

**MANAGEMENT AND LEASING AGREEMENT
FOR THE RETAIL COMPONENT OF THE ANCHOR SHOPS AND
PARKING GARAGE**

THIS AGREEMENT is made as of April 30, 2003, by and between the **Miami Beach Redevelopment Agency** ("Owner"), and **Miami Beach Community Development Corporation**, a Florida Not-For-Profit Corporation ("Contractor"):

WITNESSETH:

WHEREAS, Owner is the owner of a fee interest in a site containing a municipal parking garage and appurtenances containing approximately eight hundred (800) parking spaces (the "Garage") and certain retail space (the "Retail Space"), commonly referred to as Anchor Shops, and located in an area bounded by Washington and Collins Avenues in the proximity of 16th Street, City of Miami Beach, Metropolitan Dade County, Florida, as more particularly described in Exhibit "A", attached hereto and made a part hereof (said land, buildings and any other improvements now or hereafter located thereon hereinafter collectively referred to as the "Project"); and

WHEREAS, the Retail Space has been managed by the Contractor, pursuant to the terms of a former Management and Leasing Agreement (former Agreement), executed on January 19, 2001; and

WHEREAS, the former Agreement with the Contractor expired on December 31, 2002, which term included a one-year renewal option, exercised on December 31, 2001; and

WHEREAS, since the former Agreement did not provide for a second renewal option, the Contractor has been managing the facility on a month-to-month basis at the discretion of the Executive Director, until such time that the RFP process results in a new management agreement; and

WHEREAS, on July 31, 2002, the Redevelopment Agency authorized the Administration to issue a Request for Proposals (RFP) for the management and leasing of the retail component of the Anchor Shops and Parking Garage (Anchor Shops); and

WHEREAS, the RFP and subsequent evaluation process resulted in the recommendation the Contractor to continue in its role of managing and leasing the Retail Space; and

WHEREAS, ON April 9, 2003, the Chairman and Members of the RDA Board authorized the Administration to enter into negotiations with the Contractor for the management and leasing of the Retail Space; and

WHEREAS, Owner wishes to continue to retain the services of Contractor as manager of the Project with responsibilities for managing, operating, maintaining and servicing the Project, for coordinating the leasing of the Project, and for the performance, on behalf of Owner, of all obligations of Owner relating thereto:

- i. As landlord under all present and future leases of space of the Project;
- ii. As grantor under any security deed now or hereafter encumbering all or any portion of the Project;
- iii. As a party to any easements that now or hereafter affect the Project;
- iv. Otherwise as owner of the Project; and

WHEREAS, Contractor is willing to continue to perform such services with regard to the management, operation, maintenance and servicing of the Project and the obligations of Owner under the Basic Documents relating thereto; and

WHEREAS, Contractor is willing to cooperate with and use its best efforts to assist Owner with regard to the leasing of space now or hereafter available for lease in the Project.

NOW THEREFORE, in consideration of the foregoing and of the full and faithful performance by the parties of all the terms, conditions and obligations imposed on them hereunder, the parties hereto agree as follows:

1. **Appointment of Contractor.** Owner hereby appoints Contractor as manager of the Project with the responsibilities and upon the terms and conditions set forth herein and Contractor by its execution hereof does hereby accept such appointment.

Contractor's Tax Payer Identification number is 59-211-0264.

2. **Management Services of Contractor.**

2.1 **Orientation.** Contractor hereby acknowledges receipt of certain books and records with respect to the retail leasing and retail operation of the Project, personal property on the Project belonging to Owner, and all service contracts relating to the maintenance and operation of the Project. Within thirty (30) days after the effective date of this Agreement, Contractor shall prepare and submit to Owner a complete list of all books and records of Owner held by Contractor, a list of personal property, and a list of all service contracts. If such list was submitted by Contractor pursuant to its former

Management and Leasing Agreement, dated January 19, 2001, Contractor shall update said list within thirty (30) days after the effective date of this Agreement.

2.2 Management of the Project. Contractor shall devote its best efforts, consistent with the first-class professional management of similar facilities, to serving Owner as manager of the Project, and shall perform its duties hereunder in a diligent, careful and vigilant manner so as to manage, operate, maintain and service the Project as a professional retail project. The services of Contractor hereunder are to be of a scope and quality equal to those generally performed by professional managers of other similar professional retail buildings in South Florida. Contractor shall make available to Owner the full benefit of the judgment, experience and advice of the members of Contractor's organization and staff with respect to the policies to be pursued by Owner in operation of the Project, and will perform such services as may be reasonably requested by Owner in operating, maintaining, servicing, improving and leasing the Project.

2.3 Use and Maintenance of the Project. Contractor agrees not to knowingly permit the use of the Project for any purpose which might void any policy of insurance held by Owner or which might render any loss insured thereunder not collectible, or which would be in violation of any governmental restriction. It shall be the duty of Contractor at all times during the term of this Agreement to operate and maintain the Project according to the highest standards achievable consistent with the expressed plan of Owner. Contractor shall use its best efforts to secure full compliance by the Project tenants with the terms and conditions of their respective leases. Contractor shall be expected to perform such other acts and deeds as are reasonable, necessary and proper in the discharge of its duties under this Agreement.

2.4 Specific Duties of Contractor. Without limiting the duties and obligations of Contractor under any other provisions of this Agreement, Contractor shall have the following duties and shall use its best efforts to perform the following services:

A. **Monies Collected.** Collect all rent and other payments due from tenants in the Project and any sums otherwise due Owner with respect to the Project in the ordinary course of business. Owner authorizes Contractor to request, demand, collect, receive and receipt for all such rent and other charges and, with Owner's prior knowledge and written approval, to institute legal proceedings in the name of, and as an expense of, Owner for the collection thereof and for the dispossession of tenants and other persons from the Project. Such expense may include the engaging of counsel for any such matter, except that Contractor must notify Owner before engaging any counsel, in the event that Owner opts to use counsel provided by the City of Miami Beach Attorney's Office. All monies collected by Contractor shall be forthwith deposited in the separate bank account or accounts already established by Owner for such purpose.

B. **Obligations under Management and Leasing Agreement.** Contractor shall duly and punctually perform and comply with all of the obligations,

terms and conditions required to be performed or complied with by Owner as provided for in this Agreement, relating to management, operation, maintenance and servicing of the Retail Space, including without limitation, the timely payment of all sums required to be paid thereunder, to the extent of funds of Owner available for payment, all to the end that Owner's interest in the Project and its interests as Landlord under the leases shall be preserved and no default chargeable to Owner shall occur under the Basic Documents. After disbursements of all funds specified herein or in any other provision of this Agreement, and after establishing a cash reserve in an amount not greater than **Three Thousand Dollars and 00/100, (\$3,000.00)** any balance remaining at the time each monthly report is forwarded to Owner, as described in Section 7.2 herein, during the term of this Agreement, shall be disbursed or transferred to Owner or to such other person as directed from time to time by Owner.

C. Insurance. To the extent funds of Owner are available; Contractor shall duly and punctually pay, on behalf of Owner, all insurance premiums of the Project or any part thereof, same to be done prior to the time that any insurance policy would lapse due to nonpayment of the premium.

D. Repairs and Maintenance. Contractor shall make all repairs and perform all maintenance on the building, appurtenances and grounds of the Project, as required to be made by Owner under the Basic Documents and in a manner acceptable to Owner. For any individual item of repair or replacement, the non-budgeted expenses incurred shall not exceed the sum of **One Thousand Dollars and 00/100 (\$1,000.00)**, unless Contractor obtains the prior written authorization of Owner; excepting, however, that emergency repairs immediately necessary for the preservation and safety of the Project or danger to life or property, may be made by Contractor without the prior written approval of Owner, provided that immediately after such emergency repairs, Contractor shall send Owner a report of any repairs so made.

E. Equipment and Supplies. Contractor shall make all arrangements for the furnishing of the Project with utility, maintenance and other services and for the acquisition of equipment and supplies as necessary for the management, operation, and maintenance and servicing of the Project. The non-budgeted purchase of any single piece of equipment or order of supplies shall not be made without the written authorization of Owner.

F. Tax Assessments. Contractor shall keep Owner informed of any change in the amount of real or personal property assessments or as to the advisability of contesting either the validity or the amount thereof. Contractor shall provide Owner with sample notice of such information in the event Owner determines to contest the validity or amount of said real or personal property assessments.

G. Insurance Coverage. Contractor shall carry insurance as required by law with respect to the Project and the operations related thereto, whether conducted

on or off the premises, in an amount not less than one million dollar (\$1,000,000), per occurrence, combined single limit, subject to adjustment for inflation and designating Owner, the City of Miami Beach and its employees and agents, as a named insured.

In the event that Owner requires, at its sole option, Contractor to procure such insurance, Owner shall be given written notice to Contractor specifying the types of coverage, policy limits and the dates on which such coverage must be effective, and the Contractor shall thereafter obtain not less than three (3) bids for such insurance from insurance companies that meet the requirements set forth in this Article and shall place such insurance with the company that provides the lowest overall premium to the Owner. The insurance required under this Article shall include the following:

- i. General Liability coverage in an amount not less than one million dollars (\$1,000,000), per occurrence, combined single limit, subject to adjustment for inflation and designating Owner, the City of Miami Beach and its employees and agents, as a named insured;
- ii. Worker's Compensation and Employers Liability Insurance, as required pursuant to Florida Statute;
- iii. Fidelity Insurance covering any dishonest or fraudulent act of the Contractor and/or employees whether acting alone or in collusion with others, including robbery within the premises, with a limit of not less than \$5000 per employee and \$25,0000 for robbery per month;
- iv. Such other insurance as the Owner may reasonably request, provided such insurance is commonly provided for situations in South Florida similar to this Agreement.
- v. Insurance must be furnished by insurance companies authorized to do business in the State of Florida, and approved by the City of Miami Beach's Office of Risk Management and the Contractor's insurance company. The companies must be rated no less than "B+" as to management, and not less than "Class VI" as to strength by the latest edition of Best 's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to approval of the City's Risk Manager.
- vi. Original Certificate of Insurance for the above coverage must be submitted to the City's Risk Manager for approval prior to any work commencing. These certificates will be kept in the Office of Risk Management, 1700 Convention Center Drive, Miami Beach, Florida 33139.

Contractor shall promptly investigate and make a full, timely written report to the

insurance company, with a copy to Owner, as to all accidents, claims for damages relating to the ownership, operation and maintenance of the Project, any damage or destruction to the Project and the estimated cost of repair thereof, and shall prepare any and all reports required by any insurance company in connection therewith. All such reports shall be filed timely with the insurance company as required under the terms of the insurance policy involved. Contractor shall have no right to settle compromise or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance, without the prior written consent of Owner. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liabilities as set forth in Florida Statutes Section 768.28.

H. Personnel. Contractor shall employ such personnel as employees of and at the expense of Contractor or its affiliates, and not of Owner, as may be necessary in order for Contractor to perform its obligations hereunder. No personnel shall be employed by Contractor for the Project without prior written approval by Owner. Contractor shall maintain commercial liability insurance coverage with a minimum liability limit of **Five Hundred Thousand Dollars and 00/100 (\$500,000.00)** to cover its employees who handle or who are responsible for funds belonging to Owner. Contractor shall comply with all laws relating to the employment by the Contractor of its employees.

I. Other Services. Contractor shall perform all other services that are normally performed in connection with the operation of similar retail buildings and specifically as provided in South Florida to tenants of like premises, without additional charge; including but not limited to tenant coordination and build-out improvements. Should Contractor provide any services in addition to the above additional services for which a separate charge is made ("Additional Charge"), then a separate charge for such Additional Services shall be made to the tenants receiving such Additional Services. All such Additional Services shall be provided by Contractor directly to the tenants, and all such separate charges shall be retained for the account of Owner. All costs and expenses incurred in connection with furnishing such Additional Services shall be paid by Contractor on behalf of Owner, to the extent of funds of Owner available for payment, and any net profit shall accrue to any net loss for the account of Owner. Notwithstanding the above, the Additional Services shall exclude the installation of vending or other coin-operated machine or concessions, without the written authorization of Owner.

J. Compliance with Laws. Contractor shall comply with all applicable Federal, State, County, and Municipal laws and shall take any and all action as may be necessary to comply with any and all orders or requirements affecting the Project by a federal, state, county or municipal authority having jurisdiction thereover, and orders of the Board of Fire Underwriters or other similar bodies. Contractor shall make recommendations to Owner to challenge or question any such order or requirement where Contractor believes that such a challenge or question is appropriate. Notwithstanding same, Owner shall have the final discretion as to deciding whether to undertake any recommended challenge or question.

K. Notices. All notices from any mortgagee, ground lessor or other party to any of the Basic Documents given pursuant thereto or pertaining thereto, if any, and all notices from any governments or official entities, if any, shall be immediately delivered to Owner by Contractor.

3. Leasing Services of Contractor.

3.1 Leasing. Contractor shall retain or otherwise engage Felenstein Koniver Stern Realty Group (FKS) as the exclusive leasing broker of Owner for the purpose of leasing any part of the Project now or hereafter available for lease during the term of this Agreement. In performing its duties, Contractor shall adhere to the standards for leasing consistent with those of leasing agents for retail buildings in the South Florida area.

3.2 Terms of Leases. Unless otherwise specified by Owner, the Project shall be leased only on the following terms:

- i. To tenants not affiliated with Contractor, Owner, or any partner to the Owner, the existing tenants as of effective date of this Agreement or any party affiliated with existing tenants, and meeting criteria set by Owner as to credit worthiness;
- ii. On a form of lease approved by Owner;
- iii. For a term approved by Owner;
- iv. At a rental rate approved by Owner; and
- v. With a rental increase for each subsequent period of the lease term, subject to approval of Owner.

3.3 Leasing Procedure.

A. Prospective Tenants. Contractor shall inform Owner's Representative over the telephone of any prospective tenants and shall inform Owner's Representative whether or not the prospective tenants and lease terms fall within the Leasing Guidelines and such other information as Owner's Representative shall require.

B. Lease Brief. Contractor shall prepare a lease brief on a form supplied to Contractor by Owner, shall submit a full breakdown of tenant finish expense,

if any, and shall submit the lease brief, tenant finish breakdown, and prepared lease to Owner's Representative for review and signature.

C. Signing of Lease. Owner shall have the right to sign each and every lease of the Project and Contractor shall not be authorized to sign any lease on behalf of Owner or be permitted to act as an agent of Owner in any capacity except as specifically authorized by Owner. Notwithstanding any provision of Section 3.3 or of this Agreement, Owner shall have no duty to approve any lease meeting the criteria hereunder, and such approval shall be within the final and exclusive review, and within the sole absolute discretion of Owner, and Owner shall, accordingly, incur no liability to Contractor for any failure or refusal to approve a lease submitted pursuant to the terms herein.

D. Leasing Report. Each month, as a part of the monthly report described in Section 7.2, Contractor shall submit to Owner an internal leasing report relative to current occupancy of the Project, potential tenants, and ongoing negotiations.

3.4 Compensation for Leasing Services.

A. Leasing Commissions. Except as provided in Section 3.5 entitled "Outside Brokers", Owner shall disburse to Contractor the following monies, which Contractor represents and warrants will be paid directly to Leasing Broker, as set forth in Section 3.1, as if paid directly by Owner to said Broker for its leasing services hereunder:

An amount equal to the aggregate of the following percentages of the Minimum Rent by the tenant to Owner during the following years of the term of the Lease:

- i. Six (6%) percent of the Minimum Rent for years one (1) through five (5) of the term of the Lease; and
- ii. Four (4%) percent of the Minimum Rent for years six (6) through ten (10) of the term of the Lease; and
- iii. Three (3%) percent of the Minimum Rent for the remaining years of the term of the Lease.

The term "Minimum Rent" shall exclude additional rent or other charges of any type or nature whatsoever paid or payable by the tenant under the Lease including amounts payable on account of increases in real estate taxes, operating expenses, any escalations, utility payments or other charges for any services, if any. No Leasing Commissions will be paid for renewals, relocations and/or expansions of the existing leases.

B. Payment Schedule. Contractor shall be entitled to one-third of the Leasing Commission described in Section 3.4A and 3.5 upon full execution of a lease between Owner and tenant, one-third when tenant commences payment of the Minimum Rent under the Lease, and the remaining one-third, within six (6) months of payment of the Minimum Rent.

C. Indemnification. Contractor shall indemnify, save and hold Owner harmless from and against any and all losses, damages, claims, costs and expenses (including attorney's fees and costs), in any way resulting from or connected with any claims or suits by Owner's leasing broker for commissions, finders fees, or like compensation made or brought pursuant to this Agreement

3.5 Outside Brokers. Owner shall not pay outside brokerage fees, other than fees specified in Section 3.4. Accordingly, with exception of the fees specified in Section 3.4, Contractor shall indemnify, save and hold Owner harmless from and against any and all losses, damages, claims costs and expenses (including attorney's fees and costs) in any way resulting from or connected with any claims or suits against Owner for a broker's or salesman's commission, finder's fee or other like compensation, made or brought by any person or entity.

3.6 Direct Negotiations. Owner may, if it deems necessary, enter into negotiations directly with any prospective tenants, provided, however, that such direct negotiations by Owner shall not affect the amount of any commissions that the entering into such direct negotiations by Owner shall not affect the terms and conditions of this Agreement with regard to whether or when a commission is deemed to be earned.

4. Approval of Contracts. Contractor shall not execute or otherwise enter into or bind Owner with respect to any contract or agreement without the prior written approval of Owner. Contractor shall terminate any such contract within fifteen (15) days after notice from Owner that such contract is not satisfactory to Owner. Additionally, no contract with shall be made and entered into that exceeds the term of this Agreement, as provided for in Section 9.1, unless otherwise approved in writing by Owner prior to commencement of the term of such contract.

5. Compensation for Management Services. Owner shall compensate Contractor for the management services rendered herein, with an annual "Management Fee" equal to Twenty Five Thousand Four Hundred Forty and 00/100 (\$25,440), representing Four (4) Percent of Gross Annual Lease Revenues, to be calculated and paid on a monthly basis. Upon the commencement date of this Agreement, parties agree that such Fee has been estimated at Two Thousand One Hundred Twenty and 00/100 (\$2,120) per month, which term is defined as follows:

- i. all wages, salaries and compensation of personnel employed by Contractor as specified in Section 2.4H entitled "Personnel"; and
- ii. all expenses incurred by Contractor which are not reimbursable

hereunder.

6. Construction Services. Contractor shall not provide direct construction services to tenants, other than those services that are normally provided in connection with the operation of similar retail buildings and specifically provided in South Florida to tenants of like premises, including but not limited to, the coordination of utility, fire protection, and life safety services to other tenants, at the time that tenant build-out improvements are performed, without additional charge.

7. Accounting, Records, Reports.

7.1 Records. Contractor shall maintain a comprehensive system of office records, books and accounts, which shall belong to Owner. Owner and others designated by Owner shall have at all times access to such records, accounts and books and to all vouchers, files and all other material pertaining to the Project and this Agreement, all of which Contractor agrees to keep safe, available and separate from any records not having to do with the Project. Upon execution of this Agreement all records, budgets, plans and reports hereunder shall comply with the requirements described herein.

7.2 Monthly Reports. On or before the 15th day of each month during the term of this Agreement, Contractor shall provide Owner with a monthly narrative status report outlining progress and any significant event in the areas of leasing, physical plant management and administrative management concerning the property operations. Contractor shall provide Owner with a quarterly market survey comparing subject property to competitive properties in terms of rental rates and physical features, and providing a summary conclusion recommending market rental rates and terms for the subject property for the upcoming quarter. Contractor shall also prepare and deliver to Owner any other statements for the Project reasonably requested by Owner from time to time.

7.3 Annual Financial Statements. At the request of Owner, Contractor shall prepare and deliver to Owner annual financial statements within thirty (30) days after the end of each fiscal year which shall contain a balance sheet as of the end of the fiscal year, statement of profit and loss and a statement of changes in financial position for the fiscal year then ended. Such financial statements shall be prepared on the modified cash basis and on the accrual basis in accordance with generally accepted accounting principals and shall include a reconciliation of the modified cash basis with the accrual basis. Contractor will cooperate with and give reasonable assistance to any independent public accountant retained by Owner to examine such statements or other records pertaining to the Project.

7.4 Annual Budgets. No later than July 1st of each year or such other date specified in a written notice from Owner to Contractor, Contractor shall prepare and deliver to Owner, for Owner's approval, a proposed operating budget and a capital improvement budget for the next calendar year. The operating budget shall set forth the

projected income and receipts from the Project for such fiscal year on an accrual basis and in reasonable detail and the operating expenses to be incurred during such year, such operating budget to be set forth on an accrual basis and in reasonable detail with each category of expense listed on a separate line.

The capital improvement budget shall set forth on a cash basis and in reasonable detail a description of all capital improvements, repairs and replacements which Contractor proposes to make in and to the Project during the period covered by the budget and the estimated cost of each. Contractor shall further provide such other financial information as is reasonably requested by Owner.

7.5 Audit Provisions. Contractor shall, in accordance with good accounting practice in such form as the Owner shall require, keep such books of account and records as will accurately and completely reflect all business done at, and all income received and expenses and disbursements incurred in connection with the operation and maintenance of the Project. All such books, records and reports shall be maintained at Contractor's office in the City of Miami Beach, Florida and shall be available for inspection, audit, and copying by duly authorized representatives of the Owner upon request. Owner shall keep and preserve all such and records for a period of not less than five years, and shall not destroy or remove same without prior written notice and right to take possession thereof.

8. Operating Expenses.

8.1 Expenses of Owner. All obligations or expenses incurred hereunder shall be for the account of, on behalf of, and at the expense of Owner, except as otherwise specifically provided in this Agreement; provided, however, that Owner shall not be obligated to reimburse Contractor for any expenses for office equipment or office supplies of Contractor; for any overhead expenses of Contractor incurred in its general offices, except as provided in Section 8.2; or for any expenses incurred where the prior written consent, approval, or authorization of Owner was required, and was not obtained.

8.2 Reimbursements of Expenses. No amounts, other than those pre-approved in writing by the Owner, and included in the Approved Budget prepared in accordance with Section 7.4 hereof, shall be reimbursed or advanced to the Contractor. The following out-of pocket costs and expenses reasonably and properly incurred by the Contractor in the performance of its obligation hereunder, in amounts not to exceed those approved by Owner in each Approved Budget prepared pursuant to Section 7.4, and properly documented, shall be reimbursed to Contractor as provided below in Section 8.3:

A. "Administrative Expenses", which term shall be limited to the cost of stationary and paper, media reproductions, postage, and land line telephone charges associated with the Project. This term shall not include cellular telephone base service,

vehicle fuel or mileage charges or other costs associated with travel. All expenses associated to leasing advertisement and promotion of the premises shall have prior written approval of Owner.

B. "Operating Supplies", which term shall mean the reasonable and necessary cost for cleaning materials, lights bulbs and other consumable and expendable items required in the facility maintenance for the Project;

C. "Repair and Maintenance", which term shall mean the reasonable and necessary expenses for the upkeep and maintenance of the Project. This term shall not include structural repairs, which will be performed by the Owner.

D. "Other Operating Expenses", which term shall mean such other reasonable and necessary costs and expense set forth in the Approved Budget for items necessary to the operation of the Project.

8.3 Reimbursement Procedure Contractor shall submit with each Monthly Report, described in Section 7.2, invoices detailing eligible reimbursable expenses described above in 8.2 , proof of payment for said expenses, such as returned check or credit card receipts, and a cover page organizing, in a manner following good accounting practice, the reimbursement request.

9. Term and Termination.

9.1 Term. This Agreement is for an initial term of approximately three (3) years. The term of this Agreement shall commence on May 1, 2003, and terminate on April 30, 2005, unless sooner terminated as provided herein. At Owner's sole optional discretion, this Agreement may be renewed for an additional one year term, upon the same terms and conditions, upon thirty (30) days notice to Contractor, prior to the expiration of the initial Term.

9.2 Termination by Owner. Owner may, at all times during the term of this Agreement and any extension thereof, terminate this Agreement in the event that:

- i. In Owner's sole and final opinion, Contractor has mismanaged the Project and not properly performed its duties relative to the management, operation, maintenance or servicing of the Project, or has otherwise defaulted in the performance of its obligations hereunder; or
- ii. A receiver, liquidator or trustee of Contractor shall be appointed by court order, or a petition to liquidate or reorganize Contractor under any bankruptcy, reorganization or insolvency law, and such order or petition is not vacated or dismissed within 60 days, or Contractor

shall file a petition in bankruptcy or request reorganization under any provision of the bankruptcy, reorganization or insolvency laws, or if Contractor shall make an assignment for the benefit of its creditors, or if Contractor is adjudicated a bankrupt; or

- iii. The present management of Contractor, or of leasing broker, as set forth in Section 3.1, materially changes by reason of the acquisition or merger of Contractor by or with any other entity or otherwise; or
- iv. There is damage or destruction to the Retail Space and Owner decides not to rebuild or restore the Retail Space, or there is a taking by condemnation, or similar proceedings, of a substantial portion of the Project; or Owner shall at any time sell or otherwise transfer ownership of the Project.

Any such termination shall be effective thirty (30) days prior receipt of a written notice of termination given by Owner to Contractor, or thereafter upon such other date as specified by Owner in such written notice.

9.3 Termination for Convenience of Either Party. After the first twelve (12) months of the initial term of this Agreement, either party hereto may terminate this Agreement, without cause and for convenience at any time upon at least thirty (30) days prior written notice to the other party. Notwithstanding the preceding sentence, Contractor may terminate this Agreement without cause at any time during the first twelve (12) months of this Agreement upon at least ninety (90) days prior written notice to Owner and Owner may terminate this Agreement without cause at any time during the first twelve (12) months of this Agreement upon at least ninety (90) days written notice to Contractor.

9.4 Contractor's Rights and Obligations after Termination. Upon any termination, the obligations of the parties hereto (except those pursuant to the Section hereof entitled "Indemnities by Contractor") including Owner's obligations to pay any fees or commissions to Contractor hereunder, shall cease as of the date specified in the notice of termination, except that Contractor shall comply with the applicable provisions of this Subsection and shall be entitled to receive any and all compensation which may be due Contractor hereunder at the time of such termination, including but not limited to all management fees up to the date of termination and all leasing commissions for leases signed prior to the termination date. Upon the termination of this Agreement as provided above, Contractor shall:

- i. Deliver to Owner, or such other person or persons designated by Owner, copies of all books and records of the Retail Space and all funds in the possession of Contractor belonging to Owner or received by Contractor pursuant to the terms of this Agreement or of any of the Basic Documents; and

- ii. Assign, transfer or convey to such person or persons all service contracts and personal property relating to or used in the operation and maintenance of the Retail Space, except any personal property which was paid for and is owned by Contractor. Contractor shall at its cost and expense, remove all signs that it may have placed at the Retail Space indicating that it is manager of same and replace and restore any damage resulting there from. Contractor shall also, for a period of 90 days after such termination, make itself available to consult with and advise Owner or such other person or persons regarding the operation and maintenance of the Retail Space.

10. Indemnification. In addition to the indemnifications provided in Sections 3.4 and 3.5, and in consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt of which is hereby acknowledged, the Contractor hereby agrees to indemnify, defend and hold the Owner and its employees, agents and authorized representatives harmless with respect to any and all costs, claims, damages, and liability which may arise out of the performance of this Agreement as a result of any negligent acts, errors or omission of the Contractor, or the Contractor's sub-contractors, including but not limited to leasing broker, as set forth in Section 3.1, or any other person or entity under the direction or control of the Contractor. The Contractor shall pay all claims and losses arising out of Contractor's or Contractor's sub-contractors, including but not limited to leasing broker, as set forth in Section 3.1, or any other person or entity under the direction or control of the Contractor, negligent acts, errors or omissions and shall defend all suits, in the name of the Owner, its employees, agents and authorized representatives when applicable, including appellate proceedings, and shall pay all costs, judgments and attorney's fees which may issue thereon.

11. Article 16. Venue. 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 or all terms or conditions herein exclusive venue for the enforcement of same lie in Miami-Dade County, Florida. By entering into this Agreement, Contractor 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. Contractor shall further specifically bind any and all subcontractors, including but not limited to leasing broker, as set forth in Section 3.1, to the provisions of this section.

12. Limitation of Liability. The Owner desires to enter into this Agreement only if in doing so Owner can place a limit on Owner's liability for any cause of action for money damages due to an alleged breach by the Owner of this Agreement, so that its liability for any such breach never exceeds the amount the compensation due Contractor for Management Services under Section 5 of this Agreement, less any amounts actually paid to Contractor therein. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the Owner for any damage action for breach of contract to be limited to a maximum amount of the compensation

due Contractor for Management Services under Section 5 of this Agreement, less any amounts actually paid to Contractor therein.

13. **No Agency.** Contractor shall be responsible for all of its employees or employees of any affiliate, the supervision of all persons performing services in connection with the performance of all of Owner's obligations relating to the maintenance and operation of the Project, and for determining the manner and time of performance of all acts hereunder. Nothing herein contained shall be construed to establish Contractor or any of its employees as agent or employee of Owner.

14. **Assignment.** Contractor shall not assign this Agreement without prior written approval of Owner. Contractor shall not replace the leasing broker set forth in Section 3.1 of this Agreement without prior written consent of Owner. Except as aforesaid, this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

15. **No Waiver.** The failure of either party to seek redress for breach or to insist upon the strict performance of any covenant, agreement, provision or condition of this Agreement shall not constitute a waiver thereof, and such party shall have all remedies provided herein and by applicable law with respect to any subsequent act which would have originally constituted a breach.

16. **Notices** Unless otherwise specifically provided, all notices, demands, statements and communications required hereunder shall be in writing and shall be sent by registered or certified mail, if intended for Owner, addressed to Owner.

**Miami Beach Redevelopment Agency
Attn: Executive Director
1700 Convention Center Drive – Third Floor
Miami Beach, Florida 33139**

With a copy to:

**City of Miami Beach
Attn: Office of the City Attorney
1700 Convention Center Drive
Miami Beach, Florida 33139**

and if intended for Contractor, addressed to:

**Miami Beach Community Development Corporation
Attn: Mr. Roberto Datorre, President
1205 Drexel Avenue
Miami Beach, Florida 33139**

or to such other address as shall from time to time have been designated by written notice by either party to the other party as herein provided.

17. **Captions.** The captions of this Agreement are inserted only for the purpose of convenient reference and do not define, limit, or prescribe the scope of intent of this Agreement or any part hereof.

18. **Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of Florida.

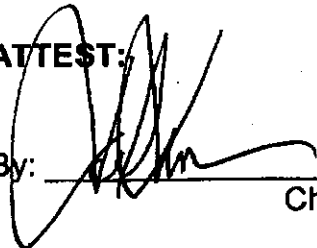
19. **Entire Agreement.** This Agreement embodies the entire understanding of the parties and there are no further agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof. This Agreement shall not be recorded or filed in any public records and if so filed or recorded shall be null and void at the election of the party which did not cause such filing or recording.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written.

OWNER: MIAMI BEACH REDEVELOPMENT AGENCY

ATTEST:

By: _____

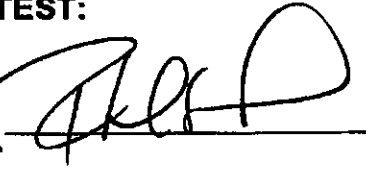

Chairman

By: _____


Secretary

CONTRACTOR: MIAMI BEACH COMMUNITY DEVELOPMENT CORPORATION

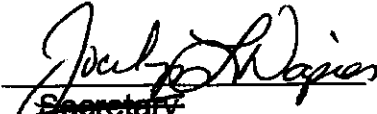
ATTEST:

By: 

By: 
Roberto Datorre, President

Agreed to and approved by Felenstein Koniver Stern Realty Group (FKS) as to those terms and conditions in the Agreement pertaining to and creating obligations between Owner and FKS, as Owner's exclusive leasing broker pursuant to Section 3.1 of the Agreement:

ATTEST:

By: 
Secretary
Witness

By: 
Lyle B. Stern, President
Felenstein Koniver Stern Group, Inc.

EXHIBITS:

Exhibit "A": Legal Description
Exhibit "B": Scope of Work

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



Redevelopment Agency
General Council  4/25/03
Date

EXHIBIT "A"
LEGAL DESCRIPTION

Lots 8, 9, 10, 11, 12 and 13, Block 57, Fisher's First Subdivision of Alton Beach, according to the Plat thereof, as recorded in Plat Book 2, Page 77 of the Public Records of Dade County, Florida, together with all of 16th Street (Avenue "C"), less and except the following described parcel:

BEGINNING at the Southwest corner of Block 54 of said Fisher's First Subdivision of Alton Beach Plat; thence North $88^{\circ} 0' 53''$ East along the South line of said Block 54, a distance of 443.08 feet, to the Southeast corner of said Block 54; thence South $07^{\circ} 35' 04''$ West, a distance of 96.26 feet, to a point of cusp with a tangent curve concave to the Southwest; thence along the arc of said curve to the left, having a radius of 25.00 feet and a central angel of $90^{\circ} 00' 00''$, an arc distance of 39.27 feet, to a point of tangency; thence North $82^{\circ} 24' 52''$ West, a distance of 24.75 feet; thence South $88^{\circ} 00' 53''$ West along a line 8.00 feet North of and parallel with, as measured at right angles to the North line of Block 57 of said plat, a distance of 382.18 feet to a point on the Easterly Right-of-Way line of Washington Avenue; thence North $01^{\circ} 59' 11''$ West along said Easterly Right-of-Way line, a distance of 62.00 feet to the Southwest corner of said Block 54 and the Point of beginning.

Said lands lying and being in the City of Miami Beach and containing 65,910 square feet (1.5131 Acres) more or less.

EXHIBIT "B"

SCOPE OF WORK

The proposed scope of services shall include but not be limited to the following:

- i. Procuring and negotiating leases for available space as well as for space that becomes available upon expiration and/or termination of exiting leases;
- ii. Collecting and remitting lease revenues;
- iii. Providing a means of communication for retail tenants to address and/or resolve matters pertaining to their respective leases, such as, but not limited to, maintenance or repair concerns;
- iv. Providing timely response to tenant issues and concerns;
- v. Conducting daily on-site inspections to ensure that tenant spaces and common area spaces are maintained o a standard consistent with a first class retail center;
- vi. Coordinating with the City's Property Management Division on maintenance issues affecting the facility;
- vii. Communicating and coordinating with tenants to secure their respective spaces, in the event of a hurricane and/or any other citywide emergency;
- viii. Coordinating and facilitating any tenant improvements involving new and/or existing leases;
- ix. Coordinating marketing and advertising efforts;
- x. Maintaining a system of accounting, bookkeeping and reporting that will accurately reflect all income received and disbursements made in connection with the operation and maintenance of the Anchor Shops.
- xi. Affecting a good neighbor policy through involvement and coordination with local area residents, businesses and business organizations, including, but not limited to, the anchor Shops Association, the City Center Association and the Washington Avenue Taskforce.