreement during the Inspection Period if it determines, in its sole opinion, that the property is not suitable or feasible for the Project.
   - As one of the conditions precedent to the City's purchase of and closing on the City Easement, the City Commission must approve the Development Agreement between the City and HACMB.
   - At closing, HACMB shall convey the City Easement to City, as well as a covenant, or covenant in lieu of unity of title, for the entire HACMB property (Parcels A, B, and C).
   - City responsible for payment of title insurance for City Easement; cost of the survey; cost of recording City Easement; and documentary stamp taxes and surtaxes (if any applicable) on Easement. HACMB responsible for recording costs of covenant or covenant in lieu of unity of title. Each party responsible for its own attorneys' fees.

2. Development Agreement (D.A.)
   - D.A. provides for development and construction of:
     - (i) West Avenue Bridge Project, (over the City Easement on Parcels A&B), at City's sole cost and expense; and
     - (ii) An affordable elderly housing project with some ground level, neighborhood-oriented commercial space (HACMB Project), to be developed and constructed on Parcel C at HACMB's sole cost and expense.
   - Concept Plan for HACMB Project, as prepared by Architect Ari Sklar, is an attachment to D.A., and is to be approved by City Commission along with D.A.
   - HACMB Project is subject to compliance with City's land development regulations, and any required reviews by the City's land use boards.
   - Project may require application for a variance.
   - City staff will propose certain amendments to the City's land development regulations with respect to modifications to minimum average unit size and parking requirements for affordable housing projects. The proposed amendments are subject to City Commission approval.
   - HACMB has right to terminate the D.A. prior to Commencement of Construction of the HACMB Project. However, even if HACMB terminates, it must still close on and convey City Easement to City.

- City has also the right to terminate D.A. during the same one (1) year "Inspection Period" provided in Purchase and Sale Agreement.
- If HACMB develops and constructs HACMB Project, it agrees to operate the Project as an affordable housing project for a minimum of thirty (30) years, commencing upon the issuance of a C.C. or C.O. for the Project (Affordability Period). Affordability Period shall be memorialized through a Restrictive Covenant, to be recorded as a condition precedent of C.C. or C.O. for the HACMB Project.
- If HACMB sells, assigns, or transfers property prior to issuance of a building permit for HACMB Project, then Affordability Period and Restrictive Covenant will only apply (and be required) if successor entity also develops property for affordable housing purposes; otherwise, not applicable.
- No transfer or sale of the property will affect HACMB's obligation to convey City Easement to City.
- As consideration for HACMB's agreement to develop and construct HACMB Project, City agrees to waive Payment in Lieu of Taxes (PILOT) fees for Project for up to fifteen (15) years, commencing upon issuance of C.C. or C.O.; provided, however, that waiver extends to twenty five (25) years if the proposed project does not need any variances and does not need any amendments to the LDR's.
- Waiver of PILOT fees also extends to twenty five (25) years if City terminates D.A. during Inspection Period and, prior to receipt of the City's notice, HACMB has submitted application for variance. (In the event that the Project does require a variance).

CONCLUSION

On July 14, 2010, the Mayor and City Commission approved the Purchase and Sale Agreement and Development Agreement on First Reading and set the public hearing for the Second (and final) Reading. The Administration recommends that the Mayor and City Commission adopt the attached resolution; approve the Purchase and Sale Agreement and Development Agreement (on Second Reading).

JMG/JGG/RA/kc

Attachment A - Schematic Drawing of the Three Parcels
Attachment B – HACMB's February 18, 2010 Letter
Attachment C - City's February 23, 2010 Letter
Attachment D - City's May 11, 2010 Letter
Attachment E – HACMB's May 26, 2010 Letter
Attachment F – HACMB's June 22, 2010 Resolution

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND AND FINAL READING AND PUBLIC HEARING, A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH (HACMB) PERTAINING TO THE DESIGN, DEVELOPMENT, AND CONSTRUCTION OF THE FOLLOWING PROJECTS ON CERTAIN REAL PROPERTY OWNED BY HACMB, LOCATED AT 1231-1251 17TH STREET, MIAMI BEACH, FLORIDA: 1.) AN AFFORDABLE ELDERLY HOUSING PROJECT WITH GROUND LEVEL, NEIGHBORHOOD ORIENTED COMMERCIAL SPACE, TO BE DEVELOPED AND CONSTRUCTED AT HACMB'S SOLE COST AND EXPENSE; (THE "HACMB PROJECT") AND 2.) A PUBLIC RIGHT OF WAY, INCLUDING A BRIDGE, FOR VEHICULAR AND PEDESTRIAN ACCESS, CONNECTING WEST AVENUE AND DADE BOULEVARD, TO BE DESIGNED, DEVELOPED, AND CONSTRUCTED AT THE CITY'S SOLE COST AND EXPENSE (THE "WEST AVENUE BRIDGE PROJECT") OVER A PREPETUAL EASEMENT OVER THE PROPERTY; WHICH EASEMENT THE CITY INTENDES TO PURCHASE FROM HACMB (THE 'CITY EASEMENT"), PURSUANT TO THE TERMS AND CONDITIONS OF THAT CERTAIN PURCHASE AND SALE AGREEMENT BETWEEN THE CITY AND HACMB, AS APPROVED (IN SUBSTANTIAL FORM) ON JULY 14, 2010, PURSUANT TO RESOLUTION NO. 2010-27451.

WHEREAS, in 1999, the City Commission approved the West Avenue Bridge Project (the Project) as Municipal Mobility Plan (MMP) Project #30, which envisioned corridor improvements to the intersection of Dade Boulevard at 17th Street/Bay Road, to be combined with a connection between Dade Boulevard and West Avenue through the construction of a new bridge; and

WHEREAS, the implementation of the Project requires that the City acquire a right-of-way through a property presently owned by the Housing Authority of the City of Miami Beach (HACMB); and

WHEREAS, current funding for the Project includes federal funds, and the estimated cost of the Project, including land acquisition and the planning and design, is approximately $6.5-7 million; and

WHEREAS, At the June 25, 2008, City Commission meeting, the City Commission referred a discussion of the Project to the Finance and Citywide Projects (FCWP) Committee for further review; and

WHEREAS, on July 10, 2010, the FCWPC discussed the Project and directed the Administration to try to acquire the land needed, through the purchase of an easement over the HACMB property, for a price of $2.5 million; and

WHEREAS, the Administration engaged Quinlivan Appraisal to estimate the market value of the easement; the appraiser formed the opinion that the entire HACMB property had a market value of $6,100,000, and the proposed easement a market value of $1,635,000; and

WHEREAS, the Administration has also been meeting with representatives of HACMB regarding HACMB's plans to develop an affordable elderly housing project on a portion of the property (the "HACMB Project"); and

WHEREAS, the proposed HACMB Project contemplates 68 to 72 units of elderly affordable housing; 1,500 square feet of ground floor retail; and 36 parking spaces at ground level; and

WHEREAS, the Administration and City Attorney's Office have been working with HACMB and its counsel to develop 1.) the attached Purchase and Sale Agreement, for the City's purchase of the easement, in the amount of $1,635,000, over a portion of the HACMB property to develop the West Avenue Bridge Project; and 2.) a Development Agreement, setting forth the City and HACMB's respective rights and obligations pertaining to the City's development and construction of the West Avenue Bridge Project, and HACMB's development and construction of the HACMB Project; and

WHEREAS, on June 22, 2010, the HACMB's Board considered both agreements and passed a resolution approving same, in substantial form; and

WHEREAS, following a duly noticed public hearing on July 14, 2010, the Mayor and City Commission adopted Resolution No. 2010-27451, approving, on First Reading, the attached Development Agreement with the HACMB; approving, in substantial form, the Purchase and Sale Agreement between the City and HACMB; authorizing the City Administration and City Attorney's Office to finalize the Purchase and Sale Agreement; authorizing the Mayor and City Clerk, and/or the City Manager and City Clerk, to execute any and all required documents, as necessary, to execute the Purchase and Sale Agreement and therefore close on the sale of the Easement, subject to the terms and conditions therein; and setting the public hearing for Second (and final) Reading of the Development Agreement for September 15, 2010; and

WHEREAS, at its regular meeting on September 15, 2010, the Mayor and city commission held the duly noticed public hearing for Second and Final Reading of the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve, following Second and Final Reading and a public hearing, a Development Agreement between the City and the Housing Authority of the City of Miami Beach (HACMB) pertaining to the design, development, and construction of the following projects on real property owned by the HACMB, and located at 1231-1251 17th Street, Miami Beach, Florida: 1.) an affordable elderly housing project with ground level, neighborhood-oriented commercial space, to be developed and constructed at HACMB's sole cost and expense; and 2.) a public right of way, including a bridge, for vehicular and pedestrian access, connecting West Avenue and Dade Boulevard, to be designed, developed, and constructed at the City's sole cost and expense over a perpetual easement over the property (the "City Easement"), which easement the City intends to purchase from HACMB, pursuant to the terms and conditions of that certain Purchase and Sale Agreement between the City and HACMB, as same was approved (in substantial form) on July 14, 2010, pursuant to Resolution No. 2010-27451.

PASSED AND ADOPTED this _____ day of ____ 2010.

ATTEST:

_____ **CITY CLERK**

_____ **MAYOR**

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 8/31/10 Date

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6B THURSDAY, AUGUST 19, 2010

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held by the City Commission of the City of Miami Beach on **Wednesday, September 15th, 2010 at 10:45 a.m. in the City Commission Chambers at City Hall, located at 1700 Convention Center Drive, Miami Beach, Florida 33139** to consider.

APPROVING, FOLLOWING A SECOND (AND FINAL) READING AND PUBLIC HEARING, A PROPOSED DEVELOPMENT AGREEMENT (PURSUANT TO THE "FLORIDA LOCAL GOVERNMENT DEVELOPEMNT AGREEMENT ACT") BETWEEN THE CITY OF MIAMI BEACH, FLORIDA (THE "CITY") AND THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH ("HACMB") FOR THE DEVELOPMENT OF THE FOLLOWING PROJECTS ON CERTAIN REAL PROPERTY OWNED BY HACMB, LOCATED AT 1231 - 1251 17TH STREET, MIAMI BEACH, FLORIDA (THE "HACMB PROPERTY"): 1.) AN AFFORDABLE ELDERLY HOUSING PROJECT WITH GROUND LEVEL, NEIGHBORHOOD-ORIENTED COMMERCIAL SPACE, WHICH WILL BE DESIGNED, DEVELOPED, AND CONSTRUCTED BY HACMB (THE "HACMB PROJECT"); AND 2.) A PUBLIC RIGHT OF WAY, INCLUDING A BRIDGE, FOR VEHICULAR AND PEDESTRIAN ACCESS, CONNECTING WEST AVENUE AND DADE BOULEVARD, TO BE DESIGNED, DEVELOPED, AND CONSTRUCTED BY THE CITY ON AND OVER A PERPETUAL EASEMENT ON THE HACMB PROPERTY (THE "CITY EASEMENT"); WHICH EASEMENT THE CITY INTENDS TO PURCHASE FROM HACMB PURSUANT TO THAT CERTAIN PURCHASE AND SALE AGREEMENT BETWEEN THE CITY AND HACMB APPROVED ON JULY 14, 2010, PURSUANT TO CITY RESOLUTION NO. 2010-27451 (THE CITY'S PROJECT ON THE CITY EASEMENT IS HEREINAFTER REFERRED TO AS THE "WEST AVENUE BRIDGE PROJECT").

Inquiries, including a copy of the proposed Development Agreement, may be directed to the Office of the City Manager at (305) 673-7010.

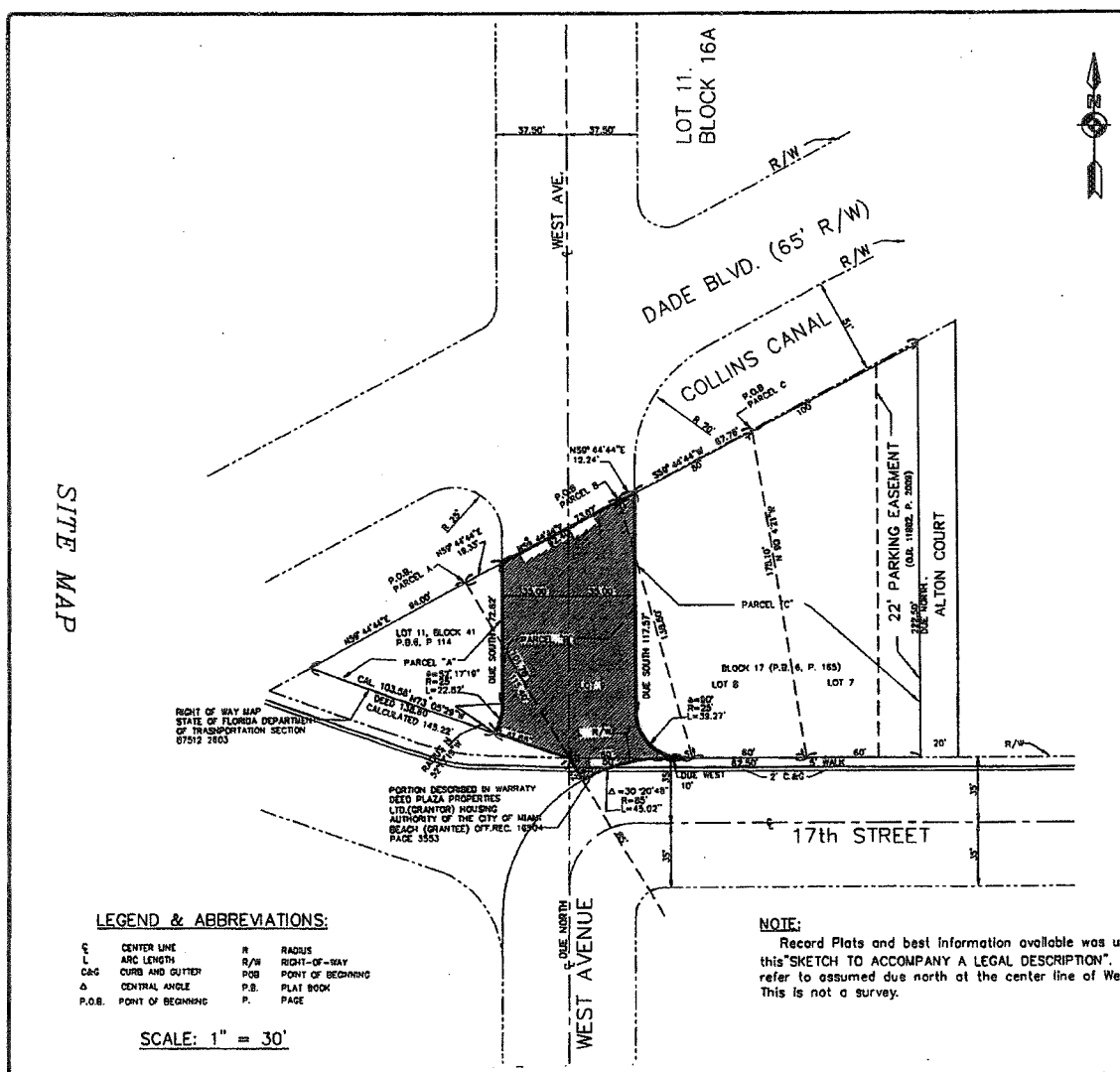
INTERESTED PARTIES are invited to appear at this meeting or be represented by an agent or to express their views in writing addressed to the City Commission c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting may be opened and continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, FL Statutes, the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding, or to request information on access for persons with disabilities, or to request this publication in accessible format, or to request sign language interpreters, should contact the City Clerk's office at (305) 673-7411, no later than four days prior to the proceeding. If hearing impaired, contact the City Clerk's office via the Florida Relay Service numbers, (800) 955-8771 (TTY) or (800) 955-8770 (VOICE). **AD # 615**

Attachment A



LEGAL DESCRIPTION

PARCEL "A"
Portion of Lot 11, Block 41, plat of BELLEVIEW SUBDIVISION, recorded in Plat Book 6 at Page 114, Public Records of Miami-Dade County, Florida, together with portion of Lot 9, Block 17, plat of SUBDIVISION OF THE WEST HALF OF BLOCKS 17, 40 AND 45, recorded in Plat Book 6 at Page 165, Public Records of Miami-Dade County, Florida. Said portion of land being more particularly described as follows:
Begin at the most northerly corner of said Lot 11, Block 41, Said point being the POINT OF BEGINNING of the tract of land herein described; thence North 59° 44' 44" East, along the North line of the above mention Lot 9, Block 17, for a distance of 19.33 feet; thence due South for a distance of 72.62 feet to a point of tangency; thence along the arc of a curve concave to the northwest, having a central angle of 52° 17' 19" and a radius of 25.00 feet for a distance of 22.82 feet; thence North 73° 05'29" West for a distance of 103.56 feet to the point of intersection with the northwesterly line of the above mentioned Lot 11. Said point of intersection being 94.00 feet southwesterly of the most northerly corner of said Lot 11; thence North 59° 44' 44" East, along the northwesterly line of said Lot 11, for a distance of 94.00 feet to the POINT OF BEGINNING. Said lands located in the City of Miami Beach, Florida and containing 4622.15 square feet more or less or 0.1060 acres more or less.

PARCEL "B"

Begin at the most northerly corner of Lot 9 Block 17, plat of SUBDIVISION OF THE WEST HALF OF BLOCKS 17, 40 AND 45, recorded in Plat Book 6, at Page 165 Public Records of Miami-Dade County, Florida. Said point being the POINT OF BEGINNING of the tract of land herein described; thence North 59° 44' 44" East, along the North line of said Block 17 for a distance of 12.24 feet; thence due South for a distance of 117.57 feet to a point of tangency; thence along the arc of a curve concave to the northeast, having a central angle of 90°00' 00" and a radius of 25.00 feet, for a distance of 39.27 feet to a point of tangency with the north right-of-way line of 17th Street, as 17th Street is shown in the above mentioned plat of SUBDIVISION OF THE WEST HALF OF BLOCKS 17, 40 and 45; thence due west, along the north right-of-way line of 17th Street, for a distance of 10.00 radius of 85.00 feet and a central angle of 30° 20'48" for a distance of 45.02 feet; thence northwesterly, radial to the last described curve for a distance of 13.62 feet to a point. Said point described in OFF REC. 16304, at page 3553 Public Records of Miami-Dade County, Florida; thence North 73° 05'29" West for a distance of 41.66 feet; thence along the arc of a curve whose radius at this point bears North 52° 17'19" West, having a radius of 25.00 feet and a central angle of 52° 17'19" for a distance of 22.82 feet to a point of tangency; thence due north for a distance of 72.62 feet to the point of intersection with the northwesterly line of the above mentioned Lot 9, Block 17; thence North 59° 44'44" East, along the northwesterly line of said lot 9 for a distance of 73.07 feet to the POINT OF BEGINNING. Said lands located in the City of Miami Beach, Florida and containing 9001.65 square feet more or less or 0.2066 acres more or less.

PARCEL "C"

Lot 7, Block 17, Plat of SUBDIVISION OF WEST HALF OF BLOCKS 17, 40 AND 45, recorded in Plat Book 6, at Page 165, Public Records of Miami-Dade County, Florida. Together with portions of Lots 8 and 9 of said Block 17 being more particularly described as follows:
Begin at the most northerly corner of said Lot 8, Block 17. Said point being the POINT OF BEGINNING of the tract of land herein described; thence South 59° 44' 44" West, along the northerly line of said Lot 8 for a distance of 67.76 feet; thence due South for a distance of 117.57 feet to point of tangency; thence along the arc of a curve concave to the northeast, having a central angle of 90° 00' 00" and a radius of 25.00 feet for a distance of 39.27 feet to a point of tangency. Said point being in the north right-of-way line of 17th Street, as shown in the above mentioned plat of SUBDIVISION OF WEST HALF OF BLOCKS 17, 40 AND 45; thence due East along the north right-of-way line of 17th Street for a distance of 65.00 feet to a point. Said point being the southeast corner of the above mentioned Lot 8, Block 17; thence bearing N 0° 4' 21" W along the East line of said Lot 8 for a distance of 175.10 feet to the POINT OF BEGINNING. Said lands located in the City of Miami Beach, Florida and containing 28,953 square feet more or less or 0.6187 acres more or less.

AREA

Parent Tract	40,576.80 Sq.Ft. (±)	or 0.9315 AC. (±)
Parcel "A"	4,622.15 Sq.Ft.(±)	or 0.1060 AC (±)
Parcel "B"	9,001.65 Sq.Ft.(±)	or 0.2066 AC (±)
Parcel "C"	26,953 Sq.Ft.(±)	or 0.6187 AC. (±)

LEGEND & ABBREVIATIONS:

℄	CENTER LINE	R	RADIUS
L	ARC LENGTH	R/W	RIGHT-OF-WAY
C&G	CURB AND GUTTER	POB	POINT OF BEGINNING
Δ	CENTRAL ANGLE	P.B.	PLAT BOOK
P.O.B.	POINT OF BEGINNING	P.	PAGE

SCALE: 1" = 30'

NOTE:
Record Plats and best information available was used for this"SKETCH TO ACCOMPANY A LEGAL DESCRIPTION". Bearings refer to assumed due north at the center line of West Avenue. This is not a survey.

I HEREBY CERTIFY: that this SKETCH TO ACCOMPANY A LEGAL DESCRIPTION is correct and meets the Minimum Technical Standards for Land Surveying in the State of Florida as set forth in Chapter 472.027 (F.S.) and Chapter 61G17-6 of the Florida Administrative Code.

11/19/2008
DATE

I. A. VARGAS
CITY SURVEYOR
P.S.M. No. 2918
STATE OF FLORIDA

MIAMIBEACH
PUBLIC WORKS DEPARTMENT
1700 CONVENTION CENTER DRIVE, MIAMI BEACH, FL 33139

NEIGHBORHOOD: NEIGHBORHOOD NO.9 CITY CENTER

TITLE: VICINITY OF WEST AVENUE AND DADE BLVD.

CITY MANAGER: JORGE GONZALEZ
DIRECTOR: FRED H. BECKMANN, P.E.
CITY ENGINEER: FERNANDO VAZQUEZ, P.E.

ENGINEER OF RECORD: F.V.
DESIGN ENGINEER: J.V.
DRAWN BY: AMSANDA
CHECKER: J.V.
SCALE: AS SHOWN

ENGINEER OF RECORD: FERNANDO VAZQUEZ, PE NO. 60617

NO.	DATE	REVISION	APPD. BY
6			
4			
3			
2			
1			

File Path: [illegible]
File name: vicinity of west ave and dade blvd-revised11 13.dwg
Field Book: N/A Page: N/A Job Order: N/A
Date: 3/18/2008
Sheet: 1 of 1 Drawing: EC-01

Attachment B

THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH

200 ALTON ROAD
MIAMI BEACH, FL 33139-6742
TEL: 305-532-6401
FAX: 305-674-8001
TDD: 305-672-5501
WWW.HACMB.ORG

BOARD OF COMMISSIONERS
MILLI MEMBIELA
CHAIRPERSON
YAMILE JIMENEZ-SOTO
VICE CHAIRPERSON
LEONARD TURKEL
VICE CHAIRPERSON

MICHAEL BAND
COMMISSIONER
ADA LLERANDI
COMMISSIONER
MIGUELL DEL CAMPILLO
EXECUTIVE DIRECTOR

February 18, 2010

Via US Mail and E-mail transmission

Jorge M. Gonzalez,
City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida

Re: 17th Street – Counter-offer from HACMB to the June 30, 2009 City offer to purchase easement

On June 30, 2009, the City of Miami Beach issued an offer to purchase a permanent easement through a portion of the Housing Authority of the City of Miami Beach's (HACMB) property, located at 1231-1251 17th Street, Miami Beach, Florida. The City's offer to purchase the easement area for the amount of $1.635 million dollars, as generally depicted in the attached Exhibit 1, is accepted, with conditions. The HACMB Board of Commissioners, on February 17, 2010, voted to proceed with the following counter-offer:

(1) As per discussions with the City Administration, the HACMB accepts the offer to purchase the above described easement interest over Parcels A and B for $1.635 million.

(2) Provided, however, the HACMB is to retain the Floor Area Ratio (FAR) for Parcels A and B to be used for development on Parcel C – at any time in the future. The HACMB's retention of the FAR from the easement portions (Parcels A & B) shall be unqualified and unrestricted for the use of Parcel C.

(3) A development agreement shall be executed, simultaneously with the closing on the easement. The agreement shall specifically address the zoning and development requirements for the remaining parcel, Parcel C. This development agreement shall include, at a minimum, the terms and conditions relating to the relief of parking requirements for Parcel C.

(4) The development agreement shall provide the HACMB with the ability to transfer and/or assign its rights under the development agreement, without limitation.

As the HACMB understands the City's offer, the terms listed above have already been considered and are implicitly a part of the June 30th, 2009 offer. For sake of clarity, the HACMB has specifically identified those conditions. As part of the HACMB's counter-offer, the HACMB is additionally seeking the following:

(5) The City shall commit to providing the HACMB with three (3) consecutive annual appropriations of $200,000, per year, as grants or other contributions, so that the HACMB can develop affordable/workforce housing on the balance of the property (Parcel C). The funding would total $600,000, over the three (3) year period following closing.

(6) The development agreement shall commit the City to expediting the building permitting process, including all Building, Planning and Fire plan reviews, so that a building permit may issue within 18 months of DRB/Planning Board approval.

(9) The City shall reimburse the HACMB for all reasonable legal fees and expenses incurred by the HACMB in negotiating the purchase of the easement and development agreement.

(10) If prior to the closing the HACMB has an identified site plan and project, the transfer of the easement shall be contingent upon DRB/Planning Board approval for a development on the balance of the property (Parcel C). The HACMB understands that the City may not contract zone. As such, with the identified plan, the transfer of the easement shall be conditioned upon DRB/Planning approval of the HACMB's project on Parcel C. This section is a provisional, contingent, provision depending upon the timing of the closing.

(11) The development of Parcel C must be on a no "net" loss in the number, quality, or affordability of housing, workforce housing, and/or commercial units to be constructed. In prior discussions with the City, the HACMB brought its architect, Ari Sklar, to the meetings who advised that approximately 60 units could be built if the entire parcel is utilized. The HACMB would like to ensure that there is no "net loss" of this number of units by utilizing solely Parcel C.

(12) The City is to waive all Payment in Lieu of Taxes (PILOT) fees due to the City for the Parcel C project, for a period of 15 years from the date a Certificate of Occupancy is issued by the City.

(13) The City shall waive any building permit and/or concurrency fees for development of Parcel C.

(14) Notwithstanding the above, or any other term or condition of this letter, the following offer shall not be binding upon the HACMB unless and until a contract for purchase and sale, and development agreement relating to the subject easement is approved by the HACMB Board of Commissioners.

Thank you for your consideration of the HACMB's counter-offer. We look forward to working with you to a successful conclusion of negotiations.

Sincerely,

Miguell Del Campillo,
Executive Director

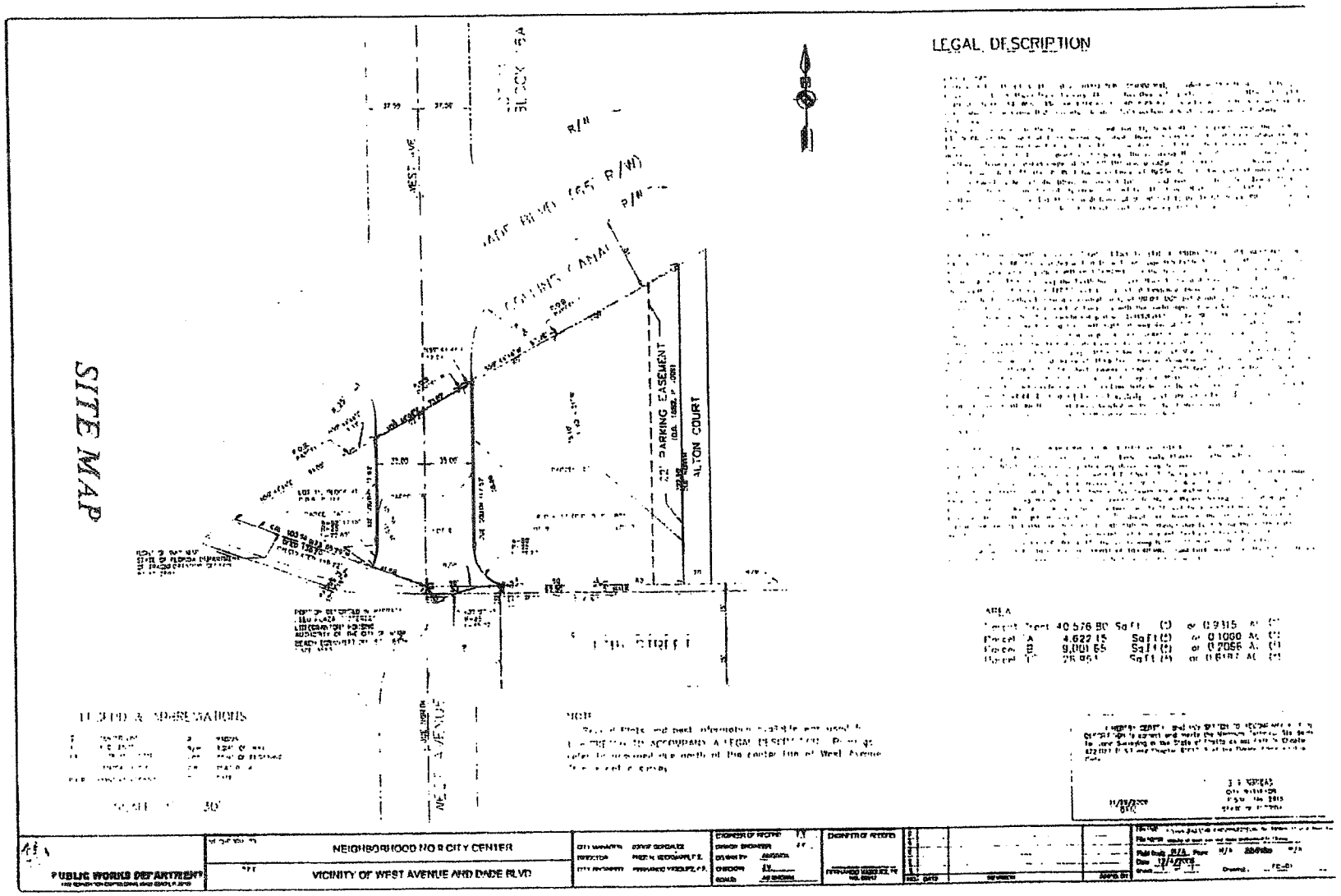
Enclosure
c: Mayor & City Commission
Jose Smith, City Attorney
Raul Aguila, Deputy City Attorney
Tim Hemstreet, Assistant City Manager
Jorge Gomez, Assistant City Manager
HACMB Board of Commissioners
Eve A. Boutsis, HACMB General Counsel

EXHIBIT 1

***Term Sheet between the City of Miami Beach (City) and the Housing Authority of the City of Miami Beach (HACOMB), for the Purchase of an Irrevocable Perpetual Easement (to the City) for the Development, Construction, Operation and Maintenance of a West Avenue Connector Bridge.**

Site:	That certain property owned by HACOMB, located at 1231-1251 17th Street, encompassing approximately 40,576.80 square feet and further described as follows: Parcel A: The westernmost portion of the Site (4,622.15 square feet). Parcel B: The center portion of the Site (9,001.65 square feet). Parcel C: (see below)
Project:	The City wishes to construct a bridge over Collins Canal, to connect the portion of West Avenue with a northernmost terminus at 17th Street, with that portion of West Avenue between Dade Boulevard and 20th Street. The City shall purchase an Irrevocable Perpetual Easement over Parcels A and B to develop, construct, operate, and maintain the Project as a public right-of-way for vehicular and pedestrian traffic. The public right-of-way for the bridge is contemplated to occur through that portion of the Easement on Parcel B. City further agrees to maintain as "green space", the remainder of the Easement Area, contemplated to be on Parcel A.
Purchase Price:	$1,635,000.
Parcel C:	HACOMB shall review the survey of the property and identify any issues related to the future development rights for which clarification is needed. However, it is expressly understood by the parties that Parcel "C" is not a part of the Project.

* ALL TERMS HEREIN CONTAINED ARE SUBJECT TO AND CONDITIONED UPON FINAL APPROVAL BY THE MAYOR AND CITY COMMISSION.


SITE MAP
LEGAL DESCRIPTION
WEST AVE
BLOCK 16A
R/W
PARKING EASEMENT
ALTON COURT
LEGEND & ABBREVIATIONS
NOTE
AREA
Parcel A 4,622.15 Sq Ft (±) or 0.1060 Ac (±)
Parcel B 9,001.65 Sq Ft (±) or 0.2066 Ac (±)
PUBLIC WORKS DEPARTMENT
NEIGHBORHOOD NO 8 CITY CENTER
VICINITY OF WEST AVENUE AND DADE BLVD

Attachment C

MIAMIBEACH

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

Jorge M. Gonzalez, City Manager
Tel: 305-673-7010, Fax: 305-673-7782

February 23, 2010

Miguell Del Campillo
Executive Director
Housing Authority of the City of Miami Beach
200 Alton Road
Miami Beach, FL 33139

Re: 17th Street Counter Offer to Purchase Easement

Dear Mr. Del Campillo:

I am in receipt of your February 18, 2010 letter, transmitting the Housing Authority of the City of Miami Beach's (HACMB) counter offer to the City's June 30, 2009 offer to purchase a permanent easement through a portion of the property located at 1231-1251 17th Street. The letter states that City's offer to purchase the easement in the amount of $1.635 million is accepted, but that the HACMB Board of Commissioners voted to proceed with a counter offer of additional conditions.

Consistent with previous discussions between the City and the HACMB, a development agreement may be entered into between the parties, for the purpose of clarifying the retention of the site's full Floor Area Ratio (FAR), as well as how certain other zoning and development requirements (such as setbacks) may be addressed.

However, the counter offer includes conditions that cannot be accomplished with a development agreement, including adjustments to the parking requirements for affordable housing, which may only be accomplished with an ordinance, and the waiver of fees. The counter offer includes additional conditions that have not been previously discussed, and which tie the purchase of the easement to a requirement for the future expenditure of additional funds and the approval of other conditions that are beyond the scope of the purchase of an easement. Therefore, the HACMB's counter offer cannot be accepted, and the City's offer remains unchanged from that of June 30, 2009: the purchase of the easement area, as generally depicted in the attached survey, for the amount of $1.635 million.

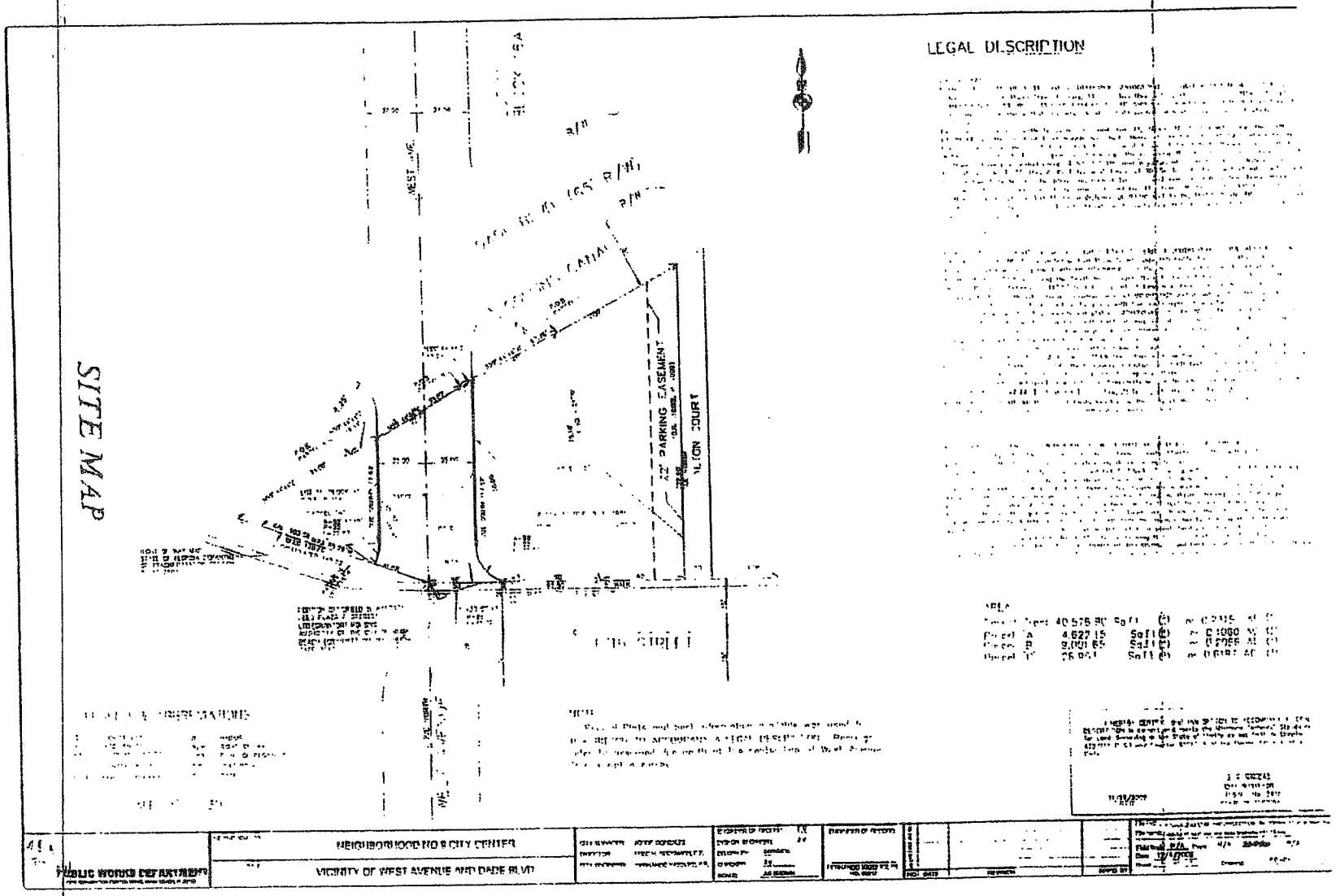
You may further recall that, in addition to directing the Administration to offer $1.635 million for the easement, the Finance and Citywide Projects Committee also directed the Administration and the City Attorney's Office to begin exploring an alternative option which would result in the condemnation of the easement area. An update on this item will be placed on the agenda of the March 25, 2010 meeting of the Finance and Citywide Projects Committee, at which time the Committee will either be informed of the HACMB's acceptance of the City's offer, or presented with information on the next steps in the condemnation process.

I look forward to discussing the HACMB's re-consideration of the City's offer to purchase a permanent easement through a portion of the property located at 1231-1251 17th Street. City staff will be in contact in the near future to schedule a meeting between the parties. In the meantime, please do not hesitate to contact me if you have any questions or need assistance.

Sincerely,

Jorge M. Gonzalez
City Manager

c: Honorable Mayor and City Commissioners
HACMB Board of Directors
Jose Smith, City Attorney
Jorge Gomez, Assistant City Manager
Eve A. Boutsis, HACMB General Counsel


SITE MAP
LEGAL DESCRIPTION
WEST
PARKING EASEMENT
NEIGHBORHOOD NO 8 CITY CENTER
VICINITY OF WEST AVENUE AND DADE BLVD
PUBLIC WORKS DEPARTMENT

Attachment D

MIAMIBEACH

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

Office of the City Manager
Tel: 305.673.7010, Fax: 305.673.7782

May 11, 2010

Miguell del Campillo
Executive Director
Housing Authority of the City of Miami Beach
200 Alton Road
Miami Beach, FL 33139

VIA Certified Mail
and Electronic Mail

Re: City's Offer to Purchase An Easement Through 1231-1251 17th Street

Dear Mr. Del Campillo:

The purpose of this letter is to provide the Housing Authority of the City of Miami Beach ("HACMB") with the City's revised written offer for purchase of a perpetual, non-revocable easement (the Easement) through a portion of the HACMB property, located at 1231-1251 17th Street, Miami Beach, Florida (the Easement Area), pursuant to the direction of the Finance and Citywide Projects Committee at its March 25, 2010 meeting. At that meeting, the Committee discussed the HACOMB's 2/18/10 counter offer regarding the City's original offer to purchase the Easement.

The following terms constitute the City's revised offer to purchase the Easement. The City's offer is of course subject to (and shall not be binding until) negotiation and execution by the City and HACMB of a final purchase and sale contract, which contract shall also be subject to approval by HACMB's board and the Mayor and City Commission, respectively:

1. Area to be Purchased: the Easement Area, depicted as Parcel "A" and Parcel "B" in Exhibit A;
2. Purchase Price: The City offers to purchase the Easement for the amount of $1.635 million;
3. City's Proposed Use of Easement Area: The City shall use the Easement Area for the purpose of providing right-of-way access for the construction of the proposed West Avenue Bridge;
4. The City confirms that the remainder of the HACMB property, also known as Parcel C, shall retain the total Lot Area of the entire parcel, including the Easement Area, for the purpose of calculating the Floor Area Ratio (FAR). This FAR provision shall run with the land and may be transferrable;
5. HACMB Affordable Housing Development (on Parcel C). The City and HACMB acknowledge that HACMB intends to develop Parcel C as an affordable housing development, which is the City's preferred and recommended use for Parcel C (HACMB's proposed affordable housing project, the specifics of which have yet to be determined, shall for purposes herein be referred to as the "Project"). The City and HACMB agree to the following with regard to the Project:
    a. At such time as HACMB indentifies the specific affordable housing Project, the City and HACMB agree to enter into a development agreement or other agreement (the Agreement) which will address, at a minimum, the following terms:
        (i) Minimum and average unit size requirements;

(ii) Parking requirements; and
(iii) Setback requirements.

Items (i)-(iii) above may also require an amendment (or amendments) to the City's current Land Development Regulations.

b. Affordability Period. The Project shall remain as affordable housing for a minimum of thirty (30) years, which period shall commence upon the issuance of a Certificate of Occupancy (CO) by the City. As consideration for the Affordability Period, the City will agree to waive all Payment in Lieu of Taxes (PILOT) fees for the Project for fifteen (15) years, commencing upon the issuance of a CO by the City.
c. HACMB may assign and/or transfer its rights under the Agreement to a subsequent developer (transferee), provided that the transferee agrees to develop the Project for its intended use as an affordable housing project, and complies with the Affordability Period.
d. As an affordable housing project, the Project is eligible for the City's expedited building permit review process.
e. The City shall assist HACMB and make reasonable efforts to identify funding sources for the Project.
f. Notwithstanding subsections 5(a)-(d) above, the Agreement shall be subject to (and shall not be binding until) approval by HACMB's board and by the Mayor and City Commission, respectively.

This offer is a proposal for the consideration of the HACMB with the purpose of completing the discussion and getting the proposed transaction to a final agreement that can be considered by our respective governing bodies.

NOTWITHSTANDING THE ABOVE, OR ANY OTHER TERM OR CONDITION OF THIS LETTER, THE AFORESTATED OFFER SHALL NOT BE BINDING UPON THE CITY UNLESS AND UNTIL A CONTRACT FOR PURCHASE AND SALE OF THE SUBJECT EASEMENT IS APPROVED BY THE MAYOR AND CITY COMMISSION.

Thank you for your consideration of this proposal. I look forward to your consideration of this proposal.

Sincerely,

Jorge M. Gonzalez,
City Manager

Attachment

c: Mayor and City Commission
Jose Smith, City Attorney
Raul Aguila, Deputy City Attorney
Jorge M. Gonzalez, Assistant City Manager
Kevin Crowder, Economic Development

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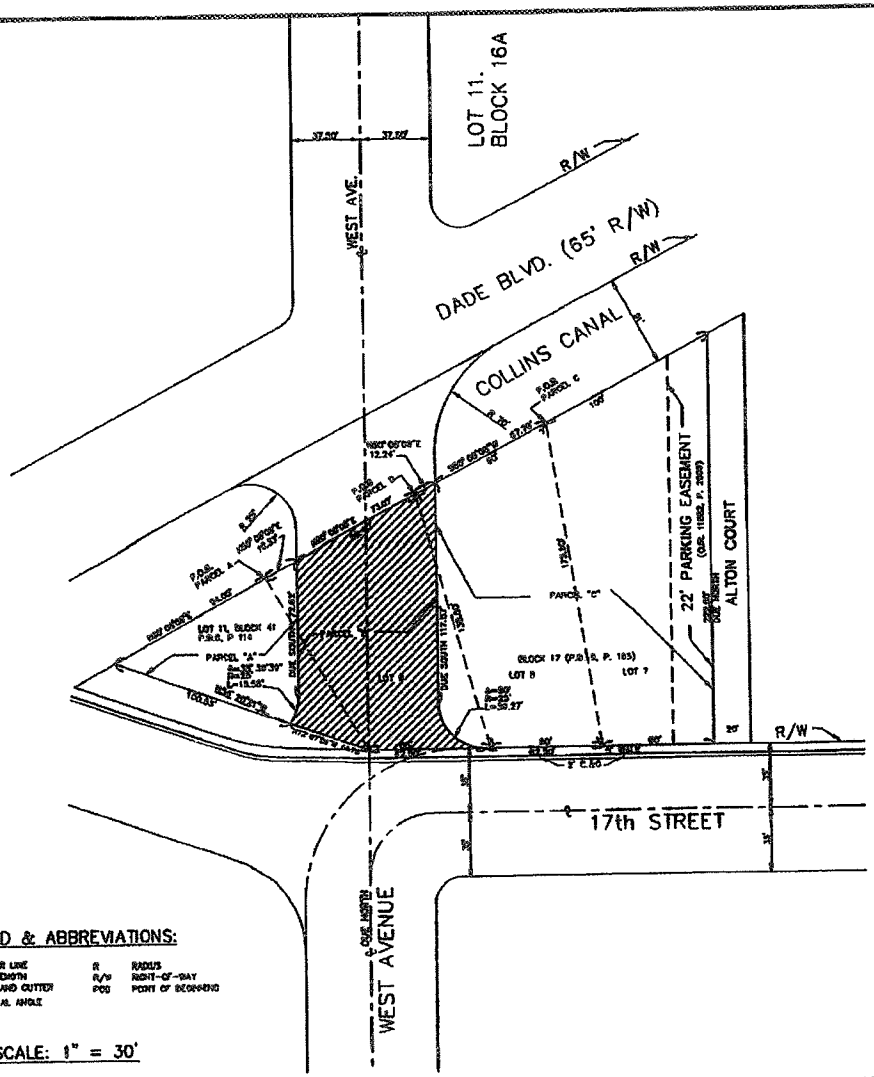

LEGAL DESCRIPTION

PARCEL "A"

[illegible]

PARCEL "B"

[illegible]

PARCEL "C"

[illegible]

AREA:

Parent Tract	40,272.42 Sq.Ft. (±)	or 0.9294 AC. (±)
Parcel "A"	4,398.64 Sq.Ft. (±)	or 0.1009 AC (±)
Parcel "B"	9,083.86 Sq.Ft. (±)	or 0.2085 AC. (±)
Parcel "C"	26,789.92 Sq.Ft. (±)	or 0.6150 AC. (±)

NOTE:

Record Plats and best information available was used for this "SKETCH TO ACCOMPANY A LEGAL DESCRIPTION". Bearings refer to assumed due north at the center line of West Avenue. This is not a survey.

J. A. VARGAS
CITY SURVEYOR
P.S.M. No. 2918
STATE OF FLORIDA

LEGEND & ABBREVIATIONS:

℄	CENTER LINE	R	RADIUS
L	ARC LENGTH	R/W	RIGHT-OF-WAY
C&G	CURB AND GUTTER	POC	POINT OF COMMENCEMENT
Δ	CENTRAL ANGLE		

SCALE: 1" = 30'

CITY OF MIAMI BEACH, FLORIDA
PUBLIC WORKS DEPARTMENT
1700 CONVENTION CENTER DRIVE, MIAMI BEACH, FL 33139

TITLE: LOCATION SKETCH VICINITY OF WEST AVENUE AND DADE BLVD

CITY MANAGER: JORGE GONZALEZ
DIRECTOR: FRED H. BECKMANN
CITY ENGINEER: FERNANDO VIZOUEZ

CHECKED BY RECORDER
DESIGNED: J.A. VARGAS
DRAWN BY: AMS
CHECKED: J.A. VARGAS
SCALE: AS SHOWN

NO.	DATE	REVISION	APPROVED BY
1			
2			
3			
4			
5			

File Location: A:\WORK\PUBLIC WORKS\PROJECTS\SKETCH WEST AVE
Field Book: 2XX Page: XXXXX Job Order:
Date: 12-18-00
Sheet X of X
Drawing: SK-XXXXX

Attachment E

THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH

200 ALTON ROAD
MIAMI BEACH, FL 33139-6742
TEL: 305-532-6401
FAX: 305-674-8001
TDD: 305-672-5501
WWW.HACMB.ORG

BOARD OF COMMISSIONERS
LEONARD TURKEL
CHAIRPERSON
MICHAEL R. BAND
VICE CHAIRPERSON

MILLI MEMBIELA
COMMISSIONER
MIGUELL DEL CAMPILLO
EXECUTIVE DIRECTOR

May 26, 2010

Jorge M. Gonzalez, City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: CMB's Offer to Purchase an Easement through 1231-1251 17th Street

Dear Mr. Gonzalez:

On May 18, 2010, the Board of Directors of the Housing Authority of the City of Miami Beach (HACMB) reviewed the offer of the City of Miami Beach dated May 11, 2010. At that time, the HACMB Board voted to accept the offer of the City and directed staff to work with the City in preparing the development agreement and closing documents relating to the creation of the perpetual easement for Parcels "A" and "B", as identified in the May 11, 2010 offer. The HACMB Board has directed the HACMB general counsel to work with the City Attorney's office to expedite the development of the necessary documents.

The HACMB looks forward to working with you to complete the above transaction.

Sincerely yours,

Miguell Del Campillo,
Executive Director

cc: HACMB Board of Directors
Mayor and City Commission
Jorge Gomez, Assistant City Manager
Kevin Crowder, Economic Development Director
Raul Aguila, Deputy City Attorney
Eve A. Boutsis, General Counsel

Attachment F

HOUSING AUTHORITY OF CITY OF MIAMI BEACH

Agenda Item No. VI. B.
June 22, 2010

RESOLUTION NO. 2010-14

RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH (HACMB) PROVIDING AUTHORIZATION TO EXECUTE A PURCHASE AND SALE OF PERPETUAL EASEMENT AGREEMENT FOR PARCELS A AND B OF 1231—1251 17TH STREET, MIAMI BEACH TO THE CITY OF MIAMI BEACH FOR $1,635,000; TO EXECUTE A DEVELOPMENT AGREEMENT REGARDING FLOOR AREA RATIO RIGHTS, SETBACKS, COORDINATING THE PRESENTATION OF AFFORDABLE HOUSING ORDINANCES RELATING TO PARKING AND AVERAGE UNIT SIZE, AND PROVIDING FOR A 15-25 YEAR PILOT FORGIVENESS FOR THE HACMB'S AFFORDABLE HOUSING PROJECT TO BE LOCATED AT PARCEL C OF 1231-1251 17TH STREET; AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE THE ATTACHED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Housing Authority of the City of Miami Beach, the HACMB, is a public housing authority authorized under state law to provide affordable housing and is authorized to sell a perpetual easement to the City of Miami Beach over Parcels A and B of 1231-1251 17th Street, Miami Beach, Florida; and,

WHEREAS, the City desires to purchase the easement area to construct the West Avenue Bridge; and,

WHEREAS, the HACMB, subject to finalization of these documents and subject to final approval of the City Commission agreed to sell the perpetual easement to the City of Miami Beach for $1,635,000, plus certain conditions to be contained in a development agreement; and,

WHEREAS, the purchase and sale and development agreements are attached hereto as exhibits 1 and 2 (which agreements are in substantial form); and,

WHEREAS, the HACMB seeks to develop affordable housing on the remaining portion, Parcel C, of 1231-1251 17th Street, and the City, in the development agreement, acknowledges the ability of the HACMB to use the Floor Area Ratio of Parcels A, B, and C, for development on solely Parcel C; and,

WHEREAS, the parties agreed to a waiver of any PILOT (Payment in Lieu of Taxes) by the HACMB for a minimum of 15 years, to a maximum of 25 years, should certain proposed affordable housing ordinances not be enacted; and,

WHEREAS, as part of the development agreement, the City desires to promote and present (an) ordinance(s) relating to modifying parking requirements and average unit size of affordable housing projects on Miami Beach, which proposed revisions would provide the HACMB the opportunity to provide a greater number of affordable housing units on 17th Street, Parcel C; and,

WHEREAS, the parties understand they cannot contract zone, and therefore recognize that the City can propose and assist the HACMB in encouraging enactment of said ordinances but cannot guarantee same; and,

WHEREAS, based upon the foregoing, the City has agreed, that should the ordinances not be enacted, the City would alternatively extend the PILOT forgiveness to 25 years for the 17th Street site; and,

WHEREAS, the City also shall promote the HACMB's project and identify it as a preferred affordable housing project and shall assist the HACMB and make reasonable efforts to identify funding sources for the project; and

WHEREAS, the HACMB desires to approve the attached Exhibits and to proceed to final closing..

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH, MIAMI-DADE COUNTY, FLORIDA:

1. The above whereas clauses are incorporated by reference into this resolution.

2. The attached Exhibits 1 & 2 are incorporated by reference and approved in substantial form.

4. The HACMB authorizes the Executive Director, Miguell Del Campillo to execute the attached Exhibits and to proceed to final closing on the sale of the easement area to the City of Miami Beach and is further authorized to execute any other documents deemed necessary to complete the transaction contemplated herein.

5. Miguell Del Campillo, the Executive Director, as the Board Secretary and Contract Officer of the HACMB is authorized and directed to negotiate the remaining specific terms of the proposed Ordinance relating to affordable housing.

6. This Resolutions shall continue in full force and effect and may be relied upon by the HACMB, the City, and the applicable Property Title Insurance Company, until receipt of written notice of any change therein.

The foregoing resolution was offered by Commissioner Fernandez, who moved its adoption. The motion was seconded by Commissioner Membiela and upon being put to a vote, the vote was as follows:

	Yes	No
Leonard Turkel (Absent)	___	___
Michael R. Band	X	___
Milli Membiela	X	___
Emilio D. Fernandez	X	___

The Vice Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of June 2010.

Michael R. Band, Vice Chairperson
Housing Authority of the
City of Miami Beach

Miguell Del Campillo, Secretary
Housing Authority of the
City of Miami Beach

Approve as to form and content
Eve A. Boutsis, Office of General Counsel to
Housing Authority of the City of Miami Beach

This instrument was prepared by (record and return to)

Name: Raul Aguila, Deputy City Attorney
Address: Office of the City Attorney
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

(Space reserved for Clerk)

EXECUTION COPY

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the Agreement) is made and entered into as of the __ day of ____ 2010 (Commencement Date), by and between the CITY OF MIAMI BEACH, a Florida municipal corporation (the City), and the HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH FLORIDA, a Florida public housing authority (the Owner or HACMB).

Introduction and Background

A. The property that is the subject of this Agreement lies in Miami Beach, Miami-Dade County, Florida. This Agreement, among other things, is intended to and shall constitute a development agreement among the parties pursuant to the Florida Local Government Development Agreement Act (the Act).

B. The Owner owns certain real property in the City of Miami Beach, located at 1231-1251 17th Street, and as more specifically delineated as Parcels A, B, and C in the sketch attached as **Exhibit "A"** hereto (Parcels A, B, and C may hereinafter collectively be referred to as the HACMB Property or the Property).

C. The Owner intends to develop Parcel C as an affordable elderly housing development with some ground level, neighborhood-oriented commercial space (the HACMB Project).

D. In order to connect Dade Boulevard and West Avenue, and thereby relieve some of the congestion caused by traffic in the surrounding area, the City is desirous of constructing a public street for pedestrian and vehicular access, which street would include a bridge, over Parcels A and B (the West Avenue Bridge Project).

E. In order to proceed with the West Avenue Bridge Project, Owner has agreed to grant to City, and City has agreed to purchase from Owner, a perpetual easement on and over Parcels A and B (the City Easement).

F. As further consideration for Owner granting the City Easement to City, the City and Owner have hereby agreed to certain other terms and conditions, pertaining to the HACMB Project as set forth in this Agreement. Owner and City have entered into and executed a purchase and sale agreement for the City Easement, which agreement was approved by Owner on _____, pursuant to HACMB Resolution No. _____, and by the City on _____, pursuant to City Resolution No. _____; and which agreement is attached and incorporated as **Exhibit "B"** hereto (hereinafter, the "Purchase and Sale Contract").

G. The City is a Florida municipal corporation with powers and authority conferred under the Florida Constitution, the Municipal Home Rule Powers Act, Florida Statutes, and the Miami Beach City Charter and Code. The City has all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal and governmental functions and render municipal services, including the

authority to adopt, implement and enforce (together with any required governmental approvals) comprehensive plans, zoning ordinances, redevelopment plans, and other police power and legislative measures necessary to assure the health, safety and general welfare of the City and its residents and visitors.

H. Owner is a public housing authority organized and created pursuant to the Housing Authorities Law of the Florida Statutes.

I. Having fully considered this Agreement at two (2) duly noticed public hearings, in compliance with Section 163.3225 of the Act; and having further determined that it is in the City and Owner's best interest, as well as the public's interest, to deal with the issues covered by this Agreement in a comprehensive manner, in compliance with all applicable laws, ordinances, plans, rules and regulations of the City, while allowing the City and Owner to proceed, respectively, with the development of the West Avenue Bridge Project and the HACMB Project in accordance with existing laws and policies, subject to the terms hereof, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitations. The foregoing recitations are true and correct and are incorporated herein by this reference.

2. Authority. This Agreement is entered into pursuant to the authority and procedures provided by the Act.

3. Definitions. All capitalized terms in this Agreement shall have the definitions set forth in this Section unless such terms are defined elsewhere in the body of this Agreement.

3.1 "Act" shall mean the Florida Local Government Development Agreement Act (Section 163.3220, *et. seq.*, Florida Statutes (1997)).

3.2 "Building Permit" means a "Full Building Permit," as such term is defined in the City's land development regulations, issued by the City's Building Department, which allows building or structures to be erected, constructed, altered, moved, converted extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinance.

3.3 Intentionally omitted.

3.4 "City Easement" shall mean a perpetual easement for the West Avenue Bridge Project, which shall provide, without limitation for the design, development, construction, operation, maintenance, repair, renovation, and improvement of a public street, including a bridge, for vehicular and pedestrian access, on, over and across the City Easement Area (as hereinafter defined); and which Easement shall be substantially in accordance with the form attached as **Exhibit "C"** hereto.

3.5 "City Easement Area" shall mean all of the area of Parcels A and B, as more specifically described in Attachment "A" of the City Easement.

3.6 Intentionally omitted.

3.7 "Comprehensive Plan" shall mean the comprehensive plan which the City has adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163 Part II, of the Florida Statutes.

3.8 "Development Approvals" shall mean all Development Permits and all approvals, consents, permits, special use exemptions or variances, as well as other official actions of the federal, state or County governments or other governmental agencies.

3.9 "Development Permits" shall mean any building permit (including, without limitation, a Full Building Permit), zoning permit, subdivision approval, zoning certification, special exceptions, variances issued or granted by the City or any other official actions of the City (whether by the City Commission or any City board, department or agency) having the effect of permitting the development of the HACMB Project.

3.10 Intentionally omitted.

3.11 "HACMB Project" shall mean the design, development, construction, operation, maintenance, repair, renovation, and improvement by Owner of that certain affordable elderly housing project, with some ground level, neighborhood-oriented commercial space, to be situated on and over Parcel C, subject to and in compliance with the following conditions:

(a) the maximum total square footage of floor area permitted upon Parcel C shall not exceed 78,700 square feet, measured in accordance with the requirements of the City's land development regulations.

(b) For purposes of the computation of the maximum floor area of Parcel C, as set forth in subsection (a) hereof, Owner may include the City Easement in the calculation of the square footage of Parcel C. The provisions of this subsection (b) shall survive expiration of this Agreement.

(c) Upon approval of this Agreement and execution by the parties hereto, and as a condition of Closing, Owner shall execute and deliver, for review and approval by the City's Planning and Zoning Director, a covenant, or covenant in lieu of unity of title (as determined by the City's Planning and Zoning Director), for the Property. The provisions of this subsection (c) shall survive expiration of this Agreement.

(d) The Project shall be designed, developed, and constructed, at the sole cost and expense of Owner, as an affordable housing development. Provided that Owner obtains all requested Development Approvals to do so the Project shall be designed and constructed substantially in accordance with the proposed concept plan prepared by Owner's architect, Ari Sklar, dated _____, and attached as **Exhibit "D"** hereto (the Concept Plan). Upon execution of this Agreement by the parties hereto, the City Commission shall be deemed to have approved the attached Concept Plan.

(e) The parties agree and acknowledge that the setbacks in the Project, as proposed in the approved Concept Plan, may require the issuance of a variance by the City's Board of Adjustment; which variance, if required, shall be proposed by City staff, but subject to final approval by the Board of Adjustment, acting in its governmental capacity, in accordance with the provisions of Section 9.4 hereof.

(f) Any material deviation (as determined by the City's Planning and Zoning Director) in any of the conditions described in subsection(s) (a) – (e) above, or in the approved Concept Plan, shall require the approval of the City Commission and a written amendment to this Agreement;

(g) Any non-material changes (as determined by the City's Planning and Zoning Director) which are required by any City land use board (including, without limitation, the Design Review Board, the Historic Preservation Board, the Board of Adjustment, and the Planning Board, as applicable), or any other applicable board, agency, or authority, or any non-material changes which are initiated by Owner, shall not require the approval of the City Commission.

(h) Any technical changes in the approved Concept Plan not governed by subsections (f) and (g) above, and which are (i) required in order for the HACMB

Project to be in compliance with any and all applicable laws, codes, rules and regulations of any governmental or regulatory agencies including, without limitation, the Florida Building Code and the Americans with Disabilities Act (ADA), or (ii) otherwise required or necessary including, without limitation, any changes in connection with ingress and egress and public works, shall be delegated to the appropriate government official of the City for review and approval of such technical changes.

3.12 "HACMB Property (or the "Property") shall mean the parcel of real property described in Exhibit "A" hereto; provided, however, that from and after the Closing, the Property shall include all of the City's right, title, and interest in and to the City Easement.

3.13 "Closing" shall mean the closing for the purchase and sale of the City Easement, pursuant and subject to the terms of the Purchase and Sale Contract, and as also provided in Section 11.1 of this Agreement.

3.14 "Purchase and Sale Contract" shall mean the agreement approved by and entered into between City and Owner for purchase and sale of the City Easement.

3.15 Intentionally omitted.

3.16 Intentionally omitted.

3.17 Intentionally omitted.

3.18 Intentionally omitted.

3.19 Intentionally omitted.

4. City Easement. The City Easement shall be granted by the Owner to the City at the Closing and shall be substantially in accordance with the form attached as Exhibit "C" hereto. Said grant shall not be affected by the expiration, termination or other treatment of this Agreement and shall be deemed a perpetual easement in accordance with the terms of said instrument.

5. Intentionally omitted.

6. Intentionally omitted.

7. Intentionally omitted.

8. West Avenue Bridge Project. Subject to and contingent upon Closing and the grant of the City Easement, the City shall design, develop, and construct, at its sole cost and expense, the West Avenue Bridge Project, subject to and in compliance with the following conditions:

(a) City shall direct the design, development, and construction process; be responsible for entering into all contracts necessary for the design, development, and construction of the Project; secure all required permits and approvals for the Project; and shall have any and all other sole authority, as City deems necessary in its sole and reasonable judgment and discretion, to direct the means, manner, and method of the design, development, and construction process.

(b) The Project shall provide for, contain, and/or otherwise comply with those specific requirements, as set forth in **Exhibit "E,"** attached and incorporated hereto.

9. Zoning and Other Approvals for HACMB Project.

9.1 Development Permits. Certain provisions of this Agreement will require that the City and/or its boards, departments, or agencies take certain governmental actions, acting in their governmental capacity, and issue Development Permits in order to accomplish and satisfy the authorization and construction of the HACMB Project:

9.2 Applications for Development Approvals. Promptly following the Commencement Date, the Owner will initiate and diligently pursue all Development Approval applications for the HACMB Project. The City shall process all Development Permit applications in a timely fashion and the City shall cooperate with the Owner (at no cost to the City) in processing all necessary Development Approvals from federal, State, and County agencies, as needed. No extension of any time period herein shall be deemed to be an extension of any time periods contained within the Development Approvals.

9.3 Laws Governing this Agreement. The City's laws and policies governing the development of the HACMB Project at the time of the execution of this Agreement by the parties hereto shall govern the development of the Project for the duration of this Agreement. The City may apply subsequently adopted laws and policies to the HACMB Project only as otherwise permitted or required by the Act.

9.4 Comprehensive Plan, Zoning and Other Approvals. As provided above, the parties recognize and agree that certain provisions of this Agreement will require the City and/or its boards, departments, or agencies, acting in their governmental capacity, to consider governmental actions, as set forth in this Agreement. All such considerations and actions shall be undertaken in accordance with established requirements of State statutes and City ordinances, in the exercise of the City's jurisdiction under the police power. The parties further recognize and agree that these proceedings shall be conducted openly, fully, freely and fairly, in full accordance with law and with both procedural and

substantive due process to be accorded the applicant and any member of the public. Nothing contained in this Agreement shall entitle the Owner to compel the City to take any such actions, save and except the consents, if applicable, to the filing of such applications for Development Permits or other required Development Approvals, as more fully set forth herein, and to timely process such applications.

9.5 Owner shall be solely responsible for obtaining all Development Approvals and Development Permits for the Project.

9.6 Owner shall, at its sole cost and expense, commence construction on or before sixty (60) days after all Development Approvals and Development Permits necessary for the HACMB Project are issued (the Construction Commencement Date). For purposes of this Agreement, "commencement of construction" means the commencement of major work (such as piling or foundations) for construction of the Project. Any and all preliminary site work (including, without limitation, any environmental remediation and ancillary demolition) shall not be deemed to be commencement of construction.

9.7 Owner shall, at its sole cost and expense, prosecute construction of the Project with diligence and continuity to completion. Completion of the Project, as evidenced by the issuance of a Certificate of Completion (C.C.) or Certificate of Occupancy (C.O.), as applicable, for the Project, shall occur no later than the date that is five (5) years after the Commencement Date (the Completion Deadline).

10. Owner's Right of Termination Prior to Commencement of Construction.

Notwithstanding anything to the contrary contained herein, Owner shall have the right to be released from its liability and obligations (except, the obligation to grant and convey the City Easement to City), and to terminate this Agreement by providing written notice to the City prior to the Construction Commencement Date because:

(a) changes to the Project required as a condition to the issuance of any Development Approval or Development Permit render the Project economically unfeasible in the reasonable business judgment of Owner; or

(b) the Project cannot meet concurrency requirements under section 163.3180, Florida Statutes, or the costs of concurrency mitigation are, in the reasonable business judgment of Owner, economically unfeasible; or

(c) Owner, after good faith efforts, has been unable to obtain a Full Building Permit for the Project.

In the event of termination of this Agreement pursuant to this Section 10, each party shall bear its own costs and expenses incurred in connection with this Agreement, and neither

party shall have any further liability to the other (except, provided the Closing occurs, Owner shall be obligated to grant and convey the City Easement to City; which obligation shall survive termination of this Agreement).

11. Conditions to Closing.

11.1 Notwithstanding anything to the contrary contained herein if, during its due diligence review of the West Avenue Bridge Project (the Due Diligence Period), the City determines that it would not be in the City's best interest to proceed with the Project due to any or all of the following conditions:

a.) lack of funding;

b.) the Project, as contemplated by City, exceeds the Project budget acceptable to City;

c.) the Project, as contemplated by City, does not, or cannot, comply and/or meet with, and/or does not, or cannot, otherwise receive all or any portion of the required approvals (including, without limitation, any conditions and or requirements imposed upon the Project by federal, State, or County funding sources) or permits; or

d.) opposition to the Project by the surrounding neighborhood and, in particular, the immediate surrounding residential area in and around the proposed site of the Project; or

e.) any or all of the conditions precedent to Closing, as set forth in the Purchase and Sale Contract, are not satisfied; or

f.) notwithstanding subsection (e) above, the Purchase and Sale Contract is terminated or otherwise declared null and void, in accordance with provisions thereof;

Then the City may elect not to proceed with the Closing and to terminate this Agreement by providing written notice to Owner, prior to the conclusion of the Due Diligence Period (as set forth below), and neither party shall have any further rights or obligations under the Agreement; provided , however, that to the extent that applications of Owner seeking any Development Approvals for the HACMB Project are still pending hearing (or appeal) as of the date of termination of this Agreement, then at Owner's option, the Agreement may be extended for an additional six (6) month period; provided further Owner has given City written notice of same within thirty (30) calendar days from the initial date of termination. Notwithstanding the preceding, in the event that Owner elects the option to extend the Agreement, and timely notifies the City of such election (as provided above), and whether or not Owner has obtained all of the Development Approvals, for the Project, then this Agreement shall automatically terminate at the end

of the extension period, and the parties shall have no further obligations under this Agreement.

The City's Due Diligence Period shall be the period of time referred to as the "Inspection Period" in the Purchase and Sale Contract.

12. Title; No Subordination. At the Closing, Owner shall grant the City Easement, free and clear of all liens, encumbrances, rights of occupancy, or other matters.

Thereafter, the City Easement including, without limitation, all or any portion of Parcels A or B, shall not be subject or subordinate to (a) any mortgage, whether now or hereafter existing; or (b) any other liens or encumbrances hereafter affecting the Property and/or the HACMB Project.

13. "As Is" Condition. Subject to Closing, the City agrees to accept the City Easement, Area, with the underlying land and improvements (if any), in "**AS-IS**" condition.

14. Affordability Period; Restrictive Covenant; Amendment to City's Land Development Regulations.

14.1 Affordability Period; Restrictive Covenant. Owner expressly agrees and covenants that the HACMB Project shall be operated as an affordable housing project for a minimum of thirty (30) years, which period shall commence upon the issuance of a Certificate of Completion (C.C.) or Certificate of Occupancy (C.O.), as applicable, for the Project (the Affordability Period). Prior to, and as a condition to the issuance of a C.C. or C.O. for the Project, Owner shall execute and deliver a Restrictive Covenant to City, substantially in accordance with the form attached as **Exhibit "F"** hereto, and which Covenant shall memorialize the Affordability Requirement; be intended and deemed to be a covenant running with the land; inure to the benefit of, and be binding upon, the parties' respective successors and assigns including, without limitation, subsequent owners of the Property and/or the Project; and be recorded in the public records in Miami-Dade County, Florida.

Notwithstanding the preceding paragraph, if Owner sells, assigns, or otherwise transfers Parcel C and/or the Property prior to the issuance of a Building Permit for the HACMB Project, then the following conditions shall apply:

a) If Parcel C and/or the Property is sold, assigned, or otherwise transferred to an individual/entity who/which intends to develop Parcel C as an affordable housing project, then Owner shall require such buyer/assignee/transferee (as applicable), as a condition of such sale, assignment, or transfer, to execute and

record a Restrictive Covenant against the Property (substantially accordance with the form attached in Exhibit "F" hereto), requiring that the development on Parcel C be operated and maintained as an affordable housing throughout the Affordability Period; or

b) If Parcel C and/or the Property is sold, assigned, or otherwise transferred to an individual/entity who/which intends to develop Parcel C for a main use other than an affordable housing project, then no Affordability Period or Restrictive Covenant shall be required.

Notwithstanding the preceding, the requirement to grant the City Easement shall not be affected by any sale, assignment, or other transfer of the Property, or any portion thereof.

As consideration for Owner's agreement to execute, record, and deliver the Restrictive Covenant, as provided above, the City agrees to waive any Payment in Lieu of Taxes (PILOT) fees for the HACMB Project for such time as the Project is operated and maintained as an affordable housing project, up to a period of fifteen (15) years, commencing upon the issuance of a Certificate of Completion (C.C.) or Certificate of Occupancy (C.O.) for the Project; provided further, that in the event that the (i) HACMB Project does not require a variance (as contemplated in subsection 3.11(e) hereof); and (ii) A) either the City Commission does not amend the City's land development regulations (ldr's) by January 31, 2010 (as contemplated in Section 14.2 below) or, B) the City's Planning and Zoning Director determines that the Project does not require any amendments to the ldr's, then the City agrees that the PILOT fee waiver period shall be automatically extended (without any further action required by either party) from the original fifteen (15) years, to a maximum of twenty-five (25) years (which new 25 year period will also be deemed to have commenced upon the issuance of a C.C. or C.O. for the Project).

14.2 Amendment to City's Land Development Regulations. The City Administration will prepare and present to the Mayor and City Commission, for its consideration at one of the Commission's regularly scheduled meetings, certain amendments to the City's land development regulations, relating to modifying minimum average unit size and parking requirements (including, without limitation, commercial, guest, and unit parking requirements) for affordable housing developments in the City of Miami Beach; which amendments, if approved, shall apply to the HACMB Project. Notwithstanding the preceding, Owner acknowledges that, the City shall not be obligated to approve any or all such amendments, whether as a condition of this Agreement or otherwise, and that any or all such approval(s) shall be at the Mayor and City Commission's sole discretion and judgment.

14.3 Notwithstanding subsections 14.1 and 14.2 hereof, in the event that the City elects not to proceed with the Closing and to terminate this Agreement on or before the Due Diligence Period, as provided in subsection 11.1 hereof, **and** provided further that the HACMB has submitted its application for a variance (in the event that the City's Planning and Zoning Director has previously deemed that the Project will require a variance) prior to receipt of the City's termination notice then, as consideration therefore, City agrees, and HACMB shall be entitled to, the PILOT fee waiver for the Project for the maximum twenty five (25) year period.

15. Reservation of Rights. This Agreement shall not affect any rights which may have accrued to any party to this Agreement under all applicable law and each party hereto reserves any and all such rights.

16. No Permit or Waiver of Fees. This Agreement is not and shall not be construed as a Development Permit, Development Approval, or authorization to commence development of the HACMB Project, nor shall it relieve Owner of the obligation to obtain all necessary Development Approvals, Development Permits, or any other approvals and/ or permits that are required under applicable law and under and pursuant to the terms of this Agreement. Except as otherwise expressly provided herein, nothing contained in this Agreement shall be deemed to constitute a waiver of any fee, charge, or cost imposed by the City in connection with the issuance of any Development Approval, Development Permit or any other approval and/or permit.

17. Good Faith; Further Assurances; No Cost. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement; provided, that the foregoing shall in no way be deemed to inhibit, restrict or require the exercise of the City's police power or actions of the City when acting in a quasi-judicial capacity. Wherever in this Agreement a provision requires cooperation, good faith or similar effort to be undertaken at no cost to a party, the concept of no cost shall not be deemed to include any cost of review (whether legal or otherwise), attendance at meetings, hearings or proceedings and comment and/or execution of documents, all such costs to be borne by the party receiving a request to so cooperation, act, in good faith or so forth.

18. Consistency with the City's Master Plan. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the HACMB Project are, or shall be, consistent with the City's adopted Comprehensive Plan and land development regulations (subject to all applicable Development Approvals).

19. Public Facilities and Concurrency. City and Owner anticipate the HACMB Project will be served by those roadway transportation facilities currently in existence as provided by state, County and local roadways. It is also anticipated that the Project will be served by public transportation facilities currently in existence, including those provided in Miami-Dade County, the City , and other governmental entities ad may presently operate public transportation services within the City sanitary sewer, solid waste, drainage, and potable water services for the proposed Project are expected to be those services currently in existence and owned or operated by Miami-Dade County, the Miami Dade County Water and Sewer Department, and the City. The Project will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12), Florida Statutes (1997), as such are described in the City's Comprehensive Plan. The foregoing, however, shall not be deemed to be an approval of, nor shall it be deemed to relieve Owner of the obligation to comply with Section 163.3180, Florida Statues (1997).

(b) Owner shall be solely responsible for obtaining all final non-appealable land use permits, including, but not limited to, all permits and approvals required pursuant to Section 163.3180, Florida Statutes (1997), with respect to concurrency requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation (the Concurrency Requirements). Owner shall apply to the appropriate governmental authorities for letter or other evidence that Owner is pursuing all applicable Concurrency Requirements, and shall diligently and in good faith pursue such letters or other evidence that the HACMB Project meets all applicable Concurrency Requirements.

20. Recording of Development Agreement. Within fourteen (14) days after the parties execute this Agreement, the City shall record this Development Agreement with the Clerk of the Circuit Court of Miami-Dade County. The Owner shall submit a copy of the recorded Agreement to the State of Florida's Land Planning Agency within fourteen (14) days after this Agreement is recorded. This Agreement shall become effective only after (i) it has been recorded in the Public Records of Miami-Dade County, and (ii) thirty (30) days have elapsed after the State of Florida Land Planning Agency's receipt of a copy of the recorded Agreement. Owner agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement. The provisions hereof shall remain in full force and affect during the term hereto, and subject to the conditions of this Agreement, shall be binding upon the undersigned and all successors in interest to the parties to this Agreement. Whenever an extension of any material deadline is permitted or provided for under the terms of this Agreement, at the request of either party, the other party shall join in a short-form recordable Memorandum of Agreement confirming such extension to be recorded in the Public Records of Miami-Dade County.

21. Duration of Development Agreement. The duration of this Agreement shall not exceed fifteen (15) years from the Commencement Date; provided, however, that the duration of this Agreement may be extended by mutual agreement of the City and Owner. During the term of this Agreement, the City's laws and policies governing the development of land in effect as of the date hereof shall govern development of the Property. The City may apply subsequently adopted laws and policies to the HACMB

Project only if the City has held a public hearing pursuant to Section 163.3 225, Florida Statutes, and determined:

(a) they are not in conflict with the laws and policies governing this Agreement and do not prevent development of the land uses, intensities, or densities in this Agreement; or

(b) they are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or

(c) they are specifically anticipated and provided for in this Agreement; or

(d) the City demonstrates that substantial changes have occurred in pertinent conditions existing a the time of approval of Agreement; or

(e) this Agreement is based on substantially inaccurate information supplied by Owner.

22. Required Development Approvals.

(a) Developer shall be solely responsible for obtaining, at its sole cost and expense, the Development Approvals listed in Exhibit "G" attached hereto. Notwithstanding the preceding, the City and Owner agree and acknowledge that the Development Approvals listed in Exhibit "G" hereto may not constitute a full listing and description of all local development approvals or permits needed to be approved for development of the HACMB Project, and that the omission of any other approval or permit (required for the development of the Project) from Exhibit "G" shall not relieve Owner of its sole obligation, whether under applicable law or this Agreement, to obtain same.

23. Intentionally omitted.

24. Public Reservations and/or Dedications. There are no reservations and/or dedications of land for public purposes that are proposed under this Agreement other than the City Easement.

25. Confirmation of Land Development Regulations. The zoning district classification of Parcel C is CD-2, as defined in City's land development regulations.

26. Omissions. The parties hereto recognize and agree that the failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve the Owner of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction notwithstanding any such omission.

27. Notices. Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the City at: City of Miami Beach, City Hall
1700 Convention Center Drive
Miami Beach, Florida 33139
Attn: City Manager

or

If to Owner at: Housing Authority of the
City of Miami Beach
200 Alton Road
Miami Beach, Florida 33139
Attn: Executive Director

28. Indemnification of Owner. Owner hereby agrees to hold the City, its officers, employees, agents, contractors, and representatives harmless from any liability/or damage or claims for damage for personal injury, including wrongful death, and claims for property damage, which may arise from the direct or indirect activities and/or operations of Owner, or these of any officer, employee, agent, contractor, sub-contractor, or other person acting on Owner's behalf, which relate to the design, development, and construction of the HACMB Project. Owner agrees to, and shall afford at its sole cost and expense, the City and its officers, employees, agents, contractors, and representatives from any and all actions for damages caused, or alleged to have been caused, by reason of Owner's activities in connection with HACMB Project. This indemnification agreement applies to all damages and claims for damages including, without limitation, interest, costs and attorney's fees, outlined or alleged to have been suffered by reason of the activities and/or operations referenced herein. This indemnification shall not apply to the gross negligence or willful misconduct of the City, or of its officer's employees, agents, contractors, or representatives. The aforestated indemnification, and the provisions of this Section 28, shall survive expiration of this Agreement.

29. Events Of Default, Conditional Limitations, Remedies, Etc.

Section 29.1 Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Owner shall default in the observance or performance of any term, covenant or condition of this Agreement on Owner's part to be observed or performed and, if no cure period is expressly provided for herein, Owner does not remedy such Default within thirty (30) days after notice by City of such Default (the "Default Notice"), or if such a Default is of such a nature that it cannot reasonably be remedied within thirty (30) days (but is otherwise susceptible to

cure), and if, Owner does not (i) within thirty (30) days after the giving of such Default Notice, advise City of Owner's intention to institute all steps necessary (and from time to time, as reasonably requested by City, Owner shall advise City of the steps being taken) to remedy such default (which such steps shall be reasonably designed to effectuate the cure of such Default in a professional manner), and (ii) thereafter diligently prosecute to completion all such steps necessary to remedy the same; or

(b) if Owner makes an assignment for the benefit of creditors; or

(c) if Owner files a voluntary petition under Title 11 of the United States Bankruptcy Code, or if Owner files a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Owner, of all or any substantial part of its properties, or of all or any part of Owner's interest in the Property and/or the HACMB Project, and the foregoing are not stayed or dismissed within one hundred fifty (150) days after such filing or other action; or

(d) if, within one hundred fifty (150) days after the commencement of a proceeding against Owner seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding has not been dismissed, or if, within one hundred eighty (180) days after the appointment, without the consent or acquiescence of Owner, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Owner, of all or any substantial part of its properties, or of all or any part of Owner's interest in the Property and/or the HACMB Project, such appointment has not been vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) days after the expiration of any such stay, such appointment has not been vacated.

In the event of a Default which with the giving of notice to Owner and the passage of time would constitute an Event of Default, City's notice to Owner shall state with specificity the provision of this Agreement under which the Default is claimed, the nature and character of such Default, the facts giving rise to such Default, the date by which such Default must be cured pursuant to this Agreement, and, if applicable, that the failure of Developer to cure such Default by the date set forth in such notice will result in City having the right to terminate this Agreement.

Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred until such time as City shall have given Owner notice of the occurrence of an Event of Default.

Notwithstanding anything to the contrary contained herein, City shall be entitled to seek any injunctive or other equitable relief that may be available to City during the pendency of any Default.

29.2 Enforcement of Performance; Damages and Termination.

If an Event of Default occurs, City may elect to (a) enforce performance or observance by Owner of the applicable provisions of this Agreement, or (b) recover damages for breach of this Agreement or terminate this Agreement. City's election of a remedy hereunder with respect to an Event of Default shall not limit or otherwise affect City's right to elect any of the remedies available to City hereunder with respect to any other Event of Default.

29.3 Strict Performance.

No failure by City or Owner to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy available to such party by reason of the other party's default or an Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition or of any other covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party, and no default by either party, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default. Owner's compliance with any request or demand made by City shall not be deemed a waiver of Owner's right to contest the validity of such request or demand.

29.4 Right to Enjoin Defaults.

In the event of Owner's Default or an Event of Default, City shall be entitled to seek to enjoin the Default or Event of Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent City's remedies are expressly limited by the terms hereof. In the event of City's Default or an Event of Default under this Agreement, Owner shall be entitled to seek to enjoin the default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, except to the extent Owner's remedies are expressly limited by the terms hereof. Each right and remedy of City and Owner provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent City's remedies and Owner's remedies are expressly limited by the terms hereof, and the exercise or beginning of the exercise by City or Owner of any one or more of the rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by City or Owner of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, except to the extent City's remedies and Owner's remedies are expressly limited by the terms hereof.

29.5 City's Default.

In the event of any default by City hereunder, not caused by City Excusable Delays (as hereinafter defined), Owner shall give City written notice specifying such default and City agrees to promptly commence the curing of such default and to cure such default within thirty (30) days after receipt of the aforesaid notice; provided, however, that if such default cannot reasonably be cured within said thirty (30) day period, then City shall cure any such default diligently and as quickly as reasonably practicable under the circumstances and shall have a reasonable period of time within which to cure such default so long as City is so proceeding. If City fails to cure any default during the applicable curative period, Owner, at any time after the expiration of such curative period, shall have the right to seek damages against City and/or to exercise any other remedy provided in this Agreement or available to Owner at law or in equity. As used herein, the term "City Excusable Delays" shall mean City's failure to perform any obligation of City hereunder by reason of one or more of the following causes, to-wit, governmental restrictions, regulations or ordinances (other than those restrictions, regulations or ordinances over which City, as a governmental entity, exercises control), strikes, lockouts, acts of God, war, terrorism, riots, gross negligence or the willful misconduct of Owner, or any other cause, similar or dissimilar to the foregoing and whether or not now in the contemplation of the parties hereto, beyond the reasonable control of City, other than the financial inability of City, provided that City takes reasonable steps to so minimize the effect of any such circumstance, in which event the required period for City's performance for any obligation hereunder shall be extended for a period equal to the length of the delay caused by such Excusable Delays. City agrees to make a good faith effort to notify Owner of any Excusable Delays affecting the performance by City of its obligations under this Agreement and the estimated delay to result therefrom.

30. Discharge of Liens.

30.1 Creation of Liens.

(a) Owner shall not create, cause to be created, or suffer or permit to exist (1) any lien, encumbrance or charge upon this Agreement, the Property (including, without limitation, the City Easement Area), the HACMB Project, or the City Easement, or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 30.2; (2) any lien, encumbrance or charge upon any assets of, or funds appropriated to, City; or (3) any other matter or thing whereby the West Avenue Bridge Project and or the City's interest in the Property (including, without limitation, the City Easement), or any part thereof or appurtenance thereto, might be materially impaired.

(b) City shall not create, cause to be created, or suffer or permit to exist (i) any lien, encumbrance upon this Agreement, the City Easement Area, the West Avenue Bridge Project, or any part thereof or appurtenance thereto, which is not removed within the time period required pursuant to Section 30.2; (ii) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Owner; or (iii) any other matter or thing

whereby Owner's interest in the Property, or the HACMB Project, or any part thereof or appurtenant thereto, might be materially impaired.

30.2 Discharge of Liens.

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Owner is filed against the Property and/or the HACMB Project, or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Owner shall be filed against any assets of, or funds appropriated to Owner, Owner shall, within thirty (30) days after Owner receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Owner shall not be required to discharge any such lien if Owner shall have (i) furnished City with, at Owner's option, a cash deposit, bond, letter of credit from an institutional lender (in form reasonably satisfactory to City) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to City, in an amount sufficient to pay the lien with interest and penalties; and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Owner's efforts to seek discharge of the lien, City reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies Owner, Owner shall, within ten (10) days of notice to such effect from City (but not later than three (3) business days prior to the entry or granting of such judgment or order of foreclosure), cause such lien to be discharged of record or City may thereafter discharge the lien and look to Owner for reimbursement of its cost in doing so.

(b) Notwithstanding anything to the contrary contained in Section 30.2 (a), if any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Owner) is filed against the Property, or any part thereof (including, without limitation, the City Easement Area), or the HACMB Project, or the West Avenue Bridge Project, or City's interest in the Property (including, without limitation, the City Easement) as a result of any action of City, its officers, employees, representatives or agents, City shall, within thirty (30) days after City receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, City shall not be required to discharge any such lien if City shall have (i) furnished Owner with, at City's option, a cash deposit, bond, letter of credit from an Institutional Lender (in form reasonably satisfactory to Owner) or other security (such as a personal guaranty or title company indemnity) reasonably satisfactory to Owner, in an amount sufficient to pay the lien with interest and penalties and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite City's efforts to seek discharge of the lien, Owner reasonably believes that a court judgment or order foreclosing such lien is about to be entered or granted and so notifies City, City shall, within ten (10) days of notice to such effect from Owner (but not later than three (3) business days prior to the entry or granting of such judgment or order of

foreclosure), cause such lien to be discharged of record or Owner may thereafter discharge the lien and look to City for reimbursement of its cost in so doing.

30.3 No Authority to Contract in Name of City.

Nothing contained herein shall be deemed or construed to constitute the consent or request of City, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the HACMB Project or any part thereof, nor as giving Owner any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the West Avenue Bridge Project or the City Easement, or City's interest in the Property (including, without limitation, the City Easement Area), or any part thereof, or against any assets of City. Notice is hereby given, and Owner shall cause all construction agreements to provide, that to the extent enforceable under Florida law, City shall not be liable for any work performed or to be performed on the HACMB Project, or any part thereof, for Owner, or for any materials furnished or to be furnished to the Project, or any part thereof, for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect the West Avenue Bridge Project, the City Easement, or City's interest in the Property (including, without limitation, the City Easement Area), or any part thereof, or any assets of City.

31. Right To Perform The Other Party's Obligations.

(a) If an Event of Default shall occur, City may, but shall be under no obligation to, perform the obligation of Owner the breach of which gave rise to such Default, without waiving or releasing Owner from any of its obligations contained herein, provided that City shall exercise such right only in the event of a *bona fide* emergency or after five (5) business days' notice, and Owner hereby grants City access to Parcel C and to the HACMB Project, as applicable, in order to perform any such obligation.

(b) If a default by City under this Agreement shall occur and be continuing beyond any applicable grace period, Owner may, but shall be under no obligation to, perform the obligations of City (other than those which are governmental as opposed to proprietary obligations) the breach of which gave rise to such default, without waiving or releasing City from any of its obligations contained herein, provided that Owner shall exercise such right only in the event of *a bona fide* emergency or after five (5) business days' notice to City.

31.2 Discharge of Liens.

(a) If Owner fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Owner) to be discharged of record in accordance with the provisions of Section 30, City may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings.

(b) If City fails to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien to be discharged of record in accordance with the provisions of Section 30, Owner may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings.

31.3 Reimbursement for Amounts Paid Pursuant to this Section.

(a) Any amount paid by City in performing Owner's obligations, as provided in this Section, including all costs and expenses incurred by City in connection therewith, shall be reimbursed to City within thirty (30) days of City's demand, together with interest on amounts actually paid by City, calculated at the maximum allowable rate under Florida law, from the date of notice of any such payment by City to the date on which payment of such amounts is received by City.

(b) Any amount paid by Owner in performing City's obligations, as provided in this Section, including all costs and expenses incurred by Owner in connection therewith, shall be reimbursed to Owner within thirty (30) days of Owner's demand, together with interest on amounts actually paid by Owner, calculated at the maximum allowable rate under Florida law, from the date of notice of any such payment by Owner to the date on which payment of such amounts is received by Owner.

31.4 Waiver, Release and Assumption of Obligations.

(a) City's payment or performance pursuant to the provisions of this Section shall not be, nor be deemed to constitute, City's assumption of Owner's obligations to pay or perform any of Owner's past, present or future obligations hereunder.

(b) Owner's payment or performance pursuant to the provisions of this Section shall not be, nor be deemed to constitute, Owner's assumption of City's obligations to pay or perform any of City's past, present or future obligations hereunder.

32. Intentionally omitted.

33. Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, excluding the financial inability of such party to perform and excluding delays resulting from appeals or rehearings commenced by the Owner (any such causes or events to be referred to herein as a "Force Majeure"), shall excuse the performance by such party for a period equal to any such period of prevention, delay or stoppage.

34. Miscellaneous.

(a) Counterparts. To facilitate execution, the parties hereto agree that this Agreement may be executed in counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required

to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single Agreement.

(b) References. All references in the Agreement to the "Agreement" shall hereafter mean and refer to the Development Agreement.

(c) Governing Law and Exclusive Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami Dade County, Florida, if in State court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND OWNER EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

(d) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by City and Owner. No waiver of any Default or default shall affect or after this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or default thereof.

(e) Effect of Other Transactions. No mortgage, whether executed simultaneously with this Agreement or otherwise, and whether or not consented to by City, shall be deemed to modify this Agreement in any respect, and in the event of an inconsistency or conflict between this Agreement and any such instrument, this Agreement shall control.

(f) Invalidity of Certain Provisions. If any provision of this Agreement or the application thereof to any Person or circumstances is, to any extent, finally determined by a court of competent jurisdiction to be invalid and unenforceable, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) Remedies Cumulative.

Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this

Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

(h) Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

(i) Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Agreement as to both City and Owner including, without limitation, the times within which City and Owner must commence and complete construction of, respectively, the West Avenue Bridge Project and the HACMB Project.

(j) Successors and Assigns.

The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, City and Owner, and, except as otherwise provided herein, their respective successors and permitted assigns. There shall be no assignment by Owner of its rights or obligations hereunder, or its interest in this Agreement, without the prior consent of the Mayor and City Commission which consent, if given at all, shall be at the City Commission's sole and reasonable discretion.

(k) Notice of Defaults.

Notwithstanding anything to the contrary set forth in this Agreement, under no circumstances shall any party to this Agreement lose any right or benefit granted under this Agreement or suffer any harm as a result of the occurrence of any Default or default of such party as to which Default or default such party has not received notice thereof from the other party.

(l) Corporate Obligations.

It is expressly understood that this Agreement and obligations issued hereunder are solely corporate obligations, and, that no personal liability will attach to, or is or shall be incurred by, the incorporators, stockholders, officers, directors, elected or appointed officials (including, without limitation, the Mayor and City Commission of the City and the Chairman and Members of the HACMB) or employees, as such, of City or Owner, or of any successor corporation, or any of them, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom; and, that any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such incorporator, stockholder, officer, director, elected or appointed officials (including, without limitation, the Mayor and City Commission of the City and the Chairman and Members of the

HACMB) or employee, as such, or under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(m) Nonliability of Officials and Employees.

No member, official or employee of City shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by City or for any amount or obligation which may become due to Owner or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

No member, official or employee of Owner shall be personally liable to City, or any successor in interest, in the event of any default or breach by Owner or for any amount or obligation which may become due to City or successor under the terms of this Agreement; and, any and all such personal liability, either at common law or in equity or by constitution or statute, of, and any and all such rights and claims against, every such person, under or by reason of the obligations, covenants or agreements contained in this Agreement or implied therefrom, are expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(n) Partnership Disclaimer.

Owner acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement.

The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy in common, joint tenancy, or co ownership for the development by Owner of the HACMB Project, the development by City of the West Avenue Bridge Project, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, or the other documents executed by the parties with respect to the HACMB Project or the West Avenue Bridge Project, shall be construed or deemed to create, or to express an intent to create, a partnership, joint venture, tenancy-in-common, joint tenancy, or co-ownership of any kind or nature whatsoever between the parties hereto. The provisions of this subsection (n) shall survive expiration of this Development Agreement.

(o) No Third Party Rights.

Nothing in this Development Agreement, express or implied, shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

(p) No Conflict of Interest.

Owner represents and warrants that, to the best of its actual knowledge, no member, official or employee of the City has any direct or indirect financial interest in this Agreement nor has participated in any decision relating to this Agreement that is prohibited by law. Owner represents and warrants that, to the best of its knowledge, no officer, agent, employee or representative of the City has received any payment or other consideration for the making of this Agreement, directly or indirectly, from Owner. Owner represents and warrants that it has not been paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, and attorneys. Owner acknowledges that Owner is relying upon the foregoing representations and warranties in entering into this Agreement and would not enter into this Agreement absent the same.

35. Entire Agreement. This Agreement, together with the documents referenced herein, constitute the entire agreement and understanding among the parties with respect to the subject matter hereof, and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought and subject to the requirements for the amendment of development agreements in the Act.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

EXECUTED as of the date first above written in several counters, each of which shall be deemed an original, but all constituting only one agreement.

Signed, sealed and delivered
in the presence of:

_____
_____

CITY OF MIAMI BEACH,
a Florida municipal corporation

By: _____
Name: _____
Attest: _____
Robert Parcher, City Clerk

Signed, sealed and delivered
in the presence of:

_____
_____

OWNER/HOUSING AUTHORITY OF
THE CITY OF MIAMI BEACH

By: _____
Name: _____
Attest: _____
By: _____

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 7/7/10 Date

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010 by _____as _____of the Housing Authority of the City of Miami Beach and on behalf of the Authority. He/She is personally known to me and who did (did not) take an oath.

_____
NOTARY PUBLIC

_____
Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____

OFFICIAL NOTARY SEAL

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

The foregoing instrument was acknowledged before me this _____day of _____, 2010, by _____as Mayor of the City of Miami Beach, a municipal corporation, on behalf of the City. He/She is personally known to me or has produced as identification and who did (did not) take an oath.

_____
NOTARY PUBLIC

_____
Typed or Printed Name of Notary
My Commission expires:
Serial No., if any: _____

OFFICIAL NOTARY SEAL

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held by the City Commission of the City of Miami Beach on **Wednesday, September 15th, 2010 at 10:45 a.m. in the City Commission Chambers at City Hall, located at 1700 Convention Center Drive, Miami Beach, Florida 33139** to consider.

APPROVING, FOLLOWING A SECOND (AND FINAL) READING AND PUBLIC HEARING, A PROPOSED DEVELOPMENT AGREEMENT (PURSUANT TO THE "FLORIDA LOCAL GOVERNMENT DEVELOPEMNT AGREEMENT ACT") BETWEEN THE CITY OF MIAMI BEACH, FLORIDA (THE "CITY") AND THE HOUSING AUTHORITY OF THE CITY OF MIAMI BEACH ("HACMB") FOR THE DEVELOPMENT OF THE FOLLOWING PROJECTS ON CERTAIN REAL PROPERTY OWNED BY HACMB, LOCATED AT 1231 - 1251 17TH STREET, MIAMI BEACH, FLORIDA (THE "HACMB PROPERTY"): 1.) AN AFFORDABLE ELDERLY HOUSING PROJECT WITH GROUND LEVEL, NEIGHBORHOOD-ORIENTED COMMERCIAL SPACE, WHICH WILL BE DESIGNED, DEVELOPED, AND CONSTRUCTED BY HACMB (THE "HACMB PROJECT"); AND 2.) A PUBLIC RIGHT OF WAY, INCLUDING A BRIDGE, FOR VEHICULAR AND PEDESTRIAN ACCESS, CONNECTING WEST AVENUE AND DADE BOULEVARD, TO BE DESIGNED, DEVELOPED, AND CONSTRUCTED BY THE CITY ON AND OVER A PERPETUAL EASEMENT ON THE HACMB PROPERTY (THE "CITY EASEMENT"); WHICH EASEMENT THE CITY INTENDS TO PURCHASE FROM HACMB PURSUANT TO THAT CERTAIN PURCHASE AND SALE AGREEMENT BETWEEN THE CITY AND HACMB APPROVED ON JULY 14, 2010, PURSUANT TO CITY RESOLUTION NO. 2010-27451 (THE CITY'S PROJECT ON THE CITY EASEMENT IS HEREINAFTER REFERRED TO AS THE "WEST AVENUE BRIDGE PROJECT").

Inquiries, including a copy of the proposed Development Agreement, may be directed to the Office of the City Manager at (305) 673-7010.

INTERESTED PARTIES are invited to appear at this meeting or be represented by an agent or to express their views in writing addressed to the City Commission c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting may be opened and continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, FL Statutes, the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding, or to request information on access for persons with disabilities, or to request this publication in accessible format, or to request sign language interpreters, should contact the City Clerk's office at (305) 673-7411, no later than four days prior to the proceeding. If hearing impaired, contact the City Clerk's office via the Florida Relay Service numbers, (800) 955-8771 (TTY) or (800) 955-8770 (VOICE). **AD # 615**

Condensed Title:

RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF MIAMI BEACH, FLORIDA OF (i) PARKING REVENUE REFUNDING BONDS, SERIES 2010A, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $20,000,000, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING PARKING REVENUE BONDS, SERIES 1997, AND (ii) PARKING REVENUE BONDS, SERIES 2010B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $30,000,000, FOR THE PURPOSE OF PAYING COSTS OF IMPROVEMENTS TO THE PARKING SYSTEM; PROVIDING FOR THE ISSUANCE OF ADDITIONAL PARKING REVENUE BONDS AND THE INCURRENCE OF OTHER TYPES OF INDEBTEDNESS OF THE CITY TO PAY ALL OR PART OF THE COST OF ADDITIONAL IMPROVEMENTS TO THE CITY'S PARKING SYSTEM AND FOR REFUNDING OUTSTANDING PARKING REVENUE BONDS; PROVIDING FOR THE PAYMENT OF SUCH BONDS AND OTHER SYSTEM DEBT; SETTING FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH BONDS AND OTHER SYSTEM DEBT; PROVIDING CERTAIN DETAILS OF THE SERIES 2010 BONDS; DELEGATING OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2010 BONDS, INCLUDING WHETHER TO SECURE ONE OR MORE CREDIT FACILITIES AND/OR RESERVE ACCOUNT INSURANCE POLICIES, AND THE REFUNDING OF THE PRIOR BONDS TO THE MAYOR; APPOINTING UNDERWRITERS, A BOND REGISTRAR, AN ESCROW AGENT AND A DISCLOSURE DISSEMINATION AGENT; AUTHORIZING THE NEGOTIATED SALE OF THE SERIES 2010 BONDS AND APPROVING THE FORM AND EXECUTION OF A BOND PURCHASE AGREEMENT FOR THE SERIES 2010 BONDS; APPROVING THE FORMS OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT FOR THE SERIES 2010 BONDS AND AUTHORIZING EXECUTION OF THE OFFICIAL STATEMENT; COVENANTING TO PROVIDE CONTINUING DISCLOSURE IN CONNECTION WITH THE SERIES 2010 BONDS AND APPROVING THE FORM AND EXECUTION OF A CONTINUING DISCLOSURE AGREEMENT; APPROVING THE FORM AND EXECUTION OF AN ESCROW DEPOSIT AGREEMENT FOR THE PRIOR BONDS; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL NECESSARY ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2010 BONDS AND REFUNDING OF THE PRIOR BONDS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Key Intended Outcome Supported:

Improve Parking Availability

Supporting Data (Surveys, Environmental Scan, etc.): Only 21% of residents and 28% of businesses rate the availability of parking in Miami beach as being the right amount.,

Issue:

Should the City Commission approve the resolution and set the second public hearing?

Item Summary/Recommendation:

The Administration anticipates that it can obtain debt service savings as well as provide additional flexibility in the issuance of bonds by refunding the Parking Revenue Bonds, Series 1997 (the "Prior Bonds") of which $19,195,000 is currently outstanding. The City's Financial Advisor, Richard Montalbano, Managing Director, RBC Capital Markets Corporation, estimated that given the current market conditions, the City could expect to achieve a net present value savings approximating 10% of the refunded bonds which equates to approximately $1,930,000 or $130,000 annual debt service savings. This refunding will be achieved by the issuance of the Series 2010A Bonds.

The Series 2010B Bonds are being issued, in part, for the purpose of paying the costs of the Project which will constitute a part of the City's Parking System. The Project consists of the following:

1. A new public parking garage to be located between 18th Street and 20th Street and between Bay Road and Purdy Avenue (Sunset Harbor Garage).
2. Improvements to certain surface parking lots as well as the purchase of additional parking meters, parking pay stations and pay-on-foot machines

The Series 2010 Bonds are payable from and secured by a first lien on and a pledge of the net revenues derived from the operation of the Parking System of the City on a parity with any additional bonds hereafter issued.

Advisory Board Recommendation:

Finance and Citywide Projects Committee July 29, 2010

Financial Information:

		Amount	Account	Approved
Source of Funds: OBPI			To be appropriated from the Parking Revenues	
Total				

City Clerk's Office Legislative Tracking:

Patricia Walker, Chief Financial Officer

Sign-Offs:

Department Director	Assistant City Manager	City Manager
	PDW	JMG

T:\AGENDA\2010\September 15\Regular\Summary for 2010 Parking Bonds.docx

AGENDA ITEM R7F
DATE 9-15-10

MIAMIBEACH

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

FIRST READING
PUBLIC HEARING

SUBJECT: **RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF MIAMI BEACH, FLORIDA OF (i) PARKING REVENUE REFUNDING BONDS, SERIES 2010A, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $20,000,000, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING PARKING REVENUE BONDS, SERIES 1997, AND (ii) PARKING REVENUE BONDS, SERIES 2010B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $30,000,000, FOR THE PURPOSE OF PAYING COSTS OF IMPROVEMENTS TO THE PARKING SYSTEM; PROVIDING FOR THE ISSUANCE OF ADDITIONAL PARKING REVENUE BONDS AND THE INCURRENCE OF OTHER TYPES OF INDEBTEDNESS OF THE CITY TO PAY ALL OR PART OF THE COST OF ADDITIONAL IMPROVEMENTS TO THE CITY'S PARKING SYSTEM AND FOR REFUNDING OUTSTANDING PARKING REVENUE BONDS; PROVIDING FOR THE PAYMENT OF SUCH BONDS AND OTHER SYSTEM DEBT; SETTING FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH BONDS AND OTHER SYSTEM DEBT; PROVIDING CERTAIN DETAILS OF THE SERIES 2010 BONDS; DELEGATING OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2010 BONDS, INCLUDING WHETHER TO SECURE ONE OR MORE CREDIT FACILITIES AND/OR RESERVE ACCOUNT INSURANCE POLICIES, AND THE REFUNDING OF THE PRIOR BONDS TO THE MAYOR; APPOINTING UNDERWRITERS, A BOND REGISTRAR, AN ESCROW AGENT AND A DISCLOSURE DISSEMINATION AGENT; AUTHORIZING THE NEGOTIATED SALE OF THE SERIES 2010 BONDS AND APPROVING THE FORM AND EXECUTION OF A BOND PURCHASE AGREEMENT FOR THE SERIES 2010 BONDS; APPROVING THE FORMS OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT FOR THE SERIES 2010 BONDS AND AUTHORIZING EXECUTION OF THE OFFICIAL STATEMENT; COVENANTING TO PROVIDE CONTINUING DISCLOSURE IN CONNECTION WITH THE SERIES 2010 BONDS AND**

APPROVING THE FORM AND EXECUTION OF A CONTINUING DISCLOSURE AGREEMENT; APPROVING THE FORM AND EXECUTION OF AN ESCROW DEPOSIT AGREEMENT FOR THE PRIOR BONDS; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL NECESSARY ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2010 BONDS AND REFUNDING OF THE PRIOR BONDS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

Approve the resolution on first reading and schedule a second reading public hearing.

BACKGROUND

The proposed Parking Revenue Bonds are separated into two series; Series 2010A for the refinancing of the Series 1997 Parking Revenue Bonds, and Series 2010B for the purpose of paying the costs of improvements to the Parking System, specifically for the construction of a new City garage, improvements to certain surface parking lots as well as the purchase of additional parking meters, parking pay stations and pay-on-foot machines.

Refinancing of the Series 1997 Parking Revenue Bonds with Series 2010A

On February 20, 1996, the Mayor and City Commission authorized the issuance of the Series 1997, Parking Revenue Bonds in the amount of $21,000,000 for the purpose of funding the improvement and expansion of the City's Parking System.

The Administration continually monitors existing debt obligations for savings opportunities and as a result the Administration has proposed that it would be financially beneficial to refinance the Series 1997 Parking Revenue Bonds.

At the May 20, 2010 meeting of the Finance and Citywide Projects Committee, the Committee approved the refinancing of the $19,195,000 now outstanding of the Series 1997 Parking Revenue Bonds in conjunction with the issuance of additional bonds to finance both the Sunset Harbor Garage and the Collins Park Garage. Concurrent with the delivery of the Series 2010A Bonds, a portion of the proceeds, not to exceed $20,000,000, will be applied to the payment of the City's outstanding Parking Revenue Bonds. As of September 1, 2010, the estimated present value savings for the refunding series total $1,930,000 or approximately 10% of the value of the refunded bonds or annual debt service savings of $130,000.

Projects to be Financed with Series 2010B

Sunset Harbor Garage

The Sunset Harbor Garage is a joint venture "project" with the Scott Robbins Company (SRC) to provide a City owned and operated 458 space (estimated) parking garage and 31,000 square feet of ground floor retail. The Sunset Harbor Garage will be located on a 43,500 square foot site located between 18th Street and 20th Street and between Purdy Avenue and Bay Road, on the former Tremont Towing lot. The Scott Robins Companies ("SRC") will be financially responsible for the retail space construction and operation.

The Sunset Harbor neighborhood, bounded by Purdy Avenue on the west, Alton Road on the east, 20th Street on the north, and Dade Boulevard on the south is part of the Middle Beach commercial service area. The neighborhood has limited public parking inventory in the form of one surface lot on the west end and scattered on-street metered parking. While this neighborhood is in transition with a number of restaurants, bars, and clubs thriving as well as a Whole Foods Market currently under construction, it still demonstrates a deficiency in neighborhood retail.

The City performed an initial economic development site analysis, which indicates that retail should do well in this neighborhood, primarily serving middle beach residents. These residents currently have to travel to other areas since there is insufficient retail in mid-beach to meet their needs. The proposed development could provide sustainable neighborhood retail, which would generate the need for approximately 135 parking spaces. The Parking Department has indicated that there are currently peak periods with a parking shortage in the area, such as evening hours and lunchtime. The estimated parking demand for these peak periods is 30 spaces. There is also demand for valet parking storage in the area for commercial and residential uses. It is anticipated that commercial valet demand will be supported by the private sector as it will not be permitted at the Purdy Avenue Garage; however, incidental valet storage is contemplated for single-family residents in adjacent neighborhoods who have large events in their homes yet little to no parking inventory to service their needs. Residential valet use is for a one (1) day event and is limited to a few times a year.

There have been discussions regarding a parking overlay district in this area that could serve as a catalyst for redevelopment of properties in the area, with the potential of expanding the neighborhood retail opportunities beyond that which would be included in the garage. However, if the overlay strict initiative is pursued, it would be crafted in such a manner as to preserve the tax exempt status of the bonds. The preliminary estimate for this demand is 150-175 spaces. This equates to an overall demand for approximately 390 parking spaces. The project contemplates a 458 space garage to build some additional capacity.

Construction drawings for this garage are complete; bids have been received and are currently being reviewed by a technical review panel. The construction bids ranged from $9.2 million to $13.2 million and a recommendation is expected to be finalized in late September/early October. The first closing related to this project occurred in 2009, and the second closing and commencement of construction will begin upon receipt of revenue from this bond issue.

At their November 18, 2008 meeting, the Finance and Citywide Projects Committee recommended the Commission approve the final negotiated contract with SRC. On December 10, 2008, the Commission approved the purchase of Air Rights over property owned by Scott Robins Companies (SRC). On April 22, 2009, the City passed a Resolution No. 2009-27051 declaring the official intent of the City to issue tax-exempt bonds in order to, among other things, reimburse itself from the proceeds of such bonds for funds advanced by the City for certain expenses incurred with respect to the new parking garages

Other Projects

Along with the Sunset Harbor Garage, funding of approximately $4.3 million will be provided for improvements to certain surface parking lots as well as the purchase of additional parking meters, parking pay stations and pay-on-foot machines. Series 2010B is proposed in an amount not to exceed $30 million to fund these projects.

not to exceed $30 million to fund these projects.

Collins Park Garage

Since the mid-1990's, the City has identified a need for additional public parking in the Collins Park area to serve the Cultural Campus facilities. Additionally, the City identified a need in the Sunset Harbor area for a facility that would provide additional parking inventory and retail/restaurant amenities to the area.

The Collins Park Garage will be located in the 300 block of 23rd Street, adjacent to and behind the Miami City Ballet, the Library and the Bass Museum. This facility will be fully owned and operated by the City, with approximately 20,300 square feet of ground floor retail space and 397 parking spaces.

At the March 25, 2010 meeting of the Finance and Citywide Projects Committee, the Committee was informed that American Riviera Real Estate (ARRE) has agreed to sell the parcel located at 340 23rd Street to the City, for the development of a public parking garage (the Collins Park Garage) at the purchase price of $4,975,000. The City has entered into a purchase and sale agreement with ARRE, for the property, located adjacent to the City's lot and closing on the purchase of the property is expected to occur before the end of the fiscal year. Initially, the Collins Park Garage was also included in this series; however it has been removed because the acquisition of the land has not been finalized. (Please see Subsequent Event section.)

Finance and Citywide Projects Committee July 29, 2010

In November 2007, the Mayor and City Commission approved Ordinance 2007-3582 which amended the procedures that the City followed in connection with the approval of a bond issue and added the following Section to Chapter 2 of the Miami Beach City Code, entitled "Administration"; Article V entitled "Finance"; Sec. 2-278, entitled "Procedures governing the issuance of bonds.

Sec. 2-278. Procedures governing the issuance of bonds.

(a) Prior to the adoption by the city commission of the final resolution approving the issuance of any bonds by the city, the following requirements shall be complied with:

(1) In order for the city commission and the public to be fully informed on all matters relating to the proposed issuance of bonds, the city manager shall prepare, or cause to be prepared, a fiscal analysis of the economic impact of the proposed bond issuance using the following criteria:

a) The estimated cost of the project or projects on account of which such bonds are to be issued;

b) The estimated annual revenues, if any, to be generated by such project or projects; and

c) The estimated annual cost of maintaining, repairing and operating such project or projects.

(2) Upon completion of the fiscal analysis in subsection (a)(1), the proposed issuance of bonds shall be first considered and reviewed by the city's finance and citywide projects committee.

(3) The city commission shall hold two public hearings, each advertised not less than 15 days prior to the hearing, in order to obtain citizen input into the proposed bond

response to Sec. 2-278 (a) 1 (a).

Sunset Harbor Garage	$19.8M (1)
Collins Park Garage	$21.9M (1)
	$41.7M
System wide Meter Acquisition	$1.3M
250 Pay Stations	$0.2M
Pay on Foot Machines	$0.3M
Surface Lot 19B at Collins & 53rd	$1.54M
Surface Lot at Collins & 84th	$0.72M
13th St Parking Garage	$0.09M
17th St Parking Garage	$0.13M
Cultural Campus Parking Garage	$0.02M
	$4.3M
Sub-Total	$46.0M
Refunding Bonds	$20.9M
Total	$66.9M

(1) Includes cost of land, design, permitting, construction, construction mgt. equipment AIPP and contingencies

Additionally, two pro-formas for the initial five years of operation of the Sunset Harbor Garage and one for the proposed Collins Park Garage were presented to meet the requirements of Sec. 2-278 (a) 1 (b) and (c). Please see the attached schedules.

Both pro-formas for the Sunset Harbor Garage take into account the initial start-up costs that will occur in the first year. Additionally, the pro-formas assume that the retail component of the facility will reach 90% occupancy at the end of year 1, with 100% occupancy during years 2-5.The first pro-forma accounts for the spaces in the garage that will be utilized for City operations, and therefore, will not generate revenue. During the first five (5) years, the pro-forma indicates that the facility will operate at a loss. Since the City's use of 120 spaces in this garage is a unique circumstance that supports additional benefits related to this project, the Administration prepared a second pro-forma to analyze the viability of this project as if it were a normal parking garage with ground floor retail. In this scenario, the "City spaces" were not accounted for, and therefore were included as revenue-generating spaces

During the discussion at the Finance and Citywide Projects Committee, the question was raised as to what would happen to the Collins Park portion of the bond issue should the parcel owned by ARRE not be acquired. If the parcel was not acquired or it became uncertain as to the timing of the acquisition, the project would be removed and the series size would be reduced.

The Finance and Citywide Projects Committee voted to recommend approval of the proposed Parking Revenue Bonds to the Commission in accordance with Sec. 2-278 (a) 2.

In accordance with Sec. 2-278 (a) 3, two public hearings will be held for this proposed Parking Revenue Bond issue. The dates of the public hearings are scheduled for September 15 and 20, 2010, and each date was advertised at least fifteen (15) days prior to the public hearing date.

Revenue Bond issue. The dates of the public hearings are scheduled for September 15 and 20, 2010, and each date was advertised at least fifteen (15) days prior to the public hearing date.

Subsequent Event

As of the scheduled closing date of September 1, 2010, the acquisition of the parcel from ARRE has not been finalized. The Administration offered ARRE an extension to complete the transaction by September 14, 2010 and ARRE has not accepted the extension. Because of the uncertainty surrounding this acquisition, funding for the Collins Park Garage is no longer included as part of this bond issue. Should this transaction be finalized subsequent to the issuance of this series, financing can be accomplished through an additional series of bonds, a borrowing from the Gulf Breeze Government Loan Pool, or a bank loan.

ANALYSIS

The City has the power and authority to acquire, own, maintain and operate on a revenue-producing basis a public parking system, and the City currently owns, maintains and operates such a public parking system. The City is also authorized by Chapter 166, Florida Statutes and the City of Miami Beach Charter to issue parking revenue bonds to pay the cost of improvements to the Parking System and to refund outstanding debt obligations incurred in connection with the Parking System and to pledge the net revenues of the Parking System for the payment of such revenue bonds.

The Administration anticipates that it can obtain debt service savings as well as provide additional flexibility in the issuance of bonds by refunding the Parking Revenue Bonds, Series 1997 (the "Prior Bonds") of which $19,195,000 is currently outstanding. The City's Financial Advisor, Richard Montalbano, Managing Director, RBC Capital Markets Corporation, estimated that given the current market conditions, the City could expect to achieve a net present value savings approximating 10% of the refunded bonds which equates to approximately $1,930,000 or $130.000 annual debt service savings. This refunding will be achieved by the issuance of the Series 2010A Bonds.

The Series 2010B Bonds are being issued, in part, for the purpose of paying the costs of the Project which will constitute a part of the City's Parking System. The Project consists of the following:

1. A new public parking garage to be located between 18th Street and 20th Street and between Bay Road and Purdy Avenue (Sunset Harbor Garage).

2. Improvements to certain surface parking lots as well as the purchase of additional parking meters, parking pay stations and pay-on-foot machines

The Series 2010 Bonds are payable from and secured by a first lien on and a pledge of the net revenues derived from the operation of the Parking System of the City on a parity with any additional bonds hereafter issued.

Because of the character of the Series 2010 Parking Bonds, the prevailing market conditions, the complexity of structuring a refunding and a new system-wide financing program for the Parking System and the recommendations of the Financial Advisor, it was further determined that the sale of the Series 2010 Parking Bonds on the basis of a negotiated sale rather than a public sale by competitive bid is in the best interest of the City.

The attached resolution delegates to the Mayor, relying upon the recommendation of the Chief Financial Officer and RBC Capital Markets, the determination of various terms of the Series 2010 Bonds, including whether to secure one or more Credit Facilities and/or Reserve Account Insurance Policies with respect to the Series 2010 Bonds, the final award of the Series 2010 Bonds, the dates of redemption of the Prior Bonds to be redeemed prior to maturity, the payment of all related costs and expenses in connection with the issuance of the Bonds and all other actions necessary or desirable in connection with the issuance of the Series 2010 Bonds and the refunding of the Prior Bonds.

Additionally, this Resolution provides the structure for the issuance of other Bonds and other forms of indebtedness of the City payable from the Net Revenues of the Parking System for the purpose of paying all or any part of the cost of any other improvements to the Parking System or to refund or refinance all or a portion of the Bonds or any other series or other indebtedness of the City incurred with respect to the Parking System then outstanding. All such additional actions would require approval of the Mayor and City Commission.

Conclusion

The Administration recommends that the Mayor and City Commission of the City of Miami Beach, Florida, approve the resolution on first reading and schedule a second reading public hearing.

JMG/PDW

Attachments:
- Escrow Deposit Agreement
- Disclosure Dissemination Agreement
- The Preliminary Official Statement (POS)
- Bond Purchase Contract

T:\Agenda/2010/September 15/Regular/Parking Bonds 2010-Comm Memo

CITY OF MIAMI BEACH
PARKING DEPARTMENT
Collins Park Garage
350 Spaces

	REVENUE	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
	TRANSIENT 300 x Avg Ticket Price @ $3.00 - Mon-Sun (8a to 6p)	$ 327,600	$ 327,600	$ 327,600	$ 327,600	$ 327,600
	TRANSIENT 100 x 156 days x $15.00- Fri Sat & Sun (nights & weekends)	$ 234,000	$ 234,000	$ 234,000	$ 234,000	$ 234,000
	Valet Storage 50 @ $14 X 156 days (Thu, Fri & Sat)	$ 109,200	$ 109,200	$ 109,200	$ 109,200	$ 109,200
	MONTHLY- 88 x $74.90 x 12 months	$ 79,094	$ 79,094	$ 79,094	$ 79,094	$ 79,094
	SALES TAX	$ (49,059)	$ (49,059)	$ (49,059)	$ (49,059)	$ (49,059)
	TOTAL NET REVENUE	**$ 700,836**	**$ 700,836**	**$ 700,836**	**$ 700,836**	**$ 700,836**

	EXPENSES		YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
000312	**TOTAL PROFESSIONAL SERVICE**		$ 152,412	$ 157,746.42	$ 163,267.54	$ 168,981.91	$ 174,896.28
	SUPERVISOR/ATTENDANT 168 hrs x 52 wks @ $17 per hr	$ 148,512					
	LANDSCAPING - $150/WK X 26	$ 3,900					
000314	SECURITY		$ 3,000	$ 3,105.00	$ 3,213.68	$ 3,326.15	$ 3,442.57
000316	TELEPHONE ($250/MO) + CABLE ($100/MO)		$ 4,200	$ 4,347.00	$ 4,499.15	$ 4,656.62	$ 4,819.60
000317	WATER $2,000/MO		$ 24,000	$ 24,840.00	$ 25,709.40	$ 26,609.23	$ 27,540.55
000318	SEWER		$ 4,000	$ 4,140.00	$ 4,284.90	$ 4,434.87	$ 4,590.09
000319	SANITATION		$ 3,500	$ 3,622.50	$ 3,749.29	$ 3,880.51	$ 4,016.33
000324	PRINTING/TICKETS ETC.		$ 5,000	$ 5,175.00	$ 5,356.13	$ 5,543.59	$ 5,737.62
000325	**TOTAL MAINTENANCE CONTRACTS**		$ 121,800	$ 147,663.00	$ 152,831.21	$ 158,180.30	$ 163,716.61
	JANITORIAL $9,900/MO	$ 108,000					
	*ELEVATOR $1,000/MO (1st year under warranty)**	*$ 12,000*					
	EXTERMINATING SERVICES $250/MO	$ 3,000					
	FIRE EXTINGUISHERS $150/MO	$ 1,800					
	FIRE ALARM MONITORING $250/MO	$ 3,000					
	COURIER SERVICE $500/MO	$ 6,000					
	REVENUE CONTROL EQUIPMENT -$800/MO (1st year under warranty)*	*$ 9,600*					
000341	OFFICE SUPPLIES		$ 3,000	$ 3,105.00	$ 3,213.68	$ 3,326.15	$ 3,442.57
000342	**TOTAL REPAIRS & MAINTENANCE**		$ 21,000	$ 21,735.00	$ 22,495.73	$ 23,283.08	$ 24,097.98
	R & M SUPPLIES	$ 3,000					
	REVENUE CONTROL R & M (NOT COVERED UNDER WARRANTY)	$ 5,000					
	ELEVATOR REPAIRS (NOT COVERED UNDER CONTRACT)	$ 5,000					
	PRESSURE CLEANING	$ 8,000					
	TOTAL OPERATING EXPENSES		**$ 341,912**	**$ 375,479**	**$ 388,621**	**$ 402,222**	**$ 416,300**
	PROFIT/(LOSS)		**$ 358,924**	**$ 325,357**	**$ 312,215**	**$ 298,613**	**$ 284,536**

CITY OF MIAMI BEACH
PARKING DEPARTMENT
SUNSET HARBOR GARAGE - Property Management Use of Spaces
458 Spaces

	REVENUE	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
	TRANSIENT - 180 x Avg Ticket Price @ $3.00 - Mon-Fri	$ 105,300	$ 140,400	$ 143,208	$ 143,208	$ 143,208
	TRANSIENT - 150 x 2 days x $15.00-Sat & Sun (Conventions/Events)	175,500	234,000	238,680	238,680	238,680
	MONTHLY- 229 x $74.90 x 12 months (BUSINESS/RESIDENTIAL)	205,825	205,825	205,825	205,825	205,825
	PROPERTY MANAGEMENT 120 VEHICLES NEST	-	-	-	-	-
	ODE (one day event) VALET 30 SPACES $14.00 DAY TWICE A MONTH	10,080	10,080	10,080	10,080	10,080
		-	-	-	-	-
	TOTAL ACCESS CARDS -100					
	SALES TAX	(32,495)	(38,618)	(39,108)	(39,108)	(39,108)
	TOTAL NET REVENUE	**$ 464,210**	**$ 551,687**	**$ 558,685**	**$ 558,685**	**$ 558,685**

	EXPENSES					
000312	**TOTAL PROFESSIONAL SERVICE**	**$ 378,144**	**$ 378,144**	**$ 378,144**	**$ 378,144**	**$ 378,144**
	SUPERVISOR / ATTENDANT-168 hrs x 52 wks @ $17 per hr	297,024	297,024	297,024	297,024	297,024
	SECURITY-12 hrs per day x 7 days x 52 wks(7p-7a) @ $15 per hr	65,520	65,520	65,520	65,520	65,520
	LANDSCAPING/LOT CLEANING - $300 x 52	15,600	15,600	15,600	15,600	15,600
000314	UTILITIES/ELECTRICITY	40,000	41,200	42,436	43,709	45,020
000316	TELEPHONE + DSL	4,500	4,635	4,774	4,917	5,065
000317	WATER	2,000	2,060	2,122	2,185	2,251
000318	SEWER	4,000	4,120	4,244	4,371	4,502
000319	SANITATION	3,500	3,605	3,713	3,825	3,939
000324	PRINTING/TICKETS ETC.	5,000	5,150	5,305	5,464	5,628
000325	**TOTAL MAINTENANCE CONTRACTS**	**$ 133,800**	**$ 143,400**	**$ 143,880**	**$ 144,384**	**$ 144,913**
	JANITORIAL - $9,000 per Month	108,000	108,000	108,000	108,000	108,000
	ELEVATOR - $1,000 per Month(Second Year)	12,000	12,000	12,000	12,000	12,000
	EXTERMINATING SERVICE - $250 per Month	3,000	3,000	3,000	3,000	3,000
	FIRE EXTINGUISHERS - $150 per Month	1,800	1,800	1,800	1,800	1,800
	FIRE ALARM MONITORING - $250 per Month	3,000	3,000	3,000	3,000	3,000
	EMERGENCY GENERATOR - (Property Mgmt)	-	-	-	-	-
	COURIER SERVICE - $500 per Month (Brinks/Loomis)	6,000	6,000	6,000	6,000	6,000
	REVENUE CONTROL EQUIPMENT -$800 per Month(second year)	-	9,600	10,080	10,584	11,113
000327	ADVERTISING/MARKETING	-	-	-	-	-
000329	STORM WATER	4,600	4,738	4,880	5,027	5,177
000341	OFFICE SUPPLIES	3,000	3,090	3,183	3,278	3,377
000342	**TOTAL REPAIRS & MAINTENANCE**	**$ 19,000**	**$ 19,570**	**$ 20,157**	**$ 20,762**	**$ 21,385**
	R & M SUPPLIES	3,000	3,090	3,183	3,278	3,377
	PRESSURE CLEANING	8,000	8,240	8,487	8,742	9,004
	REVENUE CONTROL R & M not covered under warranty	3,000	3,090	3,183	3,278	3,377
	ELEVATOR REPAIRS (not covered under contract)	5,000	5,150	5,305	5,464	5,628
000343	**OTHER OPERATING EXPENSES**	1,500	1,545	1,500	1,545	1,591
000502	PROPERTY MGMT	30,000	30,900	31,827	32,782	33,765
000503	FLEET MGMT - $250 Per Month	3,000	3,090	3,183	3,278	3,377
	TOTAL OPERATING EXPENSES	**$ 632,044**	**$ 645,247**	**$ 649,347**	**$ 653,670**	**$ 658,134**
	PROFIT/(LOSS) - FIRST YEAR	**$ (167,834)**	**$ (93,560)**	**$ (90,662)**	**$ (94,985)**	**$ (99,449)**
000674	REVENUE CONTROL EQUIPMENT PURCHASE	$ 185,000	$ -	$ -	$ -	$ -
	PROFIT	$ (352,834)	$ (93,560)	$ (90,662)	$ (94,985)	$ (99,449)

CITY OF MIAMI BEACH
PARKING DEPARTMENT
SUNSET HARBOR GARAGE - w/out Property Management Use of Spaces
458 Spaces

	REVENUE	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
	TRANSIENT - 300 x Avg Ticket Price @ $3.00 - Mon-Fri	$ 175,500	$ 234,000	$ 238,680	$ 238,680	$ 238,680
	TRANSIENT - 270 x 2 days x $15.00-Sat & Sun (Conventions/Events)	315,900	421,200	429,624	429,624	429,624
	ACCESS CARDS					
	MONTHLY- 229 x $74.90 x 12 months (BUSINESS/RESIDENTIAL)	205,825	205,825	205,825	205,825	205,825
		-	-	-	-	-
	ODE (one day event) VALET 30 SPACES $14.00 DAY TWICE A MONTH	10,080	10,080	10,080	10,080	10,080
		-	-	-	-	-
	SALES TAX	(46,272)	(56,988)	(57,845)	(57,845)	(57,845)
	TOTAL NET REVENUE	**$ 661,033**	**$ 814,117**	**$ 826,364**	**$ 826,364**	**$ 826,364**

	EXPENSES					
000312	**TOTAL PROFESSIONAL SERVICE**	**$ 378,144**	**$ 378,144**	**$ 378,144**	**$ 378,144**	**$ 378,144**
	SUPERVISOR / ATTENDANT-168 hrs x 52 wks @ $17 per hr	297,024	297,024	297,024	297,024	297,024
	SECURITY-12 hrs per day x 7 days x 52 wks(7p-7a) @ $15 per hr	65,520	65,520	65,520	65,520	65,520
	LANDSCAPING/LOT CLEANING - $300 x 52	15,600	15,600	15,600	15,600	15,600
000314	UTILITIES/ELECTRICITY	40,000	41,200	42,436	43,709	45,020
000316	TELEPHONE + DSL	4,500	4,635	4,774	4,917	5,065
000317	WATER	2,000	2,060	2,122	2,185	2,251
000318	SEWER	4,000	4,120	4,244	4,371	4,502
000319	SANITATION	3,500	3,605	3,713	3,825	3,939
000324	PRINTING/TICKETS ETC.	5,000	5,150	5,305	5,464	5,628
000325	**TOTAL MAINTENANCE CONTRACTS**	**$ 133,800**	**$ 143,400**	**$ 143,880**	**$ 144,384**	**$ 144,913**
	JANITORIAL - $9,000 per Month	108,000	108,000	108,000	108,000	108,000
	ELEVATOR - $1,000 per Month(Second Year)	12,000	12,000	12,000	12,000	12,000
	EXTERMINATING SERVICE - $250 per Month	3,000	3,000	3,000	3,000	3,000
	FIRE EXTINGUISHERS - $150 per Month	1,800	1,800	1,800	1,800	1,800
	FIRE ALARM MONITORING - $250 per Month	3,000	3,000	3,000	3,000	3,000
	EMERGENCY GENERATOR - (Property Mgmt)	-	-	-	-	-
	COURIER SERVICE - $500 per Month (Brinks/Loomis)	6,000	6,000	6,000	6,000	6,000
	REVENUE CONTROL EQUIPMENT -$800 per Month(second year)	-	9,600	10,080	10,584	11,113
000327	ADVERTISING/MARKETING	-	-	-	-	-
000329	STORM WATER	4,600	4,738	4,880	5,027	5,177
000341	OFFICE SUPPLIES	3,000	3,090	3,183	3,278	3,377
000342	**TOTAL REPAIRS & MAINTENANCE**	**$ 19,000**	**$ 19,570**	**$ 20,157**	**$ 20,762**	**$ 21,385**
	R & M SUPPLIES	3,000	3,090	3,183	3,278	3,377
	PRESSURE CLEANING	8,000	8,240	8,487	8,742	9,004
	REVENUE CONTROL R & M not covered under warranty	3,000	3,090	3,183	3,278	3,377
	ELEVATOR REPAIRS (not covered under contract)	5,000	5,150	5,305	5,464	5,628
000343	**OTHER OPERATING EXPENSES**	1,500	1,545	1,500	1,545	1,591
000502	PROPERTY MGMT	30,000	30,900	31,827	32,782	33,765
000503	FLEET MGMT - $250 Per Month	3,000	3,090	3,183	3,278	3,377
	TOTAL OPERATING EXPENSES	**$ 632,044**	**$ 645,247**	**$ 649,347**	**$ 653,670**	**$ 658,134**
	PROFIT/(LOSS) - FIRST YEAR	**$ 28,989**	**$ 168,870**	**$ 177,017**	**$ 172,693**	**$ 168,230**
000674	REVENUE CONTROL EQUIPMENT PURCHASE	$ 185,000	$ -	$ -	$ -	$ -
	PROFIT	$ (156,011)	$ 168,870	$ 177,017	$ 172,693	$ 168,230

CITY OF MIAMI BEACH, FLORIDA

RESOLUTION NO. _____

Adopted on _____ __, 2010

Authorizing and Securing
Parking Revenue Bonds

MIAMI/4255897.6

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EXHIBIT A - THE PROJECT

EXHIBIT B - INITIAL SEPARATE PARKING FACILITIES

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF MIAMI BEACH, FLORIDA OF (i) PARKING REVENUE REFUNDING BONDS, SERIES 2010A, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $20,000,000, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING PARKING REVENUE BONDS, SERIES 1997, AND (ii) PARKING REVENUE BONDS, SERIES 2010B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $30,000,000, FOR THE PURPOSE OF PAYING COSTS OF IMPROVEMENTS TO THE PARKING SYSTEM; PROVIDING FOR THE ISSUANCE OF ADDITIONAL PARKING REVENUE BONDS AND THE INCURRENCE OF OTHER TYPES OF INDEBTEDNESS OF THE CITY TO PAY ALL OR PART OF THE COST OF ADDITIONAL IMPROVEMENTS TO THE CITY'S PARKING SYSTEM AND FOR REFUNDING OUTSTANDING PARKING REVENUE BONDS; PROVIDING FOR THE PAYMENT OF SUCH BONDS AND OTHER SYSTEM DEBT; SETTING FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH BONDS AND OTHER SYSTEM DEBT; PROVIDING CERTAIN DETAILS OF THE SERIES 2010 BONDS; DELEGATING OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2010 BONDS, INCLUDING WHETHER TO SECURE ONE OR MORE CREDIT FACILITIES AND/OR RESERVE ACCOUNT INSURANCE POLICIES, AND THE REFUNDING OF THE PRIOR BONDS TO THE MAYOR; APPOINTING UNDERWRITERS, A BOND REGISTRAR, AN ESCROW AGENT AND A DISCLOSURE DISSEMINATION AGENT; AUTHORIZING THE NEGOTIATED SALE OF THE SERIES 2010 BONDS AND APPROVING THE FORM AND EXECUTION OF A BOND PURCHASE AGREEMENT FOR THE SERIES 2010 BONDS; APPROVING THE FORMS OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT FOR THE SERIES 2010 BONDS AND AUTHORIZING EXECUTION OF THE OFFICIAL STATEMENT; COVENANTING TO PROVIDE CONTINUING DISCLOSURE IN CONNECTION WITH THE SERIES 2010 BONDS AND APPROVING THE FORM AND EXECUTION OF A CONTINUING DISCLOSURE AGREEMENT; APPROVING THE FORM AND EXECUTION OF AN ESCROW DEPOSIT AGREEMENT FOR THE PRIOR BONDS; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL NECESSARY ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2010 BONDS AND REFUNDING OF THE PRIOR

BONDS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach, Florida (the "City") is a municipal corporation in Miami-Dade County, Florida (the "County"), duly organized and existing under the Constitution and laws of the State of Florida (the "State"), including particularly Chapter 166, Florida Statutes, as amended, and the City of Miami Beach Charter (together, the "Act"); and

WHEREAS, the City has the power and authority to acquire, own, maintain and operate on a revenue-producing basis a public parking system and the City currently owns, maintains and operates a public parking system (as hereinafter defined, the "Parking System"); and

WHEREAS, under the authority granted by the Act, the City is authorized to issue parking revenue bonds to pay the cost of Improvements (hereinafter defined) to the Parking System and to refund outstanding debt obligations incurred in connection with the Parking System and to pledge for the payment of such revenue bonds the Net Revenues (hereinafter defined) of the Parking System; and

WHEREAS, under the authority granted by the Act, the City has previously issued $21,000,000 original principal amount of its Parking Revenue Bonds, Series 1997, of which $19,195,000 are now outstanding (the "Prior Bonds"), pursuant to Resolution No. 96-21898, adopted by the Mayor and City Commission of the City (collectively, the "Commission") on February 20, 1996, and Resolution No. 97-22482 adopted by the Commission on July 16, 1997 (collectively, the "Prior Bonds Resolution"), the proceeds of which were applied to fund certain Improvements to the Parking System; and

WHEREAS, the City has determined that it can obtain debt service savings as well as provide additional flexibility in the issuance of Bonds (hereinafter defined) by refunding the Prior Bonds; and

WHEREAS, the City has also determined to undertake certain Improvements to the Parking System as more particularly described in Exhibit A attached hereto and made a part hereof (the "Project"); and

WHEREAS, the City has determined to issue (i) its Parking Revenue Refunding Bonds, Series 2010A (the "Series 2010A Bonds"), to refund, together with any other available moneys, the Prior Bonds, and (ii) its Parking Revenue Bonds, Series 2010B (the "Series 2010B Bonds" and, together with the Series 2010A Bonds, the "Series 2010 Bonds"), to pay, together with any other available moneys, Costs of the Project, which Series 2010 Bonds shall be payable from and secured by a pledge of the Net Revenues; and

WHEREAS, the Commission has determined that it is in the best interests of the City to delegate to the Mayor (hereinafter defined), who shall rely upon the recommendations of the Chief Financial Officer (hereinafter defined) and RBC Capital Markets Corporation, the City's financial advisor (the "Financial Advisor"), the determination of various terms of the Series 2010 Bonds, whether to secure one or more Credit Facilities and/or Reserve Account Insurance Policies with respect to the Series 2010 Bonds, the final award of the Series 2010 Bonds, the date of redemption of the Prior Bonds, and other actions necessary or desirable in connection with the issuance of the

Series 2010 Bonds and the refunding of the Prior Bonds, subject to the limitations herein, which provisions shall be contained in a certificate of the Mayor (the "Mayor's Certificate") executed at or prior to the time of initial delivery of the Series 2010 Bonds or, with respect to the Prior Bonds, in the Escrow Agreement (hereinafter defined); and

WHEREAS, because of the character of the Series 2010 Bonds, prevailing market conditions, the complexity of structuring a refunding and a new system-wide financing program for the Parking System and the recommendations of the Financial Advisor, the Commission has further determined that the sale of the Series 2010 Bonds on the basis of a negotiated sale rather than a public sale by competitive bid is in the best interests of the City; and

WHEREAS, the City has determined to provide in this Resolution for authorizing the issuance hereafter of other Bonds and other forms of indebtedness of the City payable from the Net Revenues under this Resolution for the purpose of paying all or any part of the cost of any other Improvements to the Parking System or to refund or refinance all or a portion of the Bonds or any Series (hereinafter defined) thereof or other indebtedness of the City incurred with respect to the Parking System then outstanding, and to prescribe the terms and conditions under which such Bonds and other indebtedness may be authorized and issued; and

WHEREAS, in connection with the issuance of the Series 2010B Bonds, the requirements of Ordinance No. 2007-3582, adopted by the Commission on November 21, 2007, including the holding of two public hearings, have been complied with prior to the adoption of this Resolution;

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

ARTICLE I

DEFINITIONS

Section 101. Meaning of Words and Terms. In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used in this Resolution shall have the following meaning, unless some other meaning is plainly intended:

"Accountant" shall mean the independent certified public accountant or firm of independent certified public accountants which shall have a favorable reputation for skill and experience in accounting matters at the time and during the period employed by the City under the provisions of Section 704 of this Resolution to perform and carry out the duties imposed on the Accountant by this Resolution.

"Accreted Value" shall mean, as of any date of computation with respect to any Capital Appreciation Bond, an amount equal to the principal amount of such Bond (the principal amount on the date of original issuance), plus the interest accrued on such Bond from the date of original issuance to the Interest Payment Date next preceding the date of computation or the date of computation if an Interest Payment Date, compounded periodically at the times provided for in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to the Series Resolution authorizing the issuance of any other Bonds with respect to such other Bonds, and if such date of computation is not an Interest Payment Date, a portion of the difference between the Accreted Value as of the immediately preceding Interest Payment Date (or the date of original issuance if such date of computation is prior to the first Interest Payment Date) and the Accreted Value as of the immediately succeeding Interest Payment Date, calculated based on the assumption that Accreted Value accrues during any period in equal daily amounts on the basis of a year of twelve 30-day months.

"Act" shall have the meaning ascribed to it in the recitals to this Resolution.

"Additional Bonds" shall mean the Bonds issued at any time under the provisions of Section 209 of this Resolution.

"Alternative Parity Debt" means indebtedness of the City (including the assumption or guarantee of the debts of others) or borrowed money (including refunding or refinancing of then existing indebtedness and leases capitalized in accordance with generally accepted accounting principles) incurred in accordance with Section 211 of this Resolution.

"Amortization Requirements" shall mean the amounts required to be deposited in the Redemption Subaccount for any Series of Bonds for the purpose of redeeming prior to their maturity and paying at their maturity the Term Bonds of any Series issued pursuant to this Resolution, the specific amounts and times of such deposits to be determined in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to a Series Resolution relating to any other Series of Bonds with respect to such other Bonds.

"Annual Budget" shall mean the Annual Budget adopted pursuant to Section 503 of this Resolution.

"Appreciated Value" shall mean, (i) as of any date of computation with respect to any Capital Appreciation and Income Bond up to the Interest Commencement Date set forth in the Mayor's Certificate with respect to any Series 2010 Bond or pursuant to the Series Resolution for any other Series of Bonds with respect to such other Bond, an amount equal to the principal amount of such Bond (the principal amount on the date of original issuance) plus the interest accrued on such Bond from the date of original issuance of such Bond to the Interest Payment Date next preceding the date of computation or the date of computation if an Interest Payment Date, such increased value to accrue at the stated rate per annum of such Bond compounded on the Interest Payment Dates of such year, plus, if such date of computation shall not be an Interest Payment Date, a portion of the difference between the Appreciated Value as of the immediately preceding Interest Payment Date (or the date of original issuance if the date of computation is prior to the first Interest Payment Date succeeding the date of original issuance) and the Appreciated Value as of the immediately succeeding Interest Payment Date calculated based upon an assumption that Appreciated Value accrues during any semi-annual period in equal daily amounts on the basis of a year of twelve 30-day months and (ii) as of any date of computation on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date.

"Arbitrage Rebate Fund" shall mean a fund or funds established by the City for the deposit of moneys necessary for payments required to be made to the United States of America in connection with any Series of Bonds or System Debt subject to arbitrage rebate requirements under the Code. The moneys in such fund or funds shall be applied only for the purposes for which such fund or funds are established and shall not be subject to a lien or charge in favor of Holders of any Bonds or holders of any System Debt and shall not be pledged as security for the payment of any Bonds or System Debt.

"BABs" shall mean Bonds issued under this Resolution as Build America Bonds, Recovery Zone Economic Development Bonds or such other bonds with respect to which Federal Direct Payments are payable.

"Bond Counsel" shall mean Squire, Sanders & Dempsey L.L.P., or another lawyer or law firm selected by the City of favorable national reputation for skill in matters relating to tax-exempt municipal bonds.

"Bond Purchase Agreement" shall mean the Bond Purchase Agreement to be entered into between the City and the Underwriters in connection with the issuance of the Series 2010 Bonds.

"Bond Registrar" shall mean (i) with respect to the Series 2010 Bonds, U.S. Bank National Association, and (ii) with respect to any other Series of Bonds, a bank or trust company, either within or outside the State of Florida, designated as such by the Commission in the Series Resolution authorizing such Series of Bonds, each of which shall perform such functions as Bond Registrar as are required by Article II of this Resolution.

"Bonds" shall mean collectively the Bonds issued under the provisions of Article II of this Resolution.

"Bondholders" or "Holders" shall mean the registered owners of the Bonds.

"Bond Service Subaccount" shall mean the Bond Service Subaccount, a special subaccount within the Debt Service Account created and designated by Section 505 of this Resolution.

"Build America Bonds" shall mean Build America Bonds (Direct Payment) authorized under Section 54AA of the Code, as further described in Internal Revenue Service Notice 2009-26.

"Capital Appreciation Bond" shall mean any Bond or Bonds of a Series issued under this Resolution as to which interest is compounded periodically on each of the applicable periodic dates designated for compounding in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to the Series Resolution for any other Series of Bonds with respect to such other Bonds and payable in an amount equal to the then current Accreted Value to the date of maturity or redemption prior to maturity as designated in such Mayor's Certificate or Series Resolution and which may be either Serial Bonds or Term Bonds.

"Capital Appreciation and Income Bonds" shall mean any Bond or Bonds of a Series issued under this Resolution as to which accruing interest is not payable prior to the Interest Commencement Date specified in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to the Series Resolution for any other Series of Bonds with respect to such other Bonds and the Appreciated Value for such Bonds is compounded periodically on certain dates designated in such Mayor's Certificate or Series Resolution prior to the Interest Commencement Date for such Capital Appreciation and Income Bonds and which may be either Serial Bonds or Term Bonds.

"Capital Expenditures" shall mean all expenditures made for extensions, additions, improvements, renewals and replacements (other than ordinary maintenance and repairs) acquired, constructed or installed for the purpose of preserving, extending, increasing or improving the Parking System or for reducing the cost of operation, and shall include the cost of purchasing and installing such equipment and appurtenances as may be necessary to meet the demands upon the Parking System; Capital Expenditures shall also include, without limitation, the acquisition of such lands and rights-of-way and such engineering, legal and administrative expenses as may be required in connection with the foregoing.

"Chief Financial Officer" shall mean the Chief Financial Officer of the City or the officer succeeding to his or her principal functions.

"City" shall mean the City of Miami Beach, Florida.

"City Attorney" shall mean the City Attorney of the City, his or her designated assistant or the officer succeeding to his or her principal functions.

"City Clerk" shall mean the City Clerk of the City or his or her designee or the officer succeeding to his or her principal functions.

"City Manager" shall mean the City Manager of the City or his or her designee or the officer succeeding to his or her principal functions.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

"Commission" shall mean the Mayor and City Commission of the City or any other commission, board or body in which the general legislative power of the City shall be vested.

"Completion Date" shall mean the date of completion of the acquisition or construction of the Project or of any other Improvements, as the case may be, as such date shall be certified pursuant to the requirements of Section 405 of this Resolution.

"Construction Fund" shall mean the Parking System Construction Fund, a special fund created and designated by Section 401 of this Resolution.

"Consulting Engineers" shall mean one or more licensed professional engineers or firms of professional engineers at the time employed by the City under the provisions of Section 703 of this Resolution to perform and carry out the duties imposed on the Consulting Engineers by this Resolution.

"Continuing Disclosure Agreement" shall mean the Disclosure Dissemination Agent Agreement to be entered into between the City and DAC in connection with the Series 2010 Bonds.

"Convertible Bonds" shall mean Bonds issued under this Resolution which are convertible, at the option of the City, into a form of Bonds which are permitted by this Resolution other than the form of such Bonds at the time they were issued.

"Cost" as applied to the Project or any other Improvements, shall embrace the costs of acquisition and construction and all obligations and expenses and all items of cost which are set forth in Section 403 of this Resolution.

"County" shall mean Miami-Dade County, Florida, a political subdivision of the State of Florida.

"Credit Facility" shall mean an irrevocable letter of credit, policy of municipal bond insurance, guaranty, purchase agreement, credit agreement, surety bond or similar facility in which the entity providing such facility irrevocably agrees to provide funds to make payment of the principal of and interest on Bonds or System Debt.

"Current Expenses" shall mean the City's reasonable and necessary current expenses of maintenance, repair and operation of the Parking System and shall include, without limiting the generality of the foregoing, all ordinary and usual expenses of maintenance, repair and operation, which may include expenses not annually recurring, any reasonable payments to pension or retirement funds properly chargeable to the Parking System, insurance premiums, engineering expenses relating to maintenance, repair and operation, management fees paid by the City to any independent operators or managers of any part of the Parking System, fees and expenses of the Bond Registrar and Escrow Agent, legal and accounting expenses, expenses incurred in the collection of parking violation fines imposed on users of the Parking System which under State law may be applied to purposes consistent with this Resolution, costs of complying with the continuing disclosure requirements under the Rule, any fees, fines, or penalties lawfully imposed on the Parking System, any taxes which may be lawfully imposed on the Parking System or its income or operations and reserves for such taxes, annual fees for the maintenance of Credit

Facilities, Liquidity Facilities, Reserve Account Insurance Policies, Reserve Account Letters of Credit or Interest Rate Swaps (other than payments due under an Interest Rate Swap on a parity with interest due on the Bonds and termination payments thereunder), and any other expenses required to be paid by the City in connection with the Parking System under the provisions of this Resolution or by law, including any amounts required from time to time to pay arbitrage rebate under the Code to the United States of America directly or to fund the Arbitrage Rebate Fund, but shall not include any reserves for extraordinary maintenance or repair, or any allowance for depreciation, or any administrative expenses payable to the City's General Fund, or any deposits or transfers to the credit of the Debt Service Account, the Reserve Account or the Subordinated Indebtedness Account.

"Current Interest Bonds" shall mean Bonds the interest on which is payable to the Bondholder on the Interest Payment Dates with respect thereto and not only at the maturity thereof.

"DAC" shall mean Digital Assurance Certification, L.L.C., its successors and assigns.

"Debt Service Account" shall mean the Parking Revenue Bonds Debt Service Account, a special account within the Enterprise Fund created and designated by Section 505 of this Resolution.

"Defaulted Interest" shall have the meaning attributed to such term in Section 202 of this Resolution.

"DTC" shall mean The Depository Trust Company, New York, New York, its successors and assigns.

"Depositary" shall mean any bank or trust company duly authorized by law to engage in the banking business and designated by the Chief Financial Officer as a depositary of moneys under the provisions of this Resolution.

"Enterprise Fund" shall mean the Parking System Enterprise Fund, the special fund described in Section 504 of this Resolution.

"Escrow Agent" shall mean U.S. Bank National Association, in the capacity of escrow agent with respect to the Prior Bonds.

"Escrow Agreement" shall mean the Escrow Deposit Agreement to be entered into between the City and the Escrow Agent in connection with the refunding of the Prior Bonds.

"Federal Direct Payments" shall mean the direct payments to the City from the United States Treasury with respect to BABs.

"Financial Advisor" shall mean RBC Capital Markets Corporation.

"Financial Statements" shall mean the audited financial statements of the City relating to the Parking System, prepared in accordance with generally accepted accounting principles applicable to parking systems owned by cities, which in the case of the Parking System may be

those provisions of the City's Consolidated Audited Financial Report relating to the Parking System.

"Fiscal Year" shall mean the period commencing on the first day of October and ending on the last day of September of the following year as the same may be amended from time to time to conform to the fiscal year of the City.

"Fitch" shall mean Fitch Ratings Inc., its successors and assigns, and if such entity no longer performs the functions of a securities rating agency, "Fitch" shall refer to any other nationally recognized securities rating agency designated by the City in a written certificate filed with the City Clerk.

"Government Obligations" shall mean any of the following, to the extent the same is legal for the investment of public funds under State law:

(i) direct obligations of, or obligations the timely payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America;

(ii) obligations issued or guaranteed by any instrumentality or agency of the United States of America, whether now existing or hereafter organized, including but not limited to those of the Federal Financing Bank, the members of the Farm Credit System whether individually or consolidated, Federal Home Loan Banks, the Export-Import Bank, Government National Mortgage Association and the Tennessee Valley Authority;

(iii) evidences of ownership of proportionate interests in future interest or principal payments on specified obligations described in clause (i) of this definition held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor on the underlying obligations described in clause (i) of this definition, and which underlying obligations are not available to satisfy any claim of the custodian or any person claiming through the custodian or to whom the custodian may be obligated; and

(iv) municipal obligations, the timely payment of the principal of, interest on and redemption premium, if any, on which are irrevocably secured by obligations described in clause (i) of this definition which will provide sufficient moneys for the payment of the principal of, interest on and redemption premium, if any, of such municipal obligations and which obligations described in clause (i) have been deposited in an escrow account irrevocably pledged to the payment of the principal of, interest on and redemption premium, if any, of such municipal obligations.

"Improvements" shall mean such improvements, renewals and replacements of the Parking System or any part thereof and such extensions and additions thereto as may be necessary or desirable, in the judgment of the City, and shall include such land, structures and facilities as may be authorized to be acquired or constructed by the City under the provisions of State law, such improvements, renewals and replacements of such land, structures and facilities of the Parking System and such extensions and additions thereto as may be necessary or desirable, but shall exclude, unless otherwise determined by the City upon acquisition or construction of such structures or facilities, retail space within such structures and facilities.

"Interest Commencement Date" shall mean, with respect to any Capital Appreciation and Income Bonds, the date specified in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to the Series Resolution for any other Series of Bonds with respect to such Bonds (which date must be prior to the maturity date of such Bonds) after which interest accruing on such Bonds shall be payable semi-annually with the first such payment date being the applicable Interest Payment Date immediately succeeding such Interest Commencement Date.

"Interest Payment Date" shall mean the dates for the payment of interest on a Series of Bonds as shall be established in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to the Series Resolution for any other Series of Bonds with respect to such Bonds.

"Interest Rate Swap" shall mean an agreement in writing by and between the City and another entity (the "Counterparty") pursuant to which (i) the City agrees to pay to the Counterparty an amount, either at one time or periodically, which is determined by reference to a rate of interest or formula and a "notional" amount specified in such agreement, during the period specified in such agreement and (ii) the Counterparty agrees to pay to the City an amount, either at one time or periodically, which is determined by reference to a different rate of interest or formula but the same "notional" amount specified in such agreement, during the period specified in such agreement.

"Interim Bonds or Notes" shall mean bonds or notes issued by the City with a final maturity not longer than 60 months (or longer period if then so permitted by the provisions of State law relating to the issuance of bond anticipation notes by municipalities) in anticipation of the refinancing thereof from all or a portion of the proceeds of a Series of Bonds issued under this Resolution.

"Investment Obligations" shall mean and include such obligations as are legal for the investment of public funds by the City under State law.

"Letter of Representations" shall mean the letter of representations from the City to DTC with respect to Bonds deposited with DTC in its book-entry system.

"Liquidity Facility" shall mean a letter of credit, policy of municipal bond insurance, guaranty, purchase agreement, line of credit or similar facility in which the entity providing such facility agrees to provide funds to pay the purchase price of Optional Tender Bonds upon their tender by the Holders of Optional Tender Bonds.

"Maximum Principal and Interest Requirements" shall mean the maximum amount of Principal and Interest Requirements for any Fiscal Year.

"Mayor" shall mean the Mayor of the City, or in his or her absence, the Vice Mayor of the City, or the officer succeeding to his or her principal functions.

"Mayor's Certificate" shall mean the certificate to be executed by the Mayor prior to or at the time of the initial delivery of the Series 2010 Bonds, which shall provide the details of the Series 2010 Bonds.

"Moody's" shall mean Moody's Investors Service, Inc., its successors and assigns, and if such entity no longer performs the functions of a securities rating agency, "Moody's" shall refer to any other nationally recognized securities rating agency designated by the City in a written certificate filed with the City Clerk.

"Net Revenues" for any particular period shall mean the amount of Revenues for such period less the Current Expenses for such period.

"Official Statement" shall mean the Official Statement to be delivered by the City in connection with the issuance of the Series 2010 Bonds.

"Optional Tender Bonds" shall mean all or the portion of a Series of Bonds issued under this Resolution, a feature of which is an option on the part of the Holders of such Bonds to tender such Bonds to the City, a trustee or other fiduciary for such Holders for payment prior to stated maturity.

"Outstanding" shall mean, when used with respect to the Bonds, all Bonds theretofore delivered except:

(a) Bonds paid, redeemed or delivered to or acquired by the City and canceled; and

(b) Bonds deemed to have been paid in accordance with Section 307 or Section 1101 of this Resolution.

"Parking Director" shall mean the City's Parking Director or the employee of the City succeeding to his or her principal functions.

"Parking System" shall mean the City's parking system pursuant to which parking facilities are made available by the City for public parking of automobiles and other motor vehicles upon payment of a fee or charge for the privilege of parking, whether such facilities are owned by the City, leased by the City as lessor or lessee, or consist of parking spaces on public streets (whether such streets are City streets, County roads or State roads) for which the City lawfully charges a parking fee by meter or otherwise, and shall (i) include the Project, any other Improvements and any Separate Parking Facilities consolidated with the Parking System pursuant to Section 709 of this Resolution, and (ii) exclude any Separate Parking Facilities not so consolidated with the Parking System.

"Preliminary Official Statement" shall mean the Preliminary Official Statement to be delivered by the City in connection with the issuance of the Series 2010 Bonds.

"Principal" or "principal" shall mean, (i) with respect to Current Interest Bonds, the stated principal amount thereof, (ii) with respect to Capital Appreciation Bonds, the Accreted Value thereof, as of any particular date of determination, and (iii) with respect to Capital Appreciation and Income Bonds, the Appreciated Value thereof, as of any particular date of determination.

"Principal and Interest Requirements" shall mean the respective amounts which are required in each Fiscal Year to provide:

(i) for paying the interest on all Bonds then Outstanding which is payable on each Interest Payment Date in such Fiscal Year, and

(ii) for paying the principal of all Serial Bonds then Outstanding which is payable upon the maturity of Serial Bonds in such Fiscal Year, and

(iii) the Amortization Requirements for the Term Bonds of such Series for such Fiscal Year.

In determining the amount of the Principal and Interest Requirements for any Fiscal Year, the following rules shall apply:

(a) with respect to Variable Rate Bonds, the interest rate shall be assumed to be the average rate of interest for all Variable Rate Bonds for the prior Fiscal Year or portion thereof while said Bonds were Outstanding or if there were no Variable Rate Bonds Outstanding during such prior Fiscal Year, then the lesser of (i) the initial rate of interest on such Variable Rate Bonds and (ii) the average rate of interest for the prior Fiscal Year under a published variable interest rate index selected by the then financial advisor to the City which is generally consistent with the rate of interest such Bonds shall bear; "average rate" with respect to Outstanding Variable Rate Bonds shall mean the rate determined by dividing the total annualized amount of interest paid on Variable Rate Bonds in such Fiscal Year or portion thereof by the average principal amount of Variable Rate Bonds Outstanding during such Fiscal Year or portion thereof;

(b) with respect to Interim Bonds or Notes, interest only and not the principal shall be included in Principal and Interest Requirements if the Series of Bonds all or a portion of the proceeds of which are expected to be used to refinance such Interim Bonds or Notes have been duly authorized by the City; provided, however, none of the interest or principal on Interim Bonds or Notes shall be included in Principal and Interest Requirements if the Commission shall determine in the resolution authorizing the issuance of such Interim Bonds or Notes that such Interim Bonds or Notes shall be Subordinated Indebtedness hereunder;

(c) with respect to Optional Tender Bonds, Principal and Interest Requirements shall not include the principal amount of such Optional Tender Bonds payable upon tender of such Bonds for purchase to the extent and for so long as a Liquidity Facility shall be in full force and effect with respect to such Optional Tender Bonds but shall include the regularly scheduled principal payments on such Optional Tender Bonds, either upon payment at maturity or redemption in satisfaction of the Amortization Requirements for such Optional Tender Bonds; provided, however, that during any period of time after the issuer of the Liquidity Facility or any Credit Facility has advanced funds thereunder and before such amount is repaid, Principal and Interest Requirements shall include the principal amount so advanced and interest thereon, in accordance with the principal repayment schedule and interest rate or rates specified in the Liquidity Facility or the Credit Facility;

(d) with respect to Capital Appreciation Bonds, the principal and interest

portions of the Accreted Value becoming due at maturity or by virtue of an Amortization Requirement shall be included in the calculations of Principal and Interest Requirements in the Fiscal Year in which said principal and interest portions are due and payable;

(e) with respect to Capital Appreciation and Income Bonds, the principal and interest portions of the Appreciated Value becoming due at maturity or by virtue of an Amortization Requirement shall be included in the calculations of Principal and Interest Requirements in the Fiscal Year in which said principal and interest portions are due and payable;

(f) with respect to BABs, interest shall be computed net of Federal Direct Payments scheduled to be received by the City in connection with such BABs in each Fiscal Year;

(g) if all or a portion of principal of or interest on a Series of Bonds is payable from the proceeds of such Bonds or from other amounts set aside irrevocably for such purpose, together with projected earnings thereon to the extent such earnings are projected to be from Investment Obligations, such principal or interest on such Series of Bonds shall not be included in Principal and Interest Requirements;

(h) To the extent that the City has entered into an Interest Rate Swap with respect to any Bonds and notwithstanding the provisions of clauses (a) through (f) above, while the Interest Rate Swap is in effect and the Counterparty has not defaulted thereunder, the interest rate with respect to the principal amount of such Bonds equal to the "notional" amount specified in the Interest Rate Swap shall be assumed to be (i) if the City's payment obligations under the Interest Rate Swap are computed based upon a fixed rate of interest, the actual rate of interest upon which the City's payment obligations are computed under such Interest Rate Swap and (ii) if the City's payment obligations under the Interest Rate Swap are computed based upon a variable rate of interest, the average rate of interest for the City's payment obligations under the Interest Rate Swap for the prior Fiscal Year or portion thereof while the Interest Rate Swap was in effect or if the Interest Rate Swap was not in effect during such prior Fiscal Year, then the lesser of (x) the initial rate of interest for the City's payment obligations under the Interest Rate Swap and (y) the average rate of interest for the prior Fiscal Year under a published variable interest rate index agreed upon by the City and the Counterparty which is generally consistent with the formula which shall be used to determine the City's payment obligations; "average rate" with respect to the City's payment obligations for the prior Fiscal Year shall mean the rate determined by dividing the total annualized amount paid by the City under the Interest Rate Swap in such Fiscal Year or portion thereof by the "notional" amount specified in the Interest Rate Swap for such Fiscal Year;

(i) Principal and Interest Requirements shall not include the principal of, redemption premium, if any, and interest on Subordinated Indebtedness; and

(j) Principal and Interest Requirements shall not include the principal of, redemption premium, if any, and interest on bonds or other debt of the City issued or

incurred for the purpose of financing the acquisition or construction of Separate Parking Facilities.

"Prior Bonds" shall mean the $19,195,000 outstanding principal amount of the City's $21,000,000 original principal amount of Parking Revenue Bonds, Series 1997.

"Prior Bonds Resolution" shall mean City Resolution No. 96-21898, adopted by the Commission on February 20, 1996, and Resolution No. 97-22482, adopted by the Commission on July 16, 1997, pursuant to which the Prior Bonds were issued.

"Project" shall mean the Improvements described in Exhibit A hereto, as the same may be modified or supplemented from time to time by the City.

"Rate Consultant" shall mean a consultant or consulting firm or corporation at the time employed by the City to perform and carry out the duties imposed on the Rate Consultant by this Resolution.

"Recovery Zone Economic Development Bonds" shall mean Recovery Zone Economic Development Bonds (Direct Payment) authorized under Section 1400U-2(b) of the Code, as further described in Internal Revenue Service Notice 2009-26.

"Redemption Subaccount" shall mean the Redemption Subaccount, a special subaccount within the Debt Service Account created and designated by Section 505 of this Resolution.

"Refunding Bonds" shall mean the Bonds issued at any time under the provisions of Section 210 of this Resolution.

"Regular Record Date" shall mean the 15th day (whether or not a business day) of the month preceding any Interest Payment Date; provided, however, that a different Regular Record Date may be provided for a Series of Bonds pursuant to the Series Resolution with respect to such Series.

"Reserve Account" shall mean the Parking Revenue Bonds Reserve Account, a special account within the Enterprise Fund created and designated by Section 505 of this Resolution, including any subaccounts created therein as permitted by Section 505 of this Resolution.

"Reserve Account Deposit Requirement" shall mean, unless otherwise determined in a Series Resolution with respect to a Series of Bonds to be secured separately by a subaccount within the Reserve Account,

(i) one-twelfth (1/12) of the Reserve Account Requirement, or of the increase thereon as a result of the issuance of a Series of Bonds, in each month until the amount on deposit in the Reserve Account shall be equal to the Reserve Account Requirement (taking into account amounts available under any Reserve Account Insurance Policy or Reserve Account Letter of Credit); and

(ii) in the event any deficiency is created in the Reserve Account by a withdrawal or otherwise, the Reserve Account Deposit Requirement shall be increased,

beginning in the month following the month in which such deficiency was created and continuing until the amount on deposit in the Reserve Account shall be equal to the Reserve Account Requirement (taking into account amounts available under any Reserve Account Insurance Policy or Reserve Account Letter of Credit), by an amount at least equal to one-twelfth (1/12) of the amount of such deficiency; provided, however, that if the deficiency is created by a drawing or payment under a Reserve Account Insurance Policy or a Reserve Account Letter of Credit, the Reserve Account Deposit Requirement may be satisfied either by the deposit of an amount as stated above or by the entity providing such facility restoring at least one-twelfth (1/12) of the withdrawn amount.

"Reserve Account Insurance Policy" shall mean an insurance policy, surety bond or other acceptable evidence of insurance, if any, maintained by the City in lieu of or in partial substitution for cash or securities on deposit in the Reserve Account, provided that the entity providing such facility is at the time of so providing of sufficient credit quality to entitle debt backed by its facilities to be rated in one of the two highest rating categories (without regard to any gradations within such categories) by Fitch, Moody's or Standard & Poor's.

"Reserve Account Letter of Credit" shall mean an irrevocable, transferable letter of credit, if any, maintained by the City in lieu of or in partial substitution for cash or securities on deposit in the Reserve Account, provided that the entity providing such facility is at the time of so providing of sufficient credit quality to entitle debt backed by its facilities to be rated in one of the two highest rating categories (without regard to any gradations within such categories) by Fitch, Moody's or Standard & Poor's.

"Reserve Account Requirement" shall mean the lesser of (a) Maximum Principal and Interest Requirements for all outstanding Bonds in the current or any subsequent Fiscal Year, or (b) the maximum amount allowed to be funded from proceeds of Bonds under the Code; provided that, if the Series Resolution corresponding to a Series of Bonds provides for the establishment of a separate subaccount in the Reserve Account to secure only such Series of Bonds (with such Series of Bonds having no claim on the other moneys deposited to the credit of the Reserve Account), the Reserve Account Requirement for such Series of Bonds shall be calculated as set forth in the corresponding Series Resolution; and provided further that, if the Series Resolution corresponding to a Series of Bonds provides that such Series of Bonds shall not be secured by the Reserve Account or any separate subaccount therein, the Reserve Account Requirement shall be calculated without taking into account such Series of Bonds. The City shall be permitted to provide all or a portion of the Reserve Account Requirement by the execution and delivery of a Reserve Account Insurance Policy or a Reserve Account Letter of Credit.

"Resolution" shall mean this resolution authorizing the issuance of the Series 2010 Bonds and providing for the issuance of Additional Bonds and Refunding Bonds, as supplemented and amended as permitted hereby.

"Revenues" shall mean all moneys received by the City in connection with or as a result of its ownership or operation of the Parking System, including, but not limited to, the income derived by the City from the direct fees and charges made for parking, all indirect revenues received through the supplying of any other services legally suppliable by the City to users of the Parking System, all rents received by the City from the rental of space comprising any part of the Parking

System, including receipts from concessionaires, all fees received by the City from the management by other parties of all or any part of the Parking System, income received by the City from parking violation fines imposed upon users of the Parking System which under State law may be applied to purposes consistent with this Resolution, Federal Direct Payments received by the City, any proceeds of use and occupancy insurance on the Parking System or any part thereof, payments made to the City under Interest Rate Swap arrangements and income from investments made under this Resolution; provided, however, Revenues shall not include grants, contributions or donations, investment income from investments of moneys on deposit in the Construction Fund and the Subordinated Indebtedness Account, proceeds of insurance (except use and occupancy insurance) and condemnation awards, moneys held in the Subordinated Indebtedness Account and in any Arbitrage Rebate Fund created pursuant to Section 605 of this Resolution, proceeds of sales of property constituting a part of the Parking System and the proceeds of Bonds or other System Debt; and provided further, however, Revenues shall not include Federal Direct Payments for purposes of the calculations of Net Revenues under Sections 209(c) and (d) and Section 502 of this Resolution.

"Rule" shall mean Rule 15c2-12 prescribed by the SEC pursuant to the Securities Exchange Act of 1934.

"SEC" shall mean the United States Securities and Exchange Commission.

"Separate Parking Facilities" shall mean, initially, the parking facilities described in Exhibit B hereto, which shall not be a part of the Parking System, and any other parking facilities, including portions of the Parking System, which the Commission shall determine hereafter by resolution to exclude from the Parking System; provided, however, that the Commission shall not hereafter adopt a resolution designating parking facilities as Separate Parking Facilities unless the requirements therefor as set forth in Section 709 of this Resolution are met at the time of such designation.

"Serial Bonds" shall mean the Bonds of a Series which shall be stated to mature in annual installments.

"Series" shall mean the Bonds delivered at any one time under the provisions of Sections 208, 209 and 210 of this Resolution.

"Series 2010 Bonds" shall mean collectively, the Series 2010A Bonds and the Series 2010B Bonds.

"Series 2010A Bonds" shall mean the City's Parking Revenue Refunding Bonds, Series 2010A, authorized to be issued pursuant to Section 208 of this Resolution.

"Series 2010B Bonds" shall mean the City's Parking Revenue Bonds, Series 2010B, authorized to be issued pursuant to Section 208 of this Resolution.

"Series Resolution" shall mean the resolution of the Commission that is required by Article II of this Resolution to be adopted prior to the issuance of any Series of Bonds, other than the Series 2010 Bonds, under this Resolution. Each Series Resolution shall, among other things, (a) determine or provide for the determination of the details of the Bonds of such Series, including,

among other things, the maximum principal amount of such Series, the date thereof, the method of payment of interest thereon, the maximum maturity thereof, the redemption provisions relating thereto, including the Amortization Requirements for the Term Bonds, if any, the Bond Registrar therefor, and whether the Bonds of such Series shall be issuable in book entry or certificated form, (b) define any Improvements to be financed with the proceeds of such Series, (c) provide for the application of the proceeds of the Bonds to which such Series Resolution relates, (d) if so determined in connection with such Series of Bonds, create a separate Debt Service Account or subaccounts therein or a separate subaccount within the Reserve Account for such Series and determine the method of funding of such Debt Service Account or subaccounts for such Series, (e) if a separate subaccount within the Reserve Account is created, establish the Reserve Account Requirement and the Reserve Account Deposit Requirement for such Series, (f) if so determined in connection with such Series of Bonds, provide that such Series shall not be secured by the Reserve Account or any subaccount therein, (g) set forth additional covenants and provisions with respect to any Series required in connection with the obtaining of a Credit Facility, a Liquidity Facility, a Reserve Account Insurance Policy, a Reserve Account Letter of Credit, or an Interest Rate Swap, including any special provisions designed to comply with repayment requirements under reimbursement or repayment agreements with the entities providing such facilities, and (h) provide for the award of the Series of Bonds to the purchasers thereof, and such other matters as the Commission shall determine; provided, however, the Commission may provide in the Series Resolution that all matters set forth above except the maximum principal amount of any Series and the definition of any Improvements to be financed with the proceeds of such Series may be determined by the Commission in a subsequent resolution awarding such Series to the purchasers thereof or by the Mayor in a certificate of the Mayor.

"Short-Term Indebtedness" shall mean all indebtedness incurred or assumed by the City (excluding bond anticipation notes issued as Interim Bonds or Notes) with respect to the Parking System for any of the following:

(i) Payments of principal and interest with respect to money borrowed for an original term, or renewable at the option of the City for a period from the date originally incurred, of one year or less;

(ii) Payments under leases having an original term, or renewable at the option of the lessee for a period from the date originally incurred, of one year or less; and

(iii) Payments under installment purchase contracts having an original term of one year or less.

"Special Record Date" shall mean a date fixed by the Bond Registrar for the payment of Defaulted Interest pursuant to Section 202 of this Resolution.

"Standard & Poor's" shall mean Standard & Poor's Ratings Services, a Division of McGraw-Hill, Inc., its successor and assigns, and if such entity no longer performs the functions of a securities rating agency, "Standard & Poor's" shall refer to any other nationally recognized securities rating agency designated by the City in a written certificate filed with the City Clerk.

"State" shall mean the State of Florida.

"Subordinated Indebtedness" shall mean bonds, notes or other forms of indebtedness, the payment of the principal of which or interest or redemption premium on which are payable solely from moneys which may from time to time be on deposit in the Subordinated Indebtedness Account under this Resolution and which is designated as Subordinated Indebtedness by the Commission in the resolution authorizing the issuance of such indebtedness.

"Subordinated Indebtedness Account" shall mean the Parking Subordinated Indebtedness Account, a special account within the Enterprise Fund created and designated by Section 505 of this Resolution.

"System Debt" shall mean Alternative Parity Debt, Short-Term Indebtedness, Subordinated Indebtedness, Interim Bonds or Notes and any other indebtedness incurred by the City in connection with the Parking System other than Bonds issued under Article II of this Resolution.

"Term Bonds" shall mean the Bonds of a Series so designated in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to the Series Resolution for any other Series of Bonds with respect to such Bonds.

"Underwriters" shall mean the underwriters for the Series 2010 Bonds, being Sterne, Agee & Leach, Inc., Loop Capital Markets, LLC, Citigroup Global Markets Inc. and Raymond James & Associates, Inc.

"Variable Rate Bonds" shall mean any Bonds issued under this Resolution the interest rate on which is not established at the time of issuance at a fixed numerical rate.

Section 102. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Bond", "owner", "Holder" and "person" shall include the plural as well as the singular number, the word "person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof, and the word "Holder" or "Bondholder" when used herein with respect to Bonds issued hereunder shall mean the Holder or registered owner, as the case may be, of Bonds at the time issued and outstanding hereunder. The word "may" shall mean "may, but shall not be required to" and the word "including" shall mean "including, without limitation".

Section 103. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds authorized to be issued hereunder by those who shall own the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the City and such Bondholders, and the covenants and agreements herein set forth to be performed by the City shall be for the equal benefit, protection and security of the owners of any and all of such Bonds, all of which shall be of equal rank and without preference, priority, or distinction of any of the Bonds over any other thereof except as expressly provided therein and herein.

[END OF ARTICLE I]

ARTICLE II

FORM, EXECUTION, DELIVERY AND REGISTRATION OF BONDS

Section 201. Issuance of Bonds. For the purpose of providing funds for refunding the Prior Bonds and for paying Costs of the Project, Bonds of the City shall be issued under and secured by this Resolution subject to the conditions hereinafter provided in Section 208 of this Article. Bonds of the City may also be issued under and secured by this Resolution, subject to the conditions hereinafter provided in Sections 209 and 210 of this Article, for the purpose of paying the Costs of Improvements and refunding all or any portion of the Bonds of one or more Series issued by the City under the provisions of this Resolution. The principal of and the interest on all such Bonds shall be payable solely from the special account hereinafter created and designated "Parking Revenue Bonds Debt Service Account" or other separate Debt Service Accounts created under the provisions of Section 505 of this Resolution, and all of the covenants, agreements and provisions of this Resolution shall be for the benefit and security of all and singular the present and future Holders of the Bonds so issued or to be issued, without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided, of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, or otherwise.

Section 202. Details of Bonds. Each Series of Bonds issued hereunder, other than the Series 2010 Bonds created under Section 208 hereof, shall be created by a Series Resolution. The Bonds of each Series issued under the provisions of this Article shall be designated "City of Miami Beach, Florida Parking Revenue Bonds, Series __," or such appropriate variation thereof as contained herein or in any Series Resolution in each case inserting an identifying Series year, and if more than one Series are expected to be issued in a single calendar year, inserting an identifying Series letter in addition to the year. Except as otherwise provided in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to the Series Resolution relating to any other Series of Bonds with respect to such other Bonds, the Bonds of any Series are issuable in fully registered form without coupons in denominations (either with respect to original principal amount or principal amount payable at maturity) of $5,000 or any whole multiple thereof. Bonds shall be numbered consecutively from R-1 upwards. Bonds of each Series shall be dated, and shall bear interest until their payment at a rate or rates, including rates which may vary, not exceeding the maximum rate then permitted by law, such interest being payable and such Bonds being subject to redemption prior to their respective maturities, all as provided in the Mayor's Certificate with respect to the Series 2010 Bonds or pursuant to the Series Resolution for any other Series of Bonds with respect to such other Bonds.

Unless otherwise provided in the Series Resolution pursuant to which a Series of Bonds is issued, each Bond shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated unless it is (a) authenticated upon any Interest Payment Date in which event it shall bear interest from such Interest Payment Date or (b) authenticated before the first Interest Payment Date in which event it shall bear interest from its date; provided, however, that if at the time of authentication of any Bond interest is in default, such Bond shall bear interest from the date to which interest has been paid; except for (i) Capital Appreciation Bonds which shall bear interest as described under the defined term Accreted Value, payable only upon redemption, acceleration or maturity thereof and (ii) Capital Appreciation and Income Bonds which shall bear

interest as described under the defined term Appreciated Value payable on the amount due at maturity but only from and after the Interest Commencement Date.

Unless otherwise provided in the Series Resolution pursuant to which a Series of Bonds is issued, both the principal of and the interest on the Bonds shall be payable in any coin or currency of the United States of America (or other coin or currency provided for in the Series Resolution applicable to any Series) that is legal tender for the payment of public and private debts on the respective dates of payment thereof.

Unless otherwise provided in the Series Resolution pursuant to which a Series of Bonds is issued, the principal of the Bonds shall be payable upon the presentation and surrender of such Bonds as the same shall become due at the principal office of the Bond Registrar.

Unless otherwise provided in the Series Resolution pursuant to which a Series of Bonds is issued, any interest on any Bond which is payable, and is punctually paid, or for which payment is duly provided, on any Interest Payment Date shall be paid to the person in whose name the Bond is registered in the registration books provided for in Section 206 of this Resolution (hereinafter, as used in this Section, the "Holder") at the close of business on the Regular Record Date. The Bond Registrar shall pay interest which is payable on the Bonds by check or draft mailed to the persons entitled thereto on the Interest Payment Date; provided, however, that, unless otherwise provided by Series Resolution with respect to any Series of Bonds, each Holder of Bonds aggregating not less than $1,000,000 shall be entitled to the payment of such interest by wire transfer within the continental United States.

Unless otherwise provided in the Series Resolution pursuant to which a Series of Bonds is issued, any interest on any Bond which is payable, but is not punctually paid, or for which payment is not duly provided, on any interest payment date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date solely by virtue of such Holder having been such Holder, and such Defaulted Interest may be paid by the City, at its election in each case, as provided in Subsection A or B below:

A. The City may elect to make payment of any Defaulted Interest on the Bonds of any Series to the persons in whose names such Bonds are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The City shall notify the Bond Registrar in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be such as will enable the Bond Registrar to comply with the next sentence hereof), and at the same time the City shall deposit or cause to be deposited with the Bond Registrar an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Bond Registrar for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this Subsection provided. Thereupon the Bond Registrar shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Bond Registrar of the notice of the proposed payment. The Bond Registrar shall promptly notify the City of such Special Record Date and, in the name and at the expense of the City, shall cause notice of the proposed payment of such Defaulted Interest and the Special

Record Date therefor to be mailed, first-class postage prepaid, to each Holder at such Holder's address as it appears in the registration books provided for in Section 206 of this Resolution not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds of such Series are registered on such Special Record Date and shall no longer be payable pursuant to the following Subsection B. The Bond Registrar shall pay such Defaulted Interest which is payable on the Bonds pursuant to this clause A by check or draft mailed to the persons entitled thereto on the date fixed for the payment of such Defaulted Interest pursuant to this clause A; provided, however, the Commission pursuant to the Series Resolution for a Series may provide for payment of such Defaulted Interest by the Bond Registrar by wire transfer.

B. The City may make payment of any Defaulted Interest on the Bonds of any Series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Bonds may be listed and upon such notice as may be required by such exchange, if, after notice given by the City to the Bond Registrar of the proposed payment pursuant to this Subsection, such payment shall be deemed practicable by the Bond Registrar.

Subject to the foregoing provisions of this Section, each Bond delivered under this Resolution upon transfer of or in exchange for or in lieu of any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond and each such Bond shall bear interest from such date, that neither gain nor loss in interest shall result form such transfer, exchange or substitution.

Section 203. Execution and Form of Bonds. The Bonds shall be signed by or bear the facsimile signature of the Mayor and shall be signed by or bear the facsimile signature of the City Clerk and the official seal of the City or a facsimile thereof shall be impressed or imprinted on the Bonds; provided, however, that if required by State law at the time of such execution, the Bonds shall be manually executed by the Mayor. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery and also any Bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such Bond shall be the proper officers to execute such Bond although at the date of such Bond such persons may not have been such officers. The Bonds issued under the provisions of this Article, the certificate of authentication, the statement of validation, if any, the opinion certification and the form of assignment shall be, respectively, in the following forms with such appropriate variations, omissions and insertions as may be required or permitted by this Resolution, the Mayor's Certificate with respect to the Series 2010 Bonds or the Series Resolution pursuant to which any other Bonds are issued with respect to such Bonds. All Bonds shall be endorsed thereon with such legends or text as may be necessary or appropriate to conform to the applicable rules and regulations of any governmental authority or any securities exchange on which such Bonds may be listed or to any requirements of law with respect thereto.

The forms of Bonds may be changed to reflect appropriate provisions for different types of Bonds authorized under this Resolution, including, without limitation, provisions for BABs,

Capital Appreciation Bonds, Capital Appreciation and Income Bonds, Interim Bonds, Variable Rate Bonds, Optional Tender Bonds and Convertible Bonds.

[FORM OF BOND]

No. __ $_____

UNITED STATES OF AMERICA
STATE OF FLORIDA
CITY OF MIAMI BEACH

PARKING REVENUE BOND
SERIES _____

Maturity Date	Interest Rate	Original Issue Date	Cusip

REGISTERED HOLDER:

PRINCIPAL AMOUNT:

The City of Miami Beach (herein called the "City"), a municipal corporation duly organized and existing under the Constitution and laws of the State of Florida, is justly indebted and for value received hereby promises to pay to the registered holder shown above or to the registered assigns or legal representative thereof on the date specified above (or earlier as hereinafter referred to), upon the presentation and surrender hereof, at the principal office of _____, in the City of _____ (the "Bond Registrar"), the principal sum shown above, and to pay to the registered owner hereof, by check or draft mailed to the registered owner at such registered owner's address as it appears on the bond registration books of the City, or by wire transfer within the continental United States to the registered owner of at least $1,000,000 principal amount of the Bonds, interest on such principal sum from the date hereof or from _____ 1 or _____ 1 next preceding the date of authentication to which interest shall have been paid, unless such date of authentication is a _____ 1 or _____ 1 to which interest shall have been paid, in which case from such date, such interest to the maturity hereof being payable on _____ 1 and _____ 1 in each year, commencing _____ 1, _____, at the rate per annum specified above, until payment of such principal sum. The interest so payable and punctually paid, or duly provided for, on any interest payment date will be paid to the person in whose name this bond is registered at the close of business on the Regular Record Date for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding such interest payment date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the

registered holder on such Regular Record Date, and may be paid to the person in whose name this bond is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the Bond Registrar, notice whereof being given to the holders not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the bonds of this series may be listed and upon such notice as may be required by such exchange, or as more fully provided in the Resolution under which this bond is issued hereinafter mentioned or by wire transfer as mentioned above. Such payment of interest shall be by check mailed to the holder at such holder's address as it appears on the bond registration books maintained by the Bond Registrar. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

This bond shall not be deemed to constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation and the City is not obligated to pay the principal of, the premium, if any, or the interest on this bond except from the special fund hereinafter mentioned, and the faith and credit of the City are not pledged to the payment of the principal of, the premium, if any, or the interest on this bond. The issuance of this bond shall not directly, indirectly or contingently obligate the City to levy or to pledge any taxes whatever therefor or to make any appropriation for the payment of the principal of, the premium, if any, or the interest on this bond except as provided in the hereinafter described Resolution.

This bond is one of a series of bonds designated "Parking Revenue Bonds, Series __" and issued by the City of Miami Beach, Florida (the "City") for the purpose of providing funds, with any other available funds, for _____, and this bond is issued under and pursuant to that certain resolution adopted by the Mayor and City Commission of the City on _____, 2010 (the "Resolution"). The bonds of this series consist of bonds maturing on _____ 1 of the years __ to __, inclusive (the "Serial Bonds") and of bonds maturing on _____, 1 __ (the "Term Bonds").

The Term Bonds are subject to mandatory redemption prior to maturity, in part, on _____ 1, _____ and on each _____ 1 thereafter set forth below, at a redemption price equal to the principal amount thereof, without premium, from Amortization Requirements (as defined in the Resolution), as follows:

Redemption Date (_____1)	Principal Amount

The bonds of this series maturing on _____ 1, _____ and thereafter may be redeemed prior to their stated dates of maturity, at the option of the City, from any moneys that may be made available for such purpose, as a whole or in part on any date on or after _____ 1, ____, and if in part in any order of maturity selected by the City, at the following

redemption prices (expressed as percentages of the principal amount to be redeemed) plus accrued interest to the redemption date:

Redemption Dates Inclusive	Redemption Price
_____ 1, ____ to _____ 1, ____	%
_____ 1, ____ to _____ 1, ____	
_____ 1, ____ and thereafter	

If less than all of the bonds of any one maturity shall be called for redemption, the particular bonds to be redeemed shall be selected by lot or by such other manner as the Bond Registrar shall deem appropriate as provided in the Resolution.

At least thirty (30), but not more than sixty (60), days before the redemption date of any bonds to be redeemed, whether such redemption be in whole or in part, the City shall cause a notice of such redemption to be filed with the Bond Registrar and mailed by the Bond Registrar, first class postage prepaid, to all registered owners of bonds to be redeemed in whole or in part at their last addresses appearing upon the registration books of the City kept by the Bond Registrar. The failure to mail such notice to any such registered owner shall not affect the validity of such redemption. On the date fixed for redemption, notice having been given as aforesaid, and with respect to a Conditional Redemption (as defined in the Resolution), the Conditional Redemption not having been rescinded, the bonds or portions thereof so called for redemption shall be due and payable at the redemption price provided for the redemption of such bonds or portion thereof and, if moneys for payment of such redemption price and the accrued interest are held as provided in the Resolution, interest on the bonds or the portions thereof so called for redemption shall cease to accrue. If a portion of this bond shall be called for redemption, a new bond or bonds in principal amount equal to the unredeemed portion hereof will be issued to the registered owner hereof or his legal representative upon the surrender hereof.

The holder of this bond shall have no right to enforce the provisions of the Resolution, or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Resolution, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Resolution.

Modifications or alterations of the Resolution or of any ordinance supplemental thereto may be made only to the extent and in the circumstances permitted by the Resolution.

The bonds are issuable as fully registered bonds in the denomination of $5,000 or any whole multiple thereof. At the principal office of the Bond Registrar, in the manner and subject to certain conditions provided in the Resolution, bonds may be exchanged for an equal aggregate principal amount of bonds of the same maturity, or authorized denomination and bearing interest at the same rate.

The Bond Registrar is required to keep at its principal office the books of the City for the registration of and for the registration of transfers of bonds. The transfer of this bond may be registered only upon such books and as otherwise provided in the Resolution upon the surrender

hereof to the Bond Registrar together with an assignment duly executed by the registered owner hereof or such registered owner's attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such registration of transfer, the Bond Registrar shall deliver in exchange for this bond a new bond or bonds, registered in the name of the transferee, of authorized denominations, in an aggregate principal amount equal to the unredeemed principal amount of this bond, of the same maturity and bearing interest at the same rate.

The Bond Registrar shall not be required to exchange or register any transfer of this bond during the fifteen (15) days immediately preceding the date of mailing of notice of redemption or after this bond has been selected for redemption.

This bond is issued and the Resolution was adopted under and pursuant to the laws of the State of Florida. The Resolution provides for the creation of a special account designated "Parking Revenue Bonds Debt Service Account", which fund is pledged to and charged with the payment of the principal of, premium, if any, and the interest on all bonds issued and outstanding under the Resolution [the language in the preceding clause will change if a separate Debt Service Account is created for a series of bonds pursuant to Section 505 of the Resolution], and the City has covenanted in the Resolution to deposit to the credit of said special fund a sufficient amount of the Net Revenues (as defined in the Resolution) of the City's Parking System (as defined in the Resolution) to provide for the payment of the principal of, premium, if any, and interest on the bonds issued under the provisions of the Resolution as the same shall become due and to create a reserve for such purpose.

All acts, conditions and things required by the Constitution and laws of the State of Florida and the ordinances and resolutions of the City to happen, exist and be performed precedent to and in the issuance of this bond have happened, exist and have been performed as so required.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Resolution until this bond shall have been authenticated by the execution by the Bond Registrar of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, said City of Miami Beach, by resolution duly adopted by its City Commission, has caused this bond to be signed by [bear the facsimile signature of] its Mayor and to be signed by [bear the facsimile signature of] its City Clerk and a facsimile of the official seal of the City to be imprinted hereon.

CITY OF MIAMI BEACH, FLORIDA

By: _____
Mayor

[SEAL]

Attest: _____
City Clerk

CERTIFICATE OF AUTHENTICATION

This bond is one of the bonds of the series designated herein and issued under the provisions of the within-mentioned Resolution.

_____,
Bond Registrar

By: _____
Authorized Signatory

Date of Authentication: _____

[If the Bonds of a Series have been validated pursuant to Chapter 75, Florida Statutes, such Bonds shall have endorsed thereon a statement in substantially the following form.]

STATEMENT OF VALIDATION

This bond is one of a Series of Bonds which were validated by judgment of the Circuit Court for Miami-Dade County rendered on _____ __, __.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to register the transfer of the within bond on the books kept for registration thereof with full power of substitution in the premises.

Dated:_____

_____

NOTICE: The signature to this assignment must correspond with the name as it appears on the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

_____

NOTICE: Signatures must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or a trust company.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of the within bond, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM	-	as tenants in common
TEN ENT	-	as tenants by the entireties
JT TEN	-	as joint tenants with the right of survivorship and not as tenants in common

UNIFORM GIFT MIN ACT - _____ Custodian _____
(Cust) (Minor)

under Uniform Gifts to Minors

Act _____
(State)

Additional abbreviations may also be used
though not in the above list.

[END OF FORM OF BOND]

Section 204. Authentication of Bonds. Only such of the Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth above, duly executed by the Bond Registrar, shall be entitled to any benefit or security under this Resolution. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Bond Registrar, and such certificate of the Bond Registrar upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Resolution and the Series Resolution relating to such Bond. The certificate of authentication on any Bond shall be deemed to have been duly executed if signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds that may be issued hereunder at any one time.

Section 205. Exchange of Bonds. Bonds, upon surrender thereof at the principal corporate trust office of the Bond Registrar, together with an assignment duly executed by the registered owner or such registered owner's attorney or legal representative in such form as shall be satisfactory to the Bond Registrar, may, at the option of the owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series and maturity, of any denomination or denominations authorized by this Resolution or the Series Resolution relating to such Bonds and bearing interest at the same rate.

The City shall make provision for the exchange of Bonds at the principal corporate trust office of the Bond Registrar.

Section 206. Negotiability, Registration and Transfer of Bonds. The Bond Registrar shall keep books for the registration of and for the registration of transfer of Bonds as provided in this Resolution. The transfer of any Bond may be registered only upon the books kept by the Bond Registrar for the registration of and registration of transfer of Bonds upon surrender thereof to the Bond Registrar together with an assignment duly executed by the registered owner or such registered owner's attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such registration of transfer the City shall execute and the Bond Registrar shall authenticate and deliver in exchange for such Bond a new Bond or Bonds registered in the name of the transferee, of any denomination or denominations authorized by the Series Resolution relating to such Bonds.

In all cases in which Bonds shall be exchanged, the City shall execute and the Bond Registrar shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Bond Registrar. The City or the Bond Registrar may make a charge for every such exchange or registration of transfer of Bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any owner of Bonds for the privilege of exchanging or registering the transfer of Bonds under the provisions of this Resolution. Neither the City nor the Bond Registrar shall be required to make any such exchange or registration of transfer of Bonds during the fifteen (15) days immediately preceding the date of mailing of notice of such redemption, or after such Bond or any portion thereof has been selected for redemption.

Section 207. Ownership of Bonds. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and

the interest on any such Bond shall be paid only to or upon the order of the registered owner thereof or such registered owner's legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond including the premium, if any, and interest thereon to the extent of the sum or sums so paid.

Section 208. Authorization of Series 2010 Bonds and Refunding of Prior Bonds; Negotiated Sale of Series 2010 Bonds. There shall be initially issued at one time, under and secured by this Resolution, a Series of revenue bonds of the City which shall bear the designation "City of Miami Beach, Florida Parking Revenue Refunding Bonds, Series 2010A". The Series 2010A Bonds shall be issued in an aggregate principal amount not to exceed Twenty Million Dollars ($20,000,000) for the purpose of providing funds, together with any other available moneys, for (a) refunding the Prior Bonds, (b) to the extent not satisfied by the deposit of a Reserve Account Insurance Policy to the credit of the Reserve Account, making a deposit to the Reserve Account, and (c) paying costs of issuing the Series 2010A Bonds, including the premiums or portions thereof allocable to the Series 2010A Bonds for any Credit Facility and/or Reserve Account Insurance Policy relating to the Series 2010A Bonds.

There shall also be initially issued at one time, under and secured by this Resolution, a Series of revenue bonds of the City which shall bear the designation "City of Miami Beach, Florida Parking Revenue Bonds, Series 2010B." The Series 2010B Bonds shall be issued in an aggregate principal amount not to exceed Thirty Million Dollars ($30,000,000) for the purpose of providing funds, together with any other available moneys, for (a) paying Costs of the Project, (b) to the extent not satisfied by the deposit of a Reserve Account Insurance Policy to the credit of the Reserve Account, making a deposit to the Reserve Account, and (c) paying costs of issuing the Series 2010B Bonds, including the premiums or portions thereof allocable to the Series 2010B Bonds for any Credit Facility and/or Reserve Account Insurance Policy relating to the Series 2010B Bonds.

U.S. Bank National Association is hereby appointed the Bond Registrar with respect to the Series 2010 Bonds and the Escrow Agent with respect to the Prior Bonds.

Each Series of the Series 2010 Bonds shall be issued in such aggregate principal amount, shall be dated, shall be stated to mature (subject to the right of prior redemption as hereinafter set forth) on such date or dates and in such year or years, but not later than September 1, 2040, shall bear interest at such fixed rate or rates, not to exceed 6.25%, payable on such Interest Payment Dates, shall be Serial Bonds and/or Term Bonds, the Term Bonds, if any, shall have such Amortization Requirements, may be made redeemable at such times and prices (subject to the provisions of Article III of this Resolution), may be in the form of Current Interest Bonds or Capital Appreciation Bonds or Capital Appreciation and Income Bonds or any combination thereof, and shall have such other terms, all as determined by the Mayor, in reliance upon the recommendations of the Chief Financial Officer and the Financial Advisor, and as provided in the Mayor's Certificate.

If the Mayor determines, in reliance upon the recommendations of the Chief Financial Officer and the Financial Advisor, that there is an economic benefit to the City to secure and pay for one or more Credit Facilities and/or Reserve Account Insurance Policies with respect to all or a portion of the Series 2010 Bonds, the Mayor is authorized to secure one or more Credit Facilities

and/or Reserve Account Insurance Policies with respect to all or a portion of the Series 2010 Bonds. The Mayor is authorized to provide for the payment of any premiums for such Credit Facilities and/or Reserve Account Insurance Policies from the proceeds of the Series 2010 Bonds or other available moneys and, after consultation with the City Attorney, to enter into, execute and deliver such agreements as may be necessary to secure such Credit Facilities and/or Reserve Account Insurance Policies, the execution and delivery by the Mayor of any such agreements for and on behalf of the City to be conclusive evidence of the City's approval of securing such Credit Facilities and/or Reserve Account Insurance Policies and of such agreements. Any agreements with any providers of Credit Facilities and/or Reserve Account Insurance Policies shall supplement and be in addition to the provisions of this Resolution.

The Series 2010 Bonds shall be initially registered in the name of CEDE & Co., as nominee of DTC, and issued under the book-entry system maintained by DTC. Each of the Series 2010 Bonds shall be executed substantially in the form and manner hereinabove set forth and shall be deposited with the Bond Registrar for authentication and delivery, but prior to or simultaneously with the delivery of the Series 2010 Bonds by the Bond Registrar there shall be filed with the City the following:

(a) a copy, certified by the City Clerk, of this Resolution;

(b) an original counterpart of the Mayor's Certificate;

(c) an original counterpart of the executed Escrow Agreement;

(d) the executed approving opinion of Bond Counsel in the form included in the Official Statement; and

(e) an executed opinion of Bond Counsel with respect to the defeasance of the Prior Bonds under the provisions of the Prior Bonds Resolution.

When the documents mentioned in clauses (a) to (e), inclusive, of this Section shall have been filed with the City and when the Series 2010 Bonds shall have been executed by the City and authenticated by the Bond Registrar as required by this Resolution, but subject to the provisions of the fifth to last paragraph of this Section 208, the Bond Registrar shall deliver said Bonds at one time to or upon the order of the Underwriters but only upon payment to or upon the order of the Chief Financial Officer of the purchase price of said Bonds. The Chief Financial Officer shall be entitled to rely upon the Mayor's Certificate as to all matters stated therein.

The proceeds (including any premium) of the Series 2010A Bonds shall be applied by or upon the order of the Chief Financial Officer as follows:

(1) an amount of the proceeds of the Series 2010A Bonds necessary to provide, together with any other available moneys, for the refunding of the Prior Bonds shall be deposited with the Escrow Agent under the provisions of the Escrow Agreement;

(2) to the extent not satisfied by the deposit of other available moneys or a Reserve Account Insurance Policy, an amount of the proceeds of the Series 2010A Bonds

as determined by the Chief Financial Officer shall be deposited to the credit of the Reserve Account; and

(3) the balance of the proceeds of the Series 2010A Bonds shall be deposited to the credit of a special account designated "Series 2010A Cost of Issuance Account" and applied to the payment of expenses of issuing the Series 2010A Bonds, including, but not limited to, financial advisory, accounting and legal fees, Consulting Engineers and Rate Consultant fees, rating agency fees, printing costs, Bond Registrar's fees and expenses, Escrow Agent's fees and expenses, any other miscellaneous expenses relating to the issuance of the Series 2010A Bonds and the refunding of the Prior Bonds and, to the extent not paid directly by the Underwriters, the premiums or portions thereof allocable to the Series 2010A Bonds for any Credit Facility and/or Reserve Account Insurance Policy relating to the Series 2010A Bonds.

The proceeds (including any premium) of the Series 2010B Bonds shall be applied by or upon the order of the Chief Financial Officer as follows:

(1) to the extent not satisfied by the deposit of other available moneys or a Reserve Account Insurance Policy, an amount of the proceeds of the Series 2010B Bonds as determined by the Chief Financial Officer shall be deposited to the credit of the Reserve Account;

(2) an amount of the proceeds of the Series 2010B Bonds estimated by the Chief Financial Officer to be sufficient for the purpose shall be deposited to the credit of a special account designated "Series 2010B Cost of Issuance Account" and applied to the payment of expenses of issuing the Series 2010B Bonds, including, but not limited to, financial advisory, accounting and legal fees, Consulting Engineers and Rate Consultant fees, rating agency fees, printing costs, Bond Registrar's fees and expenses, any other miscellaneous expenses relating to the issuance of the Series 2010B Bonds and, to the extent not paid directly by the Underwriters, the premiums or portions thereof allocable to the Series 2010B Bonds for any Credit Facility and/or Reserve Account Insurance Policy relating to the Series 2010B Bonds; and

(3) the balance of the proceeds of the Series 2010B Bonds shall be deposited to the credit of a special account in the Construction Fund established in Section 401 hereof and designated the "Series 2010B Construction Account" for application to the payment of the Costs of the Project, including to the extent provided in a certificate of the Chief Financial Officer delivered concurrently with the issuance of the Series 2010B Bonds for the payment of interest accruing on the Series 2010B Bonds prior to, during and after construction of the Project.

The proceeds of the Series 2010 Bonds, other than the portion thereof deposited with the Escrow Agent under the provisions of the Escrow Agreement, shall be invested in accordance with the provisions of this Resolution in Investment Obligations as determined by the Chief Financial Officer.

The Commission hereby approves the distribution of copies of the Preliminary Official Statement in substantially the form presented at the meeting at which this Resolution was considered, with such changes, modifications, insertions, omissions and filling-in of blanks as may be approved by the Mayor, after consultation with the Chief Financial Officer and the City Attorney. The Mayor is hereby authorized to deem the Preliminary Official Statement "final" for purposes of the Rule and to execute any certificates in connection with such finding. The Mayor and the City Manager are hereby authorized to execute the Official Statement on behalf of the City, in substantially the form of the Preliminary Official Statement presented at the meeting at which this Resolution was considered, with such changes, modifications, insertions, omissions and filling-in of blanks as may be approved by the Mayor, after consultation with the Chief Financial Officer and the City Attorney, such execution to constitute conclusive evidence of the City's approval of the Preliminary Official Statement and the Official Statement. The use of the Preliminary Official Statement and the Official Statement in the marketing and sale of the Series 2010 Bonds is hereby approved.

For the reasons contained in the preambles to this Resolution, the negotiated sale of the Series 2010 Bonds to the Underwriters is hereby authorized and approved. Upon compliance by the Underwriters with the requirements of Florida Statutes, Section 218.385, the Mayor is hereby authorized to award the Series 2010 Bonds to the Underwriters and to execute and deliver the Bond Purchase Agreement in substantially the form presented at the meeting at which this Resolution was considered, subject to such changes, modifications, insertions, omissions and such filling-in of blanks as may be approved by the Mayor, after consultation with the Chief Financial Officer and the City Attorney. The purchase price at which the Series 2010 Bonds shall be awarded to the Underwriters shall be determined by the Mayor, in reliance upon the recommendations of the Chief Financial Officer and the Financial Advisor, but shall not be less than 99% of the principal amount of the Series 2010 Bonds (not including original issue discount). The execution and delivery by the Mayor of the Bond Purchase Agreement for and on behalf of the City shall be conclusive evidence of the City's acceptance of the Underwriters' proposal to purchase the Series 2010 Bonds and of the Bond Purchase Agreement.

For the benefit of the Holders and beneficial owners from time to time of the Series 2010 Bonds, the City agrees, in accordance with and as the only obligated person with respect to the Series 2010 Bonds under the Rule, to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of paragraph (b)(5) of the Rule. In order to describe and specify certain terms of the City's continuing disclosure agreement, the Chief Financial Officer is hereby authorized and directed to enter into and deliver, in the name and on behalf of the City, the Continuing Disclosure Agreement with DAC, which is hereby appointed as disclosure dissemination agent with respect to the Series 2010 Bonds, in substantially the form thereof presented at the meeting at which this Resolution was considered, with such changes, modifications, insertions, omissions and filling-in of blanks as may be approved by the Chief Financial Officer, after consultation with the City Attorney. The execution by the Chief Financial Officer of the Continuing Disclosure Agreement for and on behalf of the City shall be conclusive evidence of the City's approval of the Continuing Disclosure Agreement. Notwithstanding any other provisions of this Resolution, any failure by the City to comply with any provisions of the Continuing Disclosure Agreement shall not constitute an Event of Default under this Resolution and the remedies therefor shall be solely as provided in the Continuing Disclosure Agreement.

The Chief Financial Officer is further authorized to establish procedures in order to ensure compliance by the City with the Continuing Disclosure Agreement, including the timely provision of information and notices. Prior to making any filing, or causing any filing to be made, in accordance with such agreement, the Chief Financial Officer may consult with the City Attorney. The Chief Financial Officer, acting in the name and on behalf of the City, shall be entitled to rely upon any legal advice provided by the City Attorney in determining whether a filing should be made.

The refunding of the Prior Bonds is hereby authorized. The Prior Bonds shall be redeemed prior to maturity pursuant to the optional redemption provisions thereof. The date of redemption of the Prior Bonds redeemed, the application of moneys on deposit in the funds and accounts established under the Prior Bonds Resolution and the investment, if any, of the proceeds of the Series 2010A Bonds and/or other moneys deposited with the Escrow Agent under the provisions of the Escrow Agreement shall be as determined by the Mayor, after consultation with the Chief Financial Officer and the Financial Advisor, and as provided in the Mayor's Certificate or the Escrow Agreement. The Mayor is hereby authorized to execute the Escrow Agreement in substantially the form presented at the meeting at which this Resolution was considered, subject to such changes, modifications, insertions, omissions and filling-in of blanks as may be approved by the Mayor, after consultation with the Chief Financial Officer and the City Attorney, including such changes, modifications, insertions, omissions and filling-in of blanks as may be necessary if the proceeds of the Series 2010A Bonds and/or other moneys deposited with the Escrow Agent are determined not to be invested. The execution and delivery by the Mayor of the Escrow Agreement for and on behalf of the City shall be conclusive evidence of the City's approval of the Escrow Agreement.

The Mayor, the City Manager, the Chief Financial Officer, the Parking Director, the City Attorney and such other officers, employees and staff of the City as may be designated by the Mayor and the City Manager or either of them are each designated as agents of the City in connection with the issuance and delivery of the Series 2010 Bonds and the refunding of the Prior Bonds and are authorized and empowered, collectively or individually, to take all action and steps and to execute all instruments, documents and contracts on behalf of the City, that are necessary or desirable in connection with the Series 2010 Bonds, the appointment of the Bond Registrar, the Escrow Agent and DAC, securing any Credit Facilities and/or Reserve Account Insurance Policies and refunding of the Prior Bonds, including the filing of any subscription forms with respect to the investment of proceeds of the Series 2010A Bonds and/or other moneys under the Escrow Agreement.

Section 209. Additional Bonds. In addition to the Bonds authorized under the provisions of Sections 208 of this Article, Additional Bonds of the City may be issued under and secured by this Resolution, on a parity as to the pledge of the Net Revenues of the Parking System with the Bonds theretofore issued under Sections 208, 209 and 210 of this Resolution and secured by this Resolution and then Outstanding, subject to the conditions hereinafter provided in this Section, from time to time for the purpose of paying all or any part of the Cost of any Improvements and funding as necessary the Reserve Account.

Before any Additional Bonds shall be issued under the provisions of this Section, the Commission shall adopt a Series Resolution authorizing the issuance of such Additional Bonds,

fixing the amount and the details thereof and describing in brief and general terms the Improvements to be constructed or acquired and the Accounts to be funded with the proceeds of such Additional Bonds. The Additional Bonds of each Series issued under the provisions of this Section shall be dated, shall be stated to mature (subject to the right of prior redemption as hereinafter set forth) on such date or dates and in such year or years, shall bear interest at such rate or rates, fixed or variable, shall have such Credit Facility, Liquidity Facility, Reserve Account Letter of Credit, Reserve Account Insurance Policy and/or Interest Rate Swap, shall have such Bond Registrar, any Term Bonds of such Series shall have such Amortization Requirements, may be made redeemable at such times and prices (subject to the provisions of Article III of this Resolution) and may be subject to tender for purchase, all as may be provided by the Series Resolution for such Additional Bonds. Such Additional Bonds shall be executed in the form and manner hereinabove set forth, with such changes as may be necessary or appropriate to conform to the provisions of the Series Resolution therefor, and shall be deposited with the Bond Registrar for authentication and delivery, but before such Additional Bonds shall be delivered by the Bond Registrar, there shall be filed with the City the following:

(a) a copy, certified by the City Clerk, of the Series Resolution for such Series of Additional Bonds;

(b) a copy, certified by the City Clerk, of the resolution, if other than the Series Resolution for such Series of Additional Bonds, adopted by the Commission awarding such Additional Bonds, specifying, or providing for the determination of, the interest rate or rates for such Additional Bonds, or the initial interest rate if such Additional Bonds bear interest at a variable rate and directing the delivery of such Additional Bonds to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth;

(c) a certificate of the Chief Financial Officer, an Accountant or the Rate Consultant demonstrating that either (i) (A) the percentage derived by dividing the Net Revenues for any period of twelve consecutive months selected by the City out of the eighteen months preceding the delivery of such certificate by the Maximum Principal and Interest Requirements, including the Principal and Interest Requirements with respect to the Additional Bonds then to be delivered, for any future Fiscal Year is not less than one hundred ten per centum (110%) and (B) the percentage derived by dividing the Net Revenues projected for the Parking System for the Fiscal Year following the Fiscal Year in which the Completion Date of the Improvements to be financed by the Additional Bonds then to be delivered is expected to occur, including the Net Revenues attributable to the Improvements, as certified by the Rate Consultant adjusted as hereinafter permitted in the next succeeding paragraph of this Section, by the Maximum Principal and Interest Requirements, including the Principal and Interest Requirements with respect to the Additional Bonds then to be delivered, for any future Fiscal Year is not less than one hundred fifty per centum (150%); or (ii) the percentage derived by dividing the Net Revenues for any period of twelve consecutive months selected by the City out of the eighteen months preceding the delivery of such certificate by the Maximum Principal and Interest Requirements, including the Principal and Interest Requirements with respect to the Additional Bonds then to be delivered, for any future Fiscal Year is not less than one hundred fifty per centum (150%) (the period during which Net Revenues are determined for purposes of this clause (c) being referred to hereinafter as the "Measurement Period");

(d) if, in connection with such Series of Additional Bonds, there shall be filed with the City the certificate specified in (c)(i) above, a certificate of the Rate Consultant setting forth the projected Net Revenues for the Fiscal Year following the Fiscal Year in which the Completion Date of the Improvements to be financed by the Additional Bonds then to be delivered is expected to occur;

(e) an opinion of the City Attorney or Bond Counsel that the issuance of such Additional Bonds has been duly authorized and that all conditions precedent to the delivery of such Additional Bonds have been fulfilled; and

(f) a certificate of the Chief Financial Officer to the effect that no event of default, as defined in Section 802 of this Resolution, and no event which with the passage of time, the giving of notice or both would become an event of default has occurred within the twelve (12) consecutive calendar months prior to the date of such certificate and is continuing, or, if any such event or event of default has occurred and is continuing, that the issuance of such Series of Additional Bonds will cure the same.

In determining whether to execute and deliver the certificate mentioned in clause (c) of this Section 209, the following adjustments to Net Revenues may be made:

(1) If the City, prior to the issuance of the proposed Additional Bonds, shall have increased the rates, fees, rentals or other charges for the services of the Parking System, the Net Revenues for the Measurement Period shall be adjusted to show the Net Revenues which would have been derived from the Parking System in such Measurement Period as if such increased rates, fees, rentals or other charges for the services of the Parking System had been in effect during all of such Measurement Period.

(2) If the City shall have acquired or has contracted to acquire any privately or publicly owned existing automobile parking facilities, then the Net Revenues derived from the Parking System during the Measurement Period shall be increased by addition to the Net Revenues for the Measurement Period of the net revenues which would have been derived from said existing automobile parking facilities as if such existing automobile parking facilities had been a part of the Parking System during the Measurement Period. For the purposes of this paragraph, the Net Revenues derived from said automobile parking facilities during the Measurement Period shall be adjusted by deducting the cost of operation and maintenance of said existing automobile parking facilities from the gross revenues of said existing automobile parking facilities in the same manner provided in this Resolution for the determination of Net Revenues.

(3) If the City, in connection with the issuance of Additional Bonds, shall enter into a contract (with a duration not less than the final maturity of such Additional Bonds) with any public or private entity whereby the City agrees to furnish services in connection with any automobile parking facilities then the Net Revenues of the Parking System during the Measurement Period shall be increased by the least amount which said public or private entity shall guarantee to pay in any one year for the furnishing of said services by the City, after deducting therefrom the proportion of operating expenses and repair, renewal and replacement cost attributable in such year to such services. Such payments shall be

deemed to be Net Revenues of the Parking System and pledged for the Bonds in the same manner as other Net Revenues of the Parking System.

When the documents mentioned above in this Section shall have been filed with the City and when the Additional Bonds described in the resolutions mentioned in clauses (a) and (b) of this Section shall have been executed by the City and authenticated by the Bond Registrar as required by this Resolution, the Bond Registrar shall deliver such Additional Bonds at one time to or upon the order of the purchasers named in said resolutions, but only upon payment to the Chief Financial Officer of the purchase price of such Additional Bonds. The Chief Financial Officer shall be entitled to rely upon such resolutions as to all matters stated therein.

The proceeds (excluding accrued interest and any premium) of such Additional Bonds shall be paid to the City for deposit (i) to the credit of a special account in the Construction Fund appropriately designated for application to the payment of the Cost (as defined in Section 403 of this Resolution but excluding (ii) below) of such Improvements, and (ii) to the other Accounts created under this Resolution as shall be specified by the City pursuant to the Series Resolution for such Additional Bonds. All of the provisions of Article IV of this Resolution which relate to the Construction Fund shall apply to such Improvements and the special account created with respect thereto in the Construction Fund to the extent that such provisions may be applicable; provided, however, that there may be included in the Cost of such Improvements interest accruing on such Additional Bonds prior to, during and after construction of such Improvements if and to the extent provided in the Series Resolution with respect thereto. The amount received as accrued interest upon the original issuance and delivery of such Bonds and any premium on such Bonds shall be deposited to the credit of the Bond Service Subaccount for application to the first interest due on such Bonds.

Section 210. Refunding Bonds. Refunding Bonds may be issued under and secured by this Resolution, subject to the conditions hereinafter provided in this Section, from time to time for the purpose of providing funds for refunding all or any portion of the outstanding Bonds of any one or more Series by payment at maturity or redemption at a selected redemption date or dates or combination of such payment at maturity and redemption, including the payment of any redemption premium thereon and any interest which will accrue on such Bonds to such maturity dates or selected redemption date or dates or combination of maturity and redemption dates, funding as necessary the Reserve Account and paying any expenses incurred or to be incurred in connection with such refunding.

Before any Series of Refunding Bonds shall be issued under the provisions of this Section, the Commission shall adopt a Series Resolution authorizing the issuance of such Refunding Bonds, fixing the amount and details thereof, describing the Bonds to be refunded and the Accounts to be funded with proceeds of such Refunding Bonds and setting forth the determination of the Commission that such refunding is in the best interests of the City and the users of the Parking System and stating the reasons for such determination. Such Refunding Bonds shall be dated, shall be stated to mature (subject to the right of prior redemption as hereinafter set forth) on such date or dates and in such year or years, shall bear interest at such rate or rates, fixed or variable, shall have such Credit Facility, Liquidity Facility, Reserve Account Letter of Credit, Reserve Account Insurance Policy and/or Interest Rate Swap, shall have such Bond Registrar, any Term Bonds of such Series shall have such Amortization Requirements, may be made redeemable

at such times and prices (subject to the provisions of Article III of this Resolution) and may be subject to tender for purchase, all as may be provided by the Series Resolution for such Refunding Bonds. Except as to any differences in the maturities thereof or the rate or rates of interest or the provisions for redemption, such Refunding Bonds shall be on a parity as to the pledge of Net Revenues of the Parking System with and shall be entitled to the same benefits and security under this Resolution as all other Bonds issued under Sections 208, 209 and 210 of this Resolution. Such Refunding Bonds shall be executed substantially in the form and manner hereinabove set forth, with such changes as may be necessary or appropriate to conform to the provisions of the Series Resolution therefor, and shall be deposited with the Bond Registrar for authentication and delivery, but prior to or simultaneously with the delivery of such Refunding Bonds by the Bond Registrar, there shall be filed with the City the following:

(a) a copy, certified by the City Clerk, of the Series Resolution with respect to such Refunding Bonds;

(b) a copy, certified by the City Clerk, of the resolution, if other than the Series Resolution for such Series of Refunding Bonds, adopted by the Commission, awarding such Refunding Bonds, specifying, or providing for the determination of, the interest rate or rates for such Refunding Bonds, or the initial rate if such Refunding Bonds bear interest at a variable rate, determining, or providing for the determination of, the disposition of the moneys on deposit in the Debt Service Account and any other funds and accounts on account of the Bonds to be refunded, and directing the delivery of such Refunding Bonds to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth;

(c) an opinion of Bond Counsel to the effect that upon the issuance of such Refunding Bonds and the application of the proceeds thereof, the Bonds to be refunded will no longer be deemed to be Outstanding under this Resolution and that the issuance of the Refunding Bonds will not adversely affect the exclusion of interest on any Bonds then Outstanding from gross income for federal income tax purposes;

(d) an opinion of the City Attorney or Bond Counsel that the issuance of such Refunding Bonds has been duly authorized and that all conditions precedent to the delivery of such Refunding Bonds have been fulfilled;

(e) such documents as shall be required by the Chief Financial Officer to show that provision has been duly made in accordance with the provisions of this Resolution for the payment or redemption or combination of such payment and redemption of all of the Bonds to be refunded; and

(f) either (i) a certificate of the Chief Financial Officer that the issuance of the Refunding Bonds will result in a decrease in total Principal and Interest Requirements for all Bonds Outstanding, or (ii) the certificates required by clauses (c), (d) and (f) of Section 209 of this Resolution; provided, however, that with respect to the certificates required under clauses (c)(i) and (d), the projected Net Revenues shall be computed for the Fiscal Year immediately following the issuance of the Refunding Bonds.

When the documents mentioned above in this Section shall have been filed with the City Clerk and when the Refunding Bonds described in the resolutions mentioned in clauses (a) and (b) of this Section shall have been executed by the City and authenticated by the Bond Registrar as required by this Resolution, the Bond Registrar shall deliver such Refunding Bonds at one time to or upon the order of the purchasers named in said resolutions, but only upon payment to the Chief Financial Officer of the purchase price of such Refunding Bonds. The Chief Financial Officer shall be entitled to rely upon such resolutions as to all matters stated therein.

Simultaneously with the delivery of such Refunding Bonds, the Chief Financial Officer shall withdraw, if so provided pursuant to the Series Resolution or the resolution mentioned in clause (b) of this Section 210, from the appropriate subaccounts of the Debt Service Account an amount equal to the amount on deposit therein on account of the principal of, redemption premium, if any, and the interest on the Bonds to be refunded and from the Reserve Account all or a portion of the amount equal to the amount on deposit therein on account of the Bonds to be refunded, and apply the amount so withdrawn in accordance with the Series Resolution or the resolution mentioned in clause (b) of this Section 210. The total amount so withdrawn, if so provided pursuant to the Series Resolution or the resolution mentioned in clause (b) of this Section 210, the proceeds of such Refunding Bonds (including accrued interest and any premium) and any other moneys provided for such purpose, shall be applied by the Chief Financial Officer as follows:

(1) the accrued interest received as part of the proceeds of such Refunding Bonds shall be deposited to the credit of the Bond Service Subaccount for application to the first interest due on such Refunding Bonds;

(2) an amount which, together with any income which shall be derived from the investment of such amount pursuant to this clause (2) and any other available funds, shall be sufficient to pay the principal of and redemption premium, if any, and the interest on the Bonds to be refunded hereunder, either at maturity or a selected redemption date or dates or combination of such payment and redemption, shall be deposited by the Chief Financial Officer to the credit of a special fund, appropriately designated, to be held in trust by an escrow agent, for the sole and exclusive purpose of paying such principal, redemption premium, if any, and interest; and moneys held for the credit of such fund shall, as nearly as may be practicable and reasonable, be invested and reinvested by such escrow agent at the direction of the Chief Financial Officer in Government Obligations which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when the moneys held for the credit of such fund will be required for the purposes intended;

(3) such amount shall be applied to, or set aside for, the payment of the expenses incident to such refunding as shall be specified pursuant to the Series Resolution relating to such Refunding Bonds; and

(4) any balance of such proceeds shall be deposited to the credit of the other Accounts created under this Resolution as shall be specified pursuant to the Series Resolution relating to such Refunding Bonds.

Section 211. Other Indebtedness. In addition to the Bonds authorized pursuant to the provisions of Section 208, 209 and 210 and to the extent permitted by the laws of the State from time to time in effect, the City may incur other forms of indebtedness related to the Parking System, as follows:

(a) The City may incur Short-Term Indebtedness, payable on a parity as to the pledge of Net Revenues of the Parking System with the Bonds, without satisfying the requirements set forth in Sections 209 or 210 hereof, if immediately after incurrence of such Short-Term Indebtedness, the outstanding principal amount of all Short-Term Indebtedness does not exceed ten per centum (10%) of the Net Revenues of the Parking System as shown on the Annual Budget for the current Fiscal Year.

(b) The City may incur Subordinated Indebtedness without limit as to amount.

(c) The City may issue Convertible Bonds, secured on a parity as to the pledge of Net Revenues of the Parking System with Bonds issued hereunder, provided that such Convertible Bonds are issued under Section 209 or 210 of this Resolution and such Convertible Bonds comply with the tests of such Sections based upon the form of such Convertible Bonds at the time of their issuance.

(d) The City may issue or incur Alternative Parity Debt secured on a parity as to the pledge of the Net Revenues of the Parking System with the Bonds issued hereunder if, but only if, the following conditions are complied with:

(1) The City must satisfy the requirements set forth in Section 209 or 210 of this Resolution pertaining to the issuance of additional parity Bonds as though such requirements were expressly applicable to Alternative Parity Debt.

(2) The instrument evidencing such Alternative Parity Debt shall include a cross default provision with this Resolution to the effect that, prior to exercising any remedies upon a default by the City under such instrument, the holders of such Alternative Parity Debt or their representative shall cooperate with the Holders of Bonds Outstanding under this Resolution or their representative so that the interest of such holders and the Holders of Bonds issued under this Resolution shall be equally and ratably protected.

(3) The City shall duly authorize the issuance or incurrence of such Alternative Parity Debt.

Upon satisfaction of the foregoing conditions the Chief Financial Officer shall certify in writing that the proposed indebtedness satisfies the conditions set forth in this Resolution to be deemed Alternative Parity Debt, and, upon such certification, such indebtedness shall be so deemed. Upon the issuance of Alternative Parity Debt, notwithstanding the provisions of Section 505 hereof, Net Revenues may be applied (on a parity basis with the application of such revenues under Section 505 hereof) as required under the ordinance or resolution authorizing the issuance of such Alternative Parity Debt. The City shall take such actions (including amending or supplementing this Resolution and any other collateral agreement or document) and execute, deliver, file and record such instruments of

security as may be necessary or appropriate to grant or to otherwise secure for the holders of the Alternative Parity Debt a lien on the Net Revenues of the Parking System on a parity with that of all other holders of Alternative Parity Debt and Holders of Bonds.

(e) The City may secure Credit Facilities, Liquidity Facilities, Reserve Account Insurance Policies and Reserve Account Letters of Credit and, as provided in Section 714 hereof, grant security interests and liens with respect thereto.

(f) Nothing in this Resolution shall prohibit the City from entering into Interest Rate Swaps.

Section 212. Temporary Bonds. Until the definitive Bonds of any Series are ready for delivery, there may be executed by the City and authenticated by the Bond Registrar, and the City may deliver, in lieu of definitive Bonds and subject to the same limitations and conditions except as to identifying numbers, temporary printed, engraved, lithographed or typewritten Bonds in the denomination of Five Thousand Dollars ($5,000) or any whole multiple thereof, substantially of the tenor hereinabove set forth, in fully registered form without coupons, and with appropriate omissions, insertions and variations as may be required. The City shall cause the definitive Bonds to be prepared and to be executed, endorsed and delivered to the Bond Registrar, and the Bond Registrar upon presentation of any temporary Bond shall cancel the same and authenticate and deliver, in exchange therefor, at the place designated by the Holder, without expense to the Holder, a definitive Bond or Bonds of the same Series and in the same aggregate principal amount, maturing on the same date and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects, including the privilege of registration and registration of transfer if so provided, be entitled to the same benefit of this Resolution as the definitive Bonds to the issued and authenticated hereunder, and interest on such temporary Bonds and notation of such payment shall be endorsed thereon.

Section 213. Mutilated, Destroyed or Lost Bonds. In case any Bonds secured hereby shall become mutilated or be destroyed or lost, the City may cause to be executed, and the Bond Registrar may deliver, a new Bond of like date, number and tenor in exchange and substitution for and upon the cancellation of such mutilated Bond or in lieu of and in substitution for such Bond destroyed or lost, upon the Holder's paying the reasonable expenses and charges of the City and the Bond Registrar in connection therewith and, in the case of a Bond destroyed or lost, the Holder's filing with the Bond Registrar evidence satisfactory to the Bond Registrar that such Bond was destroyed or lost, and of his ownership thereof, and furnishing the City and the Bond Registrar with indemnity satisfactory to each of them.

Section 214. Provisions with Respect to Book-Entry System. The provisions of this Article contained in Sections 202 to 207, inclusive, may be changed or varied with respect to any Series of Bonds issued under this Article in any Series Resolution or other agreement applicable to such Series of Bonds for the purposes of (1) complying with the requirements of any automated depository and clearinghouse for securities transactions and (2) effectuating any book-entry only registration and payment system.

Appropriate officers and officials of the City are hereby authorized to enter into agreements, including the Letter of Representations, with DTC and other depository trust

companies, including but not limited to agreements necessary for wire transfers of interest and principal payments with respect to any Series of Bonds, utilization of electronic book entry data received from DTC and other depository trust companies in place of actual delivery of Bonds and provision of notices with respect to Bonds registered by DTC and other depository trust companies (or any of their designees identified to the City) by overnight delivery, courier service, telegram, telecopy or other similar means of communication.

Section 215. Capital Appreciation Bonds; Capital Appreciation and Income Bonds. For purposes of determining the principal amount of a Capital Appreciation Bond or a Capital Appreciation and Income Bond for redemption, acceleration or computation of the amount of Bonds held by the Holder thereof in giving to the City any notice, covenant, request or demand pursuant to this Resolution for any purpose whatsoever, the principal amount of a Capital Appreciation Bond shall be deemed to be its Accreted Value and the principal amount of a Capital Appreciation and Income Bond shall be deemed to be its Appreciated Value.

[END OF ARTICLE II]

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption Generally. The Bonds of each Series issued under the provisions of this Resolution shall be subject to redemption, either in whole or in part and at such times and prices, as may be provided by the Mayor's Certificate with respect to the Series 2010 Bonds and pursuant to the Series Resolution relating to any other Series of Bonds with respect to such other Bonds.

Section 302. Selection of Bonds for Redemption or Purchase. The City shall, in accordance with the terms and provisions of the Bonds and of this Resolution, select the Bonds or portions thereof to be purchased or redeemed; provided, however, that the Bond Registrar shall select Bonds of any one Series and maturity to be redeemed in part by lot or by such other manner as the Bond Registrar shall deem appropriate. The City shall promptly notify in writing the Bond Registrar of the Bonds so selected by the City for redemption. In selecting Bonds for redemption, each Bond of each Series of Bonds shall be treated as representing that number of Bonds of the lowest authorized denomination of that Series as is obtained by dividing the principal amount of such Bond by such denomination.

Section 303. Redemption Notice. Unless otherwise provided in a Series Resolution relating to any Series of Bonds with respect to such Bonds, at least thirty (30), but not more than sixty (60), days before the redemption date, a notice of any such redemption, either in whole or in part, signed by the Chief Financial Officer, (a) shall be filed with the Bond Registrar and (b) shall be mailed by the Bond Registrar, first class mail, postage prepaid, to all registered owners of Bonds to be redeemed at their addresses as they appear on the registration books hereinabove provided for, but failure so to mail any such notice to any registered owner shall not affect the validity of the proceedings for such redemption. Each such notice shall specify the redemption date and the place or places where amounts due upon such redemption will be payable and, if less than all of the Bonds are to be redeemed, the numbers or other distinguishing marks of such Bonds to be redeemed in part and the respective portions thereof to be redeemed. Subject to the next succeeding paragraph, such notice shall further state that on such date there shall become due and payable upon each of the Bonds to be redeemed the redemption price or the specified portions thereof in the case of Bonds to be redeemed in part only, together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable on such Bonds or portions thereof so redeemed.

In the case of an optional redemption of Bonds, the redemption notice may state that (a) it is conditioned upon the deposit of moneys with the Bond Registrar or with a bank, trust company or other appropriate fiduciary institution acting as escrow agent (the "escrow agent"), in amounts necessary to effect the redemption, no later than the redemption date, or (b) the City retains the right to rescind such notice on or prior to the scheduled redemption date (in either case, a "Conditional Redemption"), and such notice and optional redemption shall be of no effect if such moneys are not so deposited or if the notice is rescinded as described in this Section. Any such notice of Conditional Redemption shall be captioned "Conditional Notice of Redemption." Any Conditional Redemption may be rescinded at any time prior to the redemption date if the City delivers a written direction to the Bond Registrar directing the Bond Registrar to rescind the

redemption notice. The Bond Registrar shall give prompt notice of such rescission to the affected Bondholders. Any Bonds subject to Conditional Redemption where redemption has been rescinded shall remain Outstanding, and neither the rescission nor the failure by the City to make such moneys available shall constitute an Event of Default.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear a description of the issue and maturity of the Bonds being redeemed with the proceeds of such check or other transfer.

The provisions concerning the manner of giving notice of redemption may be changed or varied or supplemented in any Series Resolution applicable to any Series of Bonds issued under this Resolution for the purpose of complying with any governmental or industry standards from time to time in effect.

Section 304. Partial Redemption of Bonds. In the event that only part of the principal sum of any Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Bond Registrar. Upon surrender of such Bond, the Bond Registrar shall cause to be executed and deliver to the registered owner thereof at the principal office of the Bond Registrar, new duly executed Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same maturity and interest rate as, the unredeemed portion of the Bond surrendered.

Section 305. Effect of Calling for Redemption. On the date so designated for redemption, notice having been filed and mailed in the manner and under the conditions hereinabove provided, and with respect to a Conditional Redemption, the Conditional Redemption not having been rescinded, the Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds on such date, and, moneys for payment of the redemption price being held in separate accounts by the Chief Financial Officer or by the Bond Registrar in trust for the Holders of the Bonds to be redeemed, all as provided in this Resolution, interest on the Bonds so called for redemption shall cease to accrue, such Bonds shall cease to be entitled to any lien, benefit or security under this Resolution, and the Holders or registered owners of such Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof and accrued interest thereon.

Section 306. Cancellation of Bonds. All Bonds paid, redeemed or purchased, either at or before maturity, shall be delivered to the Bond Registrar when such payment, redemption or purchase is made and such Bonds shall, except as provided by Section 304 hereof, thereupon be canceled. The Bond Registrar shall certify to the City the details of all Bonds so canceled. All Bonds canceled under any of the provisions of this Resolution either shall be delivered to the City or destroyed by the Bond Registrar, as the City directs. Upon destruction of any Bonds, the Bond Registrar shall execute a certificate in duplicate, describing the Bonds so destroyed, and one executed certificate shall be filed with the City and the other executed certificate shall be retained by the Bond Registrar.

Section 307. Bonds Called for Redemption Deemed Not Out-standing. If (a) (1) Bonds shall have been duly called for redemption under the provisions of this Article or (2) irrevocable instructions have been given by the City to the Bond Registrar or to an escrow agent to (i) call

Bonds for redemption under the provisions of this Article, (ii) pay Bonds at their maturity or maturities or (iii) both call Bonds for redemption under the provisions of this Article and pay Bonds at their maturity or maturities in any combination (the Bonds described in clauses (a)(1) and (a)(2) are herein collectively called the "Bonds to be Paid"), and (b) cash or Sufficient Government Obligations (hereinafter defined) are held in separate accounts by the Bond Registrar or escrow agent solely for the holders of the Bonds to be Paid, then the Bonds to be Paid shall not be deemed to be outstanding under the provisions of this Resolution and shall cease to be entitled to any benefit or security under this Resolution other than to receive payment of principal, redemption premium, if any, and interest from such moneys.

For purposes of this Section 307, "Sufficient Government Obligations" shall mean Government Obligations which are in such principal amounts, bear interest at such rate or rates and mature (without the option of prior redemption) on such date or dates so that the proceeds to be received upon payment of such Government Obligations at their maturity and the interest to be received thereon will provide sufficient amounts in cash on the dates required to pay the principal of and redemption premium, if any, and the interest on the Bonds to be Paid to the dates of their maturity or redemption.

[END OF ARTICLE III]

ARTICLE IV

CONSTRUCTION FUND

Section 401. Construction Fund. A special fund to be maintained by the City is hereby created and designated "Parking System Construction Fund" (herein sometimes called the "Construction Fund"). A special account within the Construction Fund is hereby created and designated "Series 2010B Construction Account," in which shall be deposited the amount required to be deposited therein pursuant to Section 208 of this Resolution.

The moneys in the Construction Fund shall be held in trust and applied to the payment of the Costs of the Project and if Additional Bonds are issued under Section 209 of this Resolution to the payment of the costs of constructing or acquiring Improvements and, pending such application, shall be subject to a lien and charge in favor of the Holders of the Series of Bonds issued under this Resolution the proceeds of which were deposited to the credit of the Construction Fund and for the further security of such Holders until paid out as herein provided.

For each Series of Additional Bonds issued pursuant to Section 209 of this Resolution for the purpose of payment of the Cost of Improvements, the City shall create a separate special account within the Construction Fund, entitled "Series . . . Construction Account", to which shall be deposited the amounts provided from such Series of Additional Bonds for construction of Improvements.

Section 402. Payments from Construction Fund. Payment of the Cost of the Project and any other Improvements shall be made from the special accounts within the Construction Fund as herein provided. All such payments shall be subject to the provisions and restrictions set forth in this Article and the City covenants that it will not cause or permit to be paid from the Construction Fund any sums except in accordance with such provisions and restrictions. Moneys in the Construction Fund shall be disbursed by check, voucher, order, draft, certificate or warrant signed by any one or more officers or employees of the City having such duties under City rules and regulations or designated by resolution of the Commission from time to time, for such purpose or if the City shall so elect, by wire transfer.

Section 403. Cost of Improvements. For the purposes of this Article, the Cost of the Project and any other Improvements to be constructed or acquired shall include, without intending thereby to limit or to restrict or to extend any proper definition of such Cost under the provisions of this Resolution, the following:

(a) obligations incurred for labor and materials and to contractors, builders and materialmen in connection with the construction of enlargements, improvements and extensions, for machinery and equipment, and for the restoration of property damaged or destroyed in connection with such construction;

(b) interest accruing upon any Bonds or upon any other System Debt of the City incurred to finance the Project or other Improvements prior to the commencement of and during construction or for any additional period as may be authorized by law if so

provided, and subject to any limitation, in the Series Resolution providing for the issuance of such Bonds;

(c) the cost of acquiring any automobile parking facilities now serving any portion of the City and territory adjacent thereto, either within or without or partly within or partly without the corporate limits of the City;

(d) the cost of acquiring by purchase, if such purchase shall be deemed expedient, and the amount of any award or final judgment in any proceeding to acquire by condemnation, such land, property rights, right-of-way, franchises, easements, and other interests in lands as may be deemed necessary or convenient in connection with such construction or with the operation of the Parking System, and the amount of any damages incident thereto;

(e) expenses of administration properly chargeable to such construction or acquisition, legal, architectural and engineering expenses and fees, costs of audits and of preparing and issuing the Bonds, fees and expenses of consultants, financing charges, taxes or other governmental charges lawfully assessed during construction, premiums on insurance in connection with construction, deposits to the Reserve Account, premiums for bond insurance, interest rate insurance or insurance assuring availability of the amounts required to be on deposit in the Reserve Account, initial set-up fees and annual fees for letters of credit, lines of credit, standby bond purchase agreements or other similar credit enhancement or liquidity enhancement devices and tender agent fees and fees payable for remarketing Bonds during the period of construction of any Improvements for which Bonds supported by such devices were issued and all other items of expense not elsewhere in this Section specified, incident to the financing, construction or acquisition of any Improvements and the placing of the same in operation; and

(f) any obligation or expense heretofore or hereafter incurred by the City for any of the foregoing purposes, including the cost of materials, supplies or equipment furnished by the City in connection with the construction of the Project and any other Improvements and paid for by the City out of funds other than moneys in the Construction Fund.

Section 404. Title to Properties Acquired. The City further covenants that the Project and any other Improvements will be constructed on or under land which is owned or can be acquired by the City in fee simple or over or under which the City shall acquire or can acquire either by lease or by easements for the purposes of the Parking System, free from all liens, encumbrances and defects of title which have a materially adverse effect upon the City's right to use such lands or properties for the purposes intended or which have been adequately guarded against by a bond or other form of indemnity, or lands, including public streets and highways, the right to use and occupy which for such purposes shall be vested in the City by law or by valid rights of way, easements, franchises, licenses or agreements.

Section 405. Disposition of Construction Fund Balance. When the construction of the Project or any other Improvements for which a Series of Additional Bonds were issued shall have been completed (which fact shall be evidenced to the Chief Financial Officer by a certificate

stating the Completion Date, approved by the Consulting Engineers), the balance in the special account or accounts of the Construction Fund not reserved by the City for the payment of any remaining part of the Cost of the Project or such other Improvements shall be transferred by the Chief Financial Officer, in the discretion of the City, to the credit of the Enterprise Fund or to the credit of the Debt Service Account for the payment of Bonds or retained in the Construction Fund and used to pay the Cost of a different Improvement or Improvements which have been approved by the Commission or applied to redeem Bonds in a manner permitted under this Resolution and the Mayor's Certificate or a Series Resolution, as applicable. Before undertaking any such transfer, the Chief Financial Officer shall procure an opinion of Bond Counsel to the effect that the proposed transfer will not adversely affect the exclusion of interest on any Bonds from gross income for federal income tax purposes.

[END OF ARTICLE IV]

ARTICLE V

REVENUES AND FUNDS

Section 501. Parking Rates. The City covenants that the rates and charges for use of the Parking System will not be less than the rates and charges required to enable the City to comply with the requirements of Section 502 hereof. So long as the City is in compliance with the requirements of Section 502 hereof, the City may from time to time revise the rates and charges for use of the Parking System.

Section 502. Rate Covenant. The City further covenants that it will fix, charge and collect reasonable rates and charges for the use of the services and facilities furnished by the Parking System and that from time to time, and as often as it shall appear necessary, it will adjust such rates and charges by increasing or decreasing the same or any selected categories of rates and charges so that the Net Revenues (excluding from the computation of Current Expenses for any Fiscal Year any amount received from any source other than Revenues and applied to the payment of Current Expenses in such Fiscal Year) will be sufficient to provide an amount in each Fiscal Year at least equal to one hundred thirty-five per centum (135%) of the Principal and Interest Requirements for such Fiscal Year on account of the Bonds then Outstanding and one hundred per centum (100%) of all amounts required to be deposited or paid pursuant to clauses (c) and (d) of Section 505 of this Resolution for such Fiscal Year.

If in any Fiscal Year the Net Revenues shall be less than the amount required under the preceding paragraph of this Section, within 30 days of the receipt of the audit report for such Fiscal Year, the City shall employ a Rate Consultant to review and analyze the financial status and operations of the Parking System and to submit, within 60 days thereafter, a written report to the City recommending revisions of the rates, fees and charges of the Parking System and the methods of operation of the Parking System that will result in producing the amount so required in the following Fiscal Year. Promptly upon its receipt of such recommendations, the City shall transmit copies thereof to the City Manager, the Parking Director and the Chief Financial Officer and the City shall revise its rates, fees and charges, or alter its methods of operation and take such other action as shall conform with such recommendations.

If the City shall fail to comply with the recommendations of the Rate Consultant, the registered owners of not less than ten per centum (10%) in principal amount of all Bonds then Outstanding may institute and prosecute an action or proceeding in any court or before any board or commission having jurisdiction to compel the City to comply with the recommendations and the requirements of the preceding paragraph of this Section.

If the City shall comply with all recommendations of the Rate Consultant in respect to its rates, fees, charges and methods of operation, the failure of Net Revenues to meet the requirements in the first paragraph of this Section shall not constitute an Event of Default so long as the Revenues, together with available moneys in the Funds and Accounts created in Article V of this Resolution, are sufficient to pay in cash the Current Expenses and to pay the Principal and Interest Requirements on all Outstanding Bonds and other System Debt for such Fiscal Year.

Section 503. Annual Budget. The City covenants that not later than thirty (30) days before the end of each Fiscal Year it will prepare a preliminary budget covering Revenues, Current Expenses, Capital Expenditures and all deposits to Funds and Accounts required by Section 505 of this Resolution for the ensuing Fiscal Year. Copies of each such preliminary budget shall be filed with the Chief Financial Officer.

The City further covenants that on or before the first day of each Fiscal Year it will finally adopt the budget covering the above items for such Fiscal Year (herein sometimes called the "Annual Budget"). Copies of the Annual Budget shall be filed with the Chief Financial Officer and mailed by the City to all Bondholders who shall have filed their names and addresses with the Chief Financial Officer for such purpose.

If for any reason the City shall not have adopted the Annual Budget before the first day of any Fiscal Year, the Annual Budget for the preceding Fiscal Year shall, until the adoption of the Annual Budget, be deemed to be in force and shall be treated as the Annual Budget under the provisions of this Article.

The City may at any time adopt an amended or supplemental Annual Budget for the remainder of the then current Fiscal Year and the Annual Budget so amended or supplemented shall be treated as the Annual Budget under the provisions of this Article. There shall be no limitation on the nature or amount covered by any such amendment to the Annual Budget.

The City further covenants that the amount expended for Current Expenses in any Fiscal Year will not exceed the reasonable and necessary amount therefor, and that it will not expend any amount for maintenance, repair and operation of the Parking System in excess of the total amount provided for Current Expenses in the Annual Budget. Nothing in this Section contained shall limit the amount which the City may expend for Current Expenses in any Fiscal Year provided any amounts expended therefor in excess of the total amount provided in the Annual Budget shall be received by the City from some source other than the Revenues of the Parking System.

Section 504. Enterprise Fund. A special fund is maintained by the City and designated the "Parking System Enterprise Fund" (herein called the "Enterprise Fund"). Except as provided in Article VI of this Resolution with respect to investment income on certain Funds and Accounts, the City covenants that all Revenues will be collected by the City and deposited as received to the credit of the Enterprise Fund. All moneys in the Enterprise Fund and the Accounts and Subaccounts therein shall be held by the City in trust and applied as provided in this Article.

Section 505. Debt Service Account and Other Accounts. A special account is hereby created within the Enterprise Fund and designated "Parking Revenue Bonds Debt Service Account" (herein called the "Debt Service Account"). There are hereby created in the Debt Service Account two separate subaccounts designated "Bond Service Subaccount" and "Redemption Subaccount". Two additional special accounts are hereby created within the Enterprise Fund and designated "Parking Revenue Bonds Reserve Account" (herein called the "Reserve Account") and "Parking Subordinated Indebtedness Account" (herein called the "Subordinated Indebtedness Account").

If required by the terms of any Series of Additional Bonds issued pursuant to Section 209 of this Resolution or any Series of Refunding Bonds issued pursuant to Section 210 of this Resolution, the City hereby covenants to establish and maintain, pursuant to the Series Resolution for such Additional Bonds and Refunding Bonds, a separate Debt Service Account to provide for the payment of the principal of, redemption premium, if any, and interest on such Series of Bonds or to provide within the Debt Service Account and the subaccounts therein separate subaccounts as required by the terms of such Bonds. To the extent required in the applicable Series Resolution, the City hereby further covenants to establish and maintain a separate subaccount in the Reserve Account to be maintained solely for the benefit of the Holders of such Series of Bonds; otherwise, except for Bonds not secured by the Reserve Account, all Bonds outstanding shall be secured by amounts on deposit to the credit of the Reserve Account. If any separate Debt Service Accounts or separate subaccounts within the Debt Service Account or the subaccounts therein or if any separate subaccounts within the Reserve Account are created pursuant to this paragraph, such Debt Service Accounts or separate subaccounts shall be funded in the manner and at the times required by the applicable Series Resolution and shall be held by the Chief Financial Officer separate and apart from the Debt Service Accounts or the Reserve Account or other separate subaccounts therein with respect to any other Series of Bonds issued under this Resolution, and shall be held solely for the benefit and security of the Series of Bonds with respect to which such separate Debt Service Account or separate subaccounts were created. Each such separate Debt Service Account or separate subaccounts therein with respect to a Series shall be designated "Series __ Debt Service Account" or "Series ____ Subaccount," as the case may be, and each such separate subaccount within the Reserve Account shall be designated "Series ____ Reserve Subaccount" (inserting an identifying Series year, and if more than one Series is to be issued in a single calendar year, an identifying Series letter).

The moneys in each of said Funds and Accounts shall be held in trust and applied as hereinafter provided with regard to each such Fund and Account and, pending such application, said Funds and Accounts, other than the Subordinated Indebtedness Account, shall be subject to a lien and charge in favor of the Holders of the Bonds issued and Outstanding under this Resolution and for the further security of such Holders until paid out or transferred as herein provided.

The City shall, on or before the 20th day of the month next succeeding the month in which Bonds are issued under the provisions of Section 208 of this Resolution and not later than the 20th day of each month thereafter, withdraw from amounts on deposit in the Enterprise Fund, after retaining therein an amount (to be held in the Enterprise Fund for the payment of Current Expenses) equal to the amount shown by the Annual Budget to be necessary for Current Expenses during the next ensuing two (2) months, the amounts required to make the deposits described below (or if the available amounts on deposit in the Enterprise Fund are less than the required amounts, the entire balance (other than the amount required to be retained therein for the payment of Current Expenses) and deposit the amounts so withdrawn to the credit of the following Accounts or Subaccounts in the following order:

(a) To the credit of the Bond Service Subaccount of the Debt Service Account, an amount equal to one-sixth (1/6) of the amount of interest payable on the Bonds of each Series on the next succeeding Interest Payment Date and one-twelfth (1/12) or, if principal is payable semi-annually, one-sixth (1/6) of the next maturing installment of principal on all Serial Bonds then Outstanding; provided, however, that in each month intervening

between the date of delivery of Bonds pursuant to Sections 208, 209 or 210 of this Resolution (beginning with the month following the month in which such delivery takes place) and the next succeeding Interest Payment Date and the next succeeding principal payment date, respectively, the amount specified in this subparagraph shall be that amount which when multiplied by the number of deposits to the credit of the Bond Service Subaccount required to be made during such respective periods as provided above will equal the amounts required (in addition to any amounts received as accrued interest or capitalized interest from the proceeds of such Bonds) for such next succeeding interest payment and next maturing installment of principal, respectively; and, provided further, that in the event the City has issued Variable Rate Bonds or entered into any Interest Rate Swaps pursuant to the provisions of this Resolution, amounts shall be deposited in the Bond Service Subaccount at such other times and/or in such other amounts or transferred to such other parties as necessary to pay the interest becoming due on the Variable Rate Bonds or the payments due under the Interest Rate Swaps on a parity with interest due on the Bonds, all in the manner provided in the applicable Series Resolutions.

(b) To the credit of the Redemption Subaccount of the Debt Service Account, an amount equal to one-twelfth (1/12) or, if any Bonds are required to be retired semi-annually in satisfaction of the Amortization Requirements therefor, one-sixth (1/6) of the principal amount of Term Bonds of each Series then Outstanding required to be retired, in satisfaction of the Amortization Requirements, if any, for such Fiscal Year.

(c) To the credit of the Reserve Account, such amount, if any, of any balance remaining after making the deposits under clauses (a) and (b) above (or the entire balance if less than the required amount) as may be required to make the amount deposited to the credit of the Reserve Account in such month equal to the Reserve Account Deposit Requirement for such month; provided, however, that if the Reserve Account Deposit Requirement is being satisfied by the restoration of any amount drawn or paid under a Reserve Account Insurance Policy or a Reserve Account Letter of Credit, there shall be paid to the provider thereof such amount, if any, of any balance remaining after making the deposits under clauses (a) and (b) above (or the entire balance if less than the required amount), as may be required to cause the Reserve Account Deposit Requirement to be satisfied.

(d) To the credit of the Subordinated Indebtedness Account, an amount, if any, of any balance remaining after making the deposits under clauses (a), (b) and (c) above (or the entire balance if less than the required amount) equal to the sum of one-twelfth (1/12) of the principal of, redemption premium, if any, and interest coming due on any Subordinated Indebtedness during the next succeeding twelve month period and the amount, if any, required to be deposited in any special reserve subaccount established within the Subordinated Indebtedness Account as provided in Section 510 hereof.

If the amount deposited in any month to the credit of any of the Accounts or subaccounts shall be less than the amount required to be deposited under the foregoing provisions of this Section, the requirement therefor shall nevertheless be cumulative and the amount of any deficiency in any month shall be added to the amount otherwise required to be deposited in each month thereafter until such time as all such deficiencies have been made up.

Section 506. Payment of Current Expenses. The Current Expenses shall be paid from the Enterprise Fund as the same become due and payable. Payments therefor from the Enterprise Fund shall be made in accordance with procedures established by the City from time to time, the Annual Budget and the covenants in Section 503 of this Article.

Section 507. Application of Moneys in Bond Service Subaccount. Except as otherwise provided in Article XII hereof or in a resolution supplemental hereto, the City shall on or before the business day immediately preceding each Interest Payment Date withdraw from the Bond Service Subaccount and deposit in trust with the Bond Registrar to enable the Bond Registrar to remit by mail or otherwise as provided in this Resolution to each registered owner of Bonds the amount required for paying the interest on such Bonds as such interest becomes due and payable. The Bond Registrar shall be permitted to transfer by wire to owners of at least $1,000,000 principal amount of the Bonds the amounts required for paying the interest on such Bonds as such interest becomes due and payable. Except as otherwise provided in Article XII hereof or in a resolution supplemental hereto, the City shall on or before the business day immediately preceding a date on which principal is due on Serial Bonds withdraw from the Bond Service Subaccount and deposit in trust with the Bond Registrar the amounts required for paying the principal of all Serial Bonds as such principal becomes due and payable. The City, in its discretion, may make the deposits required in this Section with the Bond Registrar by wire transfer. In addition, amounts on deposit in the Bond Service Subaccount shall be applied as provided in the second paragraph of Section 512 hereof.

Section 508. Application of Moneys in Redemption Subaccount. Moneys held for the credit of the Redemption Subaccount shall be applied to the retirement of the Bonds issued under the provisions of this Resolution as follows:

(a) Subject to the provisions of paragraph (c) of this Section, the City may endeavor to purchase any Bonds secured hereby and then Outstanding, whether or not such Bonds shall then be subject to redemption, such purchase to be on the most advantageous terms obtainable with reasonable diligence and at a price not to exceed the principal of such Bonds plus the amount of the redemption premium, if any, which might on the next redemption date be paid to the holders of such Bonds under the provisions of Article III of this Resolution if such Bonds should be called for redemption on such date from moneys in the Debt Service Account. The City shall pay the interest accrued on such Bonds to date of settlement therefor from the Bond Service Subaccount and the purchase price from the Redemption Subaccount, but no such purchase shall be made by the City within the period of forty-five (45) days next preceding any Interest Payment Date on which such Bonds are subject to call for redemption under the provisions of this Resolution, except from moneys other than moneys set aside or deposited for the redemption of Bonds.

(b) Subject to the provisions of Article III of this Resolution and paragraph (c) of this Section, the City may call for redemption on each Interest Payment Date on which Bonds are subject to redemption such amount of such Bonds as, with the redemption premium, if any, will exhaust the moneys which will be held for the credit of the Redemption Subaccount on said Interest Payment Date as nearly as may be; provided, however, that not less than Fifty Thousand Dollars ($50,000) principal amount of Bonds shall be called for redemption at any one time unless a lesser amount shall be required to

satisfy the Amortization Requirement for any Fiscal Year. Such redemption shall be made pursuant to the provisions of Article III of this Resolution. Except as otherwise provided in Article XII hereof or in a resolution supplemental hereto, the City shall during the period of five (5) business days prior to the Redemption Date withdraw from the Bond Service Subaccount and the Redemption Subaccount and set aside in separate accounts or deposit with the Bond Registrar the respective amounts required for paying the interest on, and the principal and redemption premium of, the Bonds so called for redemption.

(c) Moneys held in the Redemption Subaccount shall be applied by the City each Fiscal Year to the retirement of Bonds of each Series then Outstanding in the following order:

First: the Term Bonds of each such Series to the extent of the Amortization Requirement, if any, for such Fiscal Year for such Term Bonds, plus the applicable premium, if any, and any deficiency in any preceding Fiscal Years in the purchase or redemption of such Term Bonds under the provisions of this subdivision and, if the amount available in such Fiscal Year shall not be sufficient therefor, then in proportion to the Amortization Requirement, if any, for such Fiscal Year for the Term Bonds of each such Series then Outstanding, plus the applicable premium, if any, and any such deficiency;

Second: Term Bonds of each Series, if any, in proportion (as nearly as practicable) to the aggregate principal amount of the Bonds of each such Series originally issued; and

Third: after the retirement of all Term Bonds, if any, Serial Bonds issued under the provisions of this Resolution in the inverse order of their maturities and, to the extent that Serial Bonds of different Series mature on the same date, in proportion (as nearly as practicable) to the principal amount of Bonds of each Series maturing on such date.

Upon the retirement of any Bonds by purchase or redemption there shall be filed with the Chief Financial Officer a statement briefly describing such Bonds and setting forth the date of their purchase or redemption, the amount of the purchase price or the redemption price of such Bonds and the amount paid as interest thereon. The expenses in connection with the purchase or redemption of any Bonds shall be paid by the City from the Enterprise Fund.

Section 509. Application of Moneys in Reserve Account. Moneys held for the credit of the Reserve Account shall first be used for the purpose of paying the interest on and the principal of the Bonds whenever and to the extent that the moneys held for the credit of the Bond Service Subaccount shall be insufficient for such purpose and thereafter for the purpose of making deposits to the credit of the Redemption Subaccount in respect of such Bonds pursuant to the requirements of clause (b) of Section 505 of this Resolution whenever and to the extent that withdrawals from the Enterprise Fund are insufficient for such purposes; provided, however, that moneys held for the credit of a separate subaccount in the Reserve Account shall be applied to the foregoing purposes and in the foregoing manner, but only for the benefit of the Series of Bonds for which such separate subaccount was established and such Series of Bonds shall only have a claim upon

such separate subaccount and not upon any other moneys on deposit in the Reserve Account. If at any time the moneys held for the credit of the Reserve Account shall exceed the Reserve Account Requirement, such excess shall be withdrawn and deposited to the credit of the Enterprise Fund; provided, however, that the Commission, pursuant to the Series Resolution for any Series of Bonds hereunder may provide for a different disposition of any such excesses which relate to such Series of Bonds.

Notwithstanding the foregoing, the City may cause to be deposited to the credit of the Reserve Account (or the applicable subaccount therein) a Reserve Account Insurance Policy or Reserve Account Letter of Credit for the benefit of the Holders of the Bonds, either in substitution for all or a portion of the amount then on deposit therein or in an amount equal to the difference between the amount required to be deposited in such Reserve Account and the sum, if any, then on deposit in such Reserve Account (or the applicable subaccount therein), which Reserve Account Insurance Policy or Reserve Account Letter of Credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date or redemption or principal payment date on which a deficiency exists for the Bonds or the Series of Bonds for which such Reserve Account Insurance Policy or Reserve Account Letter of Credit was issued, which cannot be cured by moneys in the Reserve Account or any other Fund, Account or Subaccount held pursuant to this Resolution and available for such purpose.

If any such Reserve Account Insurance Policy or Reserve Account Letter of Credit is substituted for moneys on deposit in the Reserve Account (or the applicable subaccount therein), the excess moneys in the Reserve Account shall be applied to satisfy any such deficiency in any of the Funds, Accounts or Subaccounts under this Resolution, and any remaining balance shall be deemed surplus, shall be released from the lien of this Resolution and may be used by the City for any lawful purpose. If a disbursement is made from a Reserve Account Insurance Policy or Reserve Account Letter of Credit, the City shall be obligated, as provided in Section 505(c), to either reinstate the maximum limits of such Reserve Account Insurance Policy or Reserve Account Letter of Credit following such disbursement or deposit into such Reserve Account funds in the amount of the disbursement made under such Reserve Account Insurance Policy or Reserve Account Letter of Credit, or to undertake a combination of such alternatives.

In the event that upon the occurrence of any deficiency in the Debt Service Account, the Reserve Account is then funded with one or more Reserve Account Insurance Policies and/or Reserve Account Letters of Credit, the City or the Bond Registrar, as applicable pursuant to the provisions of any such facilities, shall, on the Interest Payment Date or principal payment date or redemption date to which such deficiency relates, draw upon or cause to be paid under such facilities, on a pro-rata basis thereunder, an amount sufficient to remedy such deficiency, in accordance with the terms and provisions of such facilities and any corresponding reimbursement or other agreement governing such facilities; provided however, that if at the time of such deficiency the Reserve Account is only partially funded with one or more Reserve Account Insurance Policies and/or Reserve Account Letters of Credit, prior to drawing on such facilities or causing payments to be made thereunder, there shall first be applied any cash and securities on deposit in the Reserve Account to remedy the deficiency and, if after such application a deficiency still exists, the City or the Bond Registrar, as applicable, shall make up the balance of the deficiency by drawing on such facilities or causing payments to be made thereunder, as provided in this paragraph. Amounts drawn or paid under a Reserve Account Insurance Policy or Reserve

Account Letter of Credit shall be applied as set forth in the first paragraph of this Section 509. Any amounts drawn or paid under a Reserve Account Insurance Policy or Reserve Account Letter of Credit shall be reimbursed to the issuer thereof in accordance with the terms and provisions of the reimbursement or other agreement governing such facility.

In the event that all or a portion of the Reserve Account Requirement shall be provided by a Reserve Account Insurance Policy or Reserve Account Letter of Credit, the City shall do all things necessary to receive, or have the Bond Registrar receive, in a timely fashion from the provider of such Reserve Account Insurance Policy or Reserve Account Letter of Credit amounts required to be expended pursuant to this Section.

Notwithstanding anything to the contrary contained in this Section 509 or elsewhere in this Resolution, the Series Resolution for a Series of Bonds may provide that such Series of Bonds shall not be secured by the Reserve Account or any subaccount therein and, in such event, such Series of Bonds shall not be secured by the Reserve Account or any subaccount therein and shall not have a claim upon any moneys held for the credit of the Reserve Account or any subaccount therein and such moneys shall not be applied for the benefit of such Series of Bonds.

Section 510. Application of Moneys in Subordinated Indebtedness Account. The City shall on the business day immediately preceding the date on which any payment in respect of principal of, redemption premium, if any, or interest on any Subordinated Indebtedness shall become due withdraw from the Subordinated Indebtedness Account and deposit in trust with the paying agent for such Subordinated Indebtedness to enable such paying agent to pay to the holders of such Subordinated Indebtedness the amount required to pay such principal, redemption premium or interest becoming due and payable, all as provided in the ordinance, resolution or other instrument pursuant to which such Subordinated Indebtedness has been incurred (the "Subordinated Indebtedness Instrument").

The City may, pursuant to the Subordinated Indebtedness Instrument relating to any Subordinated Indebtedness, establish within the Subordinated Indebtedness Account a special reserve subaccount for such Subordinated Indebtedness. Moneys deposited to the credit of the Subordinated Indebtedness Account with respect to any reserve subaccount deposit requirement established in a Subordinated Indebtedness Instrument shall be deposited in said subaccount and held as a reserve for the corresponding Subordinated Indebtedness, as shall be more fully set forth in such Subordinated Indebtedness Instrument.

Section 511. Application of Moneys Remaining in Enterprise Fund. Moneys held for the credit of the Enterprise Fund after the applications under Section 505 hereof, other than moneys held therein in respect of Current Expenses, may at the election of the City be applied:

(a) to make up deficiencies in any of the Funds and Accounts created by this Resolution,

(b) to pay the Cost of Improvements,

(c) to purchase or redeem Bonds,

(d) to pay the Cost of any required renewals and replacements to, or maintenance of, the Parking System,

(e) to make payments required under Interest Rate Swap arrangements which are not payable as Current Expenses or from amounts deposited therefor pursuant to Section 505(a) hereof, and

(f) for any other lawful purpose of the City, including payment of additional Current Expenses.

Section 512. Application of Moneys in Debt Service Account. Subject to the terms and conditions set forth in this Resolution, moneys held for the credit of the Debt Service Account shall be held in trust and disbursed for (a) the payment of interest on the Bonds issued under the provisions of Sections 208, 209 and 210 of this Resolution as such interest becomes due and payable, or (b) the payment of the principal of such Bonds at their maturities, or (c) the payment of the purchase or redemption price of such Bonds before their maturity and such moneys are hereby pledged to and charged with the payments mentioned in this Section.

Notwithstanding the foregoing or any other provision herein to the contrary, including Sections 507 and 508, (i) if principal of and premium, if any, and interest on the Bonds that would have been paid from a subaccount in the Debt Service Account, is paid instead under a Credit Facility or a Liquidity Facility, amounts deposited in such relevant subaccount may be paid, to the extent required, to the issuer of the Credit Facility or Liquidity Facility having therefore made said corresponding payment and (ii) amounts deposited in the Bond Service Subaccount of the Debt Service Account may, to the extent provided in a Series Resolution, be applied to payments due under an Interest Rate Swap on a parity with interest due on the Bonds.

Section 513. Money Held in Trust. All moneys which the City shall have withdrawn from the Debt Service Account or shall have received from any other source and deposited with the Bond Registrar, for the purpose of paying any of the Bonds hereby secured, either at the maturity thereof or upon call for redemption, or for the purpose of paying any interest on any of the Bonds hereby secured, shall be held in trust for the respective Holders of such Bonds. But any moneys which shall be so set aside or deposited and which shall remain unclaimed by the Holders of such Bonds for the period of six (6) years after the date on which such Bonds or the interest thereon shall have become due and payable shall upon request in writing be paid to the City or to such officer, board or body as may then be entitled by law to receive the same, and thereafter the Holders of such Bonds shall look only to the City or to such officer, board or body, as the case may be, for the payment and then only to the extent of the amounts so received without any interest thereon, and the Bond Registrar shall have no responsibility with respect to such moneys.

Section 514. Cancellation of Bonds. All Bonds, paid, redeemed or purchased either at or before maturity shall be canceled upon the payment, redemption or purchase of such Bonds and shall be delivered to the City when such payment, redemption or purchase is made. All bonds canceled under any of the provisions of this Resolution shall be destroyed by the City, which shall execute a certificate in duplicate describing the Bonds so destroyed, and one executed certificate shall be filed with the Chief Financial Officer and the other executed certificate shall be retained by the City.

[END OF ARTICLE V]

ARTICLE VI

DEPOSITARIES OF MONEYS, SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 601. Security for Deposits. All moneys received by the City under the provisions of this Resolution shall be held either in accordance herewith or shall be deposited with a Depositary or Depositaries, shall be held in trust, shall be applied only in accordance with the provisions of this Resolution and shall not be subject to lien or attachment by any creditor of the City.

All moneys held by the City or deposited with any Depositary hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other Federal agency shall be continuously secured for the benefit of the City and the Holders of the Bonds, either (a) by lodging with a bank or trust company approved by the City as custodian, or, if then permitted by law, by setting aside under control of the trust department of the bank holding such deposit as collateral security, Government Obligations, or, with the approval of the City, other marketable securities eligible as security for the deposit of trust funds under applicable regulations of the Comptroller of the Currency of the United States or applicable State of Florida laws or regulations, having a market value (exclusive of accrued interest) not less than the amount of such deposit, or, if the furnishing of security as provided in (a) of this Section is not permitted by applicable law, (b) in such other manner as may then be required or permitted by applicable State of Florida or Federal laws or regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that it shall not be necessary for the Bond Registrar to give security for the deposits of any moneys with them for the payment of the principal of or the redemption premium or the interest on any Bonds issued hereunder, or for the City to give security for any moneys which shall be represented by obligations purchased under the provisions of this Article as an investment of such moneys.

All moneys held by the City and deposited with each Depositary shall be credited to the particular Fund or Account to which such moneys belong.

Section 602. Investment of Moneys. Moneys held for the credit of the Construction Fund, the Enterprise Fund, the Debt Service Account, the Bond Service Subaccount, the Redemption Subaccount, the Reserve Account and any subaccounts therein shall, as nearly as may be practicable, be continuously invested and reinvested in Investment Obligations which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when moneys held for the credit of said Funds, Accounts and Subaccounts will be required for the purposes intended; provided, however, that amounts on deposit in the Reserve Account shall be invested in Investment Obligations which have an average aggregate weighted term to maturity not greater than five (5) years.

Investment Obligations so purchased as an investment of moneys in any such Fund or Account shall be deemed at all times to be part of such Fund or Account. The interest accruing thereon and any profit realized from such investment shall be credited to such Fund or Account and any loss resulting from such investment shall be charged to such Fund or Account.

Investment earnings on moneys on deposit to the credit of the following Funds and Accounts shall be applied as follows:

(a) Investment earnings on moneys on deposit to the credit of the Bond Service Subaccount and the Redemption Subaccount may, at the option of the City, be retained in said Accounts if the amounts are required for paying interest on the Bonds on the next Interest Payment Date and principal of Serial Bonds or the Amortization Requirements for Term Bonds when due, and to the extent that earnings are so retained, the City shall receive a credit against the amounts required to be deposited to said Accounts pursuant to Section 505 of this Resolution or the City may withdraw such earnings and deposit them to the credit of the Enterprise Fund.

(b) Investment earnings on money on deposit in the Reserve Account or a subaccount therein shall be retained in said Reserve Account or subaccount, as applicable, at any time that the amounts on deposit to the credit of said Reserve Account or subaccount are less than the applicable Reserve Account Requirement, or if moneys on deposit therein are sufficient for such purpose, then such earnings shall be withdrawn and deposited to the credit of the Enterprise Fund.

(c) Investment earnings on moneys on deposit to the credit of the Enterprise Fund shall be retained therein and applied in the same manner as other moneys on deposit therein.

(d) Investment earnings on moneys on deposit to the credit of the Construction Fund may, at the option of the City, be retained in said Fund or, if deemed to be surplus to the requirements of the Construction Fund, withdrawn and deposited to the credit of the Enterprise Fund. Anything in this clause (d) to the contrary notwithstanding, no transfer of investment earnings to the Enterprise Fund as permitted herein shall affect the definition of Revenues contained in this Resolution.

The City shall sell or present for payment or redemption any Investment Obligations so acquired whenever it shall be necessary so to do in order to provide moneys to meet any payment from such Fund or Account. Neither the City nor any agent thereof shall be liable or responsible for any loss resulting from any investment.

Moneys held for the credit of the Subordinated Indebtedness Account and any subaccounts therein shall be invested in accordance with the provisions of, and the investment earnings thereon shall be credited as provided in, the applicable Subordinated Indebtedness Instrument.

Section 603. Valuation of Investment Obligations. In computing the amount in any Fund or Account created pursuant to the provisions of this Resolution, obligations purchased as an investment of moneys therein shall be valued at the lower of (i) par, or amortized value if purchased at other than par, or (ii) market value, plus, in each case, accrued interest. Amortized value, when used with respect to an obligation purchased at a premium above or a discount below par, means the value as of any given time obtained by dividing the total premium or discount at which such obligation was purchased by the number of days remaining to maturity on such obligation at the date of such purchase and by multiplying the amount thus calculated by the

number of days having passed since such purchase, and (1) in the case of an obligation purchased at a premium by deducting the product thus obtained from the purchase price, and (2) in the case of an obligation purchased at a discount by adding the product thus obtained to the purchase price. Valuation on any particular date shall include the amount of interest then earned or accrued to such date or any moneys or investments in such Fund. The computation of the amount on deposit in or credited to the Funds and Accounts created under this Resolution and the valuation of the investments of such amount shall be performed by the City on the last day of each Fiscal Year, and such computation and valuation shall not be required to be performed at other times.

Section 604. Accounting for Funds. For the purposes of this Resolution, each Fund created hereunder shall be a series of self-balancing accounts within the book of accounts of the Parking System and shall connote a segregation of accounts, which will support special purpose disclosure reports, not to be construed as a separate set of books of accounts.

For the purpose of investing or reinvesting, the City may commingle moneys in the Funds and Accounts created and established hereunder in order to achieve greater investment income; provided that the City shall separately account for the amounts so commingled. The amounts required to be accounted for in each of the Funds and Accounts designated herein may be deposited in a single bank account for the Parking System provided that adequate accounting procedures are maintained to reflect and control the restricted allocations of the amounts on deposit therein for the various purposes of such Funds and Accounts as herein provided. The designation and establishment of funds and accounts in and by this Resolution shall not be construed to require the establishment of any completely independent funds and accounts but rather is intended solely to constitute an allocation of certain revenues and assets of the Parking System for certain purposes and to establish such certain priorities for application of certain revenues and assets as herein provided.

Section 605. Tax Covenants. The City covenants and agrees that so long as any Bonds remain Outstanding, it shall comply with the requirements of the Code, including any arbitrage rebate covenants in connection with the issuance of any Series of Bonds, except to the extent that to not so comply would, in the opinion of Bond Counsel, not result in the interest payable on such Bonds being included in gross income for Federal income tax purposes to the Holders thereof under the Code or, with respect to BABs, not result in the City not being entitled to receive Federal Direct Payments. Notwithstanding anything to the contrary contained herein or otherwise, and except with respect to BABs, the City shall not be required to comply with the covenants herein contained to the extent that interest on any Bonds issued hereunder shall be intended by the City, on the date of issuance of such Bonds, to be included in gross income for Federal income tax purposes to the Holders thereof under the Code. In connection with the issuance of the Series 2010 Bonds and for the purpose of complying with the arbitrage rebate covenants relating thereto, there is hereby created a special fund designated "Series 2010 Arbitrage Rebate Fund," which shall be held by the City and constitute an Arbitrage Rebate Fund under this Resolution.

[END OF ARTICLE VI]

ARTICLE VII

PARTICULAR COVENANTS

Section 701. Payment of Principal, Interest and Premium; Pledge of Net Revenues. The City covenants that it will promptly pay the principal of and the interest on each and every Bond and all other System Debt issued under the provisions of this Resolution at the places, on the dates and in the manner specified herein and in said Bonds and any premium required for the retirement of said Bonds and System Debt by purchase or redemption, according to the true intent and meaning thereof. Such principal, interest and premium will be payable solely from the Net Revenues and the Funds and Accounts created hereunder, other than the Subordinated Indebtedness Account and the Arbitrage Rebate Fund, and said Net Revenues and the Funds and Accounts created hereunder, other than the Subordinated Indebtedness Account and the Arbitrage Rebate Fund, are hereby pledged to the payment thereof in the manner and to the extent particularly specified in this Resolution.

Bonds and other System Debt issued under the provisions of this Resolution shall not be deemed to constitute a debt of the City or a pledge of the faith and credit of the City, but such Bonds and other System Debt shall be payable solely from the Net Revenues and the Funds and Accounts created hereunder, other than the Subordinated Indebtedness Account and the Arbitrage Rebate Fund, and the Bonds and other System Debt shall not directly or indirectly or contingently obligate the City to levy or to pledge any form of taxation whatever therefor, nor shall any such Bonds and other System Debt constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City.

Section 702. Construction of Project and Other Improvements; Operation of Parking System. The City further covenants that it will construct the Project and all other Improvements for the construction or acquisition of which Bonds or other System Debt shall be issued under the provisions of this Resolution, or for which moneys repayable from the proceeds of Bonds or other System Debt issued under the provisions of this Resolution shall have been advanced to the City, in accordance with the plans theretofore approved by the Consulting Engineers and that upon the completion of the Project or any such other Improvements it will operate and maintain the same as a part of the Parking System. The City further covenants that any contract with any person for the construction of all or a portion of the Project or any other Improvements shall provide for such performance and payment bonds or security in lieu thereof and for such ratings as shall be in compliance with the laws of the State of Florida and the normally established practices of the City from time to time in effect.

The City further covenants that it will establish and enforce reasonable rules and regulations governing the use of the Parking System and the operations thereof, that all compensation, salaries, fees and wages paid by it in connection with the maintenance, repair and operation of the Parking System will be reasonable, that it will operate the Parking System in an efficient and economical manner, that it will at all times maintain the Parking System or any part thereof in good repair and in sound operating condition and will make all necessary repairs, renewals and replacements, that it will duly observe and comply with all valid requirements of any municipal or governmental authority relative to the Parking System, that, except as permitted by this Resolution, it will not create or suffer to be created any lien or charge upon the Parking System

or any part thereof or upon the Net Revenues ranking equally with or prior to the Bonds, and that, out of the Net Revenues, it will pay or cause to be discharged, within sixty (60) days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects which, if unpaid, might by law become a lien upon the Parking System or any part thereof or upon the Revenues; provided, however, that nothing contained in this Section shall require the City to pay or cause to be discharged, or make provision for, any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

Section 703. Consulting Engineers. The City covenants and agrees that so long as any Bonds are Outstanding under this Resolution, it will employ an independent engineer or engineering firm or corporation having a favorable reputation for skill and experience in the construction and operation of public parking systems. Except for any fees and expenses incurred under the provisions of Section 403 of this Resolution, the cost of employing Consulting Engineers shall be treated as a part of the cost of operation and maintenance of the Parking System.

Upon request of the City, it shall be the duty of the Consulting Engineers to prepare and file with the City a report setting forth such advice and recommendations with respect to the Parking System as they may deem desirable.

The City further covenants that the Consulting Engineers shall at all times have free access to all properties of the Parking System and every part thereof for the purposes of inspection and examination and that its books, records and accounts may be examined by the Consulting Engineers at all reasonable times.

Section 704. Employment of Accountant. The City covenants and agrees that it will for the purpose of performing and carrying out the duties imposed on the Accountant by this Resolution employ an independent certified public accountant or firm of independent certified public accountants of suitable experience and responsibility, having a favorable reputation for skill and experience in the auditing of municipal enterprise funds.

Section 705. Insurance. The City covenants that it will at all times carry insurance, in a responsible insurance company or companies authorized and qualified under the laws of the State of Florida to assume the risk thereof, covering such properties belonging to the Parking System as are customarily insured, and against loss or damage from such causes as are customarily insured against by municipally-owned parking systems.

All such policies shall be for the benefit of the City, shall be made payable to the City and shall be deposited with the City, and the City shall have the sole right to receive the proceeds of such policies and to collection and receipt for claims thereunder. The proceeds of any and all such insurance shall be deposited in the name of the City.

The City covenants that, immediately after any loss or damage to any properties of the Parking System resulting from any cause, whether or not such loss or damage shall be covered by insurance, it will cause its engineers to prepare plans and specifications for repairing, replacing or reconstructing (either in accordance with the original or a different design) the damaged or destroyed property, and that it will forthwith commence and diligently prosecute the repair, replacement or reconstruction of the damaged or destroyed property unless it shall determine that

the repair, replacement or reconstruction of such property is not essential to the efficient or economic operation of the Parking System. In the event that the City shall determine that the repair or replacement of such damaged or destroyed property is not essential to the efficient or economic operation of the Parking System, the proceeds of such insurance received by the City shall be deposited to the credit of the Enterprise Fund.

The proceeds of all insurance referred to in this Section shall be available for and shall, to the extent necessary, be applied to the repair, replacement or reconstruction of the damaged or destroyed property, and shall be paid out in the manner hereinabove provided for payments from the Construction Fund. If such proceeds are more than sufficient for such purpose, the balance remaining shall be deposited to the credit of the Enterprise Fund.

All insurance policies shall be open to the inspection of the Bondholders and their representatives at all reasonable times. The Chief Financial Officer is hereby authorized in the name of the City to demand, collect, sue and receipt for the insurance money which may become due and payable under any policies payable to it. Any appraisement or adjustment of any loss or damage and any settlement or payment of indemnity therefor which may be agreed upon between the City and any insurer shall be evidenced to the Chief Financial Officer by a certificate signed by the Parking Director.

Notwithstanding the foregoing provisions of this Section, the City may institute self-insurance programs with regard to such risks as shall be consistent with the practices of municipally-owned parking systems operating in a manner similar to the Parking System.

Section 706. Use of Revenues. The City covenants and agrees that, so long as any of the Bonds secured hereby shall be outstanding, none of the Revenues will be used for any purpose other than as provided in this Resolution, and that no contract or contracts will be entered into or any action taken by which the rights of Holders of the Bonds might be impaired or diminished.

Section 707. Records, Accounts and Audits. The City covenants that it will keep the funds and accounts of the Parking System separate from all other funds and accounts of the City or any of its departments, and that it will keep accurate records and accounts of all items of costs and of all expenditures relating to the Parking System and of the Revenues collected and the application of such Revenues. Such records and accounts shall be open to the inspection of all interested persons.

The City further covenants that within six months after the close of each Fiscal Year it will cause an audit to be made of its books and accounts pertaining to the Parking System by the Accountant. Within a reasonable time thereafter the resulting Financial Statements shall be filed with the Commission and the Chief Financial Officer, and copies of such Financial Statements shall be mailed to any Bondholder who shall have filed his name and address with the Chief Financial Officer for such purpose. Such Financial Statements shall be open to the inspection of all interested persons.

The City further covenants that it will cause any additional reports or audits relating to the Parking System to be made as required by law or by any applicable rules or regulations of any governmental authority or of any securities exchange on which the Bonds may be listed or traded.

Such reports or audits may be extracted from the Financial Statements. The cost of such audits shall be treated as a part of the cost of operation.

Section 708. Supervisory Personnel. The City in operating the Parking System will employ a Parking Director with demonstrated ability and experience in operating similar facilities, and will require all employees who may have possession of money derived from the operation of the Parking System to be covered by a fidelity bond, written by a responsible indemnity company in amounts fully adequate to protect the City from loss.

Section 709. Separate Parking Facilities. In addition to the Separate Parking Facilities described in Exhibit B hereto, the Commission may by resolution determine to own or operate additional Separate Parking Facilities; provided, however, that prior to the adoption of any such resolution designating any facilities as a Separate Parking Facility, there shall be delivered to the City Manager a certificate of the Chief Financial Officer containing his determination that the ownership and operation of such Separate Parking Facility will not have a material adverse impact on the Net Revenues of the Parking System and stating his reasons for such determination.

The City may incur debt to acquire or improve Separate Parking Facilities without compliance with any test or limit contained in the Resolution so long as such debt is payable solely from the revenues generated by such Separate Parking Facility and the holders of such debt have no recourse and are in no way payable from the Revenues of the Parking System. The revenues, current expenses and debt service associated with such Separate Parking Facility and any debt of the City incurred therefor shall not be included in Revenues, Current Expenses and Principal and Interest Requirements, each as defined in this Resolution.

Any such Separate Parking Facility may be consolidated with the Parking System upon demonstration of compliance with the tests for the incurrence of Additional Bonds contained in clause (c) of Section 209 of this Resolution. In determining compliance with the test mentioned above, the revenues and current expenses of the Separate Parking Facility shall be included in computing Net Revenues and the debt service on any debt payable from revenues of such Separate Parking Facility shall be included in Principal and Interest Requirements. Prior to any such consolidation, compliance with the tests set forth in clause (c) of Section 209 shall be demonstrated regardless of whether there shall be any debt outstanding with respect to such Separate Parking Facility.

Section 710. No Free Parking. To the extent permitted by law, the City will not permit free parking or services to be supplied by the Parking System except that (i) the Commission, officers and employees may use facilities of the Parking System free of charge only while on official City business, (ii) the City may establish the hours during which meter charges shall be applicable and (iii) the City may permit free parking during hours when the volume of parking business does not justify the expense of collecting parking charges.

Section 711. Enforcement of Collections. The City will diligently enforce and collect, or cause to be enforced and collected, the rates, fees and other charges for the use of the Parking System; will take, or cause to be taken, all steps, actions and proceedings for the enforcement and collection of such rates, fees and charges to the full extent permitted or authorized by law; and will maintain accurate records with respect thereto. All such rates, fees, charges and revenues herein

pledged shall, as collected, be held in trust to be applied as provided in this Resolution and not otherwise.

Section 712. Management by Others of the Parking System. All or any part of the Parking System may be managed by independent managers or operators or by any authority created by the City for such purpose under such provisions as are acceptable to the Commission; provided, however, that prior to the approval of any such management arrangement, there shall be delivered to the City Manager (i) a certificate of the Chief Financial Officer containing his determination that such management arrangements will not have a material adverse impact on the Net Revenues of the Parking System and stating his reasons for such determination and (ii) an opinion of Bond Counsel to the effect that such management arrangement will have no adverse impact on the exclusion of interest on any of the Bonds or other System Debt from gross income for federal income tax purposes. Any and all financial considerations received by the City by reason of such management arrangement shall be regarded as Revenues for purposes of this Resolution and applied as described in Section 505 hereof.

Section 713. Sale or Other Disposition of the Parking System. Except as provided in Section 709 and this Section, the City shall not sell, lease or otherwise dispose of all or any part of the Parking System.

(a) To the extent permitted by law, the City, without restriction, may in any Fiscal Year sell, lease or otherwise dispose of assets forming a part of the Parking System, the aggregate value of which in each such Fiscal Year does not exceed the lesser of $1,000,000 or one half of one per centum (1/2 of 1%) of the book value of the net property, plant and equipment of the Parking System as shown on the Financial Statements for the latest Fiscal Year for which such Financial Statements are available. The proceeds of a disposition pursuant to this clause (a) shall be applied as described in Section 505 of this Resolution or to the defeasance of Bonds pursuant to Section 1101 of this Resolution.

(b) To the extent permitted by law, the City may in any Fiscal Year sell, lease or otherwise dispose of assets forming a part of the Parking System in excess of the amount set forth in clause (a) of this Section if, before any such transfer, there is delivered to the City Manager a report of the Consulting Engineers or Rate Consultant demonstrating that the sale, lease or other disposition of such property will not have a material adverse impact on the Net Revenues and stating his reasons therefor. In determining whether to render such report, the Consulting Engineers or the Rate Consultant shall consider the usefulness of the assets to be disposed of to the operations of the Parking System, the uses to be made of any proceeds of a sale and the rental income to be received with respect to any lease thereof. The proceeds of a disposition pursuant to this clause (b) shall be applied as described in Section 505 of this Resolution or to the defeasance of Bonds pursuant to Section 1101 of this Resolution.

(c) To the extent permitted by law, the City may in any Fiscal Year sell, lease or otherwise dispose of any assets forming a part of the Parking System without regard to the limitations and conditions in clauses (a) and (b) above if the Commission by resolution declares that such assets are not needed or serve no useful purpose in connection with the maintenance and operation of the Parking System. The proceeds of a disposition pursuant

to this clause (c) shall be applied as described in Section 505 of this Resolution or to the defeasance of Bonds pursuant to Section 1101 of this Resolution.

(d) To the extent permitted by law, the City may sell, lease or otherwise dispose of the assets of the entire Parking System, if, upon the application of the proceeds of any such disposition as hereinafter required, there shall be no Bonds deemed to be Outstanding under the provisions of this Resolution and the City shall have paid or made full provision for the payment of all other obligations of the City payable from the Revenues of the Parking System, including but not limited to, Current Expenses then due and payable or to become due and payable, and all other System Debt payable in any way from the Revenues of the Parking System and all fees then due and owing or to become due in the future with respect to Credit Facilities. The proceeds of any sale, lease or other disposition permitted by this clause (d) shall be applied first to the payment or provision for payment of the obligations, including the Bonds, set forth above, and only after all such obligations shall have been paid or full provision for their payment been made, shall the City apply any of such proceeds to any other lawful purpose of the City.

No sale, lease or any other disposition of assets of the Parking System pursuant to clauses (a) through (d) above shall be consummated nor shall the proceeds of any such disposition be applied unless prior to such consummation or application, there shall be delivered an opinion of Bond Counsel to the effect that such disposition and the application of the proceeds as required herein will have no adverse impact on the exclusion of interest on any of the Bonds or other System Debt from gross income for Federal income tax purposes.

Notwithstanding anything to the contrary in this Resolution, including this Section, and without having to comply with the above provisions of this Section but subject to Sections 502 and 605 hereof, to the extent permitted by law, the City may permit at such rates as the City shall deem reasonable (i) the exclusive use of parking lots or structures, or any portion thereof, which are part of the Parking System in connection with special events or occasions for periods of no more than one (1) week, including renewals; (ii) the exclusive use of spaces in parking lots or structures which are part of the Parking System by individuals who are members of the general public for periods of no more than one (1) month (however, such use may be renewed for successive periods of no more than one (1) month each); (iii) the exclusive use of parking lots or structures, or any portion thereof, which are part of the Parking System during periods (e.g., at night) when there is little or no reasonably expected demand for use of such lots or structures by members of the general public and when such exclusive use for such periods will not prevent any foreseeable use of such lots or structures by members of the general public; or (iv) the rental of retail space within parking structures that are part of the Parking System and intended, upon initial acquisition or construction by the City of such structures, to be used as retail space. The income from such use pursuant to this paragraph shall be deposited in the Enterprise Fund and applied as described in Section 505 of this Resolution.

Section 714. Covenants with Providers of Credit Facilities, Liquidity Facilities, Reserve Account Insurance Policies or Reserve Account Letters of Credit. (a) Subject to the provisions of this Resolution, the City may make such covenants, including the granting of a parity or subordinate lien to the lien of Bonds hereunder, as the City may in its sole discretion determine to be appropriate with any provider that shall agree to insure or to provide for Bonds of any one or

more Series a Credit Facility or Liquidity Facility, which Credit Facility or Liquidity Facility shall enhance the security or the value of such Bonds and thereby reduce the Principal and Interest Requirements on such Bonds. Such covenants may be set forth in the applicable Series Resolution or in any agreement entered into with such provider and shall be binding on the City, the Bond Registrar and all the Holders of Bonds the same as if such covenants were set forth in full in this Resolution; provided, however, that no such covenant shall create any additional or expand any existing obligations, duties or responsibilities of the Bond Registrar hereunder or limit, waive or restrict any existing rights of the Bond Registrar hereunder, without the Bond Registrar's prior written consent.

(b) The City may make such covenants, including the granting of a subordinate lien to the lien of Bonds hereunder, as it may in its sole discretion determine to be appropriate with any provider of a Reserve Account Insurance Policy or Reserve Account Letter of Credit deposited in the Reserve Account. Such covenants may be set forth in a resolution adopted by the City or in any agreement entered into with such provider and shall be binding on the City, the Bond Registrar and all the Holders of Bonds the same as if such covenants were set forth in full in this Resolution; provided, however, that no such covenant shall create any additional or expand any existing obligations, duties or responsibilities of the Bond Registrar hereunder or limit, waive or restrict any existing rights of the Bond Registrar hereunder, without the Bond Registrar's prior written consent.

(c) All covenants for the benefit of a provider of a Credit Facility, Liquidity Facility, Reserve Account Letter of Credit or Reserve Account Insurance Policy shall remain in full force and effect only for so long as such provider has not defaulted in its obligations under the applicable Credit Facility, Liquidity Facility, Reserve Account Letter of Credit or Reserve Account Insurance Policy.

[END OF ARTICLE VII]

ARTICLE VIII

REMEDIES

Section 801. Extension of Interest Payment. In case the time for the payment of any interest on any Bond shall be extended, whether or not such extension be by or with the consent of the City, such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Resolution except subject to the prior payment in full of the principal of all Bonds then Outstanding and all interests the time for the payment of which shall not have been extended.

Section 802. Events of Default. Each of the following events is hereby declared an "Event of Default":

(a) payment of the principal and of the redemption premium, if any, of any of the Bonds shall not be made when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or

(b) payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable; or

(c) the City shall for any reason be rendered incapable of fulfilling its obligations hereunder; or

(d) final judgment for the payment of money shall be rendered against the City as a result of the ownership, control or operation of the Parking System and any such judgment shall not be discharged within ninety (90) days from the entry thereof or an appeal shall not be taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof; or

(e) the City admits in writing its inability to pay its debts generally as they become due, or files a petition in bankruptcy or makes an assignment for the benefit of its creditors or consents to the appointment of a receiver or trustees for itself or for the whole or any part of the Parking System or a receiver or trustee for such purpose is appointed without the consent of the City; or

(f) the City is adjudged insolvent by a court of competent jurisdiction, or is adjudged a bankrupt on a petition in bankruptcy filed against the City, or an order, judgment or decree is entered by a court of competent jurisdiction appointing, without the consent of the City, a receiver or trustee of the City or of the whole or any part of its property and any of the aforesaid adjudications, orders, judgments or decrees shall not be vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or

(g) the City shall file a petition or answer seeking reorganization or any arrangement under the Federal bankruptcy laws or any other applicable law or statute of the United States of America or any state thereof; or

(h) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the City or of the whole or any substantial part of its property, and such custody or control shall not be terminated within ninety (90) days from the date of assumption of such custody or control; or

(i) the City shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Resolution on the part of the City to be performed and such default shall continue for thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the City by the holders of not less than ten per centum (10%) in aggregate principal amount of the Bonds then Outstanding; provided, however, if the default specified in this clause (i) shall be of a type which cannot be remedied within thirty (30) days, it shall not constitute an Event of Default if the City shall begin to remedy such default within such thirty-day period.

Section 803. Acceleration of Maturities. Upon the happening and continuance of any Event of Default specified in clauses (a) through (i) of Section 802 of this Article, then and in every such case the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding may, by a notice in writing to the City, declare the principal of all of the Bonds then Outstanding (if not then due and payable) to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything contained in the Bonds or in this Resolution to the contrary notwithstanding; provided, however, that if at any time after the principal of the Bonds shall have been so declared to be due and payable, and before the entry of final judgment of decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Resolution, moneys shall have accumulated in the Debt Service Account sufficient to pay the principal of all matured Bonds and all arrears of interest, if any, upon all Bonds then Outstanding (except the principal of any Bonds not then due except by virtue of such declaration and the interest accrued on such Bonds since the last Interest Payment Date), and all amounts then payable by the City hereunder shall have been paid or a sum sufficient to pay the same have been deposited with the Bond Registrar, and every other default in the observance or performance of any covenant, condition, agreement or provision contained in the Bonds or in this Resolution (other than a default in the payment of the principal of such Bonds then due only because of a declaration under this Section) shall have been remedied, then and in every such case the Holders of not less than a majority in aggregate principal amount of the Bonds not then due except by virtue of such declaration and then Outstanding may, by written notice to the City, rescind and annul such declaration and its consequences, but no such rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 804. Enforcement of Remedies. Upon the happening and continuance of any Event of Default then and in every such case the Holders of not less than ten per centum (10%) in aggregate principal amount of the Bonds then Outstanding hereunder may proceed to protect and enforce the rights of the Bondholders under State law, or under this Resolution by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as such Bondholder shall deem most effectual to protect and enforce such rights. Such Holders of Bonds, or any trustee appointed to

represent Bondholders as hereinafter provided, shall be entitled as of right to the appointment of a receiver of the Parking System in an appropriate judicial proceeding in a court of competent jurisdiction, whether or not such Holder or trustee is also seeking or shall have sought to enforce any other right or exercise any other remedy in connection with Bonds issued pursuant to this Resolution.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the Parking System, and each and every part thereof, and shall hold, operate and maintain, manage and control the Parking System, and each and every part thereof, and in the name of the City shall exercise all the rights and powers of the City with respect to the Parking System as the City itself might do. Such receiver shall collect and receive all Revenues and maintain and operate the Parking System in the manner provided in this Resolution and comply under the jurisdiction of the court appointing such receiver, with all of the provisions of this Resolution.

Whenever all that is due upon the Bonds, and interest thereon, and under any covenants of this Resolution for the Funds and Accounts, and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the Revenues of the Parking System shall have been paid and made good, and all defaults under the provisions of this Resolution shall have been cured and made good, possession of the Parking System shall be surrendered to the City upon the entry of an order of the court to that effect. Upon any subsequent Event of Default, any Holder of Bonds issued pursuant to this Resolution, or any trustee appointed for Bondholders as hereinafter provided, shall have the right to secure the further appointment of a receiver.

Such receiver shall in the performance of the powers hereinabove conferred upon him be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby and a successor receiver appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the Parking System in the name of the City and for the joint protection and benefit of the City and the Holders of Bonds issued pursuant to this Resolution. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the Parking System, except as provided herein, but the authority of such receiver shall be limited to the possession, operation and maintenance of the Parking System for the sole purpose of the protection of both the City and the Bondholders.

The Holder or Holders of Bonds in an aggregate principal amount of more than fifty per centum (50%) of the Bonds then Outstanding may by a duly executed certificate in writing appoint a trustee for Holders of Bonds issued pursuant to this Resolution with authority to represent such Bondholders in any legal proceedings for the enforcement and protection of the rights of such Bondholders. Such certificate shall be executed by such Bondholders or their duly authorized attorneys or representatives, and shall be filed in the office of the City Clerk of the City.

Notwithstanding anything in this Resolution to the contrary, so long as the issuer of a Credit Facility shall not be in default in its obligations under such Credit Facility, such issuer shall be deemed to be the holder of all Bonds having the benefit of such Credit Facility for all purposes of this Article VIII.

Section 805. Pro Rata Application of Funds. Anything in this Resolution to the contrary notwithstanding, if at any time the moneys in the Debt Service Account shall not be sufficient to pay the principal of or the interest on the Bonds as the same become due and payable (either by their terms or by acceleration of maturities under the provisions of Section 803 of this Article), such moneys, together with any moneys then available for such purpose, whether through the exercise of the remedies provided for in this Article or otherwise, shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become due and payable or shall have been declared due and payable, all such moneys shall be applied:

First: to the payment of the persons entitled thereto of all installments of interest then due and payable, in the order in which such installments become due and payable, and, if the amount available shall not be sufficient to pay in full, any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

Second: to the payment of the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which sufficient moneys are held pursuant to the provisions of this Resolution), in the order of their due dates, with interest upon such Bonds at the respective rates specified therein from the respective dates upon which they became due, and, if the amount available shall not be sufficient to pay in full the principal of Bonds due on any particular date, together with such interest, then to the payment of such principal, ratably according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

Third: to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of Bonds and to the redemption of Bonds, all in accordance with the provisions of Article V of this Resolution.

(b) If the principal of all the Bonds shall have become due and payable or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

(c) If the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of Section 803 of this Article, then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys remaining in and thereafter accruing to the Debt Service Account shall be applied in accordance with the provisions of paragraph (a) of this Section.

The provisions of this Section are in all respects subject to the provisions of Section 801 of this Article.

Whenever moneys are to be applied by the City pursuant to the provisions of this Section, such moneys shall be applied by the City at such times, and from time to time, as the City in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future; the deposit of such moneys with the Bond Registrar, or otherwise setting aside such moneys, in trust for the proper purpose, shall constitute proper application by the City; and the City shall incur no liability whatsoever to any Bondholder or to any other person for any delay in applying any such funds, so long as the City acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Resolution as may be applicable at the time of application. Whenever the City shall exercise such discretion in applying such funds, it shall fix the date upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The City shall give such notice as it may deem appropriate and as otherwise required herein of the fixing of any such date, and shall not be required to make payment to the Holder of any unpaid Bond until such Bond shall be surrendered to it for appropriate endorsement.

Section 806. Effect of Discontinuance of Proceedings. In case any proceeding taken by any Bondholder on account of any default shall have been discontinued or abandoned for any reason, then and in every such case the City and the Bondholder shall be restored to their former positions and rights hereunder, respectively, and all rights and remedies of the Bondholders shall continue as though no such proceeding had been taken.

Section 807. Restrictions on Individual Bondholder Actions. No Holder or Holders of any of the Bonds hereby secured shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Resolution, or to enforce any right hereunder except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the benefit of all Holders of such Bonds.

Section 808. No Remedy Exclusive. No remedy herein conferred upon the Bondholders is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder.

Section 809. Delay Not a Waiver. No delay or omission of any Bondholder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and

remedy given by this Article to the Bondholder may be exercised from time to time and as often as may be deemed expedient.

Section 810. Right to Enforce Payment of Bonds. Nothing in this Article shall affect or impair the right of any Bondholder to enforce the payment of the principal of and interest on his Bond, or the obligation of the City to pay the principal of and interest on each Bond to the Holder thereof at the time and place in said Bond expressed.

[END OF ARTICLE VIII]

ARTICLE IX

EXECUTION OF INSTRUMENTS BY BONDHOLDERS AND PROOF OF OWNERSHIP OF BONDS

Section 901. Execution of Instruments by Bondholders and Proof of Ownership of Bonds. Any request, direction, consent or other instrument in writing required or permitted by this Resolution to be signed or executed by Bondholders may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Bondholders or their attorneys or legal representatives. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Resolution and shall be conclusive in favor of the City with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the verification of any officer in any jurisdiction who, by the laws thereof, has power to take affidavits within such jurisdiction, to the effect that such instrument was subscribed and sworn to before him, or by an affidavit of a witness to such execution. Where such execution is on behalf of a person other than an individual such verification or affidavit shall also constitute sufficient proof of the authority of the signer thereof.

(b) The fact of the ownership of Bonds shall be proved by the registration books required to be maintained pursuant to Article II of this Resolution.

Nothing contained in this Article shall be construed as limiting the City to such proof, it being intended that the City may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of the Holder of any Bond shall bind every future Holder of the same Bond in respect of anything done by the City in pursuance of such request or consent.

Notwithstanding any of the foregoing provisions of this Section, the City shall not be required to recognize any person as a Holder of any Bond or to take any action at his request unless such Bond shall be deposited with it.

[END OF ARTICLE IX]

ARTICLE X

SUPPLEMENTAL RESOLUTIONS

Section 1001. Supplemental Resolution without Bondholders' Consent. The Commission may, without the consent of any Holders of the Bonds or providers of Credit Facilities, Liquidity Facilities, Reserve Account Insurance Policies or Reserve Account Letters of Credit, from time to time and at any time adopt such resolutions supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental resolution shall thereafter form a part hereof):

(a) to cure any ambiguity or formal defect or omission or to correct any inconsistent provisions in this Resolution or in any supplemental ordinance, or

(b) to grant to or confer upon the Bondholders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Bondholders, or

(c) to add to the conditions, limitations and restrictions on the issuance of Bonds under the provisions of this Resolution other conditions, limitations and restrictions thereafter to be observed, or

(d) to add to the covenants and agreements of the City in this Resolution other covenants and agreements thereafter to be observed by the City or to surrender any right or power herein reserved to or conferred upon the City, or

(e) to permit the issuance of Bonds in coupon form, if as a condition precedent to the adoption of such supplemental resolution, there shall be delivered to the City an opinion of Bond Counsel to the effect that the issuance of Bonds in coupon or bearer form are then permitted by law to be issued and that the interest on such Bonds would be exempt from Federal income taxation, or

(f) to permit the City to issue Bonds the interest on which is not exempt from Federal income taxation, or

(g) to qualify the Bonds or any of them for registration under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or

(h) to qualify this Resolution as an "indenture" under the Trust Indenture Act of 1939, as amended, or

(i) to create additional Debt Service Accounts or subaccounts within the Reserve Account for Series of Bonds as permitted by Section 505 hereof, or

(j) to permit Bonds to be issued in denominations smaller than $5,000, or

(k) to comply with requirements of entities providing Credit Facilities, Liquidity Facilities, Reserve Account Insurance Policies, Reserve Account Letters of Credit and Interest Rate Swaps, or

(l) to designate any parking facilities, including portions of the Parking System, as Separate Parking Facilities under the provisions of Section 709 of this Resolution.

Section 1002. Supplemental Resolution with Bondholders' Consent. Subject to the terms and provisions contained in this Section, and not otherwise, the Holders of not less than a majority in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, anything contained in this Resolution to the contrary notwithstanding, to consent to and approve the adoption of such resolutions supplemental hereto as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Resolution or in any supplemental resolution; provided, however, that nothing herein contained shall permit, or be construed as permitting, (a) an extension of the maturity of the principal of or the interest on any Bond issued hereunder, or (b) a reduction in the principal amount of any Bond or the redemption premium or the rate of interest thereon, or (c) the creation of a superior or parity pledge or lien to the pledge and lien created under this Resolution other than as permitted by this Resolution, or (d) a preference or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental ordinance. Nothing herein contained, however, shall be construed as making necessary the approval by Bondholders of the adoption of any supplemental ordinance as authorized in Section 1001 of this Article.

The consent of the Holders of any Series of Additional Bonds or Refunding Bonds to be issued hereunder shall be deemed given if the underwriters or initial purchasers for resale consent in writing to such supplemental resolution and the nature of the amendment effected by such supplemental resolution is disclosed in the official statement or other offering document pursuant to which such Series of Additional Bonds or Refunding Bonds is offered and sold to the public.

If at any time the City shall determine that it is necessary or desirable to adopt any supplemental resolution for any of the purposes of this Section, the City shall cause notice of the proposed adoption of such supplemental resolution to be mailed, postage prepaid, to all registered owners of Bonds then Outstanding at their addresses as they appear on the registration books at least sixty (60) days prior to the proposed adoption date. Such notice shall briefly set forth the nature of the proposed supplemental resolution and shall state that the copies thereof are on file at the office of the City Clerk for inspection by all Bondholders. The City shall not, however, be subject to any liability to any Bondholder by reason of its failure to cause the notice required by this Section to be mailed and any such failure shall not affect the validity of such supplemental resolution when consented to and approved as provided in this Section.

Whenever, after the mailing of such notice, the City shall deliver to the Chief Financial Officer an instrument or instruments in writing purporting to be executed by the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding, which instrument or instruments shall refer to the proposed supplemental resolution described in such notice and shall specifically consent to and approve the adoption thereof in substantially the form of the copy

thereof referred to in such notice, thereupon, but not otherwise, the Commission may adopt such supplemental resolution in substantially such form, without liability or responsibility to any holder of any Bond, whether or not such Holder shall have consented thereto.

If the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding at the time of the adoption of such supplemental resolution shall have consented to and approved the adoption thereof as herein provided, no Holder of any Bond shall have any right to object to the adoption of such supplemental resolution, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Commission from adopting the same or from taking any action pursuant to the provisions thereof.

Upon the adoption of any supplemental resolution pursuant to the provisions of this Section, this Resolution shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Resolution of the City and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Resolution as so modified and amended.

Notwithstanding anything to the contrary contained in this Resolution, so long as the issuer of a Credit Facility shall not be in default in its obligations under such Credit Facility, such issuer shall be deemed to be the holder of all Bonds having the benefit of such Credit Facility for purposes of this Section 1002.

Section 1003. Supplemental Resolutions Part of Resolution. Any supplemental resolution adopted in accordance with the provisions of this Article and approved as to legality by the City Attorney shall thereafter form a part of this Resolution, and all of the terms and conditions contained in any such supplemental resolution as to any provision authorized to be contained therein shall be and shall be deemed to be part of the terms and conditions of this Resolution for any and all purposes. In case of the adoption and approval of any supplemental resolution, express reference may be made thereof in the text of any Bonds issued thereafter, if deemed necessary or desirable by the City.

[END OF ARTICLE X]

ARTICLE XI

DEFEASANCE

Section 1101. Cessation of Interests of Bondholders. If, when the Bonds secured hereby (a) shall have become due and payable in accordance with their terms or (b) shall have been duly called for redemption or (c) irrevocable instructions to call the Bonds for redemption or to pay the Bonds at their respective maturities or combination of such payment and redemption shall have been given by the City, the whole amount of the principal and the interest and premium, if any, so due and payable upon all of the Bonds then Outstanding shall be paid or sufficient moneys or Government Obligations, the principal of and the interest on which when due will provide sufficient moneys to pay such principal, interest (which with respect to any Variable Rate Bonds shall be assumed to be the maximum interest rate permitted under the documents governing such Variable Rate Bonds) and premium, if any, on the Bonds then Outstanding shall be held by the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, for such purpose under the provisions of this Resolution, and provision shall also be made for paying all other sums payable hereunder by the City, then and in that case the right, title and interest of the Holders of the Bonds under this Resolution shall thereupon cease, determine and become void, the City shall have no obligation with respect to such Bonds except for the payment of the principal of, redemption premium, if any, and interest thereon solely from the moneys or Government Obligations deposited pursuant to this Section, and the Commission in such case, shall repeal and cancel this Resolution and may apply any surplus in any subaccount in the Debt Service Account and all balances remaining in any other Funds or Accounts other than moneys held for the redemption or payment of Bonds or the interest thereon to any lawful purpose of the City as the Commission shall determine; otherwise this Resolution shall be, continue and remain in full force and effect; provided, however, that in the event Government Obligations shall be deposited with and held by the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, as hereinabove provided, and in addition to the requirements set forth in Article III of this Resolution, the City shall within thirty (30) days after such Government Obligations shall have been deposited with the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, cause a notice to be mailed, by first class mail, postage prepaid, to the Holders of such Bonds, setting forth (a) the date, if any, designated for the redemption of the Bonds or if a portion of the Outstanding Bonds are not being redeemed prior to their maturities or mandatory redemption dates, a statement to the effect that such Bonds are being paid at maturity and any Term Bonds are being redeemed in amounts and at times which will satisfy the Amortization Requirements therefor, (b) a description of the Government Obligations so held by the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, and (c) that this Resolution has been repealed and canceled in accordance with the provisions of this Section.

With respect to Variable Rate Bonds or Optional Tender Bonds, prior to the release of this Resolution, there shall be filed with the Chief Financial Officer, the following: (i) a resolution adopted by the Commission determining (which determination may be based upon opinions of Bond Counsel or investment bankers) that the rights of the owners of such Variable Rate Bonds or Optional Tender Bonds to receive payment of interest at the Variable Rate as provided in the documents pursuant to which such Bonds were issued and the right to receive payment of the purchase price of such Bonds upon tender for purchase, as provided in the documents pursuant to

which such Bonds were issued, either pursuant to a Credit Facility provided therefor or otherwise will not be materially adversely impaired by the release of this Resolution pursuant to this Article XI; (ii) a resolution, adopted by the Commission, which may be the same resolution specified in clause (i) above, specifying the uses to which any Current Excess Interest Earnings (as hereinafter defined) may be applied, which may include the financing of Improvements, Capital Expenditures or Current Expenses, to the extent that expenditure of such sums for such purpose reduces the required Revenues, or, if the City no longer owns the Parking System, capital expenditures for other lawful purposes of the City, in each event, such uses shall be for facilities the construction or acquisition of which would, but for the receipt of such Current Excess Interest Earnings, have been constructed or acquired using proceeds of unissued Bonds or other bonds of the City or paid from future revenues of the City; and (iii) there shall have been furnished to the City, as a condition of the release of this Resolution, an opinion of Bond Counsel to the effect that such release will not have an adverse effect on the Federal income tax exemption of interest on any of such Bonds as are then exempt from such taxation.

For the purposes of this Section, "Current Excess Interest Earnings" shall mean for each period for which interest is received by the escrow agent on the Government Obligations held in escrow for the Holders of the outstanding Bonds, the excess, if any, of interest received on such Government Obligations over the amount of interest paid on the Variable Rate Bonds in such period. The agreement pursuant to which such Government Obligations are held by the escrow agent shall provide for withdrawal of such Current Excess Interest Earnings when received by the escrow agent and payment of such sums to the City for expenditure in the manner provided in the resolution mentioned in clause (ii) of the preceding paragraph.

All moneys and obligations held by the Bond Registrar or other bank, trust company or other appropriate financial institution, acting as escrow agent, pursuant to this Section shall be held in trust and the principal of and interest on said obligations when received, and said moneys, applied to the payment, when due, of the principal of, and the interest and the premium, if any, on the Bonds payable therefrom.

[END OF ARTICLE XI]

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 1201. Effect of Covenants. All covenants, stipulations, obligations and agreements of the City contained in this Resolution shall be deemed to be covenants, stipulations, obligations and agreements of the City and of the Commission and of each department and agency of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall bind or inure to the benefit of the successor or successors thereof from time to time and any officer, board, body or commission to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the City or upon the Commission by the provisions of this Resolution shall be exercised or performed by the Commission, or by such other officers, board, body or commission as may be required by law to exercise such powers or to perform such duties.

No covenant, stipulation, obligation or agreement herein contained shall be deemed to be a covenant, stipulation, obligation or agreement of any member, agent or employee of the Commission in his individual capacity, and neither the members of the Commission nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 1202. Manner of Giving Notice. Any notice, demand, direction, request or other instrument authorized or required by this Resolution to be given to or filed with the City shall be deemed to have been sufficiently given or filed for all purposes of this Resolution if and when sent by registered mail, return receipt requested, to the City at

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Chief Financial Officer and City Attorney

All documents received by the City and the Commission under the provisions of this Resolution shall be retained in their possession, subject at all reasonable times to the inspection of the City, any Bondholder, and the agents and representatives thereof.

Section 1203. Successorship of Bond Registrar. Any bank or trust company with or into which the Bond Registrar may be merged or consolidated, or to which the assets and business of such Bond Registrar may be sold, shall be deemed the successor of such Bond Registrar for the purposes of this Resolution. If the position of the Bond Registrar shall become vacant for any reason, the Commission shall, within thirty (30) days thereafter, appoint a bank or trust company located in the same city, as the Bond Registrar to fill such vacancy. The City shall have the right at any time to remove the Bond Registrar and to appoint a successor Bond Registrar; provided, however, that no such removal and appointment shall cause a delay in the payment of principal of, redemption premium, if any, or interest on any Bond Outstanding under this Resolution.

Section 1204. Successorship of City Officers. In the event that the offices of Mayor, Chief Financial Officer, City Manager, Parking Director, City Clerk or City Attorney shall be abolished or any two or more of such offices shall be merged or consolidated, or in the event of a vacancy in any such office by reason of death, resignation, removal from office or otherwise, or in the event any such officer shall become incapable of performing the duties of his office by reason of sickness, absence from the City or otherwise, all powers conferred and all obligations and duties imposed upon such officer shall be performed by the officer succeeding to the principal functions thereof or by the officer upon whom such powers, obligations and duties shall be imposed by law.

Section 1205. Inconsistent Resolutions. All resolutions and parts thereof which are inconsistent with any of the provisions of this Resolution are hereby declared to be inapplicable to the provisions of this Resolution; provided, however, that until such time as "provision for payment" with respect to the Prior Bonds has been made in accordance with Section 1101 of the Prior Bonds Resolution, the provisions of the Prior Bonds Resolution shall remain in full force and effect, and upon such "provision for payment" with respect to the Prior Bonds having been made, the Prior Bonds Resolution shall be deemed repealed and cancelled.

Section 1206. Further Acts. The officers and agents of this City are hereby authorized and directed to do all the acts and things required of them by the Bonds and this Resolution, for the full, punctual and complete performance of all of the terms, covenants, provisions and agreements contained in the Bonds and this Resolution.

Section 1207. Headings Not Part of Resolution. Any headings preceding the texts of the several Articles and Sections hereof and any table of contents, marginal notes or footnotes appended to copies hereof shall be solely for convenience of reference, and shall not constitute a part of this Resolution, nor shall they effect its meaning, construction or effect.

Section 1208. Beneficiaries under Resolution. Except as herein otherwise expressly provided, nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City, the Bond Registrar, the Holders of the Bonds issued under and secured by this Resolution, and the providers of any Credit Facility, Liquidity Facility, Reserve Account Insurance Policy and Reserve Account Letter of Credit, any right, remedy or claim, legal or equitable, under or by reason of the Resolution or any provisions hereof, this Resolution and all its provisions being intended to be and being for the sole and exclusive benefit of the City, the Bond Registrar, the Holders from time to time of the Bonds issued hereunder and the providers of any Credit Facility, Liquidity Facility, Reserve Account Insurance Policy and Reserve Account letter of Credit.

Section 1209. Effect of Partial Invalidity. In case any one or more of the provisions of this Resolution or of any Bonds or coupons issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of the Bonds or coupons, but this Resolution and the Bonds and coupons shall be construed and enforced as if such illegal or invalid provision had not been contained therein. The Bonds are issued and this Resolution is adopted with the intent that the laws of the State of Florida shall govern their construction.

Section 1210. Resolution Effective. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 2010.

[SEAL]

_____
Mayor

_____
City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 9/8/10
Date

EXHIBIT A

THE PROJECT

The Project consists of the following:

(1) A new public parking garage to be located between 18th Street and 20th Street and between Bay Road and Purdy Avenue.

(2) Improvements to various parking garages and lots.

(3) Acquisition and installation of parking meters and pay stations and machines.

The Commission may approve by resolution other Improvements as part of the Project in addition to and/or in lieu of one or more of the Improvements described above.

EXHIBIT B

INITIAL SEPARATE PARKING FACILITIES

The Separate Parking Facilities initially consist of:

(1) A parking facility located at 5th Street and Alton Road.

(2) A parking facility located at 7th Street and Collins Avenue.

(3) A parking facility located at 16th Street between Collins Avenue and Washington Avenue.

CITY OF MIAMI BEACH, FLORIDA

and

U.S. BANK NATIONAL ASSOCIATION,

as Escrow Agent

ESCROW DEPOSIT AGREEMENT

Relating to
PARKING REVENUE BONDS,
SERIES 1997

DATED AS OF _____ __, 2010

ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT (the "Agreement") made and entered into as of _____ __, 2010, by and between the CITY OF MIAMI BEACH, FLORIDA (the "City") and U.S. BANK NATIONAL ASSOCIATION, as Escrow Agent (the "Escrow Agent").

W I T N E S S E T H:

WHEREAS, the City has heretofore issued its $21,000,000 aggregate principal amount City of Miami Beach, Florida Parking Revenue Bonds, Series 1997, dated August 1, 1997, presently outstanding in the principal amount of $19,195,000, as more particularly described in Schedule A attached hereto and made a part hereof (the "Outstanding Series 1997 Bonds"), pursuant to the provisions of Resolution No. 96-21898, adopted by the Mayor and City Commission of the City (the "Commission") on February 20, 1996 (the "Original Resolution"), and Resolution No. 97-22482, adopted by the Commission on July 16, 1997 (together with the Original Resolution, the "Refunded Bonds Bond Resolution"); and

WHEREAS, the City desires to refund, defease and redeem the Outstanding Series 1997 Bonds (hereinafter referred to as the "Refunded Bonds"); and

WHEREAS, the City has issued its $_____ aggregate principal amount City of Miami Beach, Florida Parking Revenue Refunding Bonds, Series 2010A (the "Bonds"), pursuant to the provisions of Resolution No. _____, adopted by the Commission on _____ __, 2010 (the "Bond Resolution"), a portion of the proceeds of which Bonds is to be deposited with the Escrow Agent to provide, with investment earnings thereon and certain other available moneys, for the defeasance and redemption of the Refunded Bonds; and

WHEREAS, a portion of the proceeds derived from the sale of the Bonds, together with the other available moneys, will be applied to the purchase of Government Obligations (as such term is hereinafter defined), which will mature and produce investment income and earnings at such time and in such amount as will be sufficient, together with certain moneys remaining uninvested, to pay upon the redemption thereof, the principal of and interest on the Refunded Bonds as more specifically set forth herein; and

WHEREAS, in order to provide for the proper and timely application of the moneys deposited hereunder, the maturing principal amount of the Government Obligations purchased therewith, and investment income and earnings derived therefrom to the payment of the Refunded Bonds, it is necessary for the City to enter into this Agreement with the Escrow Agent;

NOW, THEREFORE, the City and the Escrow Agent, in consideration of the foregoing and the mutual covenants herein set forth and in order to secure the payment of the principal of and interest on all of the Refunded Bonds according to their tenor and effect, do hereby agree as follows:

ARTICLE I

CREATION AND CONVEYANCE OF TRUST ESTATE

Section 1.01. Creation and Conveyance of Trust Estate. The City hereby grants, warrants, remises, releases, conveys, assigns, transfers, aliens, pledges, sets over and confirms unto the Escrow Agent and to its successors in the trust hereby created, and to it and its assigns forever, all and singular the property hereinafter described, to wit:

DIVISION I

All right, title and interest in and to (i) $_____ in moneys deposited directly with the Escrow Agent and derived from the proceeds of the Bonds upon issuance and delivery of the Bonds and execution of and delivery of this Agreement, and (ii) $_____ in moneys derived from the [Bond Service Subaccount and the Reserve Account] created under the Refunded Bonds Bond Resolution (such moneys described in (ii), the "Other Moneys").

DIVISION II

All right, title and interest in and to the Government Obligations described in Schedule B attached hereto and made a part hereof, together with the income and earnings thereon.

DIVISION III

Any and all other property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, conveyed, pledged, assigned or transferred as and for additional security hereunder by the City, or by anyone on behalf of the City to the Escrow Agent for the benefit of the Refunded Bonds.

DIVISION IV

All property which is by the express provisions of this Agreement required to be subject to the pledge hereof and any additional property that may, from time to time hereafter, by delivery or by writing of any kind, by the City, or by anyone in its behalf, be subject to the pledge hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate (as such term is hereinafter defined), including all additional property which by the terms hereof has or may become subject to the encumbrances of this Agreement, unto the Escrow Agent, and its successors and assigns, forever in trust, however, for the sole benefit and security of the holders from time to time of the Refunded Bonds, but if the principal of and interest on all of the Refunded Bonds shall be fully and promptly paid upon the redemption thereof, in accordance with the terms thereof, then this Agreement shall be and become void and of no further force and effect except as otherwise provided herein; otherwise the same shall remain in full force and effect, and upon the trusts and subject to the covenants and conditions hereinafter set forth.

ARTICLE II

DEFINITIONS

Section 2.01. Definitions. In addition to words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings, unless some other meaning is plainly intended.

"Government Obligations" shall mean direct general non-callable obligations of the United States of America.

"Trust Estate", "trust estate" or "pledged property" shall mean the property, rights and interests described or referred to under Divisions I, II, III and IV in Article I above.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. The word "person" shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate. Reference to a person other than a natural person shall include its successors.

ARTICLE III

ESTABLISHMENT OF ESCROW DEPOSIT TRUST FUND; FLOW OF FUNDS

Section 3.01. Creation of Escrow Deposit Trust Fund and Deposit of Moneys. There is hereby created and established with the Escrow Agent a special and irrevocable trust fund designated "City of Miami Beach, Florida Parking Revenue Bonds, Series 1997 Escrow Deposit Trust Fund" (the "Escrow Deposit Trust Fund"), to be held by the Escrow Agent for the sole benefit of the holders of the Refunded Bonds and accounted for separate and apart from the other funds of the City and, to the extent required by law, of the Escrow Agent.

Concurrently with the delivery of this Agreement, the City herewith causes to be deposited with the Escrow Agent and the Escrow Agent acknowledges receipt of immediately available moneys for deposit in the Escrow Deposit Trust Fund in the amount of $_____, consisting of $_____ from the proceeds of the Bonds and $_____ in Other Moneys, all of which, when invested in Government Obligations (other than $_____ from the Other Moneys to be held uninvested), will provide moneys sufficient to pay the principal of and interest on the Refunded Bonds, upon the redemption thereof, as more particularly described in Schedule C attached hereto and made a part hereof.

Section 3.02. Payment of Refunded Bonds. The Bond proceeds and Other Moneys received by the Escrow Agent will be sufficient to purchase $_____ par amount of Government Obligations, all as listed in Schedule B attached hereto and made a part hereof, which will mature in principal amounts and earn income at such times so that sufficient moneys will be available to pay when redeemed all principal of and interest on the Refunded Bonds. Notwithstanding the foregoing, if the amounts deposited in the Escrow Deposit Trust Fund are insufficient to make said payments of principal and interest, the City shall cause to be deposited

into the Escrow Deposit Trust Fund the amount of any deficiency immediately upon notice from the Escrow Agent.

Section 3.03. Irrevocable Trust Created. The deposit of moneys and Government Obligations or other property hereunder in the Escrow Deposit Trust Fund shall constitute an irrevocable deposit of said moneys and Government Obligations and other property hereunder for the sole benefit of the holders of the Refunded Bonds, subject to the provisions of this Agreement. The holders of the Refunded Bonds, subject to the provisions of this Agreement, shall have an express lien on all moneys and principal of and earnings on the Government Obligations and other property in the Escrow Deposit Trust Fund. The moneys deposited in the Escrow Deposit Trust Fund and the matured principal of the Government Obligations and other property hereunder and the interest thereon shall be held in trust by the Escrow Agent, and shall be applied for the payment of Refunded Bonds, as more specifically set forth in Schedule C hereto.

Section 3.04. Purchase of Government Obligations.

The Escrow Agent is hereby directed immediately to purchase the Government Obligations listed in Schedule B from the proceeds of the Bonds and the Other Moneys as described in Sections 3.01 and 3.02 hereof. The Escrow Agent shall purchase the Government Obligations solely from the moneys deposited in the Escrow Deposit Trust Fund as provided in this Agreement. The Escrow Agent shall apply the moneys deposited in the Escrow Deposit Trust Fund and the Government Obligations purchased therewith, together with all income or earnings thereon, in accordance with the provisions hereof. The Escrow Agent shall have no power or duty to invest any moneys held hereunder or to make substitutions of the Government Obligations held hereunder or to sell, transfer or otherwise dispose of the Government Obligations held hereunder except as provided in this Agreement. The Escrow Agent is hereby directed not to invest $_____ from the Other Moneys deposited in the Escrow Deposit Trust Fund simultaneously with the delivery of this Agreement.

The City covenants to take no action in the investment, reinvestment or security of the Escrow Deposit Trust Fund in violation of this Agreement and recognizes that any such action in contravention of this Agreement might cause the Refunded Bonds or the Bonds to be classified as "arbitrage bonds" under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code").

Section 3.05. Substitution of Certain Government Obligations.

(a) If so directed in writing by the City on the date of delivery of this Agreement, the Escrow Agent shall accept in substitution for all or a portion of the Government Obligations listed in Schedule B, Government Obligations (the "Substituted Securities"), the principal of and interest on which, together with any Government Obligations listed in Schedule B for which no substitution is made and moneys held uninvested by the Escrow Agent, will be sufficient to pay all principal of and interest of the Refunded Bonds as set forth in Schedule C hereof. The foregoing notwithstanding, the substitution of Substituted Securities for any of the Government Obligations listed in Schedule B may be effected only upon compliance with Section 3.05(b)(1) and (2) below.

(b) If so directed in writing by the City at any time during the term of this Agreement, the Escrow Agent shall sell, transfer, exchange or otherwise dispose of, or request the redemption of, all or a portion of the Government Obligations then held in the Escrow Deposit Trust Fund and shall substitute for such Government Obligations other Government Obligations, designated by the City, and acquired by the Escrow Agent with the proceeds derived from the sale, transfer, disposition or redemption of or by the exchange of such Government Obligations held in the Escrow Deposit Trust Fund, but only upon the receipt by the Escrow Agent of:

(1) an opinion of nationally recognized counsel in the field of law relating to municipal bonds stating that such substitution will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Refunded Bonds and the Bonds and is not inconsistent with the statutes and regulations applicable to the Refunded Bonds and the Bonds; and

(2) verification by a firm of independent certified public accountants stating that the principal of and interest on the substituted Government Obligations, together with any Government Obligations and any uninvested moneys remaining in the Escrow Deposit Trust Fund, will be sufficient, without reinvestment, to pay the principal of and interest on the Refunded Bonds as set forth in Schedule C hereof.

Any moneys resulting from the sale, transfer, disposition or redemption of the Government Obligations held hereunder and the substitution therefor of other Government Obligations not required to be applied for the payment of such principal of and interest on the Refunded Bonds (as shown in the verification report described in Section 3.05(b)(2) hereof delivered in connection with such substitution), shall be transferred to the City for deposit in the Enterprise Fund described in the Bond Resolution. Upon any such substitution of Government Obligations pursuant to Section 3.05, Schedule B hereto shall be appropriately amended to reflect such substitution.

The Escrow Agent shall be under no duty to inquire whether the Government Obligations as deposited in the Escrow Deposit Trust Fund are properly invested under the Code. The Escrow Agent may rely on all specific directions in this Agreement providing for the investment or reinvestment of the Escrow Deposit Trust Fund.

Section 3.06. Transfers from Escrow Deposit Trust Fund. As the principal of the Government Obligations set forth in Schedule B shall mature and be paid, and the investment income and earnings thereon are paid, the Escrow Agent, in its capacity of Bond Registrar (as defined in the Refunded Bonds Bond Resolution) with respect to the Refunded Bonds (the "Refunded Bonds Bond Registrar"), no later than the payment date for the Refunded Bonds, as specified in Schedule C hereof, shall pay from such moneys the principal of and interest on the Refunded Bonds, as specified in Schedule C hereof. The City hereby irrevocably determines, and irrevocably instructs the Refunded Bonds Bond Registrar, to call the Refunded Bonds for redemption on _____ __, 2010 at a redemption price of 100% of the principal amount thereof in accordance with the Refunded Bonds Bond Resolution. The City shall perform, and shall cause the Refunded Bonds Bond Registrar to perform, as applicable, the responsibilities, described in the Refunded Bonds Bond Resolution, in connection with the redemption of the Refunded Bonds, including the giving of notice of redemption as required therein. The City shall mail, or cause the Refunded Bonds Bond Registrar to mail, a copy of such notice of

redemption to Financial Security Assurance Inc. ("FSA"). The City shall also file, or cause to be filed, a copy of such notice of redemption with the Municipal Securities Rulemaking Board (the "MSRB").

Section 3.07. Investment of Certain Moneys Remaining in Escrow Deposit Trust Fund. Subject to the provisions of Section 3.04, the Escrow Agent shall invest and reinvest, at the written direction of the City, in Government Obligations any moneys remaining from time to time in the Escrow Deposit Trust Fund until such time as they are needed. Such moneys shall be reinvested in such Government Obligations for such periods and at such interest rates as the Escrow Agent shall be directed to invest by the City, which periods and interest rates shall be set forth in an opinion from nationally recognized counsel in the field of law relating to municipal bonds to the City and to the Escrow Agent, which opinion shall also be to the effect that such reinvestment of such moneys in such Government Obligations for such period and at such interest rates will not, under the statutes and regulations applicable to the Refunded Bonds and the Bonds, cause the interest on the Refunded Bonds or the Bonds to be included in gross income for federal income tax purposes and that such investment is not inconsistent with the statutes and regulations applicable to the Refunded Bonds and the Bonds. Any interest income resulting from reinvestment of moneys pursuant to this Section 3.07 not required to be applied for the payment of the principal of and interest on the Refunded Bonds shall be transferred to the City for deposit in the Enterprise Fund.

Section 3.08. Escrow Deposit Trust Fund Constitutes Trust Fund. The Escrow Deposit Trust Fund created and established pursuant to this Agreement shall be and constitute a trust fund for the purposes provided in this Agreement and shall be kept separate and distinct from all other funds of the City and, to the extent required by law, of the Escrow Agent and used only for the purposes and in the manner provided in this Agreement.

Section 3.09. Transfer of Funds After All Payments Required by this Agreement are Made. After all of the transfers by the Escrow Agent to the payment of the principal of and interest on the Refunded Bonds provided in Schedule C have been made, all remaining moneys and securities, together with any income and interest thereon, in the Escrow Deposit Trust Fund shall be transferred to the City for deposit in the Enterprise Fund; provided, however, that no such transfers (except transfers made in accordance with Sections 3.05 and 3.07 hereof) shall be made until all of the principal of and interest on the Refunded Bonds have been paid.

ARTICLE IV

CONCERNING THE ESCROW AGENT

Section 4.01. Liability of Escrow Agent. The Escrow Agent shall not be liable in connection with the performance of its duties hereunder except for its own negligence, misconduct or default. The Escrow Agent shall not be liable for any loss resulting from any investments made pursuant to the terms of this Agreement. The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of moneys and of the principal amount of the Government Obligations and the earnings thereon to pay the Refunded Bonds. So long as the Escrow Agent applies any moneys, Government Obligations and interest earnings therefrom to pay the Refunded Bonds as provided herein, and complies fully with the terms of this

Agreement, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to pay the Refunded Bonds caused by such calculations.

The duties and obligations of the Escrow Agent shall be determined by the express provisions of this Agreement. The Escrow Agent may consult with counsel with respect to any matter relevant to this Agreement, who may or may not be counsel to the City, and be entitled to receive from the City reimbursement of the reasonable fees and expenses of such counsel, and in reliance upon the opinion of such counsel have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action under this Agreement, such matter may be deemed to be conclusively established by a certificate signed by an authorized officer of the City and the Escrow Agent may in good faith conclusively rely upon such certificate.

The Escrow Agent shall have no lien, security interest or right of set-off whatsoever upon any of the moneys or investments in the Escrow Deposit Trust Fund for the payment of fees or expenses for the services rendered by the Escrow Agent under this Agreement.

Section 4.02. Permitted Acts. The Escrow Agent and its affiliates may become the owner of all or may deal in the Refunded Bonds as fully and with the same rights as if it were not the Escrow Agent.

Section 4.03. Payment to Escrow Agent. The City shall pay to the Escrow Agent reasonable compensation for all services rendered by it hereunder and also its reasonable expenses, charges and other disbursements and those of its attorneys, agents and employees incurred in and about the administration and execution of the trusts hereby created, and the performance of its powers and duties hereunder, including, without limitation, all advances, counsel fees and other expenses reasonably made or incurred by the Escrow Agent in connection with such services, all as provided in Schedule D hereto.

ARTICLE V

MISCELLANEOUS

Section 5.01. Amendments to this Agreement. This Agreement is made for the benefit of the holders from time to time of the Refunded Bonds and shall not be repealed, revoked, altered or amended without the written consent of all such holders of the Refunded Bonds, the Escrow Agent and the City; provided, however, that the City and the Escrow Agent may, without the consent of, or notice to, such holders, enter into such agreements supplemental to this Agreement which shall not adversely affect the rights of such holders and shall not be inconsistent with the terms and provisions of this Agreement for any one or more of the following purposes:

(a) to cure any ambiguity or formal defect or omission in this Agreement; or

(b) to grant to or confer upon the Escrow Agent for the benefit of the holders of the Refunded Bonds any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Escrow Agent.

The Escrow Agent shall be entitled to rely upon an unqualified opinion of a nationally recognized counsel in the field of law relating to municipal bonds with respect to compliance with this Section.

Prior to any repeal, revocation, alteration or amendment of this Agreement, the City shall provide written notice of such proposed repeal, revocation, alteration or amendment to Standard & Poor's Ratings Services and Moody's Investors Service, Inc. at their addresses set forth below:

Standard & Poor's Ratings Services
55 Water Street
New York, New York 10041
Attn: Municipal Ratings Desk/Refunded Bonds

Moody's Investors Service, Inc.
7 World Trade Center
250 Greenwich Street, 23rd Floor
New York, New York 10007

Section 5.02. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

Section 5.03. Agreement Binding. All the covenants, proposals and agreements in this Agreement contained by or on behalf of the City or by or on behalf of the Escrow Agent shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 5.04. Notices to Escrow Agent and City. Any notice, demand, direction, request or other instrument authorized or required by this Agreement to be given to or filed with the Escrow Agent or the City, shall be deemed to have been sufficiently given or filed for all purposes of this Agreement if personally delivered and receipted for, or if sent by registered or certified United States mail, return receipt requested, addressed as follows:

(a) As to the City -

City of Miami Beach, Florida
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Chief Financial Officer

(b) As to the Escrow Agent -

U.S. Bank National Association
200 South Biscayne Boulevard
Suite 1870
Miami, Florida 33131
Attention: Corporate Trust Services

Any party hereto may, by notice sent to the other parties hereto, designate a different or additional address to which notices under this Agreement are to be sent.

Section 5.05. Termination. This Agreement shall terminate when all transfers and payments required to be made by the Escrow Agent under the provisions hereof shall have been made.

Section 5.06. Execution by Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

Section 5.07. Notice of Defeasance. The Chief Financial Officer is hereby instructed to (i) publish in accordance with Section 1101 of the Original Resolution, (ii) mail, or cause the Refunded Bonds Bond Registrar to mail, to FSA, and (iii) file, or cause to be filed, with the MSRB, a notice of defeasance of the Refunded Bonds, substantially in the form attached hereto as Schedule E.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers and, with respect to the City, its official seal to be hereunto affixed and attested as of the date first above written.

CITY OF MIAMI BEACH, FLORIDA

_____
Mayor

ATTEST:

_____
City Clerk

U.S. BANK NATIONAL ASSOCIATION,
as Escrow Agent

(SEAL)

By:_____
Vice President

U.S. Bank National Association, as Refunded Bonds Bond Registrar, hereby agrees to the provisions of this Agreement applicable to the Refunded Bonds Bond Registrar.

U.S. BANK NATIONAL ASSOCIATION,
as Refunded Bonds Bond Registrar

By:_____
Vice President

SCHEDULE A

REFUNDED BONDS

Maturity Date	Principal Amount	Interest Rate
09/01/2015	$ 6,650,000	5.000%
09/01/2022	12,545,000	5.125

SCHEDULE B

INVESTMENT OF BOND PROCEEDS AND OTHER MONEYS

Type of Security	Maturity Date	Principal Amount	Interest Rate
		$	%

SCHEDULE C

SCHEDULE OF PAYMENTS ON
REFUNDED BONDS

Date	Principal	Interest	Total
__/__/10	$19,195,000	$	$

SCHEDULE D

ESCROW AGENT FEES AND EXPENSES

(i) In consideration of the services to be rendered by the Escrow Agent under the Agreement, the City upon execution hereof agrees to pay the Escrow Agent a one-time fee of $_____ to be paid at closing for all services to be incurred as Escrow Agent in connection with such services, plus agrees to pay as incurred reimbursement at cost for ordinary out-of-pocket expenses. The term "ordinary out-of-pocket expenses" means expenses of holding, investing and disbursing the Escrow Deposit Trust Fund as provided herein and includes, but is not limited to publication costs, postage and legal fees as incurred.

(ii) The City shall also reimburse the Escrow Agent for any extraordinary expenses incurred by it in connection herewith. The term "extraordinary expenses" includes (a) expenses arising out of the assertion of any third party to any interest in the Escrow Deposit Trust Fund or any challenge to the validity hereof, including reasonable attorneys' fees, (b) expenses relating to any reinvestment under Section 3.07 or substitution under Section 3.05 hereof, and (c) expenses (other than ordinary expenses) not occasioned by the Escrow Agent's misconduct or negligence.

(iii) The fees and expenses payable by the City under clause (i) or (ii) above shall not be paid from the Escrow Deposit Trust Fund, but shall be paid by the City from legally available funds of the City.

SCHEDULE E

NOTICE OF DEFEASANCE

City of Miami Beach, Florida
Parking Revenue Bonds, Series 1997
Dated: August 1, 1997

Maturity Date (September 1,)	Principal Amount	Interest Rate	CUSIP Numbers*
2015	$ 6,650,000	5.000%	593235EZ3
2022	12,545,000	5.125	593235EU4

NOTICE IS HEREBY GIVEN that monies have been deposited with U.S. Bank National Association, as Escrow Agent, for the payment of the principal and interest on the above bonds (the "Bonds"), and such monies, except to the extent maintained in cash, have been invested in direct obligations of the United States of America. U.S. Bank National Association, as Bond Registrar for the Bonds, has been irrevocably instructed to call the Bonds for redemption on _____ __, 2010 (the "Redemption Date") at a redemption price of 100% of the principal amount thereof.

The amount so deposited as aforesaid has been calculated to be adequate to pay the principal of and interest on the Bonds through and including the Redemption Date. The Bonds are therefore deemed not to be "Outstanding" within the meaning of Resolution No. 96-21898 adopted by the Mayor and City Commission of the City of Miami Beach, Florida (the "Commission") on February 20, 1996 (as supplemented, the "Bond Resolution"). The Bond Resolution has been repealed and cancelled in accordance with the provisions of Section 1101 thereof.

CITY OF MIAMI BEACH, FLORIDA

By:_____
Patricia D. Walker,
Chief Financial Officer

Dated: _____ __, 2010

* No representation is made as to the correctness of these CUSIP numbers either as printed on the Bonds or contained in this Notice.

DISCLOSURE DISSEMINATION AGENT AGREEMENT

This Disclosure Dissemination Agent Agreement (the "Disclosure Agreement"), dated as of _____ __, 2010, is executed and delivered by the City of Miami Beach, Florida (the "Issuer") and Digital Assurance Certification, L.L.C., as exclusive Disclosure Dissemination Agent (the "Disclosure Dissemination Agent" or "DAC") for the benefit of the Holders (hereinafter defined) of the Bonds (hereinafter defined) and in order to provide certain continuing disclosure with respect to the Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the "Rule").

SECTION 1. Definitions. Capitalized terms not otherwise defined in this Disclosure Agreement shall have the meaning assigned in the Rule or, to the extent not in conflict with the Rule, in the Official Statement (hereinafter defined). The capitalized terms shall have the following meanings:

"Annual Report" means an Annual Report described in and consistent with Section 3 of this Disclosure Agreement.

"Annual Filing Date" means the date, set in Sections 2(a) and 2(f), by which the Annual Report is to be filed with the MSRB.

"Annual Financial Information" means annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(a) of this Disclosure Agreement.

"Audited Financial Statements" means the financial statements (if any) of the Issuer for the prior Fiscal Year, certified by an independent auditor as prepared in accordance with generally accepted accounting principles or otherwise, as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(b) of this Disclosure Agreement.

"Bonds" means the bonds as listed on the attached Exhibit A, with the 9-digit CUSIP numbers relating thereto.

"Certification" means a written certification of compliance signed by the Disclosure Representative stating that the Annual Report, Audited Financial Statements, Voluntary Report or Notice Event notice delivered to the Disclosure Dissemination Agent is the Annual Report, Audited Financial Statements, Voluntary Report or Notice Event notice required to be submitted to the MSRB under this Disclosure Agreement. A Certification shall accompany each such document submitted to the Disclosure Dissemination Agent by the Issuer and include the full name of the Bonds and the 9-digit CUSIP numbers for all Bonds to which the document applies.

"Disclosure Representative" means the Chief Financial Officer of the Issuer or his or her designee, or such other person as the Issuer shall designate in writing to the Disclosure Dissemination Agent from time to time as the person responsible for providing Information to the Disclosure Dissemination Agent.

"Disclosure Dissemination Agent" means Digital Assurance Certification, L.L.C, acting in its capacity as Disclosure Dissemination Agent hereunder, or any successor Disclosure Dissemination Agent designated in writing by the Issuer pursuant to Section 9 hereof.

"Holder" means any person (a) having the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries) or (b) treated as the owner of any Bonds for federal income tax purposes.

"Information" means the Annual Financial Information, the Audited Financial Statements (if any), the Notice Event notices, and the Voluntary Reports.

"MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

"Notice Event" means an event listed in Section 4(a) of this Disclosure Agreement.

"Official Statement" means that Official Statement prepared by the Issuer in connection with the Bonds.

"Voluntary Report" means the information provided to the Disclosure Dissemination Agent by the Issuer pursuant to Section 7.

SECTION 2. Provision of Annual Reports.

(a) The Issuer shall provide, annually, an electronic copy of the Annual Report and Certification to the Disclosure Dissemination Agent, not later than 30 days prior to the Annual Filing Date. Promptly upon receipt of an electronic copy of the Annual Report and the Certification, the Disclosure Dissemination Agent shall provide an Annual Report to the MSRB not later than two hundred forty (240) days after the end of each Fiscal Year, commencing with the Fiscal Year ended September 30, 2010. Such date and each anniversary thereof is the Annual Filing Date. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3 of this Disclosure Agreement.

(b) If on the fifteenth (15th) day prior to the Annual Filing Date, the Disclosure Dissemination Agent has not received a copy of the Annual Report and Certification, the Disclosure Dissemination Agent shall contact the Disclosure Representative by telephone and in writing (which may be by e-mail) to remind the Issuer of its undertaking to provide the Annual Report pursuant to Section 2(a). Upon such reminder, the Disclosure Representative shall either (i) provide the Disclosure Dissemination Agent with an electronic copy of the Annual Report and the Certification no later than two (2) business days prior to the Annual Filing Date, or (ii) instruct the Disclosure Dissemination Agent in writing that the Issuer will not be able to file the Annual Report within the time required under this Disclosure Agreement, state the date by which the Annual Report for such year will be provided and instruct the Disclosure Dissemination Agent that a Notice Event as described in Section 4(a)(12) has occurred and to immediately send a notice to the MSRB in substantially the form attached as Exhibit B.

(c) If the Disclosure Dissemination Agent has not received an Annual Report and Certification by 12:00 noon on the first business day following the Annual Filing Date for the Annual Report, a Notice Event described in Section 4(a)(12) shall have occurred and the Issuer irrevocably directs the Disclosure Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit B.

(d) If Audited Financial Statements of the Issuer are prepared but not available prior to the Annual Filing Date, the Issuer shall, when the Audited Financial Statements are available, provide in a timely manner an electronic copy to the Disclosure Dissemination Agent, accompanied by a Certification, for filing with the MSRB.

(e) The Disclosure Dissemination Agent shall:

(i) determine the address of the MSRB each year prior to the Annual Filing Date;

(ii) upon receipt, promptly file each Annual Report received under Section 2(a) with the MSRB;

(iii) upon receipt, promptly file each Audited Financial Statement received under Section 2(d) with the MSRB;

(iv) upon receipt, promptly file the text of each disclosure to be made with the MSRB together with a completed copy of the Event Notice Cover Sheet in the form attached as Exhibit C, describing the event by checking the box indicated below when filing pursuant to the Section of this Disclosure Agreement indicated:

1. "Principal and interest payment delinquencies," pursuant to Sections 4(c) and 4(a)(1);

2. "Non-Payment related defaults," pursuant to Sections 4(c) and 4(a)(2);

3. "Unscheduled draws on debt service reserves reflecting financial difficulties," pursuant to Sections 4(c) and 4(a)(3);

4. "Unscheduled draws on credit enhancements reflecting financial difficulties," pursuant to Sections 4(c) and 4(a)(4);

5. "Substitution of credit or liquidity providers, or their failure to perform," pursuant to Sections 4(c) and 4(a)(5);

6. "Adverse tax opinions or events affecting the tax-exempt status of the security," pursuant to Sections 4(c) and 4(a)(6);

7. "Modifications to rights of securities holders," pursuant to Sections 4(c) and 4(a)(7);

8. "Bond calls," pursuant to Sections 4(c) and 4(a)(8);

9. "Defeasances," pursuant to Sections 4(c) and 4(a)(9);

10. "Release, substitution, or sale of property securing repayment of the securities," pursuant to Sections 4(c) and 4(a)(10);

11. "Ratings changes," pursuant to Sections 4(c) and 4(a)(11);

12. "Failure to provide annual financial information as required," pursuant to Section 2(b)(ii) or Section 2(c), together with a completed copy of Exhibit B to this Disclosure Agreement;

13. "Other material event notice (specify)," pursuant to Section 7 of this Agreement, together with the summary description provided by the Disclosure Representative.

(v) provide the Issuer evidence of the filings of each of the above when made, which shall be by means of the DAC system, for so long as DAC is the Disclosure Dissemination Agent under this Disclosure Agreement.

(f) The Issuer may adjust the Annual Filing Date upon change of its Fiscal Year by providing written notice of such change and the new Annual Filing Date to the Disclosure Dissemination Agent and the MSRB, provided that the period between the existing Annual Filing Date and new Annual Filing Date shall not exceed one year.

SECTION 3. Content of Annual Reports.

(a) Each Annual Report shall contain the following Annual Financial Information with respect to the System for the prior Fiscal Year:

[Number of parking spaces, parking rates, Revenues, Current Expenses, Net Revenues, Principal and Interest Requirements, debt service coverage ratio, incurrence of additional Parking System debt, major expansion of the Parking System and changes in the senior management of the Parking System.]

(b) Audited Financial Statements prepared in accordance with generally accepted accounting principles ("GAAP") will be included in the Annual Report, but may be provided in accordance with Section 2(d).

Any or all of the items listed above may be included by specific reference from other documents, including official statements of debt issues with respect to which the Issuer is an "obligated person" (as defined by the Rule), which have been previously filed with the Securities and Exchange Commission or available on the MSRB Internet Website. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Issuer will clearly identify each such document so incorporated by reference.

Any annual financial information containing modified operating data or financial information is required to explain, in narrative form, the reasons for the modification and the impact of the change in the type of operating data or financial information being provided.

SECTION 4. Reporting of Notice Events.

(a) The occurrence of any of the following events, if material, with respect to the Bonds constitutes a Notice Event:

1. Principal and interest payment delinquencies;

2. Non-payment related defaults;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements relating to the Bonds reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;

7. Modifications to rights of Bond holders;

8. Bond calls;

9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the Bonds;

11. Rating changes on the Bonds;

12. Failure to provide annual financial information as required; and

13. Other material event notice (specify).

The Issuer shall promptly notify the Disclosure Dissemination Agent in writing upon the occurrence of a Notice Event. Such notice shall instruct the Disclosure Dissemination Agent to report the occurrence pursuant to subsection (c). Such notice shall be accompanied with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Disclosure Dissemination Agent to disseminate such information, and the date the Issuer desires for the Disclosure Dissemination Agent to disseminate the information.

(b) The Disclosure Dissemination Agent is under no obligation to notify the Issuer or the Disclosure Representative of an event that may constitute a Notice Event. In the event the Disclosure Dissemination Agent so notifies the Disclosure Representative, the Disclosure Representative will within five business days of receipt of such notice, instruct the Disclosure

Dissemination Agent that (i) a Notice Event has not occurred and no filing is to be made or (ii) a Notice Event has occurred and the Disclosure Dissemination Agent is to report the occurrence pursuant to subsection (c), together with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Disclosure Dissemination Agent to disseminate such information, and the date the Issuer desires for the Disclosure Dissemination Agent to disseminate the information.

(c) If the Disclosure Dissemination Agent has been instructed by the Issuer as prescribed in subsection (a) or (b)(ii) of this Section 4 to report the occurrence of a Notice Event, the Disclosure Dissemination Agent shall promptly file a notice of such occurrence with the MSRB in accordance with Section 2(e)(iv) hereof.

SECTION 5. CUSIP Numbers. Whenever providing information to the Disclosure Dissemination Agent, including but not limited to Annual Reports, documents incorporated by reference to the Annual Reports, Audited Financial Statements, notices of Notice Events, and Voluntary Reports filed pursuant to Section 7(a), the Issuer shall indicate the full name of the Bonds and the 9-digit CUSIP numbers for the Bonds as to which the provided information relates.

SECTION 6. Additional Disclosure Obligations. The Issuer acknowledges and understands that other state and federal laws, including but not limited to the Securities Act of 1933 and Rule 10b-5 promulgated under the Securities Exchange Act of 1934, may apply to the Issuer, and that the failure of the Disclosure Dissemination Agent to so advise the Issuer shall not constitute a breach by the Disclosure Dissemination Agent of any of its duties and responsibilities under this Disclosure Agreement. The Issuer acknowledges and understands that the duties of the Disclosure Dissemination Agent relate exclusively to execution of the mechanical tasks of disseminating information as described in this Disclosure Agreement.

SECTION 7. Voluntary Reports.

(a) The Issuer may instruct the Disclosure Dissemination Agent to file information with the MSRB, from time to time pursuant to a Certification of the Disclosure Representative accompanying such information (a "Voluntary Report").

(b) Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information through the Disclosure Dissemination Agent using the means of dissemination set forth in this Disclosure Agreement or including any other information in any Annual Report, Annual Financial Statement, Voluntary Report or Notice Event notice, in addition to that required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report, Annual Financial Statement, Voluntary Report or Notice Event notice in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report, Annual Financial Statement, Voluntary Report or Notice Event notice.

SECTION 8. Termination of Reporting Obligation. The obligations of the Issuer and the Disclosure Dissemination Agent under this Disclosure Agreement shall terminate with

respect to the Bonds upon the legal defeasance, prior redemption or payment in full of all of the Bonds, when the Issuer is no longer an obligated person with respect to the Bonds, or upon delivery by the Disclosure Representative to the Disclosure Dissemination Agent of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required.

SECTION 9. Disclosure Dissemination Agent. The Issuer has appointed Digital Assurance Certification, L.L.C. as exclusive Disclosure Dissemination Agent under this Disclosure Agreement. The Issuer may, upon thirty days written notice to the Disclosure Dissemination Agent, replace or appoint a successor Disclosure Dissemination Agent. Upon termination of DAC's services as Disclosure Dissemination Agent, whether by notice of the Issuer or DAC, the Issuer agrees to appoint a successor Disclosure Dissemination Agent or, alternately, agrees to assume all responsibilities of Disclosure Dissemination Agent under this Disclosure Agreement for the benefit of the Holders of the Bonds. Notwithstanding any replacement or appointment of a successor, the Issuer shall remain liable until payment in full for any and all sums owed and payable to the Disclosure Dissemination Agent. The Disclosure Dissemination Agent may resign at any time by providing thirty days' prior written notice to the Issuer.

SECTION 10. Remedies in Event of Default. In the event of a failure of the Issuer or the Disclosure Dissemination Agent to comply with any provision of this Disclosure Agreement, the Holders' rights to enforce the provisions of this Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the parties' obligation under this Disclosure Agreement. Any failure by a party to perform in accordance with this Disclosure Agreement shall not constitute a default on the Bonds or under any other document relating to the Bonds, including the Bond Resolution, and all rights and remedies shall be limited to those expressly stated herein.

SECTION 11. Duties, Immunities and Liabilities of Disclosure Dissemination Agent.

(a) The Disclosure Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The Disclosure Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Issuer has provided such information to the Disclosure Dissemination Agent as required by this Disclosure Agreement. The Disclosure Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Disclosure Dissemination Agent shall have no duty or obligation to review or verify any Information or any other information, disclosures or notices provided to it by the Issuer and shall not be deemed to be acting in any fiduciary capacity for the Issuer, the Holders of the Bonds or any other party. The Disclosure Dissemination Agent shall have no responsibility for the Issuer's failure to report to the Disclosure Dissemination Agent a Notice Event or a duty to determine the materiality thereof. The Disclosure Dissemination Agent shall have no duty to determine, or liability for failing to determine, whether the Issuer has complied with this Disclosure Agreement. The Disclosure Dissemination Agent may conclusively rely upon certifications of the Issuer at all times.

The obligations of the Issuer under this Section shall survive resignation or removal of the Disclosure Dissemination Agent and defeasance, redemption or payment of the Bonds.

(b) The Disclosure Dissemination Agent may, from time to time, consult with legal counsel (either in-house or external) of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or its respective duties hereunder, and neither of them shall incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. The fees and expenses of such counsel shall be payable by the Issuer.

(c) All documents, reports, notices, statements, information and other materials provided to the MSRB under this Disclosure Agreement shall be provided in an electronic format and accompanied by identifying information as prescribed by the MSRB.

SECTION 12. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Issuer and the Disclosure Dissemination Agent may amend this Disclosure Agreement and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to both the Issuer and the Disclosure Dissemination Agent to the effect that such amendment or waiver does not materially impair the interests of Holders of the Bonds and would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule; provided neither the Issuer or the Disclosure Dissemination Agent shall be obligated to agree to any amendment modifying their respective duties or obligations without their consent thereto.

Notwithstanding the preceding paragraph, the Disclosure Dissemination Agent shall have the right to adopt amendments to this Disclosure Agreement necessary to comply with modifications to and interpretations of the provisions of the Rule as announced by the Securities and Exchange Commission from time to time by giving not less than 20 days written notice of the intent to do so together with a copy of the proposed amendment to the Issuer. No such amendment shall become effective if the Issuer shall, within 10 days following the giving of such notice, send a notice to the Disclosure Dissemination Agent in writing that it objects to such amendment.

SECTION 13. Sources of Payments; No Personal Liability. Notwithstanding anything to the contrary contained in this Disclosure Agreement, the Issuer shall be required to use only Revenues to pay any costs and expenses to be incurred in the performance of this Disclosure Agreement by it, and the performance of its obligations hereunder shall be subject to the availability of Revenues for that purpose; provided, that any such costs and expenses shall constitute Current Expenses under the Bond Resolution. This Disclosure Agreement does not and shall not constitute a general obligation of the Issuer. No covenant, stipulation, obligation or agreement of the Issuer contained in this Disclosure Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future officer, agent or employee of the Issuer in other than that person's official capacity.

SECTION 14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Disclosure Dissemination Agent, the Underwriter, and the Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 15. Governing Law. This Disclosure Agreement shall be governed by the laws of the State of Florida.

SECTION 16. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The Disclosure Dissemination Agent and the Issuer have caused this Disclosure Agreement to be executed, on the date first written above, by their respective officers duly authorized.

DIGITAL ASSURANCE CERTIFICATION,
L.L.C., as Disclosure Dissemination Agent

By: _____
Name: _____
Title: _____

CITY OF MIAMI BEACH, FLORIDA,
as Issuer

By: _____
Patricia D. Walker
Chief Financial Officer

EXHIBIT A

NAME AND CUSIP NUMBERS OF BONDS

Name of Issuer:	City of Miami Beach, Florida
Obligated Person:	City of Miami Beach, Florida
Name of Bond Issue:	Parking Revenue Refunding Bonds, Series 2010A and Parking Revenue Bonds, Series 2010B
Date of Issuance:	_____ __, 2010
Date of Official Statement:	_____ __, 2010

CUSIP Numbers:

EXHIBIT B

NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT

Issuer:	City of Miami Beach, Florida
Obligated Person:	City of Miami Beach, Florida
Name of Bond Issue:	Parking Revenue Refunding Bonds, Series 2010A and Parking Revenue Bonds, Series 2010B
Date of Issuance:	_____ __, 2010

NOTICE IS HEREBY GIVEN that the Issuer has not provided an Annual Report with respect to the above-named Bonds as required by the Disclosure Agreement, dated as of _____ __, 2010, between the Issuer and Digital Assurance Certification, L.L.C., as Disclosure Dissemination Agent. The Issuer has notified the Disclosure Dissemination Agent that it anticipates that the Annual Report will be filed by _____.

Dated: _____

Digital Assurance Certification, L.L.C., as
Disclosure Dissemination Agent, on behalf
of the Issuer

_____

cc: City of Miami Beach, Florida

EXHIBIT C
EVENT NOTICE COVER SHEET

This cover sheet and material event notice will be sent to the Municipal Securities Rulemaking Board pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C) and (D).

Issuer's and/or Other Obligated Person's Name:

_____

Issuer's Six-Digit CUSIP Number:

_____

_____

or Nine-Digit CUSIP Number(s) of the bonds to which this material event notice relates:

_____

Number of pages of attached material event notice: _____

Description of Material Event Notice (Check One):

1. ___ Principal and interest payment delinquencies
2. ___ Non-Payment related defaults
3. ___ Unscheduled draws on debt service reserves reflecting financial difficulties
4. ___ Unscheduled draws on credit enhancements reflecting financial difficulties
5. ___ Substitution of credit or liquidity providers, or their failure to perform
6. ___ Adverse tax opinions or events affecting the tax-exempt status of the security
7. ___ Modifications to rights of securities holders
8. ___ Bond calls
9. ___ Defeasances
10. ___ Release, substitution, or sale of property securing repayment of the securities
11. ___ Rating changes
12. ___ Failure to provide annual financial information as required
13. ___ Other material event notice (specify) _____

I hereby represent that I am authorized by the issuer or its agent to distribute this information publicly:

Signature:

_____

_____

Name: _____ Title: _____

Employer: Digital Assurance Certification, L.L.C.

Address: _____

City, State, Zip Code: _____

Voice Telephone Number: _____

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held by the City Commission of the City of Miami Beach on **Wednesday, September 15, 2010 at 11:30 a.m. in the City Commission Chambers at City Hall, located at 1700 Convention Center Drive, Miami Beach, Florida 33139**, in order to obtain citizen input into the proposed Series 2010B Parking Revenue Bond Issuance, as identified in the following City Resolution:

A RESOLUTION AUTHORIZING THE ISSUANCE BY THE CITY OF MIAMI BEACH, FLORIDA OF (I) PARKING REVENUE REFUNDING BONDS, SERIES 2010A, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $20,000,000, FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING PARKING REVENUE BONDS, SERIES 1997, AND (II) PARKING REVENUE BONDS, SERIES 2010B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $30,000,000, FOR THE PURPOSE OF PAYING COSTS OF IMPROVEMENTS TO THE PARKING SYSTEM; PROVIDING FOR THE ISSUANCE OF ADDITIONAL PARKING REVENUE BONDS AND THE INCURRENCE OF OTHER TYPES OF INDEBTEDNESS OF THE CITY TO PAY ALL OR PART OF THE COST OF ADDITIONAL IMPROVEMENTS TO THE CITY'S PARKING SYSTEM AND FOR REFUNDING OUTSTANDING PARKING REVENUE BONDS; PROVIDING FOR THE PAYMENT OF SUCH BONDS AND OTHER SYSTEM DEBT; SETTING FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH BONDS AND OTHER SYSTEM DEBT; PROVIDING CERTAIN DETAILS OF THE SERIES 2010 BONDS; DELEGATING OTHER MATTERS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2010 BONDS, INCLUDING WHETHER TO SECURE ONE OR MORE CREDIT FACILITIES AND/OR RESERVE ACCOUNT INSURANCE POLICIES, AND THE REFUNDING OF THE PRIOR BONDS TO THE MAYOR; APPOINTING UNDERWRITERS, A BOND REGISTRAR, AN ESCROW AGENT AND A DISCLOSURE DISSEMINATION AGENT; AUTHORIZING THE NEGOTIATED SALE OF THE SERIES 2010 BONDS AND APPROVING THE FORM AND EXECUTION OF A BOND PURCHASE AGREEMENT FOR THE SERIES 2010 BONDS; APPROVING THE FORMS OF A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT FOR THE SERIES 2010 BONDS AND AUTHORIZING EXECUTION OF THE OFFICIAL STATEMENT; COVENANTING TO PROVIDE CONTINUING DISCLOSURE IN CONNECTION WITH THE SERIES 2010 BONDS AND APPROVING THE FORM AND EXECUTION OF A CONTINUING DISCLOSURE AGREEMENT; APPROVING THE FORM AND EXECUTION OF AN ESCROW DEPOSIT AGREEMENT FOR THE PRIOR BONDS; AUTHORIZING OFFICIALS OF THE CITY TO TAKE ALL NECESSARY ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2010 BONDS AND REFUNDING OF THE PRIOR BONDS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Inquiries, including a copy of the proposed Resolution, may be directed to the Office of the City's Chief Financial Officer at (305) 673-7466.

INTERESTED PARTIES are invited to appear at this meeting or be represented by an agent or to express their views in writing addressed to the City Commission c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. This meeting may be opened and continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, FL Statutes, the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in this proceeding, or to request information on access for persons with disabilities, or to request this publication in accessible format, or to request sign language interpreters, should contact the City Clerk's office at (305) 673-7411, no later than four days prior to the proceeding. If hearing impaired, contact the City Clerk's office via the Florida Relay Service numbers, (800) 955-8771 (TTY) or (800) 955-8770 (VOICE). **AD # 622**

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R9

MIAMIBEACH

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

OFFICE OF THE CITY CLERK, Robert Parcher, City Clerk
Tel: (305) 673-7411, Fax: (305) 673-7254

COMMISSION MEMORANDUM

To: Mayor Matti Herrera Bower and Members of the City Commission

From: Jorge M. Gonzalez, City Manager

Date: September 15, 2010

Subject: BOARD AND COMMITTEES

ADMINISTRATION RECOMMENDATION:

That appointments be made as indicated.

ANALYSIS:

Attached are the applicants that have filed with the City Clerk's Office for Board and Committee appointments.

VACANCIES

BOARD OR COMMITTEE:	TOTAL MBRS.	APPOINTED BY:	TOTAL VAC	PAGE
Affordable Housing Advisory Committee	11	City Commission	5	Page 1
Beautification Committee	8	Commissioner Jerry Libbin	1	Page 4
Committee for Quality Education in MB	16	Commissioner Jonah M. Wolfson	1	Page 8
Community Development Advisory Committee	14	Commissioner Ed Tobin	1	Page 11
		Commissioner Jerry Libbin	1	
		Commissioner Jorge Exposito	1	
Community Relations Board	17	Commissioner Ed Tobin	1	Page 12

Agenda Item R9A
Date 9-15-10

VACANCIES

BOARD OR COMMITTEE:	TOTAL MBRS.	APPOINTED BY:	TOTAL VAC	PAGE
Convention Center Advisory Board	7	Commissioner Ed Tobin	1	Page 14
Fine Arts Board	14	Commissioner Ed Tobin	1	Page 18
		Commissioner Jerry Libbin	2	
Gay, Lesbian, Bisexual and Transgender (GLBT)	15	Commissioner Jerry Libbin	1	Page 19
Golf Advisory Committee	12	Commissioner Jonah M. Wolfson	1	Page 20
Health Advisory Committee	11	City Commission	5	Page 21
Hispanic Affairs Committee	7	Mayor Matti Herrera Bower	1	Page 24
Historic Preservation Board	7	City Commission	1	Page 25
Housing Authority	5	Mayor Matti Herrera Bower	1	Page 26
Loan Review Committee	7	Commissioner Ed Tobin	1	Page 27
		Commissioner Jorge Exposito	1	
Marine Authority	7	Commissioner Ed Tobin	1	Page 28
Miami Beach Sister Cities Program	24	Mayor Matti Herrera Bower	3	Page 31

VACANCIES

BOARD OR COMMITTEE:	TOTAL MBRS.	APPOINTED BY:	TOTAL VAC	PAGE
Normandy Shores Local Gov. Neighborhood Impv.	3	City Commission	1	Page 32
Production Industry Council	7	Commissioner Deede Weithorn	1	Page 38
Safety Committee	14	Commissioner Jorge Exposito	1	Page 39
Single-Family Residential Review Panel	3	Jorge M. Gonzalez, City Manager	3	Page 40

Attached is breakdown by Commissioner or City Commission:

JMG:REP/lg

City Commission Committees

Committee	Position	First Name	Appointed by
Finance & Citywide Projects Committee			
	Chairperson	Commissioner Deede Weithorn	Mayor Bower
	Vice-Chair	Commissioner Jerry Libbin	Mayor Bower
	Alternate	Commissioner Jonah Wolfson	Mayor Bower
	Member	Commissioner Jorge Exposito	Mayor Bower
	Liaison	Patricia Walker, Chief Financial Off.	
Land Use & Development Committee			
	Chairperson	Commissioner Michael Góngora	Mayor Bower
	Vice-Chair	Commissioner Jonah Wolfson	Mayor Bower
	Alternate	Commissioner Deede Weithorn	Mayor Bower
	Member	Commissioner Edward L. Tobin	Mayor Bower
	Liaison	Richard Lorber, Acting Planning Dir	
Neighborhoods/Community Affairs Committee			
	Chairperson	Commissioner Jerry Libbin	Mayor Bower
	Vice-Chair	Commissioner Edward L. Tobin	Mayor Bower
	Alternate	Commissioner Michael Góngora	Mayor Bower
	Member	Commissioner Jorge Exposito	Mayor Bower
	Liaison	Barbara Hawayek, Code Complianc	

NON-CITY COMMISSION COMMITTEES

Mayor Matti Herrera Bower

- Citizen's Oversight Committee
- Greater Miami Convention and Visitors Bureau
- Metropolitan Planning Organization
- Tourist Development Council

Hilda Fernandez, Asst. CM.

- Miami-Dade County Homeless Trust Board

Mitchell Kaplan

- Performing Arts Center Trust (PACT)

Vacant Vacant Vacant

- Dade Cultural Alliance

Commissioner Weithorn

- Miami Dade League of Cities

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MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: September 15, 2010

SUBJECT: **BOARD AND COMMITTEE APPOINTMENTS – CITY COMMISSION APPOINTMENTS**

ADMINISTRATION RECOMMENDATION

Make appointments as indicated.

BOARDS AND COMMITTEES

1 Affordable Housing Advisory Committee
2 Health Advisory Committee
3 Historic Preservation Board

JMG/REP

Agenda Item R9A1
Date 9-15-10

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Board and Committees Current Members

Affordable Housing Advisory Committee

Sec. 2-167

Composition:

The committee shall consist of eleven (11) voting members with two (2) year terms appointed at large by a majority vote of the Mayor and City Commission:

One citizen:
1) actively engaged in the residential home building industry in connection with affordable housing;
2) actively engaged in the banking or mortgage banking industry in connection with affordable housing;
3) representative of those areas of labor actively engaged in home building in connection with affordable housing;
4) actively engaged as an advocate for low-income persons in connection with affordable housing;
5) actively engaged as a for-profit provider of affordable housing;
6) actively engaged as a not-for-profit provider of affordable housing (Housing Authority member);
7) actively engaged as a real estate professional in connection with affordable housing;
8) actively serving on the local planning agency pursuant to Florida Statute § 163.3174 (Planning Board member);
9) who resides within the jurisdiction of the local governing body making the appointments;
10) who represents employers within the jurisdiction;
11) who represents essential services personnel as defined in the local housing assistance plan.

Members of the Loan Review Committee, members of the Community Development Advisory Committee (CDAC), Planning Board and Miami Beach Housing Authority may be appointed to fill any of the eleven (11) categories and serve as ex-officio voting members on this committee. If due to conflict of interest by prospective appointees, or other reasonable factor, the City is unable to appoint a citizen actively engaged in these activities in connection with affordable housing, a citizen engaged in the activity without regard to affordable housing may be appointed.
City Liaison: Richard Bowman

Vacancy:

To replace Roberto DaTorre	(6) Not For Profit	12/31/2010	City Commission
To replace Dr. Barry Ragone	(10) Rep. Empl. with/ju	12/31/2011	City Commission
To replace Ada Llerandi	(4) Low-Income Advoc.	12/31/2011	City Commission
To replace Brian Ehrlich	(1) Res. Home Bldg.	12/31/2010	City Commission
To replace Lianne Pastoriza	(11) Rep. Essential Serv	12/31/2011	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	Term Limit:
Clark	Reynolds	(9) Res. Juris. Local Gvt	12/31/2011	City Commission	12/31/13
David	Smith	(2) Banking/Mortgage	12/31/2010	City Commission	12/31/15
Jonathan	Fryd	(8) Local Planning Board	12/31/2010	City Commission	12/31/13
Michael	Burnstine	(7) Real Estate Prof.	12/31/2011	City Commission	12/31/13
Robert	Saland	(5) For Profit	12/31/2010	City Commission	12/31/13
Stephanie	Berman	(3) Rep. Labor Home Bldg.	12/31/2010	City Commission	12/31/13

Board and Committees Current Members

Applicants	Position/Title	Applicants	Position/Title
Amy Perry		Andrew Fischer	
Karen Fryd		Marie Towers	
Roberto DaTorre		Steven Gonzalez	

Board and Committees Current Members

Health Advisory Committee

Sec. 2-81 2002-3368

Composition:

Eleven (11) voting members. Appointed by the City Commission at-large, upon recommendations of the City Manager:
Two (2) members shall be the chief executive officers (CEO's) or their designated administrators from each of the following local hospitals:
1) Mount Sinai Medical Center,
2) South Shore Hospital,
One (1) member shall be the Chief Executive Officer (CEO) from Stanley C. Myers Community Health Center or his/her designee administrator;
Two (2) member shall be an administrator from an Adult Congregate Living Facility (ACLF). And/or an Assisted Living Facility (ACLF);
One (1) member shall be a representative from the nursing profession;
One (1) member shall be a health benefits provider;
Two (2) members shall be physicians.;
Two (2) members shall be consumers consisting of:
1) one (1) individual from the corporate level and ;
2) one (1) private individual.

There shall be one (1) non-voting ex-officio representative from each of the following: The Miami Dade County Health Department and the Fire Rescue Department. The director of the Office of the Children's Affairs shall be added as a non-voting ex-officio member of the board.
City Liaison: Cliff Leonard

Vacancy:

To replace Kathryn Abbate	CEO Stanley Myers (NT	12/31/2010	City Commission
To replace William Zubkoff	CEO So. Shore (NTL)	12/31/2010	City Commission
To replace Joyce Galbut	Adm. Adult Congr. Liv.	12/31/2010	City Commission
To replace Laura Leyva	Nursing Profession	12/31/2011	City Commission
To replace Abraham Galbut	ACLF	12/31/2010	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	Term Limit:
Baruch	Jacobs M.D.	Health Provider	12/31/2011	City Commission	12/31/15
Dr. Andrew	Nullman	Physician	12/31/2010	City Commission	12/31/14
Harold	Foster	Private Industry	12/31/2011	City Commission	12/31/15
Shaheen	Wirk		12/31/2011	City Commission	12/31/15
Steven	Sonenreich	CEO/Mt. Sinai/MH (NTL)	12/31/2010	City Commission	
Zalman	Bacheikov	Dentist (TL 12/31/2010)	12/31/2010	City Commission	12/31/10

Maria Ruiz	ex-officio, Director of Children's Affairs
Sonia Albury	rep. From the Health Council of South Fla

Applicants	Position/Title	Applicants	Position/Title

Board and Committees Current Members

Charlotte Tomic
Jared Plitt
Eli Strohli
Paul Venette

Board and Committees Current Members

Historic Preservation Board

Sec. 118-101

Composition:

Two (2) year term. Appointed by a minimum of 4 votes.
Seven (7) members. There shall be a member from each of the following categories:
1) A representative from the Miami Design Preservation League (MDPL);
Selected from three names nominated by the League.
2) A representative from Dade Heritage Trust (DHT);
Selected from three names nominated by the Trust.
3) One at-large member who owns or manages a property or properties located in one of the city's historic districts;
4) One at-large member who resides in one of the city's historic districts;
5) An architect registered in the State of Florida with practical experience in the rehabilitation of historic structures;
6) A registered architect, registered landscape architect, professional designer or professional urban planner with practical experience in the rehabilitation of historic structures; or an attorney, or a licensed engineer who has professional experience and demonstrated interest in historic preservation.;
7) A member of the faculty of a school of architecture in the State of Florida, with academic expertise in the field of design and historic preservation or the history of architecture, with a preference for an individual with practical experience in architecture and the preservation of historic structures.
City Liaison: Thomas Mooney

Vacancy:

James (Jeff) Donnelly	MDPL	12/31/2010	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	Term Limit:
David	Wieder	Attorney	12/31/2011	City Commission	12/31/15
Erika	Brigham	Dade Heritage	12/31/2010	City Commission	12/31/12
Henry	Lares	Faculty Member	12/31/2011	City Commission	12/31/13
Josephine	Manning	At-large	12/31/2010	City Commission	12/31/14
Norberto	Rosenstein	Registered Architect	12/31/2011	City Commission	12/31/11
Simon	Nemni	At-large	12/31/2010	City Commission	12/31/12

Applicants	Position/Title	Applicants	Position/Title
Andrew Fischer		Beth Dunlop	
Daniel Garcia		Jane Gross	
Jeffrey Cohen		Jessica Jacobs	
Jorge Kuperman		Morris Sunshine	
Prakash Kumar		Scott Needelman	
Yair Lapciuc			

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

RECEIVED
2010 AUG 25 AM 11:10
CITY MANAGER'S OFFICE
BY

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Jerry Libbin, Commissioner

DATE: August 19, 2010

SUBJECT: Consent agenda item for the September 15, 2010 Commission meeting; a nomination to the Normandy Shores Local Government Neighborhood Improvement District Board.

I would like to nominate Mr. Manuel Minagorri to be appointed to the vacant seat on the Normandy Shores Local Government Neighborhood Improvement District Board. Manuel is an active participant in our community who can add a great deal to this board.

Please see attached resume and contact my office at ext. 7106 if you have any questions.

Attachment

JL/er

Mickey Minagorri
1065 Fairway Dr
Miami Beach, Florida 33141
Mina5@aol.com
305-773-6609

Bachelors in Business Administration
1979 Fla. International University

International Medical Centers (IMC)
Vice President of Corporate Development
1980-1985

V.P. and General Manager for the Rouse Company
Overseeing the construction and management of Bayside Market Place and Kendall Town and Country
1985-1992

Business Development Director for the Miami Downtown Development Authority
1992-94

Consultant for Multi Media Productions (Miami)
1992 to 1996

Assistant to City Manager – City of Miami
1997

Artco Group Inc. Partner
Designers and Manufactures of Custom High End Store Interiors.
1998 to present

Very active doing work in Guatemala with Special Needs Children in an orphanage called ANINI (Assoc. of Children for Children). In the last 5 years - our group built the school and clinic for the orphanage and village people of 3500.

Hobbies: Enjoy playing golf, a good cigar and traveling with my wife and family.

R9 - New Business and Commission Requests

R9B1	Dr. Stanley Sutnick Citizen's Forum. (12:30 p.m.)
R9B2	Dr. Stanley Sutnick Citizen's Forum. (5:30 p.m.)

AGENDA ITEM: R9B1-2
DATE: 9-15-10

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Ed Tobin, Commissioner

DATE: August 17, 2010

SUBJECT: Motion to Rescind Vote Regarding Tennis Courts and Discussion of Tennis Courts

Please place on the September 15, 2010 Commission Agenda a motion to rescind the vote taken at the June 9, 2010 Commission meeting on agenda item C4F to build twelve (12) clay courts and five (5) hard courts at Flamingo Park.

Also, please place a discussion item on tennis courts and request a time certain after 5:00 p.m. to ensure public participation.

Should you have any questions, please contact my aide, Yanette Bravo at ext. 6274.

ET/yb

Agenda Item R9C

Date 9-15-10

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Kathie
Trish
Gomez
SAUL

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Jonah Wolfson, Commissioner

DATE: August 17th, 2010

SUBJECT: Agenda Discussion Item

JW/lh

Please place on the September 15th, 2010 Commission Meeting Agenda a discussion item on recent billing of parking impact fees and the possibility of a moratorium due to present economic market conditions.

If you have any questions, please contact Leonor Hernandez at extension 6437.

JW/lh

2010 AUG 17 PM 4:21

Agenda Item R9D

Date 9-15-10

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Ed Tobin, Commissioner

DATE: August 30, 2010

SUBJECT: Agenda item for September 15th Meeting

Please place on the Agenda for discussion the re-naming of Lincoln Park to Miami Beach Music Garden or Music Garden of Miami Beach.

Should you have any questions, please contact my aide Yanette Bravo at ext. 6274.

ET/yb

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Jerry Libbin, Commissioner JL/sm

DATE: September 1, 2010

SUBJECT: Agenda item renaming of "Lincoln Park" for September 15, 2010 commission meeting

I recommend that the City sponsor a contest to be held between September 16 and October 15 to name the new public park associated with the New World Symphony. A place holder name has been used "Lincoln Park" until now, however, to maximize the opportunity of having hundreds of writers cover the opening of the Gehry designed concert hall and the opening of our park, we should have appropriate signage for the city park. Naturally, once a name is chosen, we need time to design and manufacture the sign plus get permits, etc. We should not lose out on the worldwide media coverage on the grand opening so we must move forward with the naming immediately. I therefore urge the Commission to direct administration to immediately develop and disseminate the contest rules.

Please contact my office at ext. 7106 if you have any questions.

JL/sm

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager
Jose Smith, City Attorney

FROM: Deede Weithorn, Commissioner DW/aks

DATE: August 31, 2010

SUBJECT: Agenda item for September15 Commission meeting

I would like to request a discussion at the September 15th Commission meeting regarding the naming of the new park east of the New World Symphony building.

Thank you.

DW/aks

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager
Jose Smith, City Attorney

FROM: Deede Weithorn, Commissioner DW/aks

DATE: August 31, 2010

SUBJECT: Agenda item for September15 Commission meeting

I would like to request a discussion at the September 15th Commission meeting regarding the naming rights of the New World Symphony building and creating regulations for naming rights when the City of Miami Beach has funded a project or owns the land where the project is developed.

Thank you.

DW/aks

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Jonah Wolfson, Commissioner

DATE: September 8th, 2010

SUBJECT: Agenda Discussion Item

Please place on the September 15th, 2010 Commission Meeting Agenda a discussion item on two (2) proposed ordinances providing for exemption of 1) New World Symphony (NWS) leased premises and NWS improvements, and 2) Lincoln Park from City's naming ordinance.

If you have any questions, please contact Leonor Hernandez at extension 6437.

JW/lh

Agenda Item R9E5

Date 9-15-10

ORDINANCE #1
(EXEMPTION FOR NWS LEASED PREMISES)

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CITY CODE, ENTITLED "PUBLIC PROPERTY", BY AMENDING ARTICLE VI, ENTITLED "NAMING OF PUBLIC FACILITIES AND ESTABLISHMENTS OF MONUMENTS AND MEMORIALS", BY AMENDING SECTION 82-501(c)(1) – (3) THEREOF, TO PROVIDE THAT THE NEW WORLD SYMPHONY LEASED PREMISES, AS SAME ARE DESCRIBED IN THE LEASE AGREEMENT BETWEEN THE CITY AND NEW WORLD SYMPHONY (NWS OR TENANT), DATED JANUARY 15, 2004, AND INCLUDING THE NWS BUILDING AND OTHER TENANT IMPROVEMENTS (AS DEFINED IN THE LEASE), BUT NOT INCLUDING THE CITY PARK (CURRENTLY REFERRED TO AS "LINCOLN PARK"), THE CITY GARAGE (CURRENTLY REFERRED TO AS THE PENNSYLVANIA AVENUE GARAGE), AND/OR ANY OTHER CITY-OWNED BUILDINGS, STRUCTURES, FURNISHINGS, FIXTURES, IMPROVEMENTS, STREETS, SIDEWALKS, AND RIGHTS OF WAY ASSOCIATED WITH THE DEVELOPMENT OF THE NWS PROJECT, SHALL BE EXEMPT FROM THE PROVISIONS OF SAID ARTICLE VI, SUBJECT TO THE TERMS CONTAINED IN THIS ORDINANCE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICTION AND EFFECTIVE DATE.

WHEREAS, on January 5, 2004, the City of Miami Beach (City) and the New World Symphony (NWS or Tenant), entered into a Development Agreement and Ground Lease Agreement (the Agreements), providing for design, development and construction of an educational performance and internet broadcast facility and exterior screen (formally known as "Soundspace" and now known as the "NWS Campus Expansion Project"), and a public parking garage, to be located on the westernmost portion of the 17th Street surface parking lots, bounded by 17th Street to the north; North Lincoln Lane to the south; Drexel Avenue to the east; and Pennsylvania Avenue to the west; and

WHEREAS, the NWS Development Agreement also provides for the design, development, and construction of a proposed City-owned park, which is currently referred to as "Lincoln Park;" and

WHEREAS, Chapter 82, Article VI, Sections 82-501 through 82-505, of the City Code, establishes certain procedures for the naming of public facilities and establishment of monuments and memorials on City property (the City's Naming Ordinance); and

a.

WHEREAS, pursuant to a request by NWS, the City Commission hereby finds that it would be in the best interest of the City to exempt the NWS leased premises, as same are described in the Lease Agreement between the City and NWS, dated January 15, 2004, and which premises would include the NWS building and other Tenant Improvements (as said term is also defined in the Lease), from the provisions of the City's Naming Ordinance, as hereinafter set forth in this amendment.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. AMENDMENT TO ARTICLE VI OF CHAPTER 82 OF THE CITY CODE.

A. That Chapter 82, Article VI, Section 82-501(c)(1) – (3) of the Miami Beach City Code is hereby amended as follows:

CHAPTER 82
PUBLIC PROPERTY

* * *

ARTICLE VI. Naming of Public Facilities and Establishment of Monuments and Memorials.

* * *

Sec. 82-501. Generally.

(a) No public facility located in or owned by the city shall be named except in accordance with the procedures set forth in this article.

(b) No monument or memorial shall be established within the city except in accordance with the procedures set forth in this article.

(c) Effective upon adoption of this article, no street located in the city shall be hereafter named, renamed, or co-named after any person or persons, living or deceased. The Bass Museum of Art;~~,~~ the city-owned building, located at 2200 Liberty Avenue, Miami Beach, Florida (the Miami City Ballet Building); ~~and~~ all or any portion(s) of city-owned property comprising the public cultural facility known as the "Altos Del Mar Sculpture Park," located within a portion of Altos Del Mar Park, on Collins Avenue between 76th and 77th Street, Miami Beach, Florida (the ADMSP Sculpture Park)~~,~~; and those certain leased premises as described and identified in the lease agreement between the city and the New World Symphony (NWS), dated January 15, 2004 (the NWS Lease), and including the interior and exterior portions of the NWS building and other Tenant Improvements (as said term is also defined in the NWS Lease), but specifically excluding the city-owned park (currently referred to as "Lincoln Park"), the city-owned garage (currently referred to as the Pennsylvania Avenue Garage), and any and all other city-owned buildings, structures, furnishings, fixtures, improvements, streets, sidewalks,

and/or rights of way in connection with the NWS project, shall be exempt from the provisions of this article.

The Miami City Ballet Building shall only be exempt for so long as:

(1) Said building is occupied, operated and maintained by Miami City Ballet, Inc., a not-for-profit corporation;

(2) The building is used as the principal headquarters, administrative offices, and studio and teaching facilities of the Miami City Ballet; and

(3) Miami City Ballet, Inc., remains in good standing and free from defaults under that certain lease agreement for the Miami City Ballet Building between the city, as landlord, and Miami City Ballet, Inc., as tenant (the Miami City Ballet lease).

The ADMSP Sculpture Park shall only be exempt from the provisions of this article for so long as:

(1) The Sculpture Park is occupied, operated and maintained by Altos Del Mar Sculpture Park, Inc., a not-for-profit corporation;

(2) The Sculpture Park remains free and open to the general public; and

(3) Altos Del Mar Sculpture Park, Inc., remains in good standing and free from defaults under that certain management agreement between the city and Altos Del Mar Sculpture Park, Inc., dated June 3, 2009.

The NWS lease premises shall only be exempt from the provisions of this article for so long as:

(1) all of the NWS leased premises (including the NWS building and all of the Tenant Improvements) are occupied, operated, and maintained by New World Symphony Inc., a not-for-profit corporation;

(2) the NWS building is continuously used as the principal headquarters, administrative offices, and performance facilities of/for NWS, and the other Tenant Improvements are continuously used for their original purpose(s) under the NWS Lease; and

(3) NWS remains in good standing and free from defaults under the NWS Lease, the Development Agreement between the city and NWS, dated January 5, 2004 (the NWS Development Agreement), and any other agreements between the city and NWS, whether in existence as of the effective date of this article, or as may be subsequently entered into.

The exemption for the Miami City Ballet Building and for the NWS leased premises shall automatically terminate upon the earlier of the expiration or other termination of, respectively, the ~~aforestated lease agreement between the parties~~Miami City Ballet lease and the NWS lease. The exemption for the ADMSP Sculpture Park shall automatically terminate upon the earlier of the expiration or other termination of the aforestated management agreement.

SECTION 2. **REPEALER**

All ordinances or parts in conflict herewith be and the same are hereby repealed.

SECTION 3 **SEVERABILITY**

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court or competent jurisdiction, then said holding shall in no way affect the validity of the remaining portion of this Ordinance.

SECTION 4. **CODIFICATION**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 5. **EFFECTIVE DATE**

This Ordinance shall take effect on the _____day of _____, 2010.

PASSED and ADOPTED this _____ day of _____, 2010

ATTEST:

_____
MAYOR

_____
CITY CLERK

F:\atto\AGUR\RESOS-ORD\NWS - Naming of Public Facilities Ordinance (8-30-10).doc

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 9/7/10 Date

ORDINANCE #2
(EXEMPTION FOR LINCOLN PARK)

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CITY CODE, ENTITLED "PUBLIC PROPERTY", BY AMENDING ARTICLE VI, ENTITLED "NAMING OF PUBLIC FACILITIES AND ESTABLISHMENTS OF MONUMENTS AND MEMORIALS", BY AMENDING SECTION 82-501(c)(1) – (3) THEREOF, TO PROVIDE THAT THE CITY-OWNED PARK, CURRENTLY REFERRED TO AS "LINCOLN PARK", SHALL BE EXEMPT FROM THE PROVISIONS OF SAID ARTICLE VI, SUBJECT TO THE TERMS CONTAINED IN THIS ORDINANCE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICTION AND EFFECTIVE DATE.

WHEREAS, on January 5, 2004, the City of Miami Beach (City) and the New World Symphony (NWS or Tenant), entered into a Development Agreement and Ground Lease Agreement (the Agreements), providing for design, development and construction of an educational performance and internet broadcast facility and exterior screen (formally known as "Soundspace" and now known as the "NWS Campus Expansion Project"), and a public parking garage, to be located on the westernmost portion of the 17th Street surface parking lots, bounded by 17th Street to the north; North Lincoln Lane to the south; Drexel Avenue to the east; and Pennsylvania Avenue to the west; and

WHEREAS, the NWS Development Agreement also provides for the design, development, and construction of a proposed City-owned park, which is currently referred to as "Lincoln Park;" and

WHEREAS, Chapter 82, Article VI, Sections 82-501 through 82-505, of the City Code, establishes certain procedures for the naming of public facilities and establishment of monuments and memorials on City property (the City's Naming Ordinance); and

WHEREAS, pursuant to a request by NWS, the City Commission hereby finds that it would be in the best interest of the City to exempt the City-owned park, currently referred to as "Lincoln Park," from the provisions of the City's Naming Ordinance, as hereinafter set forth in this amendment.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. AMENDMENT TO ARTICLE VI OF CHAPTER 82 OF THE CITY CODE.

A. That Chapter 82, Article VI, Section 82-501(c)(1) – (3) of the Miami Beach City Code is hereby amended as follows:

b.

CHAPTER 82
PUBLIC PROPERTY

* * *

ARTICLE VI. Naming of Public Facilities and Establishment of Monuments and Memorials.

* * *

Sec. 82-501. Generally.

(a) No public facility located in or owned by the city shall be named except in accordance with the procedures set forth in this article.

(b) No monument or memorial shall be established within the city except in accordance with the procedures set forth in this article.

(c) Effective upon adoption of this article, no street located in the city shall be hereafter named, renamed, or co-named after any person or persons, living or deceased. The Bass Museum of Art;~~,~~ the city-owned building, located at 2200 Liberty Avenue, Miami Beach, Florida (the Miami City Ballet Building); ~~and~~ all or any portion(s) of city-owned property comprising the public cultural facility known as the "Altos Del Mar Sculpture Park," located within a portion of Altos Del Mar Park, on Collins Avenue between 76th and 77th Street, Miami Beach, Florida (the ADMSP Sculpture Park)~~,~~; and the city-owned park currently referred to as "Lincoln Park", shall be exempt from the provisions of this article.

The Miami City Ballet Building shall only be exempt for so long as:

(1) Said building is occupied, operated and maintained by Miami City Ballet, Inc., a not-for-profit corporation;

(2) The building is used as the principal headquarters, administrative offices, and studio and teaching facilities of the Miami City Ballet; and

(3) Miami City Ballet, Inc., remains in good standing and free from defaults under that certain lease agreement for the Miami City Ballet Building between the city, as landlord, and Miami City Ballet, Inc., as tenant (the Miami City Ballet lease).

The ADMSP Sculpture Park shall only be exempt from the provisions of this article for so long as:

(1) The Sculpture Park is occupied, operated and maintained by Altos Del Mar Sculpture Park, Inc., a not-for-profit corporation;

(2) The Sculpture Park remains free and open to the general public; and

(3) Altos Del Mar Sculpture Park, Inc., remains in good standing and free from defaults under that certain management agreement between the city and Altos Del Mar Sculpture Park, Inc., dated June 3, 2009.

The exemption for the Miami City Ballet Building shall automatically terminate upon the earlier of the expiration or other termination of the ~~aforestated lease agreement between the parties~~Miami City Ballet lease. The exemption for the ADMSP Sculpture Park shall automatically terminate upon the earlier of the expiration or other termination of the aforestated management agreement.

SECTION 2. REPEALER

All ordinances or parts in conflict herewith be and the same are hereby repealed.

SECTION 3 SEVERABILITY

If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court or competent jurisdiction, then said holding shall in no way affect the validity of the remaining portion of this Ordinance.

SECTION 4. CODIFICATION

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect on the _____day of _____, 2010.

PASSED and ADOPTED this _____ day of _____, 2010

ATTEST:

_____
MAYOR

_____
CITY CLERK

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

F:\atto\AGUR\RESOS-ORD\Naming of Public Facilities Ordinance #2 - Lincoln Park (9-7-10).doc

3

City Attorney 9/7/10 Date

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Michael Góngora, Commissioner

DATE: September 8, 2010

SUBJECT: Discussion Item for the September 15 Commission Meeting

I would like to discuss the issue of amending the contractually approved closing time for the Fillmore Miami Beach at the Jackie Gleason Theatre from midnight to 2:00 am specifically and only for the Winter Party event in March 2011. If you have any further questions, please do not hesitate to contact my office at extension 6087.

MG/df

Agenda Item R9F

Date 9-15-10

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R9 - New Business and Commission Requests

R9G Discussion About A Proposed Settlement Agreement Regarding K.T.K.L Corporation, Vs. City Of Miami Beach, In The Eleventh Judicial Circuit Of Florida, General Jurisdiction, Case No.: 97-2687 CA 03.

(City Attorney's Office)

Agenda Item R9G

Date 9-15-10

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R10

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower
Members of the City Commission
City Manager Jorge Gonzalez

FROM: City Attorney Jose Smith

DATE: September 15, 2010

SUBJECT: Attorney Client Session

Pursuant to §286.011, Florida Statutes, the City Attorney hereby advises the Mayor and City Commission that he desires advice concerning the following pending litigation matter:

> K.T.K.L Corporation vs. City of Miami Beach, Eleventh Judicial Circuit of Florida, General Jurisdiction, Case No.: 97-2687 CA 03

Therefore, a private closed Attorney-Client Session will be held during the lunch recess of the City Commission meeting on September 15, 2010 in the City Manager's large Conference Room, Fourth Floor, City Hall, to discuss settlement negotiations and/or strategy related to litigation expenditures with regard to the above-referenced litigation matter.

The following individuals will be in attendance: Mayor Matti Herrera Bower; Members of the City Commission: Jorge Exposito, Michael Gongora, Jerry Libbin, Edward Tobin, Deede Weithorn and Jonah Wolfson; City Attorney Jose Smith, City Manager Jorge Gonzalez, Chief Deputy City Attorney Donald Papy, First Assistant City Attorney Steven Rothstein, Special Counsel Rodolfo Sorondo, and Special Counsel Michael Garcia.

JS/mem

Agenda Item R10A
Date 9-15-10

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R10 - City Attorney Reports

R10B Notice Of Closed Executive Session
Pursuant To Section 447.605, Florida Statutes, A Closed Executive Session Will Be Held During Recess Of The City Commission Meeting On Wednesday, September 15, 2010, In The City Manager's Large Conference Room, Fourth Floor, City Hall, For A Discussion Relative To Collective Bargaining.

AGENDA ITEM: R10B
DATE: 9/15/10

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Reports and Informational Items

(see LTC #234-2010)

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