



MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: April 14, 2009

SUBJECT: **Discussion on the Status, Design, and Budget for the New World Symphony Parking Garage and Park**

On January 5, 2004, the City of Miami Beach (City) and the New World Symphony (NWS), 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 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. Pursuant to the direction of the City Commission on September 8, 2004 and consistent with the Planning Board's August 24, 2004 recommendation, the Project site was expanded east to Washington Avenue to include both surface lots, to be designed as an integrated site, to include the development of a Park and certain other public improvements.

The Agreements have NWS serving as the Developer of the site and, in this capacity, NWS enters also into separate agreements with its vendors to plan, design, and construct the Garage and the Park on the City's behalf. The City is obligated to provide funding for these improvements upon approval of the scope of work and budgets for each.

On February 20, 2007, the City and NWS executed the First Addendum to the Development Agreement (First Addendum) that established the City's Preliminary Budgets for the Garage Project and the Park Project and established a \$15 million Grant-in-Aid for the NWS building. The Preliminary Garage Budget was established as \$15,210,135, and the Preliminary Park Budget was established as \$14,960,000.

The First Addendum requires that NWS secure City approval of the Final Garage Budget prior to NWS entering into a Guaranteed Maximum Price ("GMP") contract with a contractor to construct the Garage. NWS has advised the City that it is ready to proceed with the Garage design/build contract.

Architectural Consultant Criteria

The Development Agreement and the First Addendum contain language that names "Gehry Partners, LLC", as the Architectural Consultant for the Project (including the Garage and the Park components). A considerable amount of importance was placed on having the entire project site developed in accordance with the "single design vision of the Architectural Consultant...". The City and NWS agreed that a "Gehry" designed Project (including Garage and Park) was a material and integral part of the development of the site. In deciding that a

“Gehry” design was a material element, the City Commission carefully considered the potential financial costs attached to making the Architectural Consultant a material requirement.

The firm “Gehry Partners, LLC” is an architectural company created by Frank O. Gehry. The services of Mr. Gehry and his firm, Gehry Partners, are in demand throughout the world. Mr. Gehry is particularly known for the Guggenheim Museum in Bilbao, Spain; the Millennium Park in Chicago; the Walt Disney Concert Hall in downtown Los Angeles; the Experience Music Project in Seattle; the Weisman Art Museum in Minneapolis; the Dancing House in Prague, Czech Republic; and his private residence in Santa Monica, California. His work is often sought by owners to distinguish themselves from others, as the buildings that he designs become tourist attractions in and of themselves.

The projects designed by Gehry Partners are considered to be world class facilities. This type of distinction, which carefully and uniquely combines art with function is, by its nature, higher in expense than a typical municipal project. The firm is able to command a premium in fees, and the projects that are designed by them are high end products with a commensurate premium in the cost of construction. In approving the First Addendum, the City Commission considered the premium that went with making a Gehry design a material element, and determined that the distinctive value of the end product, a world class design, was worth the premium cost of design and construction.

Total Project Funding

The allocated funding for the NWS Project totals approximately \$51 million (not inclusive of land value) and comes from City Center RDA funds. At the time that the First Addendum was approved, the revenue projections by the City staff indicated that this amount could be contractually allocated in accordance with a specified schedule. It should be noted that the revenue projections were developed prior to the legislative changes to property taxes imposed by the State Legislature in 2007 and the dramatic erosion of property values and corresponding reduction in RDA funds available for this year, next year and the foreseeable future. Both of these events have greatly affected the projected revenue for the City Center RDA and consequently have required the City to reevaluate and reprioritize the various projects “in the cue.”

Given the parameters of projected available funding at the time, the City Commission generally considered the Garage, the Park, and the Additional Improvements of primary importance. The Grant-in-Aid provided for in the First Addendum was an articulated need by NWS and their original request was for a Grant-in-Aid of \$30 million. In reviewing and considering this request, the City placed the various components into priority order and spread the funding among them - with the Garage, Park, and Additional Improvements having highest priority for the City since the Development Agreement and First Addendum assign these responsibilities to the City. From the City’s perspective, this meant that the Grant-in-Aid was largely backed into as the amount remaining after the Garage, Park, and Additional Improvements were funded.

All parties recognized the significance of developing both a “world class” Park and “world class” Garage to complement the significant addition of the NWS Campus Expansion to the City Center landscape. That is why the budget for both the Park and the Garage were significantly increased at the time of the First Addendum. The City’s desire was clear at the

time: RDA funds should provide for “public” amenities which would complement the “private” investment and make the entire improvement an extraordinary facility attracting visitors from around the world. While important, the Grant-in-Aid was determined after the budgets for the public amenities were established. These budgets, established in concert with the NWS and based on information provided by the NWS were anticipated, at the time, to be sufficient to meet the architectural and aesthetic requirements of the program.

The funding approved by the City is as follows:

| | |
|-----------------------------------|---------------------|
| Garage (FY 09) | \$15,210,135 |
| Additional Improvements (FY 08) | \$6,400,000 |
| Park (Design FY 09/Const FY 2010) | \$14,960,000 |
| Grant in Aid (FY 2010) | \$15,000,000 |
| Total Funding Commitment | \$51,570,135 |

As noted above, the funding commitments for the Garage, the Additional Improvements, and the design for the Park have already been appropriated by the City Commission.

The funding commitment for the construction of the Park and for the Grant-in-Aid will be due as of October 1, 2009.

The Garage Project

From the inception of the Project, the Garage has been an integral component. The Project site, including the Park and the Garage, was previously two (2) City surface parking lots that contained just over 500 parking spaces. Throughout the course of the Project’s development, the City Commission has taken the position that the Project should not result in a net loss of parking spaces. For this reason, the Project has consistently contemplated a Gehry designed Garage containing 500 to 600 parking spaces.

The First Addendum increased the total Preliminary Garage Budget from approximately \$7 million, to \$15,210,135, to fund a projected 608 spaces (see attached proposed budget from NWS/Hines as Attachment 5), and including the City Code required retail component on the ground floor. The Preliminary Garage Budget provided by NWS and approved by the City Commission in the First Addendum was generally divided as follows:

| | |
|--------------------------------------|---------------------|
| Total Architectural/Engineering Cost | \$1,511,000 |
| Total Construction Cost | \$12,106,000 |
| Total Site Cost | \$650,680 |
| Total Tax/Insurance Cost | \$215,608 |
| Total Owner Expenses | \$10,000 |
| Total General/Admin Costs | \$568,755 |
| Total Contingency Cost | \$148,092 |
| Total Project Cost | \$15,210,135 |

The First Addendum anticipated a potential change between the Preliminary Garage Budget and the Final Garage Budget, and therefore requires NWS to bring back its Final Garage

Budget, for consideration and potential approval by the City Commission. As of March 10, 2009, NWS advised the City that it is prepared to present a Final Garage Budget.

Since execution of the First Addendum on February 20, 2007, NWS has proceeded with both the construction of the NWS building (now known as the "NWS Campus Expansion") as well as the conceptual design for the Garage with Gehry Partners. The recommended and approved process (in large part to help limit the design fees) was to have Gehry Partners do the conceptual design and obtain Design Review Board approval. Currently, the conceptual design has been bid to design/build contractors, and the selected contractor and its design professional will be responsible for finishing the design and engineering in accordance with the DRB approved conceptual plans, and then construct the Garage. The selected design/build contractor is contemplated to be a sub-contractor of the NWS Campus Expansion, general contractor, Facchina McGaughan, LLC.

Schedule

Successful completion of the Garage is on the same Critical Path as for completion of the NWS Campus Expansion building, for two reasons: (1) the electrical power vaults for both the Campus Expansion building and the Garage are located within the Garage. At this point, permanent power cannot be provided to the Campus Expansion building without the Garage commencing construction. In order to meet the Critical Path for the Campus Expansion building, engineering for the Garage has commenced as of the beginning of April 2009; and (2) Pursuant to Resolution No. 2007-26704, the City Commission approved a temporary License Agreement for NWS to count 175 parking spaces within the proposed Garage to meet its City Code required parking for a period of five (5) years from the date of Certificate of Occupancy (C.O.) of the Campus Expansion building. This requires that the Garage be constructed and open in order for a C.O. to be granted on the Campus Expansion building.

In 2006, the City Commission approved a three-party Agreement between the City, NWS, and 420 Lincoln Road Associates, known as a "Declaration of Restrictive Covenants in Lieu of Unity of Title (aka "Parking Covenant)". The purpose of this Agreement, which is a recorded document, was to allow NWS to locate its 175 Code required parking spaces within a mixed use project owned by 420 Lincoln Road Associates. This project has been delayed in its implementation and at the time that the temporary License Agreement noted above was approved, it was contemplated by NWS that 420 Lincoln Road Associates would construct the mixed use project within 5 years of TCO/CO of its Campus Expansion building. To place these two Agreements into context, NWS has provided to meet its Code required parking through the Parking Covenant which contemplates locating these 175 spaces in a mixed use project to be built by 420 Lincoln Road Associates. The temporary License Agreement essentially provides a temporary location for the Code required parking until approximately 2016 for the mixed use project to be constructed and opened.

If this mixed use project by 420 Lincoln Road Associates is not constructed and open after five (5) years of NWS obtaining a CO on its Campus Expansion building, the NWS would need to provide for its 175 Code-required parking spaces at an alternate location.

As soon as approval from the City Commission is obtained, NWS will complete the contract with the design/build contractor and finalize the design and initiate the permitting and construction of the site. Initial design/engineering commenced after First Reading of the Second Addendum was approved on March 18th. If this schedule is met, then completion of

the Garage is projected to be August/September 2010.

The Park Project

The planning effort for the Park has not yet officially commenced. Up until October 2008, NWS was still in negotiations with Gehry Partners regarding the proposed design services and fees for this component. The Preliminary Park Budget in the First Addendum is \$14,960,000. At the February Finance Committee, the NWS was asked to approach Gehry Partners, through a personal appeal by Michael Tilson Thomas, in an effort to persuade him to provide the design services for the park project at a more reasonable fee. The NWS has informed the City that they were unsuccessful in this effort and as a result, the design fees for the park project remain in excess of \$4.5 million dollars if the City wishes to use Gehry Partners as the design professionals. Furthermore, at the March 10, 2009 Finance and Citywide Projects Committee meeting, representatives from NWS proposed that the City consider an alternate design professional for the Park. After discussing this issue with the representatives from NWS, the Committee ended up agreeing with NWS that this should be explored. Based on this discussion, NWS has begun preliminary efforts to identify a suitable alternate design team.

February/March 2009

The NWS/Hines development team has selected a low bidder for the Garage. The low bidder for the Garage is a local company doing business as KVC Construction (KVC). The principals of KVC are Miami Beach residents and, although not related, currently have a contract with the City as the Construction Manager at Risk for the Scott Rakow Youth Center project.

As of the February 11, 2009 FCWPC Meeting, the cost projected for the proposed Garage was as follows:

| | |
|--------------------------------------|-------------------------------|
| Total Architectural/Engineering Cost | \$2,255,612 |
| Total Construction Cost | \$16,235,372 |
| Total Site Cost | Included in Construction Cost |
| Total Tax/Insurance Cost | \$331,500 |
| Total Owner Expenses | \$0 |
| Total General/Admin Costs | \$977,000 |
| Total Contingency Cost | \$989,974 |
| | |
| Total Project Cost | \$20,789,458 |

The proposed Garage costs as of March 11, 2009 by NWS/Hines are:

| | |
|--------------------------------------|-------------------------------|
| Total Architectural/Engineering Cost | \$2,155,612 |
| Total Construction Cost | \$13,132,888 |
| Total Site Cost | Included in Construction Cost |
| Total Tax/Insurance Cost | \$181,500 |
| Total Owner Expenses | \$0 |
| Total General/Admin Costs | \$578,000 |
| Total Contingency Cost | \$750,000 |
| Total Project Cost | \$16,798,000 |

The proposed Garage costs following the March 18, 2009 City Commission Meeting are:

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|--------------------------------------|-------------------------------|
| Total Architectural/Engineering Cost | \$2,155,612 |
| Total Construction Cost | \$13,419,906 |
| Total Site Cost | Included in Construction Cost |
| Total Tax/Insurance Cost | \$181,500 |
| Total Owner Expenses | \$0 |
| Total General/Admin Costs | \$578,000 |
| Total Contingency Cost | \$750,000 |
| Total Project Cost | \$17,085,018 |

At the current proposed total cost of \$17,085,018, the projected amount over the contractually allocated \$15,210,135 is \$1,874,883 (for purposes of the 2nd Addendum, this amount has been rounded up to \$1,875,000). KVC's design/build proposal projects approximately 535+ parking spaces, although the final count will not be known until the full engineering and permitting effort is completed.

The proposed Garage received approval by the DRB at the March 3, 2009 meeting. The DRB approval calls for the stainless steel mesh on 3 sides of the structure with the proposed LED lights. The DRB Order does not include the façade treatment on the eastern elevation, but does allow for it if funds become available to add the treatment at a future date.

A Second Addendum to the Development Agreement was negotiated between NWS and City staff. The main purposes of the Second Addendum is to accept the Final Garage Budget and reallocate funds from the Preliminary Park Budget to the Garage Budget; amend the Preliminary Park Budget; remove the "Gehry Keyman" clause from the Park Project; and amend the definition of the Garage Project.

The Second Addendum was presented to the City Commission for its consideration at First Reading at its March 18, 2009 meeting.

Update on March 18, 2009 City Commission Actions

At the March 18, 2009 City Commission Meeting, the Commission approved the following Motions:

Motion #1:

Motion made by Commissioner Weithorn to address the parking issue; seconded by Commissioner Wolfson. Commissioner Weithorn stated that she has a very specific motion and that is she wants the City's \$15 million Grant-in-Aid to be contingent upon either a) procuring the 175 spaces in time to give the grant-in-aid or b) escrow the amount of money equal to 175 spaces at \$35,000 a space or any combination thereof.

Motion #2:

Motion made by Vice-Mayor Tobin to approve the Second Addendum of the Development Agreement and moving \$1.6 million from the park, add \$275,000 to capture the cost of the two elevators, which means that an estimated \$1.875 million is being removed from the Park and added to the Garage with the cost of the two elevators coming from the Park Budget and if any money is left over should go to the Park and the points raised by Mr. Goldsmith in his email will be negotiated at the Finance and Citywide Projects Committee (FCWPC) meeting between the first and second reading.

In approving the Second Addendum, the action also confirmed that NWS could proceed with the initial design and engineering of the Garage with KVC. This is necessary in order to maintain the current critical path of the project. A copy of the Second Addendum, as amended by the above motions, and including amendments in affiliated agreements, is attached as Attachment 1.

During the discussion, the City Commission considered a number of recommendations brought forth by City resident William Goldsmith. His recommendations, submitted prior to the March 18th Commission Meeting, are attached as Attachment 2, and are included in the updated draft. NWS has indicated that it does not agree to the inclusion of these requested amendments.

NWS has advised the City, in a letter dated April 9, 2009, that the provisions contained in Motion 1 above are unacceptable and NWS will not agree to the proposed amendments. A copy of this letter is attached as Attachment 3. The primary reason for objection by NWS on this issue is that the City and NWS have already entered into Agreements that provide for its Code required parking, specifically the Parking Covenant and the temporary License Agreement noted above. The position of NWS is that these Agreements provide them a specific time period for performance post construction and occupancy of the Campus Expansion building; and not only has this time period not lapsed, it has, arguably, not yet begun.

As noted above, the current set of Agreements, specifically the Parking Covenant and the temporary License Agreement, provide for the 175 Code required parking spaces to be located in a proposed mixed use project to be constructed by 420 Lincoln Road Associates. The temporary License Agreement allows for these Code required parking spaces to be located within the City's proposed Garage Project for five (5) years from the time of CO for

the Campus Expansion building. The five (5) year time period temporary License Agreement was provided in order to allow 420 Lincoln Road Associates additional time to construct and open the proposed mixed use project.

Staff has spoken with representatives of NWS regarding their position on the Second Addendum. NWS advised staff that their position on Second Reading is consistent with their position on First Reading, in that NWS is agreeable to the Second Addendum originally submitted for First Reading with the amendment of the City funding the two elevators on the east side and center of the Garage.

Proposed Park Status and Potential Alternatives

As noted above, NWS advised the City that Michael Tilson Thomas discussed the proposed Park fees with Frank Gehry over the February 28/March 1, 2009 weekend. NWS advised the City that Gehry Partners will not lower their requested fees.

NWS/Hines is proposing that the City consider an alternative design professional for the Park, such as a well-known Landscape Architect. NWS/Hines has advised the City that it has had initial discussions with several firms since the February 11, 2009 FCWPC meeting and believes that the design costs for the park can be substantially reduced from the Gehry Partners proposed fee.

Presently, NWS/Hines is proposing to the City that if the design professional is changed, then the projected shortage to the Garage can be moved from the Park project without any reduction in scope to the proposed Park. NWS/Hines has advised the City that the current Park construction budget can be increased under the NWS proposal described above. The previous Park budget, as of February 11, 2009 was:

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|--------------------------------------|---------------------|
| Total Architectural/Engineering Cost | \$4,662,800 |
| Total Construction Cost | \$8,628,600 |
| Total Tax/Insurance Cost | \$300,000 |
| Total Owner Expenses | \$300,000 |
| Total General/Admin Costs | \$878,600 |
| Total Contingency Cost | \$190,000 |
| Total Project Cost | \$14,960,000 |

The proposed Park Budget by NWS/Hines as of the March 18, 2009 Commission Meeting is summarized below for a 535+ space Garage, if the Park design professional is changed:

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|--------------------------------------|---------------------|
| Total Architectural/Engineering Cost | \$1,500,000 |
| Total Construction Cost | \$10,344,000 |
| Total Tax/Insurance Cost | \$300,000 |
| Total Owner Expenses | 0 |
| Total General/Admin Costs | \$578,000 |
| Total Contingency Cost | \$650,000 |
| Total Project Cost | \$13,372,000 |

The proposed Park Budget as amended by Motion 2 of the City Commission at the March 18, 2009 meeting is:

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|--------------------------------------|---------------------|
| Total Architectural/Engineering Cost | \$1,500,000 |
| Total Construction Cost | \$10,057,000 |
| Total Tax/Insurance Cost | \$300,000 |
| Total Owner Expenses | \$0 |
| Total General/Admin Costs | \$578,000 |
| Total Contingency Cost | \$650,000 |
| Total Project Cost | \$13,085,000 |

Under this proposal from NWS/Hines, the NWS would meet its commitments to provide a 500 to 600 space parking garage and a high end urban park to compliment the total campus site and remain within the overall contractual amounts for the Project. It does require the City Commission to approve the transfer of dollars between budgets (\$1,875,000) within the current NWS Development Agreement, as well as removing the Gehry "key man" requirement for the Park design. This proposal would also increase the construction budget for the Park by approximately \$1.5 million above the current allocation.

Subsequent to the Commission meeting, and in an effort to maintain a schedule that would have the Park completed in early 2011, NWS/Hines, in conjunction with the City, issued a Request for Proposals for a potential new design professional for the Park (Attachment 4). Should the City Commission determine that it will retain Gehry Partners as the architectural consultant for the Park, then this RFQ can be withdrawn. However, the schedule is constrained at this point and the loss of three weeks was deemed critical if the Commission determines it would like to pursue an alternative design professional.

If an alternative design professional is sought, then the process, which contains two main steps, is intended to proceed as follows:

1. The RFQ will be received in early May 2009. The RFQ submissions will be reviewed by representatives of NWS and the City and a shortlist will be selected to move forward to the next step of submitting a formal Request for Proposal. The shortlist is currently scheduled to be brought to the City Commission at the May 13, 2009 Commission Meeting for approval.
2. The shortlist firms would be invited to submit a formal Request for Proposal. This proposal would include a refined concept for the Park, as well as a proposed fee for service and projected construction budgets. NWS/Hines, with significant input from City staff, would negotiate with the shortlist firms once the RFPs are received in order to get to a lowest and best proposer. The City Commission, at its discretion, will have the opportunity to select the best proposal from the shortlist firms once defined. This process is currently scheduled to be brought to the City Commission at the July 15, 2009 Commission Meeting for a final selection of the alternative design professional.

Park Schedule

The schedule for the Park is largely dependent upon how the City elects to proceed at this point. If Gehry Partners is maintained as the Park Project consultant, then the current Development Agreement allows for a Planning and Design phase of 18 months, followed by a construction period of 12 months. If this schedule is met, then the opening of the Park would be 30 months from the time that Park notice to proceed is issued to Gehry Partners. If this were to be done on May 1, 2009, then the proposed opening date would be around November 2011.

If the decision is made to proceed with an alternative design professional to Gehry Partners, then the timeline would be directly affected by amount of time needed for the selection process. Assuming that an alternative design professional can be selected by July 15th, in accordance with the process outlined above, then Planning and Design efforts may commence by August 1, 2009. The projected Planning and Design period is 12 months, followed by a 12 month construction period. Under this scenario, assuming authorization to proceed is granted by August 1, 2009, the projected opening date for the Park would be September 2011.

In any event, depending upon the quality of the design professional, it may be possible to shorten both the design and construction timelines; however, staff is not prepared to adjust these timelines until a design professional is selected.

Proposed Second Addendum to the Development Agreement

In summary, the substantive portions of the proposed Second Addendum where the City and NWS agree, based on the approved Motions noted above, are as follows:

- 1) The definition of Garage will be modified to specifically state that the Garage will have approximately 535 parking spaces, but no less than 520 parking spaces; and
- 2) A Final Garage Budget in the amount of \$17,085,000; and
- 3) A Design To Park Budget in the amount of \$13,085,000; and
- 4) Waiver of the "Key Man" requirement for Gehry Partners, LLC., to design the Park component under the Development Agreement; and
- 5) Authorization for NWS to proceed in selecting an Architect and/or Architectural Consultant, or both, for the Park project, pursuant to a competitive process approved by the City Manager, and with a reservation that the City Commission must approve the recommended Architect and/or Architectural Consultant; and
- 6) The City Commission, may, in its sole and absolute discretion, determine at the time of Concept Plan approval for the Park, whether or not to place the architectural treatment (i.e., stainless steel mesh and LED lighting) on the east façade of the building; and

- 7) The Final Garage Budget will include the funding by the City for the two (2) elevators in the middle of the Garage (on the East side), and having a construction value of \$275,000.

Disputed Items

The following items have not been agreed to by NWS, but were part of the Motions approved by the City Commission on March 18th:

- 1) NWS has not agreed to the amendments offered by William Goldsmith.
- 2) NWS has not agreed to any modifications to the current provisions for their 175 Code Required Parking Spaces.

Conclusion

As noted the Garage component is a critical piece of the overall development of the NWS campus. The overall cost for the Garage is competitive for a Frank Gehry designed building and will provide an appropriate architectural companion to the Symphony Campus Expansion Building. The proposed transfer of funds from the Park Budget, combined with the waiver of the "Key Man" clause will result in a higher Park construction budget. It is possible to construct a well-designed and high end Urban Park for the \$10 million proposed.

If the Commission, however, wishes to continue to have Gehry Partners as the design professional for the Park Project (at the current fee), it would be recommended that the funding shortfall for the Garage Project be identified and secured from sources other than the Park Project. In this scenario, reducing funds from the park project would directly affect the construction portion of the budget which would likely adversely affect the quality and/or quantity of public amenities to be included in the project.

It is critical for the City and NWS to arrive at a reasonable, mutual agreement for the Second Addendum quickly. As noted in this memorandum, the Garage remains a critical path component for the Campus Expansion building. The Park most likely cannot be completed in time for the projected NWS initial opening in January 2011 and we are not able to try to make up any of the time on the schedule, if indeed that is possible, until the final design professional is agreed upon.

Attachments

SECOND ADDENDUM TO DEVELOPMENT AGREEMENT

THIS SECOND ADDENDUM TO DEVELOPMENT AGREEMENT is made as of this _____ day of _____, 2009 (this "Second Addendum") by and between the CITY OF MIAMI BEACH, FLORIDA ("Owner" or "City"), a municipal corporation duly organized and existing under the laws of the State of Florida, and NEW WORLD SYMPHONY, a not-for-profit Florida corporation ("Developer") (the Owner and Developer, each a "Party" and collectively, the "Parties").

RECITALS

A. Owner and Developer entered into an Agreement of Lease ("Lease") dated as of January 5, 2004, pursuant to which Owner leased to Developer certain real property described in Exhibit "A" to said Lease (the "Land").

B. Concurrently therewith, Owner and Developer also entered into a Development Agreement ("Development Agreement") dated as of January 5, 2004, setting forth, among other things, the Owner's and Developer's respective responsibilities and agreement to coordinate and cooperate in the planning, scheduling and approval of the development, design and construction of an automobile parking garage (the "Garage") to be located on land adjacent to the Land, and a performance, educational and internet broadcast facility, together with certain related amenities, facilities and other infrastructure improvements on the Land ("Developer's Improvements"), as set forth in the Development Agreement.

C. On February 20, 2007, Owner and Developer entered into a First Addendum to Development Agreement ("First Addendum"), further clarifying the parties' respective obligations (including processes, scopes for implementation, and estimated costs and budgets) for the Garage and Developer's Improvements, and also pertaining to certain Additional Improvements and Infrastructure Improvements, and the design, development, and construction of the Park (collectively, for purposes of these Recitals, the "Project").

D. On January 23, 2008, Developer commenced construction of Developer's Improvements. Notwithstanding the preceding, subsequent to the execution of the Lease, Development Agreement and First Addendum, and commencement of construction, and given the current fiscal/financial realities affecting the U.S. and global economies, the Parties now wish to enter into this Second Addendum, further clarifying and memorializing their agreements regarding the ongoing development of the Project (including, without limitation, the Garage and Park components).

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the Parties hereto that this Second Addendum is made in consideration of the terms, covenants and conditions hereinafter set forth.

1. Capitalized Terms: Recitals. All capitalized terms not defined herein shall have the meanings given to them in the Development Agreement, as amended by the First Addendum. Hereafter, all references to the Development Agreement shall mean the Development

Agreement, as modified and augmented by the First Addendum and this Second Addendum, unless the context indicates otherwise. The Recitals are incorporated herein by reference.

2. Additional and Revised Definitions. The following definitions, as initially set forth in the Development Agreement or as may have been subsequently added or amended pursuant to the First Addendum are amended as follows:

(a) "Design-to Park Project Budget" means the preliminary total costs budgeted by the City for the Park Project, which is the preliminary estimate of costs, including estimated hard and soft construction costs, anticipated as of the date hereof, to be incurred in connection with the design, development and construction of the Park Project. As of the date hereof, the parties acknowledge and agree that the City has budgeted an amount not to exceed ~~\$13,810,000~~ ~~\$13,085,000~~ for Zones 3.1, 3.2 and 3.3, and an additional ~~\$1,150,000~~ for Zone 3.4, for a total of ~~\$14,960,000~~ ~~\$13,085,000~~, for the entire Park Project.

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Deleted: \$13,372,000

(b) "Garage" means the public municipal parking garage comprising Zone 1.1 to be designed, developed and constructed by Developer for Owner and funded as set forth in Section 13 of the First Addendum (as amended hereto), and operated by Owner at its sole cost and expense on City-owned property adjacent to the Land, legally described in Exhibit "C." It is anticipated that the Garage will maximize public parking and minimize any net loss of public parking within Zone 1.1 and will have approximately 535 (but no less than 520 spaces; have six (6) stories, including five (5) stories of covered parking plus open rooftop parking; two (2) FPL vaults; four (4) elevators; a pedestrian bridge to Developer's Project; and ground-floor retail space along 17th Street and Pennsylvania Avenue. Owner shall be responsible for operation and management of the Garage, including the leasing and management operations of the retail portion of the Garage.

Deleted: [NOTE: DISPUTED ITEM]

(c) "Preliminary Park Project Budget" means the total cost budgeted by the City for the Park Project, as mutually agreed to by the Parties and as shall be approved by the City Commission concurrently with the approval of the Park Project Concept Plan (pursuant to the provisions of Section 10 and Exhibit "D" of the First Addendum, as amended hereto), which is the preliminary estimate of costs, including estimated hard and soft construction costs, anticipated as of the date thereof to be incurred in connection with the design, development and construction of the Park Project, including the sound system. The Parties acknowledge and agree that the Preliminary Park Project Budget shall be established in accordance with the dollar amounts set forth in the "Design to" Park Project Budget, in the amount of ~~\$14,960,000~~ ~~\$13,085,000~~.

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(d) All reference (s) in the Agreement to "Zone 3.4" (as said term is defined in the First Addendum) is hereby deleted. Accordingly, the area encompassing Zone 3.4, and any improvements to be designed, developed and constructed thereon, shall not be part of the Park Project or Park Project Zone, and the budgeted amount allocated to Zone 3.4 in the Design-to Park Project Budget (or \$1,150,000), as defined in the First Addendum, has been allocated to the Park Project Budget for Zones 3.1, 3.2 and 3.3 (which shall hereafter consist of the Park Project Zone).

3. Amendment or Replacement of Certain Sections of Development Agreement.

The following section or subsections in the Development Agreement or the First Addendum, as noted respectively below, are amended as follows:

(a) Section 23.2.1 of the Development Agreement is deleted in its entirety and replaced with the following:

Developer shall design and construct the Garage (as set forth in the Development Agreement), at Owner's cost and expense, and as further set forth and subject to the provisions of the Development Agreement. The Parties acknowledge that the timing of construction and completion of the Garage is critical; therefore, Developer agrees to, and shall, as expeditiously as reasonably possible, obtain Substantial Completion of the Garage prior to completion of Developer's Improvements.

(b) Section 26.20 of the Development Agreement ("Key Man" Clause), shall not be deemed to include Gehry Partners, LLC as the Architectural Consultant (as said term is defined in the Development Agreement) for the Park Project. Accordingly, to the extent that there is any other reference in the Development Agreement, or any exhibits thereto, to the Architectural Consultant in relation to the design, development, and construction of the Park Project (but **only** as to the Park Project), then such reference shall not be interpreted as referring to Gehry Partners, LLC but, rather, shall refer to the successor architect/engineering (A/E) firm selected by NWS, and approved by the City, for the Park Project.

(c) (i) In accordance with Section 3(b) above, Section 9 of the First Addendum ("Park Project Design") shall also be amended to delete the reference to Gehry Partners, LLC, as the architectural consultant for the Park Project, and the use of the defined term "Architectural Consultant" in Section 9 (as well as in any other section of the First Addendum, and/or exhibits thereto) referring to, or intending to refer to, the Architectural Consultant, in relation to the Park Project **only**, shall be deemed to refer to the successor A/E firm selected by Developer, and approved by the City, for the Park Project.

(ii) The first sentence of Section 9(b) of the First Addendum is deleted.

4. Garage Costs.

(a) The amount for the Garage Costs, as set forth in Section 5(a)(i) of the First Addendum, is hereby amended from \$15,210,135, to \$17,085,000.

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(b) The City and Developer hereby mutually agree upon, and the City Commission hereby approves, the Final Garage Budget, in the amount of \$17,085,000; such approval by the City is further subject to, and contingent upon, the following conditions:

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- (i) The approval of the Final Garage Budget contemplates the design, development, and construction of the Garage, as said term is defined in this Second Addendum;
- (ii) At the City's sole cost, and subject to the approval of Gehry Partners, LLC, the City Commission shall retain authority and final approval over whether to add certain proposed "architectural treatments", to the east façade of the Garage including, without limitation, the stainless steel mesh and LED lighting. The City Commission shall review, consider, and approve or disapprove, the inclusion of aforesaid treatments concurrent with its review of the Park Project Concept Plan; and,

(iii) Section 13 (c) (iii) of the First Addendum shall remain in full force and effect and Developer shall not obligate any amount in excess of \$15,210,135 for the design, development and construction of the Garage, prior to October 1, 2009, with the balance of the funding in the amount of \$1,875,000, available after October 1, 2009.

(iv) NWS shall provide to the City Manager, within 15 calendar days of execution of this Second Addendum, copies of all final agreements for all costs charged against the "Additional Improvements" budget of \$6.4 million, including but not limited to, all architecture/engineering agreements; all other professional services agreements, such as traffic studies; materials testing agreements; development manager ("Hines") agreement(s); and construction agreements. NWS shall certify to the City that the final agreements submitted are within the \$6.4 million budget and that all work affiliated with the total scope of work, including approximately \$150,000 for FPL vault relocation costs that were previously allocated to the Garage Budget, for the Additional Improvements portion of the Project are included and fully disclosed.

5. (i) Amendment to the Grant-in-Aid Agreement. Section 12 of the First Addendum (entitled "Grant-in-Aid; Reimbursement Agreement"), including Exhibit "G" thereto, is amended to include the following new subsection (b):

NWS shall procure, or otherwise obtain, the 175 Code required parking spaces for the Project prior to its submission of the initial draw request contemplated in Article 3 of this Agreement; or if NWS is unable to procure, or otherwise obtain, the 175 Code required parking spaces for the Project prior to its submission of the initial draw request contemplated in Article 3 of this Agreement, then the City shall withhold, consistent with Section 130-132 of the City Code, the amount of \$35,000 per Code required parking space. If the number of Code required parking

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 [NOTE: DISPUTED ITEM] The approved Final Garage Budget, as set forth in this Second Addendum, shall not include the cost for the two (2) elevators in the middle of the Garage (on the east side) which will primarily service NWS's patrons and guests. These elevators shall be designed, developed and constructed at NWS's sole cost and expense.

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spaces yet to be procured or otherwise obtained is 175 parking spaces, then the total amount to be withheld is \$6,125,000 of the \$15 million Grant-in-Aid. This amount, or any portion thereof, shall be kept by the City for a period of five (5) years from the date of a Temporary Certificate of Occupancy, or such other certificate for the NWS Project, or such time as the parking becomes available to NWS at the property as provided for in the Parking Covenant, through the issuance of a TCO or such other certificate for such property, whichever occurs first. If, after five (5) years NWS has not procured, or otherwise obtained, the 175 Code required parking spaces, then the City shall keep any and/or all remaining amount(s) of the Grant-in-Aid as full satisfaction of Section 130-132 of the City Code.

(ii) In furtherance of the terms of subsection 5 (a) above, the Parties further agree to execute an Amendment to the following Agreements: 1) Grant-in-Aid Agreement dated July 23, 2008; and which Amendment is attached and incorporated as Exhibit "E" hereto; and 2) License Agreement for Non-exclusive use of Parking Spaces, dated November 27, 2007, and which Amendment is attached and incorporated as Exhibit "F" hereto.

6. Section 14 of the First Addendum (entitled "Substantial Completion; Final Completion" is amended to include the following new subsection (h):

(h) Any amounts remaining unspent upon Final Completion of the Garage Project shall be transferred to the Park Project to be utilized at the sole discretion of the City Commission.

7. Miscellaneous.

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(a) Counterparts. To facilitate execution, the Parties hereto agree that this Second Addendum 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 Second Addendum.

(b) References. All references in the Development Agreement (or the First Addendum) to the "Agreement" shall hereafter mean and refer to the Development Agreement, as amended by the First Addendum and this Second Addendum. If there is a contradiction between the terms of the Development Agreement, the First Addendum, and this Second Addendum, then the terms of this Second Addendum shall control. Facsimile signatures appearing hereon shall be deemed an original.

(c) Effect of Second Addendum. Except as modified herein, the Development Agreement remains in full force and effect. In the event of any conflict or ambiguity between

the Development Agreement, the First Addendum, and this Second Addendum, this Second Addendum shall control.

EXECUTION BY OWNER

IN WITNESS WHEREOF, Owner and Developer intending to be legally bound have executed this Second Addendum to Development Agreement as of the day and year first above written.

WITNESSES:

CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida

Print Name: _____

By: _____

Print Name: _____

ATTEST:

By: _____ [SEAL]

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, as Mayor, and _____, as City Clerk of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification

My commission expires:

Notary Public, State of Florida
Print Name: _____

EXECUTION BY DEVELOPER

WITNESSES:

THE NEW WORLD SYMPHONY, a not-for-profit Florida corporation

Print Name: _____

By: _____
Howard Herring, President and CEO

Print Name: _____

ATTEST:

By: _____
_____, Secretary

[CORPORATE SEAL]

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by Howard Herring, as President and CEO, and _____, as Secretary, of THE NEW WORLD SYMPHONY, a not-for-profit Florida corporation, on behalf of such corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

List of Exhibits

Exhibit "A" Legal Description of Land

Exhibit "B" Article 1 – Definitions from Original Development Agreement

Exhibit "C" Legal Description of Garage Property

Exhibit "D" Procedure for Obtaining Park Project Approval

Exhibit "E" Grant-in-Aid Agreement

Exhibit "F" License Agreement for Non-Exclusive Use of Parking Spaces

Exhibit "A"
Legal Description of Land
(To be submitted)

Exhibit "B"

Article 1 – Definition from Original Development Agreement

ARTICLE 1

DEFINITIONS

All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed thereto in the "Ground Lease" (defined below). For all purposes of this Agreement the terms defined in this Article 1 shall have the following meanings and the other provisions of this Article 1 shall apply:

"Accounting Principles" shall have the meaning provided in the Ground Lease.

"Adjacent Property" means the parcel of land owned by Owner immediately adjacent to the Land, which shall be legally described in Exhibit B, and attached hereto and made a part hereof, to be identified upon approval of the Project Concept Plan by the Mayor and City Commission.

"Architect" means a person or firm licensed to operate as an architect in Miami-Dade County, Florida.

"Architectural Consultant" shall mean the firm of Gehry Partners, LLP.

"Building Permit" means a "Full Building Permit" as such term is defined in the Land Development Regulations, issued by the Building Department of the City, 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 ordinances.

"Building Equipment" has the meaning provided in the Ground Lease.

"Business Day" or "business day" means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

"Certificate of Occupancy" means the document by that name that is required prior to the occupancy of any premises by Section 307.1 of the South Florida Building Code as amended from time to time; provided, however, that such definition shall not apply to a temporary certificate of occupancy if issued only for a period not to exceed twelve (12) months prior to the Project receiving a final Certificate of Occupancy. Such term shall include both a temporary

certificate of occupancy ("TCO") and a final certificate of occupancy ("Final CO"), as the context may require.

"City" means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida.

"City Code" means the Code of the City of Miami Beach, Florida, as amended through the date hereof.

"City Commission" means the Mayor and City Commission of the City of Miami Beach, Florida the governing body of the City, or any successor commission, board or body in which the general legislative power of the City shall be vested.

"City Manager" means the chief administrative officer of the City, or his or her designee.

"City Hall Parking Expansion" means the expansion by Owner, at its sole cost and expense, of the existing City-owned parking facility located behind City Hall ("Expansion Property") from its current parking capacity to approximately 450-600 parking spaces.

"Commence Construction" or "Commencement of Construction" means the commencement of major work (such as pilings or foundations) for construction of the Improvements in accordance with the Plans and Specifications to be performed in connection with Construction of the Project. Promptly after Commencement of Construction, Owner and Developer shall enter into an agreement acknowledging the date of Commencement of Construction. Any and all preliminary site work (including, without limitation, any environmental remediation and ancillary demolition) shall not be deemed to be Commencement of Construction.

"Commencement Date" shall mean the date this Agreement and the Ground Lease commence, which shall be the date of execution of this Agreement, and upon satisfaction of the requirements of Section 26.18 herein.

"Completion Deadline" means the date that is ten (10) years from the Commencement Date.

"Comprehensive Plan" means the Comprehensive Plan which the City adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163, Part II, Florida Statutes.

"Concurrency Requirements" has the meaning provided in Section 2.5(b).

"Consenting Party" has the meaning provided in Section 20.2(c)(i).

"Construction" or "Construction of the Project" means the construction of Developer's Improvements on the Land, and construction of the Garage on the Garage Property.

"Construction Agreement(s)" means, collectively, any general contractor's agreement, architect's agreement, engineers' agreements, or any other agreements for the provision of labor, materials or supplies entered into with respect to the Construction of the Project, as the same may be amended or otherwise modified from time to time.

"Construction Commencement Date" has the meaning provided in Section 2.8.

"Construction Work" means any construction work performed under any provision of this Agreement and/or the Construction Agreements with respect to the Construction of the Project.

"Contractor" means any contractor, subcontractor, supplier, vendor or materialman supplying services or goods in connection with the Construction of the Project.

"CPM" has the meaning provided in Section 4.2(b).

"CPM Schedule" has the meaning provided in Section 4.2(b).

"Default" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Agreement) constitute, an Event of Default.

"Default Date" has the meaning provided in Section 2.7.

"Default Notice" has the meaning provided in Section 19.1(b).

"Design Review Board" or "DRB" means the Design Review Board of the City created and established pursuant to the Land Development Regulations, or any board or body which may succeed to its function.

"Detailed Plans" has the meaning provided in Section 4.2(a)(iv)(2).

"Developer" means The New World Symphony, a not-for-profit Florida corporation.

"Developer's Improvements" means the SoundSpace facility and related improvements to be constructed or supplied by Developer, including but not limited to all buildings or structures (including footings and foundations), the Screen, as defined in the Ground Lease, Building Equipment, infrastructure improvements and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefore.

"Development Agreement" (or this "Agreement") means collectively, this Development Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

"Development Agreement Act" means the Florida Local Government Development Agreement Act, Section 163.3220, et. Seq., Florida Statutes (1998).

"Development Approval" includes any final non-appealable zoning, rezoning, conditional use special exception, variance or subdivision approval, concurrency approval under Section 163.3180, Florida Statutes, or any other official action of local government having the effect of approving development of land.

"Development Arbitrator" shall have the meaning provided in Section 22.1(j).

"Development Dispute" has the meaning provided in Section 3.5.

"Development Site" means the real property and air rights, if any, described collectively in Exhibits A, B, and C, attached hereto and made a part hereof, and as illustrated in the preliminary Master Plan in Exhibit D, attached hereto and made a part hereof. The preliminary Master Plan shall be replaced by the Project Concept Plan, upon approval of same by the City Commission, pursuant to Section 2.2 herein.

"Event of Default" has the meaning provided in Section 19.1.

"Fees" has the meaning provided in Section 6.2(a).

"Floor Area" means the floor area of any development (measured in square feet), as defined in, and measured in accordance with, the Land Development Regulations.

"Garage" means the public municipal parking garage to be constructed by Developer for Owner and funded as set forth in Section 23.2.2 hereof, and operated by Owner at its sole cost and expense on City-owned property adjacent to the Land ("Garage Property"), legally described in Exhibit C, which Garage shall contain approximately three hundred twenty (320) parking spaces and which shall be available as a public municipal parking facility subject to the terms and conditions of this Agreement.

"Garage Construction Costs" means all hard and soft construction costs incurred in connection with the development and Construction of the Garage.

"General Contractor" means the general contractor for the Construction of the Project pursuant to a construction contract to be entered into by Developer and such general contractor.

"Governmental Authority or Authorities" means the United States of America, the State of Florida, Miami-Dade County, the City (in its governmental as opposed to proprietary capacity) and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or any owner, tenant or other occupant of, or over or under the Project Site or any portion thereof or any street, road, avenue or sidewalk comprising apart of, or in front of, the Project Site, or any vault in or under the Project Site, or airspace over the Project Site.

"Ground Lease" means that certain Agreement of Lease between Owner and Developer dated as of the date hereof, pursuant to which Developer (as tenant) has agreed to lease the Land from Owner (as Landlord).

"Hearing" has the meaning provided in Section 22.1(b).

"Infrastructure Improvements" means work to be done by Owner at its sole cost and expense as a condition of Developer's obligation hereunder to construct the Developer's Improvements. Owner shall only be responsible for Infrastructure Improvements as may be agreed upon and approved by the City Commission in connection with Developer's obligations to construct the Project and the Owner's obligations to construct and operate the City Hall Parking Expansion.

"Institutional Lender" has the meaning provided in the Ground Lease.

"Land" means the real property and air rights, if any, described in Exhibit A attached hereto and incorporated by reference herein, and subject to the provisions of Section 2.1(a) in the Ground Lease.

"Land Development Regulations" means Subpart B (Chapters 114 through 142) of the Code of the City of Miami Beach, Florida, as the same was in effect as of the effective date of this Development Agreement.

"Loan Documents" means, collectively, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan secured by, among other collateral, Developer's interest in the Ground Lease or the Project.

"Mortgage" has the meaning provided in the Ground Lease.

"Mortgagee" means the holder of a Mortgage.

"Notice" has the meaning provided in Section 20.1(a).

"Notice of Failure to Cure" has the meaning provided in Section 10.1(a).

"Operating Equipment" has the meaning provided in the Ground Lease.

"Owner" means the City, acting in its proprietary capacity, and any assignee or transferee of the City of the entire Owner's Interest in the Premises, from and after the date of the assignment or transfer pursuant to which the entire Owner's Interest in the Premises was assigned or transferred to such assignee or transferee.

"Owner's Consultant" means such Person as Owner may designate in writing to Developer from time to time.

"Owner's Interest in the Premises" has the meaning provided in the Ground Lease.

"Payment and Performance Bond" has the meaning provided in Section 2. 7(f).

"Permits and Approvals" shall mean any and all permits and final non-appealable approvals required to be issued by the City—its applicable boards, and Governmental Authorities in connection with the Construction of the Project, including, without limitation, the City of Miami Beach building permits, the final non-appealable approvals of the City of Miami Beach Planning Board, Design Review Board, as applicable, the Miami-Dade County Department of Environmental Resources Management permits, the Florida Department of Environmental Protection coastal construction permit, and any utility access agreements with all applicable utility companies.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Planning Board" means the Planning Board of the City or any board or body which may succeed to its functions.

"Plans and Specifications" means the final plans and specifications for the Project, including, foundation, structural, electrical, plumbing and HVAC plans, the finish schedule, the Project program, and such other plans and specifications customarily required to obtain a Building Permit, each as established in accordance with Article 3, as the same may be modified from time to time in accordance with the provisions of Section 3.1.

"Possession Date" has the meaning provided in the Ground Lease.

"Preliminary Plans and Specifications" has the meaning provided in Section 2.4(a) of this Development Agreement.

"Premises" means Developer's Improvements and the Land.

"Project" means Developer's Improvements and the Garage.

"Project Opening Date" has the meaning provided in the Ground Lease.

"Project Site" means the Land and the Garage Property.

"Recognized Mortgage" has the meaning provided in the Ground Lease.

"Recognized Mortgagee" means the holder of a Recognized Mortgage.

"Requirements" has the meaning provided in Article 13.

"Substantial Completion" or "Substantially Complete" or "Substantially Completed" means, with respect to the Project, that (1) it shall have been substantially completed in accordance with the Plans and Specifications, (2) the certificate of the Architect described in Section 2.8(c)(i) shall have been obtained, and (3) all of the Improvements therein shall have been issued Certificates of Occupancy.

"Term" means the period commencing on the Effective Date of the Development Agreement and, unless sooner terminated as provided hereunder, expiring on the issuance of a Final CO and the completion of all remaining punch list items with respect to completion of the Project in accordance with the terms of this Agreement, subject, however, to survival of any provisions of this Agreement that are expressly stated herein to survive such expiration or termination (as the case may be).

"Unavoidable Delays" means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, catastrophic weather conditions, eminent domain, a court order which actually causes a delay (unless resulting from disputes between or among the party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging party or Affiliates (or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging party), the application of any Requirement, or another cause beyond such party's control or which, if susceptible to control by such party, shall be beyond the reasonable control of such party. Such party shall notify the other party not later than twenty (20) days after such party knows of the occurrence of an Unavoidable Delay. Failure to provide timely notice, as set forth herein, shall be deemed a waiver by the party alleging an Unavoidable Delay. In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an "Unavoidable Delay" (except for an Institutional Lender's inability to fund, which inability is not caused by Developer) with respect to such party and (ii) any delay arising from a party's (or its Affiliate's) default under this Development Agreement or any of the Construction Agreements constitute an "Unavoidable Delay" with respect to such party's obligations hereunder. The times for performance set forth in this Development Agreement (other than for monetary obligations of a party) shall be extended to the extent performance is

delayed by Unavoidable Delay, except as otherwise expressly set forth in this Development Agreement.

Exhibit "C"

Legal Description of Garage Property

(To be submitted)

Exhibit "D"

Procedure for Obtaining Park Project Approval

THE PROGRAM – Park Project Concept Plan

1) Visioning Session

Developer, Owner and Architectural Consultant shall meet in a Visioning Session on a mutually agreeable date following the approval of this Amendment. Such Visioning Session shall clarify the project goals and prepare the Developer, Owner and Architectural Consultant for the Community Design Workshops. Issues to be discussed shall include, but will not be limited to, the Park layout and siting, streetscape improvements, infrastructure improvements and landscape improvements and other appurtenances proposed upon the Project Site. The budget and schedule for the Park shall be discussed at this meeting. The Architectural Consultant shall present its initial concept for the Park Project at this Visioning Session and shall document comments and conclusions of the proceedings of this meeting.

2) Preparation of the Design Concept

Developer shall be solely responsible for the execution of the design of the Project, and such design shall be substantially in accordance with the Comprehensive Plan and the decisions reached at the Visioning Session. The design and construction of Project shall be at the sole cost and expense of the Owner. After the Owner, Developer and Architectural Consultant have agreed on the project goals as established during the Visioning session the Architectural Consultant shall develop the Design Concept. The Architectural Consultant shall submit the Design Concept to the Owner for review and approval within one hundred twenty (120) Calendar Days following the Visioning session. The Design Concept shall include, but not be limited to, a detailed site plan, concepts for public spaces, performance venues, landscape concept drawings and preliminary utility, drainage, sewer and water plans (the "Design Concept").

The Owner, Developer and Architectural Consultant shall consult together as often as necessary during the one hundred twenty (120) Calendar Day Design Concept preparation period. The Owner, Developer and Architectural Consultant shall meet to review and agree upon the Design Concept within thirty (30) Calendar Days from the Developer's delivery of the Design Concept to the Owner. At this time the Owner, Developer and Architectural Consultant shall discuss any concerns related to project scope, schedule and budget prior to Community Design Workshop Number 1. If Owner unreasonably disapproves the Design Concept and if the Design Concept is consistent with the goals established in the Visioning Session, then the Developer shall cause the Architectural Consultant to prepare a modification to the Design Concept to meet Owner's objections and all costs associated with such modification shall be at Owner's sole expense. This approval shall be completed by the City Manager and shall constitute the Approved Preliminary Design.

3) Community Design Workshop Number 1

The intent of the Community Design Workshops (CDWs) is to provide the Architectural Consultant the opportunity to present the Approved Preliminary Design to the community for the purpose of achieving general consensus with the residents. A total of two CDWs shall be conducted for this Project. The Owner shall organize and host the CDW Number 1 within thirty (30) Calendar Days following the Approved Preliminary Design. The Architectural Consultant shall prepare all meeting materials for the presentation at the workshops. The first CDW is intended to provide community residents with a review of the proposed scope and budget for the Project. The Architectural Consultant shall prepare large scale presentation graphics illustrating existing conditions and the proposed improvements as documented in the Approved Preliminary Design. The Developer shall also prepare a budget level of cost estimates for presentation at this CDW. Applicable City staff shall also attend this CDW and shall assist the Architectural Consultant and the Developer with responses to resident questions. The Architectural Consultant shall document the proceedings of the CDW Number 1 and shall note reasonable design revision requests from residents for review and possible incorporation into the Approved Preliminary Design.

4) Post Community Design Workshop Number 1 Meeting

Within twenty-one (21) Calendar Days following the Community Design Workshop Number 1 the Owner, Developer and Architectural Consultant shall meet to review the resident comments and revision requests. An agreed upon list of revisions shall be developed by the Owner, Developer and Architectural Consultant and shall be documented by the Architectural Consultant. The Architectural Consultant shall revise the Approved Preliminary Design consistent with the agreed upon list of revisions (the "Revised Preliminary Design") within thirty (30) Calendar Days of the Post CDW Number 1 Meeting.

5) Community Design Workshop Number 2

The Owner shall organize and host the CDW Number 2 within thirty (30) Calendar Days following the completion of the Revised Preliminary Design. The Owner, Developer and Architectural Consultant shall prepare for and participate in a second CDW to present community residents with the Revised Preliminary Design, the budget and a schedule for the Project. The Architectural Consultant shall have met with the appropriate City representatives and appropriate staff to ensure that the agreed upon comments and recommended revisions by the residents at the CDW Number 1 had been addressed in the Revised Preliminary Design. The Architectural Consultant shall prepare large scale presentation graphics illustrating the proposed improvements as documented in the Revised Preliminary Design. The Developer shall also prepare an updated budget level of cost estimates for presentation at this CDW. Applicable City staff shall also attend this CDW and shall assist the Architectural Consultant and the Developer

with responses to resident questions. The Architectural Consultant and the Owner shall note that the design presented during this CDW are considered “near final” and it is the Owner’s intent to consider only minor design revision requests from the residents for review and possible incorporation into the design. The Architectural Consultant shall note reasonable design revision requests from residents for review and incorporation into the Revised Preliminary Design.

6) Post Community Design Workshop Number 2 Meeting

Within twenty-one (21) Calendar Days following the Community Design Workshop Number 2 the City Manager, Developer and Architectural Consultant shall meet to review the resident comments and revision requests. An agreed upon list of revisions, if any, shall be developed by the City Manager, Developer and Architectural Consultant and shall be documented by the Architectural Consultant. The Architectural Consultant shall revise the Revised Preliminary Design to be consistent with the revisions, if any, developed in the Post CDW Number 2 Meeting (the “Final Preliminary Design”) within thirty (30) Calendar Days of the Post CDW Number 2 Meeting. This Final Preliminary Design shall be the basis for the design to be presented to the City Commission.

7) Preparation of the Initial Basis of Design Report (BODR)

Within forty-two (42) Calendar Days the Developer and Architectural Consultant shall submit the Initial BODR to the Owner for review and approval. The Initial BODR shall include at a minimum the following information – an executive summary describing the contents of the Initial BODR, description of existing conditions of the site, a detailed presentation describing the proposed design and all associated improvements, a project implementation plan describing the construction plan, traffic control details and surrounding area impacts, a budget for the project, an preliminary project schedule and the anticipated permitting process prepared by the Developer and/or the Architectural Consultant.

8) Owner Review of the Initial BODR

The Owner shall be responsible for distribution of all copies of the Initial BODR to all appropriate City Departments for review. Written comments shall be solicited and distributed to the Developer and Architectural Consultant by the Owner within thirty (30) Calendar Days following Developer’s submission of the Initial BODR to the Owner. It is anticipated that the Owner, Developer and Architectural Consultant shall meet during the Owner’s review period of the Initial BODR for clarifications and discussions. All such meetings will be initiated by the Owner to facilitate the Owner’s review of the Initial BODR.

9) Preparation of the Final BODR

The Architectural Consultant shall prepare a Final BODR based upon the written comments from the Owner's review of the Initial BODR. The Architectural Consultant shall be prepared to submit the Final BODR to the Owner and the City Commission no later than thirty (30) Calendar Days following the receipt of Owner's written comments of the Initial BODR. The Owner, Developer and Architectural Consultant shall present the Final BODR to the City Commission as soon as possible following completion of the Final BODR. If the City Commission rejects the Final BODR or request modifications to the Final BODR the Architectural Consultant shall make such modifications to the Final BODR and shall resubmit the Project to the City Commission no later than thirty (30) Calendar Days following the original City Commission meeting. If the City Commission requests modifications to the Final BODR and if the Final BODR is consistent with the comments of the Owner and the agreed to comments from the CDW's then in addition to the Owner's obligation to reimburse Developer for all Park Project Design Costs as set forth in this First Addendum to Development Agreement, subparagraph 10 (c), and notwithstanding the "cap" on the Park Project Design Costs of \$1,110,000 under the circumstances described therein, all costs associated with the revision, redesign and resubmission of the Final BODR shall be borne solely by the Owner and the "cap" of \$1,110,000 shall not apply.

10) Preparation of the Contract Documents for the Project

The Park Project design as approved by the City Commission shall be the "Park Project Concept Plan" as described in Section 10 of this First Addendum to the Development Agreement. Upon final approval of the Final BODR by the City Commission the Developer and Architectural Consultant shall proceed immediately with the Design Review Board approval process and preparation of the construction documents as described in Section 10 of the First Addendum to the Development Agreement.

GRANT-IN-AID AGREEMENT

This **Grant-in-Aid Agreement** is made as of this ___ day of _____ 2008 (the "Agreement") by and between the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida (the "City") and the New World Symphony, a Florida not-for-profit corporation (the "Developer") (the City and Developer each, a "Party" and collectively, the "Parties").

RECITALS

A. The City and Developer entered into an Agreement of Lease ("Lease") dated as of January 5, 2004, pursuant to which Owner leased to Developer certain real property described in Exhibit "A" attached hereto and made a part hereof (the "Land").

B. Concurrently therewith, City and Developer also entered into a Development Agreement dated as of January 5, 2004, setting forth, among other things, the Owner's and Developer's respective responsibilities and agreement to coordinate and cooperate in the planning, scheduling and approval of the development, design and construction of (i) an automobile parking garage to be owned by the City and located on land adjacent to the Land; and (ii) a performance, educational and internet broadcast facility, together with certain related amenities, facilities and other infrastructure improvements to be owned by the Developer and located on the Land ("Developer's Improvements").

C. With the concurrence of the City, as set forth in the Development Agreement, Developer has engaged the world-renowned architect and designer Frank Gehry as its Architectural Consultant to design Developer's Improvements, and, as agent for the City, Gehry Associates LLP has agreed to also design the City's Garage, Infrastructure Improvements and City Park. The Parties agree that the resulting world-class facilities designed by the Architectural Consultant will greatly enhance the national and international reputations of the Developer and the City.

D. The City and Developer entered into a First Addendum to Development Agreement dated February 20, 2007 ("First Addendum"), in which, among other things, the Parties recognized and agreed that the cost of the design, development and construction of the Developer's Improvements is so substantial that receipt of supplemental funding is critical to Developer's ability to successfully complete Developer's Improvements; and that it is in the best interests of the City, its residents, the Owner and the Developer for the Developer's Improvements and the Project as a whole to be built and operated as envisioned in the Ground Lease and the Development Agreement.

E. Consequently, as part of the First Addendum, the City granted to Developer a grant-in-aid ("Grant") in the aggregate sum of \$15,000,000.00 in accordance with general terms and conditions contained in the First Addendum and Exhibit "G" thereto. The Parties now wish to enter into this Agreement in order to memorialize with more specificity their agreements and respective obligations in implementing the payment and receipt of the Grant.

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NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the Parties hereto that this Agreement is made in consideration of the terms, covenants and conditions hereinafter set forth.

ARTICLE 1 -- THE GRANT

- 1.1 **Capitalized Terms; Recitals.** All capitalized terms not defined herein shall have the meanings given to them in the Development Agreement. Hereafter, all references to the Development Agreement shall mean the Development Agreement as modified and augmented by the First Addendum, unless the context indicates otherwise. The Recitals are incorporated herein by reference.
- 1.2 The City hereby ratifies and restates its grant-in-aid and grants and agrees to pay to Developer the aggregate sum of \$15,000,000.00 (the total \$15,000,000.00, the "Grant," and any portion of such sum, "Grant Monies") for the sole purpose of defraying a portion of the Developer's capital expenses incurred and to be incurred in designing, developing and constructing the Developer's Improvements, as further set forth herein.
- 1.3 Developer hereby ratifies and restates its agreement to request and use all Grant Monies solely for the purpose of defraying a portion of the Developer's capital expenses incurred and to be incurred in designing, developing and constructing the Developer's Improvements, as further set forth herein.
- 1.4 The City's obligation to pay the Grant monies to Developer is not and shall not be deemed to be part of or included within any or all other financial obligations of the City contemplated in the Ground Lease or the Development Agreement, but its obligations hereunder are separate and apart and in addition to such other financial obligations.
- 1.5 The City herein provides to Developer notice of and information regarding all legal, financial and reporting requirements (similar to those applicable to the City's grants of matching funds to a third party) in effect as of the effective date, and with which the Developer may be expected to comply in connection with its receipt of Grant Monies from the City, attached and incorporated as Exhibit "A" to this Agreement. Notwithstanding the preceding, the City reserves the right, in its sole and reasonable discretion, to amend and/or supplement the requirements in Exhibit "A" hereto at any time during the term of this Agreement.

ARTICLE 2 -- INITIAL FUNDING

- 2.1 Commencing October 1, 2009, the City shall make available to Developer, on an "as-needed" basis, the Grant, and shall disburse Grant Monies pursuant to draw requests submitted by Developer in accordance with the applicable procedures set forth in Section 13 of the First Addendum.
- 2.2 Developer shall provide the City a minimum of 180 calendar days' advance written notice ("initial notice") of the Developer's intent to begin drawing funds from the Grant.

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Developer shall provide to the City a second written notice a minimum of 60 calendar days in advance of Developer's submittal of its first draw request, pursuant to the applicable procedures set forth in Section 13 of the First Addendum.

- 2.3 Developer's initial notice shall include, in a form reasonably acceptable to the City, Developer's statement that the final cost of completion of the Developer's Improvements is anticipated to exceed \$135,000,000, and evidence reasonably substantiating Developer's expenditure or anticipated expenditure within the 180 days prior to submittal of Developer's first draw request, of at least \$135,000,000 in hard and soft costs in connection with the design, development and construction of the Developer's Improvements.
- 2.4 No later than thirty (30) days after the City receives Developer's initial notice of its intent to begin drawing funds from the Grant, the City shall provide Developer, if applicable, updated information (to Exhibit "A" hereto) regarding all legal, financial and reporting requirements (similar to those applicable to the City's grants of matching funds to a third party) in effect or reasonably anticipated to become in effect as of 150 days after the City's receipt of the initial notice, and with which the Developer may or shall be expected to comply in connection with its receipt of Grant Monies from the City. Notwithstanding the preceding, the City reserves the right, in its sole and reasonable discretion, to amend and/or supplement the requirements in Exhibit "A" hereto at any time during the term of this Agreement.
- 2.5 In the event that at any time after Developer provides the City with its initial notice, the anticipated final cost of completion of the Developer's Improvements is determined to exceed \$150,000,000 (the sum of the Developer's \$135,000,000 plus the \$15,000,000 Grant), Developer shall provide immediate notice of same to the City, along with evidence reasonably satisfactory to the City regarding the Developer's sources of funding for all final completion costs in excess of \$150,000,000.

2.6 NWS shall procure, or otherwise obtain, the 175 Code required parking spaces for the Project prior to its submission of the initial draw request contemplated in Article 3 of this Agreement; or

If NWS is unable to procure, or otherwise obtain, the 175 Code required parking spaces for the Project prior to its submission of the initial draw request contemplated in Article 3 of this Agreement, then the City shall withhold, consistent with Section 130-132 of the City Code, the amount of \$35,000 per Code required parking space. If the number of Code required parking spaces yet to be procured or otherwise obtained is 175 parking spaces, then the total amount to be withheld is \$6,125,000 of the \$15 million Grant-in-Aid. This amount, or any portion thereof, shall be kept by the City for a period of five (5) years from the date of a Temporary Certificate of Occupancy, or such other certificate for the NWS Project, or such time as the parking becomes available to NWS at the property as provided for in the Parking Covenant, through the issuance of a TCO or such other certificate for such property, whichever occurs first. If, after five (5) years NWS has not procured, or otherwise obtained, the 175 Code required parking spaces, then the City shall keep any and/or all remaining amount(s) of the Grant-in-Aid as full satisfaction of Section 130-132 of the City Code.

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ARTICLE 3 -- DRAW REQUESTS, PAYMENTS AND REPORTING

- 3.1 The submission of draw requests by Developer, and the approval and funding of such draw requests by the City, shall be made pursuant to the procedures set forth in Section 13 of the First Addendum.
- 3.2 The Developer's requests for funding shall reference "NWS Grant-in-Aid" and shall be sent to the following address:

City of Miami Beach
ATTN: Tim Hemstreet, Assistant City Manager
1700 Convention Center Drive
Miami Beach, FL 33139

- 3.3 The purpose of the Grant is to defray a portion of the Developer's capital expenses incurred and to be incurred for hard costs and soft costs in designing, developing and constructing the Developer's Improvements. Examples of some of the types of costs that qualify for funding with Grant Monies ("qualified costs") include, but are not limited to:

- A. Hard costs for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the construction, whether temporary or permanent and whether or not incorporated or to be incorporated in the Developer's Improvements.
- B. Soft costs for, among other things, the following:
 - (1) Debt service and other financing costs associated with any indebtedness incurred by the Developer in connection with the design, development, construction, completion, and start-up operations of Developer's Improvements;
 - (2) fees and costs incurred for and in connection with services and work products of architects, engineers, architectural consultants and their respective subcontractors and subconsultants;
 - (3) fees and costs incurred for and in connection with services, materials, work products and labor of construction managers, consultants, and their respective subcontractors and subconsultants;
 - (4) fees and costs incurred for and in connection with applying for and obtaining permits and approvals, including fees and costs associated with the preparation of applications therefor;
 - (5) fees and costs incurred for and in connection with field and site engineering and related tests, borings and reports, including all materials and labor or other related expenses; and

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- (6) fees and costs incurred for and in connection with any or all services, materials and labor or other expenses which may be permitted under the Community Redevelopment Act of 1969, as same may be amended from time to time (the "CRA").

3.4 The City Manager may, in the exercise of his or her reasonable discretion and judgment, and on a case-by-case basis, deny funding of certain qualified costs for which funding has been requested. Should the City Manager deny funding for any qualified costs included in a draw request, the City Manager shall provide Developer with a written denial thereof within thirty (30) business days of the request.

Developer shall then have fifteen (15) business days to demonstrate to the City Manager why the denied funding should be approved and paid, and the Parties shall cooperate and negotiate in good faith to resolve the disputed non-payment. If the Parties cannot reach a resolution of the dispute within that fifteen (15) business day period, the Developer may submit the City Manager's decision to non-binding mediation pursuant to subsection 4.7 hereof; provided, however, that notwithstanding the parties' election to submit to mediation, the City Manager shall have the final authority with regard to decision(s) on whether or not to deny funding for all, or any portion of, a draw request made hereunder.

3.5 The City shall make payment to Developer by wire transfer or by City check, as the Parties shall agree from time to time.

3.6 In the event that by a date that is 180 days after the date Developer receives its Certificate of Occupancy for 100% of the Developer's Improvements, 100% of the Grant Monies have not been requested and paid, or are not the subject of a proposed or pending draw request, upon Developer's certification that all qualifying costs have been identified, and that no more draw requests (except those proposed or pending requests specified in Developer's certification) will be submitted against the Grant, then the Parties shall be entitled to split equally between them any Grant Monies that remain after all qualified costs have been requested and funded. No later than sixty (60) calendar days after receipt of Developer's certification, the Parties shall agree upon the calculation of each Party's share, the City shall pay to the Developer the Developer's fifty percent (50%) share of such remaining Grant Monies, and shall pay to the City its fifty percent (50%) share of such remaining Grant Monies, and the Parties shall execute an agreement confirming their concurrence with the calculation of each Party's share of such remaining Grant Monies and acknowledging their receipt of such funds pursuant to this provision.

ARTICLE 4 -- GENERAL PROVISIONS

4.1 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement by the Parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other Party from performing any subsequent obligations strictly in accordance with the terms of this Agreement. No waiver shall be effective unless in writing and signed by the Party against whom enforcement is sought. Such waiver shall be limited to provisions of this

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Agreement specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

- 4.2 Should any term or provision of this Agreement be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this Agreement, to the extent the Agreement shall remain operable, enforceable and in full force and effect to the extent permitted by law.
- 4.3 This Agreement may be amended only with the written approval of the Parties.
- 4.4 This Agreement states the entire understanding and Agreement between the Parties and supersedes any and all written or oral representations, statements, negotiations or Agreements previously existing between the Parties with respect to the subject matter of this Agreement.
- 4.5 The Parties agree that time is of the essence in the performance of each and every obligation under this Agreement.
- 4.6 By providing funding hereunder, the City does not make any warranty, guaranty or any representation whatsoever regarding any of the work performed hereunder, including but not limited to, the adequacy or sufficiency of all or any part of work described in the Development Agreement.
- 4.7 In the event a dispute arises that the Parties cannot resolve between themselves, the Parties shall have the option to submit their dispute to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties.
- 4.8 The City's obligation to fund all or any portion of the Grant is subject to and contingent upon such funding continuing to be allowed and permissible pursuant to applicable Florida law, as same may be amended from time to time. In the event that City's performance and obligation to Developer with respect to the Grant is rendered impossible by applicability of law(s), then the Parties agree that City's obligation shall be extinguished, and that neither Party shall have any further liability to the other with respect to this Grant.
- 4.9 The Developer shall maintain records and the City shall have inspection and audit rights as follows:
 - A. Maintenance of Records. The Developer shall maintain all financial and non-financial records and reports directly or indirectly related to the performance of this Agreement, including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of three (3) years from completing performance and receiving final payment under this Agreement.

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- B. Examination of Records. Within three (3) years from the expiration date of this Agreement, but no more often than once a year, the City or designated agent may examine, in accordance with generally accepted governmental auditing standards, all records directly or indirectly related to this Agreement, but only upon prior written notice to Developer and at a time or times during which such inspection shall not unduly interfere with the operation of the Developer's business.
- C. Extended Availability of Records for Legal Disputes. In the event the City should become involved in a legal dispute with a third party arising in connection with this Agreement, the Developer shall extend the period of maintenance for all records relating to this Agreement until the final disposition of the legal dispute or such other time as the Parties may agree. Examination thereof shall be in accordance with the provisions of Section 5.1 B above.

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IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this Grant-In-Aid Agreement on the date written below.

WITNESSES:

CITY OF MIAMI BEACH, FLORIDA, a
municipal corporation of the State of Florida

Print Name: _____

By: _____

ATTEST:

Print Name: _____

By: _____ [Seal]

STATE OF FLORIDA)
)ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, _____ by _____, as Mayor, and _____, as City Clerk of the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me o produced valid Florida driver's licenses as identification.

My commission expires:

Notary Public, State of Florida
Print Name: _____

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IN WITNESS WHEREOF, the Parties or their duly authorized representatives hereby execute this Grant-In-Aid Agreement on the date written below.

WITNESSES: THE NEW WORLD SYMPHONY, a not-for-profit corporation

Print Name: _____ By: _____ Howard Herring, President and CEO

Print Name: _____ ATTEST: By: _____ [Seal]

STATE OF FLORIDA))ss: COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ___ day of _____, _____ by Howard Herring, as President and CEO, and _____, as Secretary, of THE NEW WORLD SYMPHONY, a not-for-profit Florida corporation, on behalf of such corporation. They are personally known to me o produced valid Florida driver's licenses as identification.

My commission expires: _____ Notary Public, State of Florida Print Name: _____

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EXHIBIT "A"
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**LICENSE AGREEMENT FOR
NON-EXCLUSIVE USE OF PARKING SPACES**

KNOW ALL BY THESE PRESENTS that the undersigned New World Symphony, Inc., a Florida not-for-profit corporation (“NWS” or “Developer”), and the City of Miami Beach, Florida (“City” or “Owner”), hereby enter into this License Agreement, which shall be binding on the City and NWS, their heirs, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them.

WHEREAS, the City and NWS are parties to a Development Agreement, dated as of January 5, 2004, and as amended by that First Addendum to Development Agreement, dated February 20, 2007 (the Development Agreement and First Addendum are hereinafter referred to as the “Development Agreement”); and

WHEREAS, the Development Agreement, sets forth the City (as “Owner”) and NWS’s (as “Developer”) respective responsibilities and agreement to coordinate and cooperate in the planning, scheduling and approval of the development, design and construction of the following improvements, to be located on that certain real property owned by the City, and as described in Exhibit “A” hereto (the “Development Site”):

- (i) performance, educational and internet broadcast facility (formerly referred to as “SoundSpace” and now known as the “NWS Campus Expansion”), together with certain related amenities, facilities, and other infrastructure improvements (which, together with the NWS Campus Expansion, are hereinafter referred to as the “Developer’s Improvements”); and
- (ii) public municipal parking garage, to be owned and operated by City, which is anticipated to have six (6) stories and ground floor retail space (hereinafter referred to as the “Garage”); and

WHEREAS, concurrent with the Development Agreement, the City and NWS also entered into a long-term Agreement of Lease (“Lease”), dated as of January 5, 2004, setting forth the parties’ respective responsibilities and obligations for that portion of the real property within the Development Site relating to and comprising the Developer’s Improvements; and

WHEREAS, NWS has a required parking obligation for the NWS Campus Expansion to provide one hundred seventy-five (175) additional parking spaces; and

WHEREAS, there is an agreement to provide such spaces on nearby property documented in the covenant recorded at OR Book 25018, Page 1153-1161 (the “Parking Covenant”), attached as Exhibit “B”; and

WHEREAS, until the parking provided for in the Parking Covenant is available, NWS must provide an interim parking solution in order to secure a building permit; and

WHEREAS, this License Agreement will allow sufficient parking to secure a building permit for NWS until such time as the parking is provided at the property in the Parking Covenant;

NOW THEREFORE, in consideration of the premises, NWS and City hereby agree as follows:

1. City hereby agrees to make available to NWS, on a non-exclusive basis, 175 parking spaces in the Garage. Such spaces shall be available at market rate, as shall be promulgated by the City, to the users whose vehicles are parked therein.
2. NWS' outstanding obligation to provide 175 required parking spaces shall be satisfied by the non-exclusive availability of these 175 spaces in the Garage.
3. Notwithstanding any rights conferred by this License Agreement, the provisions of Article 5 of the 2nd Addendum and Section 2 of the Grant-in-Aid Agreement regarding the Parking Requirement shall apply and is in full force and effect.
4. The term of this License Agreement shall be limited to five (5) years from the issuance of a Temporary Certificate of Occupancy ("TCO") or such other certificate for the NWS Campus Expansion or such time as the parking becomes available to NWS at the property as provided for in the Parking Covenant, through the issuance of a TCO or such other certificate for such property, whichever occurs first. The TCO or such other certificate for the NWS Campus Expansion shall not be issued prior to the issuance of the TCO or such other certificate for the Garage.
5. In the event that Miami-Dade County determines that this License Agreement creates an ad-valorem tax liability, the City and NWS shall cooperate in a challenge to such a determination, at NWS's sole cost and expense. However, if such a challenge is not successful, the NWS shall be responsible for the payment of such ad-valorem taxes.
6. The provisions of this License Agreement may be amended, modified or released by a written instrument executed by NWS and the City.
7. Invalidation of any of these covenants by judgment of Court shall not affect any of the other provisions, which shall remain in full force and effect.
8. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it

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preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

9. 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, DEVELOPER 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.

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Signed, witnessed, executed and acknowledged on this ____ day of _____, 2007.

IN WITNESS WHEREOF, NWS, and the City have caused these presents to be signed in their name by their proper officials.

[SIGNATURE PAGES FOLLOW]

Witnesses:

NEW WORLD SYMPHONY, INC.,
A Florida not-for-profit corporation

Signature

Print Name

Signature

Print Name

HOWARD HERRING, President
541 Lincoln Road
Miami Beach, Florida 33139

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by Howard Herring, as President of New World Symphony, Inc., a Florida not-for-profit corporation, on behalf of the corporation. He is personally known to me or has produced _____, as identification.

Witness my signature and official seal this ____ day of _____, 2007.

Notary Public, State of Florida at Large

Print Name

My Commission Expires:

Witnesses:

CITY OF MIAMI BEACH

Signature

DAVID DERMER, Mayor

Print Name

Signature

Print Name

ATTEST:

CITY OF MIAMI BEACH, CITY CLERK
Robert Parcher

Date

APPROVED AS TO FORM
& LANGUAGE & FOR EXECUTION

CITY ATTORNEY

Date

CITY OF MIAMI BEACH
CITY PLANNING DIRECTOR

Date

Attachment 2

Hemstreet, Tim

From: billg [billg@gatorinvestments.com]
Sent: Tuesday, March 17, 2009 11:59 AM
To: Weithorn, Deede; ed@edtobin.com; Bower, Matti H.; Libbin, Jerry; Gross, Saul; Wolfson, Jonah; vdiaz@podhurst.com; Gonzalez, Jorge; Hemstreet, Tim
Cc: neisen.kasdin@akerman.com; howard.herring@nws.edu; Swanson, Anne; Torter, Benjamin; billg; goldsmiw@bellsouth.net
Subject: FW: Recommendation - Proposed 2nd Addendum and Related Commission Approval Request - \$16,798,000 Final Garage Budget AND \$13,372,000 Preliminary Park Budget AND \$6,400,000 Additional Improvements Budget - New World Symphony Projects - Miami Beach, Fla

Attachments: NWS 3-18-09 Commission Memo.pdf

I have reviewed the attached as well as the prior draft of the 2Nd Addendum together with plans, specifications, prior agreements, accountings of past monies spent, contractor budgets, and unit prices I received on my own initiative.

I recommend approval of the attached subject to the following changes (all of which should be approved by both the City Manager and City Commission at every important financial step of the way):

1. \$6,400,000 Infrastructure/Additional Improvements Budget
 - It appears from my review with Tim Hemstreet that approx. \$3,200,000 of these monies have been spent
 - I recommend getting NWS to assemble a) NTE Budget within 10 days for the A/E Fees to complete the 100% Civil Plans (I would target a \$50,000 to \$100,000 Total Fees amount "All IN" including CD's/CA/CM/RPR b) award contract within 15 days to A/E Firm c) get A/E Consultant to assemble quantities lists and budget within 30 days for City Manager's reasonable approval and d) get Hines to list it's PM fees and estimated GC fees and e) finish a construction budget within 60 days for the City Manager and City Commission to sign off on
 - Failure to do the above will likely result in another "Garage" type scenario where either the taxpayer or NWS or both can get hurt by Hines further delays and fee upon fee upon fee structure...and then be forced to proceed with Hines at "top of the market" prices due to time constraints.....for example at the Garage Project even though the \$15,210,000 Original Budget for the Garage might have been achievable had we ensured strict dates were observed (Hines was late) and cost ceilings established (Hines was initially approx. \$5 Million over budget) at every step of the way, we let this thing get away from us and we may have paid a premium for the sameit is very clear to me that Hines has NOTHING TO LOSE and EVERYTHING TO GAIN by dragging their feet and running out the clocks while simultaneously sending NWS "pie in the sky" numbers....I would NOT give them that opportunity again here
 - FP&L approx. \$150,000 Vault Relocation costs (exclusive of Vault Room and exclusive of secondary cabling to NWS Garage) should be in infrastructure budget
2. Park Fees and Park Budget

- Removal of the TOPA Zone 3.4 Improvements is OK as long as Zone 3.4 is 100% included and funded by the County in the Covention Center Project (see paragraph #2(a) and (d) of 2nd Addendum). This intersectection at 17th and Washington is one of the most important intersections in the entire city and deserves to have significant and beautiful improvements on both corners to serve as "Bookends" as you head down what will one day be perceived as "Institutional Row".
 - NWS should immediately a)submit RFP to at least 100 likely Landscape/Park Engineering Design candidates within 15 days b) agree that Hines will not get more than \$25,000 TOTAL for submitting and reviewing Landscaping Design RFP...this is critically important as NWS MUST immediately get control of Hines to prevent another "Garage" type situation c) make all Landscape Engineering firms respond within 30 to 60 days d) NWS should be prepared to select a candidate within 30 days of receiving all bid proposals e) NWS should NOT obligate itself to either Hines or Facchina for any fees for the Park (if CM/CA is needed NWS could easily hire Kimley Horn or the chosen Landscape Engineer or BOTH and also avail itself of the services of Hazen Sawyer/CIP.....but all efforts should be made now to avoid unnecessary duplicitous fees, especially from Hines) e) set a "Target Budget" of \$6,000,000 to \$8,500,000 in the RFP (inclusive of the A/E fees which should not exceed \$500,000 to \$1 Million "All In" with CD's/CA/CM/RPR...this is consistant with the \$8.5 M Feb 11, 2009 FCWPC Recommendation set forth in p.351 of the attached)
 - Failure to follow each of the above steps will likely result in another "Garage" type scenario where Hines can run out the clocks and put the taxpayer or NWS or both in check mate....now is the time to put stringent time/budget controls on Hines BEFORE they can gain the upperhand again like they did at the Garage (see bullet point #3 in paragraph #1 above)
3. Garage Final Budget
- I agree that approx. \$1,588,000 of Park monies should be re-allocated to the Garage IN ADDITION to another approx. \$1 Million for the east side exterior features (see bullet point #5 of this paragraph #3 below)
 - I am NOT happy as a taxpayer to see that we must spend approx. \$1,588,000 over initially approved budget and get a ¾'s finished exterior building, but I think that is what we have to do today and to NOT proceed would be an even bigger mistake...
 - I think the 2 elevators in the middle of the garage can be reduced to 1 without materially compromising anything...this will lower costs for NWS by approx. \$125,000....I do not think that the middle elevator is just there to service NWS but rather is something that would likely be a selection by any architectural firm building a similar type building
 - I am assuming staff re-allocated to the \$6.4Million "Additional Improvements" budget the \$150,000 FP&L costs as set forth in last bullet point of paragraph #1 above
 - Another approx. \$1 Million of monies from the Park Budget should be immediately re-allocated and the Gehry skin and related LED lighting feature on the east side should be included at NTE \$1M (including all OH&P fees/GC fees/A&E fees and any other fees of any sort or kind). To me it seems ridiculous that we would not complete a taxpayer owned building 100% on all 4 sides after the taxpayer is spending possibly up to \$51 Million of total project costs (would the NWS ever allow its main campus facility to be done on 3 sides???). This is even more upsetting after having seen that the City is prepared to re-allocate funds from the Park Budget but cannot re-allocate same now for something that immediately needs same
 - I would also get NWS to get Gehry to confirm we have the right to install the skin mesh and LED now or later on the east side and that we have a license to use his plans as we see proper (I have not seen the Gehry contract so I cannot comment on exactly what must be done....but I know the City of M.B. should have control of its own destiny here)

4. Future 175 Parking Spaces by NWS

- I would require NWS to identify by 12-31-09 where it intends to find these 175 parking spaces and put target dates down now...I would not wait until Year #4 and then find out we have a problem....I would also try to tie this into something so that the TOPA Jackie Gleason theatre has more available parking so that in combination the City has better ability to utilize the TOPA facility for events and concerts that can bring more revenue into the City
- Parking is critically important and we cannot forget that just replacing the lost approx. 500 spaces is NOT enough since we have introduced a new NWS facility that will require more parking than what we previously had.....I would not rely on Mr. Cejas on this matter

5. Timing Issues and NWS Benefits to the City

- NWS and the City should move asap
- Time is of the Essence here as the FP&L Vault must be completed by this year at the latest for the NWS Main Campus Building to be energized
 - Accordingly I would immediately authorize and proceed with the Garage A/E plans with a NTE \$100,000/month price for A/E fees and a NTE \$500,000 of A/E fees in totaland with the understanding that the City owns all plans and design.....certainly NWS can sign a contract with KVS/Facchina to proceed contingent on Municipal Approval
 - This will ensure that the NWS is NOT delayed if any of the above is still not 100% resolved on March 18, 2009 City Commission....in all events we need to continue to forge forward so the \$150 Million Main Campus is not delayed with its Opening in Jan 2011 since the introduction of the NWS is certainly a great benefit for our Miami Beach Community
 - In these harsh financial times when cutbacks even in the Big Five orchestras (NY, Boston, Philadelphia, Cleveland, and Chicago) are occurring (see 3-12-09 NY Times article on page C1) we must do all we can to try and preserve the arts and help our community grow culturallywe need to be more than just night clubs and hotels and restaurants and Lincoln Road....NWS is critically important in this respect

Thanks

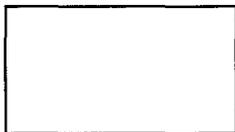
William Goldsmith

From: Kasdin, Neisen [mailto:neisen.kasdin@akerman.com]
Sent: Saturday, March 14, 2009 12:22 PM
To: billg
Subject: FW: Electronic Copy of Form Approved Second Addendum

here is what is going to Commission

Neisen O. Kasdin
Shareholder
Akerman Senterfitt
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www.akerman.com
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04/13/2009



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CIRCULAR 230 NOTICE: To comply with U.S. Treasury Department and IRS regulations, we are required to advise you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this transmittal, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

From: David J. Phillips [mailto:David.Phillips@nws.edu]
Sent: Friday, March 13, 2009 5:25 PM
To: Kasdin, Neisen
Subject: Fw: Electronic Copy of Form Approved Second Addendum

Just in. I haven't read it yet.

David J. Phillips
Senior Vice President & Chief Financial Officer
New World Symphony, America's Orchestral Academy
541 Lincoln Road, Miami Beach, FL 33139
[http://www.nws.edu/map]
david.phillips@nws.edu
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fax: 305-673-6749
www.nws.edu

The New World Symphony, America's only full-time orchestral academy, prepares gifted graduates of prestigious music programs for successful careers in orchestras and ensembles. NWS has launched the careers of more than 630 young musicians now making a difference in the profession worldwide.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: De Pinedo, Naima <NaimadePinedo@miamibeachfl.gov>
To: Hemstreet, Tim <TimHemstreet@miamibeachfl.gov>; pwelles@swmwas.com <pwelles@swmwas.com>; Howard Herring; David J. Phillips
CC: Aguila, Raul <RaulAguila@miamibeachfl.gov>; Bonde, Kent <KentBonde@miamibeachfl.gov>; Baker, Milton <Milton_Baker@hines.com>; Barry, Matthew <Matthew_Barry@hines.com>; Lawrence, David <David_Lawrence@hines.com>
Sent: Fri Mar 13 17:23:37 2009
Subject: RE: Electronic Copy of Form Approved Second Addendum

04/13/2009

P <<NWS 3-18-09 Commission Memo.pdf>> lease see the attached Commission Memo.

From: Hemstreet, Tim
Sent: Thursday, March 12, 2009 6:38 PM
To: Patricia G. Welles (pwelles@swmwas.com); New World Symphony Howard Herring; 'David J. Phillips'
Cc: Aguila, Raul; Bonde, Kent; 'Baker, Milton'; Barry, Matthew; Lawrence, David; De Pinedo, Naima
Subject: Electronic Copy of Form Approved Second Addendum

To All: I am forwarding the attached electronic copy of the Second Addendum to the Development Agreement, which has been Form Approved by the City Attorney. I will forward a copy of the City Manager's Memorandum that will accompany the proposed Addendum when it is finalized. Please let me know if there is any problems opening the attached. Tim

MIAMIBEACH
Tim Hemstreet, Assistant City Manager
OFFICE OF THE CITY MANAGER
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7010 Fax: 305-673-7782/ www.miamibeachfl.gov <<http://www.miamibeachfl.gov/>>

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

**STEARNS WEAVER MIL
WEISSLER ALHADEFF & SITTERSON, P.A.**

Miami ■ Ft. Lauderdale ■ Tampa

Eugene E. Stearns
Direct Line: (305) 789-3400
Fax: (305) 789-2669
Email: estearns@swmwas.com

Museum Tower, Suite 2200
150 West Flagler Street
Miami, Florida 33130
(305) 789-3200

April 9, 2009

Via Email and U.S. Mail

The Honorable Matti Herrera Bower
Mayor, City of Miami Beach
City Hall
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Commissioner Jonah Wolfson
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Commissioner Jerry Libbin
City of Miami Beach
1700 Convention Center Drive
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Commissioner Saul Gross
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Commissioner Victor Diaz
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Commissioner Edward L. Tobin
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Commissioner Deede Weithorn
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Re: The New World Symphony Campus Expansion Project

Dear Mayor Bower and Commissioners,

The New World Symphony asked us to review its written agreements with the City of Miami Beach in the wake of the City Commission meeting of March 18, 2009, to determine the relationship between those agreements and what some Commissioners said about them. Having done so, we are puzzled at the number and magnitude of the differences, and the vigor with which some Commissioners advance positions that are simply and indisputably contrary to what was reduced to writing and relied upon.

April 9, 2009
The Honorable Matti Herrera Bower
Mayor, City of Miami Beach
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Commissioner Victor Diaz
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Page 2

It is one thing to commit generously to worthwhile civic endeavors. It is another to tarnish a gift before its commitment is fulfilled by requiring a beneficiary to enforce its terms. That is where we fear this matter is headed.

Mutual Appreciation Led to the Binding Agreements

At the outset, NWS both recognizes and appreciates the critical role the City of Miami Beach has played in its success. Its support has been invaluable, and the quality of the Miami Beach environment has been a magnet for the best and brightest of those who have chosen a life of concert music.

It is equally important, however, to recognize the contribution NWS has made to the City of Miami Beach over the years of its existence; a contribution that led to the contractual undertakings upon which NWS and its many donors have relied. You should be proud – and we know you are – of the success of NWS, and its place in your great City. This unique cultural institution has brought honor and distinction to the City of Miami Beach, placing the City at the highest level in the world of classical music.

The New World Symphony is America's Orchestral Academy. It is the premier organization of its kind; an organization which provides top graduates of music programs throughout the United States with the opportunity to enhance their music education with the finest professional training. Led by Michael Tilson Thomas, one of the most critically-acclaimed and sought-after conductors in the world, NWS not only provides an unparalleled educational environment for aspiring young musicians, it provides as well a regular program of superb concert performances for the people of this community.

The competition to be selected to be part of NWS is fierce. Each year, NWS receives over 1000 applications from all over the world for approximately 35 fellowships. After an intensive three-year program of training – including performances that attract thousands of people and prompt routine standing ovations – NWS fellows emerge prepared to excel in the increasingly-competitive world of orchestral performance.

All told, more than 700 NWS alumni have taken their experiences in the City of Miami Beach to professional orchestras and ensembles around the world.

April 9, 2009
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Commissioner Jonah Wolfson
Commissioner Jerry Libbin
Commissioner Saul Gross
Commissioner Victor Diaz
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Page 3

The great cities of the world compete for the quality of their orchestras. No city can compete with the City of Miami Beach for the quality of *this* orchestra because of its unique organization.

NWS Commits to Make the City of Miami Beach its Permanent Home

As NWS grew in reputation and stature it outgrew its modest Miami Beach facilities. A desire by the leaders of NWS to have quarters befitting its quality and a desire on the part of the City of Miami Beach to make its presence a permanent fixture of the City led to a very public process through which NWS agreed to make Miami Beach its permanent home in exchange for substantial City support, the terms of which were carefully spelled out. Among other things, the agreements dedicate valuable City land for a state of the art educational and concert hall facility, give to NWS the right to construct its facilities on that property, commit to NWS \$15 million of CRA funds, obligate the City to construct a new parking garage and resolve a myriad of questions including parking and concurrency requirements.

An Architectural Achievement Commensurate with the Quality of the Symphony

Relying on the agreements reached with the City, NWS reached out to the community to support design and construction of its new facilities. Response from the community was overwhelming. Private funding commitments met every expectation. Unlike similar concert facilities around the world, the vast bulk of the funds that will be used to construct this extraordinary facility are private.

Relying on the substantial funding that had been achieved, the world class design team produced a design for the facility that will be an architectural masterpiece for the City and a stunning home for NWS. As the shell of the structure nears completion, it is apparent that the architecture will equal the quality of the building's inhabitants and the performances that will be enjoyed by audiences for many years to come.

The Existing Agreements Address and Resolve the Issues

Having ironed out the development issues years ago, it is disappointing that

April 9, 2009
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Mayor, City of Miami Beach
Commissioner Jonah Wolfson
Commissioner Jerry Libbin
Commissioner Saul Gross
Commissioner Victor Diaz
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Page 4

some of the issues long ago resolved are now being raised again by new voices speaking for the same City that entered into the binding agreements. Indeed, the issues that arose at the recent Commission meeting are not new and are no longer debatable. They were each previously addressed and previously resolved in the binding agreements upon which NWS has relied.

- **The City's Parking Garage**

The Parking Garage is to be constructed on City land and will be owned by the City. The City will receive all of the revenue from the Garage and the retail spaces. NWS will not own the Garage, and will not enjoy any revenue it creates. Its role with respect to the Garage is solely as the City's developer.

The process to develop the Garage is spelled out in the Development Agreement. First, NWS was to present the City several garage designs compatible with the adjacent Campus Expansion, with a minimum of 320 parking spaces. From the alternatives presented, the City was to choose the design it preferred. After a preliminary design was recommended, NWS was to solicit bids to determine the actual cost to build the Garage design chosen. Finally, if the City did not like the construction cost for the chosen design, the parties were to work together to arrive at another design that the City would be willing to fund.

The proposed Second Addendum was simply a step in that established and agreed-upon process.

NWS presented the City with Garage design choices which attempted to maximize the number of spaces within the preliminarily approved budget. City boards and staff chose the design that was preferred; a design that includes six parking levels and no fewer than 520 parking spaces, ground-floor retail space, and a decorative "scrim" wrapping. Construction costs were calculated based on the City's choices. The design and budget was brought to the Commission to formalize approval and to appropriate funds to build it (or exercise the alternative described above).

Had the City made those critical decisions contained in the proposed Second Addendum, NWS would have the direction it needs from the Commission to sign a

April 9, 2009
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Commissioner Jonah Wolfson
Commissioner Jerry Libbin
Commissioner Saul Gross
Commissioner Victor Diaz
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Page 5

maximum guaranteed price contract for the Garage's construction, and construction could proceed.

- **Parking Concurrency**

The binding agreements also address and resolve parking concurrency issues pertaining to the NWS facilities. NWS resolved its concurrency parking obligation for an additional 175 off-site parking spaces by entering into two contracts with the City, which the City agreed would satisfy NWS's concurrency obligations now and in the future:

1. The October 2006 Declaration of Restrictive Covenants in Lieu of Unity of Title (Parking Covenant) provides the long-term solution for meeting parking concurrency requirements by locking up sufficient parking beginning some five (5) years after the Campus Expansion is completed. The Parking Covenant obliges an adjacent property owner, 420 Lincoln Road Associates, Inc. ("420 Associates"), a company controlled by Paul Cejas, to provide 175 parking spaces to NWS, and obliges NWS to pay for their use. 420 Associates' obligation runs with title to its land.
2. The November 2007 License Agreement for Non-Exclusive Use of Parking Spaces (Parking License Agreement) provides the short-term, or interim, parking solution for the period between project completion and the date NWS can begin exercising its rights under the Parking Covenant. In this contract the City agrees for a period of five years after the project's TCO is issued to grant NWS the use of 175 parking spaces within the City's garage in exchange for payment of market rate rent for those spaces.

- **The CRA Grant of \$15 million**

The Grant Agreement binds the City to contribute \$15 million to NWS in connection with construction of the facility. There is no dispute that the \$15 million grant is critical to the success of the Campus Expansion as the City expressly acknowledged that fact in the Grant Agreement. Indeed, since then, the financial obligations incurred in connection with the project have made the \$15 million grant even more essential to successful completion of the project.

April 9, 2009
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Commissioner Jonah Wolfson
Commissioner Jerry Libbin
Commissioner Saul Gross
Commissioner Victor Diaz
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Page 6

The City agreed that its obligation to disburse the grant monies is entirely separate from and in addition to its other financial obligations under the Development Agreement.

The \$15 million is to be funded from CRA funds, and is included in the City's 2010 budget.

NWS will require the full \$15 million early in 2010 in order to complete the project.

- **The Park**

The agreements provide that NWS will assist the City in the design and construction of a public park contemplated by the City across the street from the NWS Campus Expansion but only if the City approves a design and funds its development. The park, if it is developed, anticipates joint programming related to projection on the east façade of the New World facility. However, the park would not be owned by NWS – it would be, if developed, the City's park to be built on the City's land and to be operated by the City for the use of its residents and visitors.

If the Commission approves a design and funds its development, NWS as the City's developer would be required to cause that park to be built in accordance with the parties' contract. Again, those decisions are entirely in the City's hands.

The Desire of Some Commissioners to Ignore Existing Agreements

Notwithstanding the foregoing, the belief was expressed at the March meeting that the City can ignore its agreements and unilaterally structure new arrangements, long after the existing ones formed the basis for a host of commitments by NWS and a host of third parties who relied on the City's performance of its contractual obligations. For example, it was suggested that the City can ignore the Parking Covenant because, it was prophesied that 420 Associates will not honor its obligations under the Parking Covenant six years from now. That expectation is not only absurd on its face (no representative of 420 Associates, of course, was in front of the Commission on March 18); it would not, in any event, excuse the City's breach of its obligations long before

April 9, 2009
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Commissioner Jonah Wolfson
Commissioner Jerry Libbin
Commissioner Saul Gross
Commissioner Victor Diaz
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Page 7

420 Associates' obligation matures. The City is bound to its agreement to accept the Parking Covenant as meeting NWS' future parking obligations.

The proposed new conditions, which affront the written agreements are also impossible to meet. At this late stage, after construction of the facility is long in process, it would be impossible for NWS to obtain additional off-site parking by the time the TCO is ready to be issued. What Miami Beach businessperson would be willing to agree to bind his or her property to a parking covenant with the City when the City clearly is willing to violate the existing Parking Covenant by assuming that the other parties will default six years hence?

The City's attempt to bundle its false prophecy with regard to 420 Associates' obligations in six years to its obligation to fund \$15 million in CRA funds will hopefully be abandoned upon reflection. An attempt to take millions from these grant monies in anticipation of a breach long in the future would be, to say the least, a breach of contract.

The design-build process for the parking garage does not permit new city officials to unilaterally renegotiate fundamental terms of the prior written agreements relied upon by NWS and its many donors in years past. The Second Addendum as it is proposed to be amended by the Commission would, in effect, eviscerate NWS' existing contractual entitlements under the 2007 Grant-in-Aid Agreement, the 2006 Parking Covenant among the City, NWS and 420 Associates, and the 2008 Parking License Agreement between the City and NWS.

The Commission debate did not focus on the City's obligations but instead focused on what current Commissioners might have liked those obligations to be. It does not work that way. Had the current Commissioners been in office when the contracts were made and if their views in 2003, 2004 and on through the present were the views expressed on March 18, there would have been no agreements with NWS, NWS would not have solicited donors to build what is now being built, and perhaps some other city would enjoy the benefits and share the burden of this wonderful institution. NWS chose to stay in Miami Beach, however, and it committed itself to complete its enormous undertaking on the basis of the City's written promises. At this late stage of the process, it is not possible, and it is not right, to undo what has already

April 9, 2009
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Commissioner Jerry Libbin
Commissioner Saul Gross
Commissioner Victor Diaz
Commissioner Edward L. Tobin
Commissioner Deede Weithorn
Page 8

been done. NWS is entitled to rely upon the agreements that exist and, on behalf of itself and on behalf of the many residents of Miami Beach and the surrounding area who contributed to this undertaking, NWS must insist that the City fully perform its obligations.

We approach this matter with the resolve to enforce the binding contractual obligations undertaken by the City but with the hope that the Commission will reflect on these matters and do nothing to darken the joy that should come to the City from the fulfillment of its contractual undertakings.

Respectfully yours,



Eugene E. Stearns

cc: New World Symphony Board of Trustees
Jorge M. Gonzalez, City Manager
Jose Smith, Esquire, City Attorney

CITY OF MIAMI BEACH
LINCOLN PARK
MIAMI BEACH, FLORIDA
REQUEST FOR QUALIFICATIONS
FOR
LANDSCAPE ARCHITECT – ARCHITECT OF RECORD
PREPARED BY HINES
April 3, 2009

PROPRIETARY

This RFQ is proprietary to the Developer and the Developer reserves the right to recall the RFQ in its entirety or in part.

Recipients shall not include or reference this RFQ in any publication, or other public manner, without prior written consent from the Developer.

| | | |
|-------------|---|----------------|
| I. | INTRODUCTION | PAGE 3 |
| II. | LANDSCAPE ARCHITECT RESPONSIBILITIES | PAGE 3 |
| III. | PROPOSAL REQUIREMENTS | PAGE 4 |
| IV. | SUBMISSION REQUIREMENTS AND PROJECT CONTACT | PAGE 9 |
| V. | PROPOSAL ACCEPTANCE | PAGE 10 |
| VI. | OTHER | PAGE 10 |
| | <u>ATTACHMENTS</u> | |
| | ATTACHMENT A: EVALUATION AND SELECTION PROCESS | PAGE 11 |
| | ATTACHMENT B: SITE PLAN | PAGE 12 |
| | ATTACHMENT C: SITE AERIAL PHOTOGRAPHS | PAGE 14 |
| | ATTACHMENT D: MODEL PICTURES | PAGE 17 |
| | ATTACHMENT E: REGULATORY PROCESS | PAGE 20 |

I. INTRODUCTION

New World Symphony has entered into an agreement with City of Miami Beach (the “City”) to construct the New World Symphony Campus Expansion Project (the “Campus Expansion”) in the City of Miami Beach, Florida consisting of an educational, rehearsal and performance facility including administrative offices and music practice rooms designed by Frank O. Gehry and Gehry Partners, LLP. New World Symphony through its affiliate New Campus II, LLC (“New Campus”) has agreed with the City to manage the design and construction of a public park including a sound system building to house projection equipment, two projectors that will project images on the wall of the Campus Expansion building, seating areas for people to view projection, shade structures, walkways, landscaped areas, hardscaped areas, public restrooms and other amenities as defined during the design process (the “Park”) on City land (the “Land”) adjacent to the Campus Expansion to be owned and operated by the City (collectively, the “Project”). The City is the owner of the Land and Park, New Campus will be hereafter referred to as “Developer” with respect to the work.

Developer and the City have agreed that it is important for the Park to become an integrated part of the New World Symphony Campus and create a high end urban park for the City of Miami Beach. Landscape Architect (as defined below) will review the Campus Expansion design and collaborate with Developer’s Architect for Campus Expansion on the design and concepts for the Park. The Park is approximately 2.5 acres bounded by Washington Avenue on the east, Drexel Avenue on the west, Lincoln Lane on the south and 17th Street on the north and located adjacent to the Lincoln Road Mall and the Fillmore Miami Beach at the Jackie Gleason Theater and in close proximity to City Hall and the Miami Beach Convention Center. The close proximity of such diverse and important social, cultural and business activities makes the Park an important venue for the City as a gathering place for residents and visitors alike.

The Developer has retained Hines to act as the development manager (“Development Manager”) on the entire New World Symphony Campus Expansion project. The Development Manager on behalf of the Developer is responsible for coordinating all aspects of the Project including design and oversight of construction administration. Major decisions regarding the scope of the Project, and critical Project team members, are vested mutually with the Developer and City and communicated through the Developer.

This Request for Qualifications (the “RFQ”) is being issued for the express purpose of identifying Landscape Architects to include on a short list to receive a Request for Proposal (the “RFP”) to provide Landscape Design and Architect of Record services for the Project.

Your response should be based on the requirements described herein and the Evaluation and Selection Process in Attachment A.

II. LANDSCAPE ARCHITECT RESPONSIBILITIES

The Landscape Architect will be the prime consultant on the Project and act as Architect of Record (the “Landscape Architect”). The Landscape Architect will subcontract with all design consultants including as required, but not limited to, architectural, structural, civil, mechanical, electrical, plumbing, fire protection, signage, graphics and wayfinding, lighting, security, telecommunications, audio-visual, acoustics, code consultant, geotechnical, etc. (“Consultants”). The Developer will contract for materials testing directly.

The Landscape Architect under the direction of the Developer, Development Manager, and the City and in close coordination with the other design consultants will be responsible for developing a design, coordinating all aspects of design and providing complete contract documents for the Project suitable for permitting, regulatory approval and competitive bidding. The Landscape Architect and consultants will be required to perform bid and award and construction administrative services for the Project. Landscape Architect will coordinate the design and installation of projection equipment and sound system with the Developer's audio-visual consultant Acoustic Dimensions. Contact at Acoustic Dimensions is Brian Elwell.

III. PROPOSAL REQUIREMENTS

Your Firm will be evaluated on the basis of how well your Firm, your key subconsultants, and your team's collective individual professionals meet the criteria outlined below including general and specific selection criteria. Please submit your proposal in a concise written tabulated format indexed and organized in order by the following sections:

A. Summary of Minimum Qualifications

ALL FIRMS THAT SUBMIT A PROPOSAL FOR CONSIDERATION MUST MEET THE MINIMUM QUALIFICATIONS AS PROVIDED BELOW. IF THE MINIMUM QUALIFICATIONS ARE NOT MET, THE CONSULTANT'S SUBMITTAL WILL BE REJECTED. PROPOSALS WILL BE CONSIDERED ONLY FROM CONSULTANTS THAT ARE REGULARLY ENGAGED IN THE BUSINESS OF PROVIDING THE SERVICES AS DESCRIBED IN THIS RFQ.

1. Firm's Experience: Indicate the Firm's years of experience in providing the requested professional services. Firm must have five (5) years of continuous operation under same name with professional licenses and insurance, qualifier for company name and type of licenses, DBPR Official Complaint History along with any disciplinary administrative action taken within the last five years to provide Landscape Architect services. Professional licenses and insurance in the State of Florida is preferred. If the Firm is not presently licensed as a Landscape Architect in Florida, the Firm shall state in its Proposal whether it will seek licensure in Florida for the Project, or if a sub-consultant Landscape Architecture Firm will be utilized for this purpose.
2. Qualifications of Project Team: Indicate the Team's years of experience, including all Key Subconsultants, in providing the requested professional services. Project Team must have prior experience within the past ten years with at least three (3) urban park projects including both buildings and site improvements valued at a minimum construction cost of \$2,000,000. Provide resumes for key Team members, including Key subconsultants, as well as a Project Team organizational chart. It is preferred, but not necessary, for the Prime Consultant and its Key Subconsultants to have completed similar projects.
3. Principal in Charge's Experience: Provide a comprehensive summary of the experience and qualifications of the individual who will be selected to serve as the Principal in Charge. This individual must have a minimum of five (5) years' experience in the planning, design, and construction administration of municipal projects, and should have served as Principal in Charge on a minimum of three

(3) previous urban park projects including both buildings and site improvements projects valued at a minimum construction cost of \$2,000,000.

4. Project Manager's Experience: Provide a comprehensive summary of the experience and qualifications of the individual who will be selected to serve as the Project Manager. This individual must have a minimum of five (5) years' experience in the planning, design, and construction administration of environmental services for municipal projects, and should have served as Project Manager on a minimum of three (3) previous urban park projects including both buildings and site improvements projects valued at a minimum construction cost of \$2,000,000. . This individual must be capable of speaking and making decisions on behalf of the Firm.

5. Similar Projects:

a. Provide a list of seven (7) similar projects on which your Firm and Key Subconsultants have been directly involved and responsible. In particular, the Developer and Development Manager would like to review similar project experience and whether on those projects the schedule and budget requirements were achieved. It is preferred, but not necessary, for the Prime Consultant and its Key Subconsultants to have completed similar projects.

b. Provide a schedule of current and past projects of similar scope and magnitude for which your Firm has provided services and describe those services. For each project provide anticipated or proposed schedule and budget and actual schedule and budget.

c. List all projects done directly or indirectly by your Firm and those personnel proposed for the Project with the City in the last five (5) years.

d. Provide a summary of experience by your Firm and those personnel proposed for the Project with LEED and sustainable building design.

6. Risk Assessment Plan:

All Consultants must submit a Risk-Assessment Plan (RAP). The RAP **must not be longer than two pages** front side of page only. The RAP must be based on: a clear understanding of project objectives; familiarity with the project site; a thorough understanding of all permitting and regulatory requirements and impacts; and other considerations that may impact the design and construction of the proposed improvements. The RAP **should be submitted in a sealed unmarked envelope** and included within the RFQ response. The Risk-Assessment Plan should address the specific items in a clear language, such as:

(1) What risks the project has. (Areas that may cause the Consultant not to finish on time, not finish within budget, cause any change orders, or be a source of dissatisfaction with the Developer).

(2) Explanation of consultant's plan to avoid/minimize each risk.

(3) Propose any value-added options that could improve this project.

- (4) Explain the benefits of the Risk Assessment Plan. Address the quality and performance differences in terms of risk minimization that the City can understand and what benefits the option will provide to the user. Do not provide brochures or marketing pieces.

7. Insurance:

Please indicate the amount of professional liability coverage, employer's liability insurance, commercial general liability insurance, and commercial automobile liability insurance and other insurance requirements that you are proposing to carry for this Project.

During the entire term that this Agreement shall remain in effect, the Landscape Architect and its Consultants, at each's sole cost and expense, shall obtain and maintain the following insurances:

- 1) Workers Compensation insurance in amounts as required by statute.
- 2) Employers Liability insurance in an amount not less than \$1,000,000 each accident.
- 3) Commercial General Liability insurance on an occurrence basis in an amount of not less than \$2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage. Such Commercial General Liability insurance shall include, but not be limited to, the following coverages:
 - Blanket contractual coverage;
 - Personal and advertising injury;
 - Independent contractors;
 - Explosion, collapse and underground hazards (x, c, u) included.
- 4) Commercial Automobile liability insurance on an occurrence basis covering all hired, owned and non-owned vehicles in an amount not less than \$1,000,000 each occurrence combined single limit for bodily injury (including death) and property damage.
- 5) Valuable Papers insurance to protect against destruction of valuable papers and records on an all-risk basis for the full replacement cost thereof.

The insurance policies required in the above sub-paragraphs 3) and 4) of this Section shall name the Developer, City of Miami Beach and the Development Manager as additional insured and shall be endorsed to be primary and non-contributory with any insurance otherwise carried by Developer or Development Manager. All insurance required hereunder a) shall be written with insurers authorized to do business in the state of Florida and rated A- IX by AM Best & Co.; b) shall provide to Developer and Development Manager 30 days advance written notice of reduction, cancellation or non-renewal and; c) shall waive all rights of subrogation against Developer and Development Manager.

B. Other Proposal Requirements

1. Project Implementation Strategy: Please describe the Project Team's strategy for implementing the project, including the following information:

Organizational structure of Project Team.

Approach to the Project.

Narrative description of how Project Team's experience, including the direct experience of Key subconsultants, specifically relates to this Project.
2. Personnel: Provide a schedule of your personnel, as well as the main personnel of Key subconsultants, who will be assigned and directly involved and responsible throughout the duration of the Project. Information shall include the names, title and resumes of all assigned Project personnel, including but not limited to:
 - a. Name, Title and Resume
 - b. Experience with similar projects (include the specific role of the individual employee on the project);
 - c. Organizational chart of proposed Project Team, including Key subconsultants, and relationship to upper management/principals;
 - d. Description of tasks key personnel, including Key subconsultants, will perform;
 - e. References for each key team member, including that of Key subconsultants, proposed;
 - f. Indicate relative involvement (based on number of hours per week) of each Project Team member;
 - g. Indicate relative involvement of the Prime and of each Key subconsultant.
3. Personnel Commitments: Provide a summary of the time (based on number of hours per week) requirements for each of your personnel assigned to the Project and a description of the nature and extent of their commitments to other projects that may impact this Project;
4. Firm Size: Provide a schedule by job description of the number of people in your Firm and indicate the total number of licensed Architects and Engineers;
5. Contact References: Provide no less than three (3) contact references for each of your Firm's personnel assigned to the Project;

6. Computer Aided Design (CAD): Provide acknowledgement that your Firm will produce all work product using the latest version of AutoCAD; prior to and during construction CAD files shall be made available to the Contractor(s) at no cost for the Contractor's coordination drawings, and will be provided to the Developer and to City at no cost at the completion of construction. It must also be acknowledged that submitted work product as well as final permitted construction documents are and will be the property of the City of Miami Beach upon submittal to Developer;
7. Special Considerations: Describe any special resources which your Firm or your personnel assigned to the Project may bring to the Project or in-house expertise in technical areas which will specifically benefit the Developer;
8. Quality Assurance/Quality Control: Provide a detailed description of your Firm's quality assurance/quality control review and checking procedures including describing how coordination, checking and quality assurance/quality control will be accomplished to achieve a one hundred percent correct, complete, coordinated, and cost effective set of construction documents for this specific Project in compliance with all applicable laws, codes, ordinances, rules and regulations;
9. Regulatory Process and Permitting: Describe your Firm's experience with the applicable jurisdictional agencies regulatory process and permitting in the City of Miami Beach, and other pertinent Miami-Dade County jurisdictional agencies as described in Attachment E, Regulatory Process and the role your Firm will provide in obtaining permit and approvals from regulatory agencies.
10. Bid and Award Services: Describe your Firm's experience with providing bid and award services, including attending pre-bid conferences, assisting with the preparation of necessary addenda, attending the bid opening, assisting with the bid evaluation and recommendation of award by the Developer and City, and providing "As-Bid" documents for use during construction.
11. Construction Administration: Describe your Firm's construction administration processes and procedures. Include qualifications of personnel, field review format, contractor interface, etc. You should anticipate that your lead personnel assigned to this Project will be at the Project site as required during the entire construction period. You will be expected to provide qualified representatives at the Project construction meetings as required during the entire construction period.
12. Detailed Exceptions: Provide in writing any exceptions you may take to the requirements of this RFQ, the reasons for such exceptions and any proposed alternatives.

C. Proposed Fee Structure - None required at this time

D. Schedule of Billable Rates – Please include a detailed schedule of fully burdened billing rates for all personnel classes that you propose to use on the Project in an Excel format per specific Tasks of scope of work.

E. Special Services

Provide a detailed description of all services which you would plan to provide that are not described above, and any fees required for special design work not included in basic services but which you believe would be in the Developer's interests for you to provide.

F. Financial Information

Provide information regarding your Firm's financial condition, type of ownership.

G. Additional Information

Please provide any other additional information that you believe would be helpful to Developer and Evaluation Committee in their decision.

H. RFQ Schedule

The **anticipated** schedule for this RFQ is as follows:

| | |
|--|---------------|
| RFQ to be issued | April 3, 2009 |
| Deadline for receipt of responses | May 4, 2009 |
| Evaluation committee meeting(s) | May 4-8, 2009 |
| Evaluation Committee recommend short list for RFP | May 9, 2009 |
| City Commission Meeting approval of short list for RFP | May 13, 2009 |
| Issue RFP to short list Landscape Architects | May 20, 2009 |

IV. SUBMISSION REQUIREMENTS AND PROJECT CONTACT

Please submit fifteen (15) hard copies and one (1) electronic copy in pdf format on compact disc of your Proposal to the Developer's designated RFQ representatives listed below no later than 3:00 pm Eastern Time on Monday, May 4, 2009:

Mr. Matthew Barry
Hines
1672 Drexel Avenue
Miami Beach, Florida 33139
(305) 535-6284
matthew.barry@hines.com

Thirteen (13) Copies and One (1) CD

Mr. Jerry Lea
Hines
2800 Post Oak Boulevard, 48th Floor
Houston, Texas 77056

Two (2) Copies

Should you have any questions concerning the Project or this submission, please call Mr. Matthew Barry at (305) 535-6284.

V. PROPOSAL ACCEPTANCE

The Developer reserves the right to reject any or all proposals received under this Request for Qualifications, and is under no obligation to any of the prospective Landscape Architect or their Consultants as a result of this Request for Qualifications process. Upon review of the proposals, the Developer may elect to enter into negotiations with one or more respondents for one or more components of the various services described herein.

VI. OTHER

You will receive no reimbursement for your expenses in preparing this qualifications information, or travel expenses if you choose to visit the site or if Developer requests you to provide additional written or oral presentation. The Developer is under no obligation to accept your proposal and specifically reserves the right to reject it for any reason.

All materials and documents submitted hereunder shall become the sole property of the Developer and the Developer may use and disclose as the Developer may deem necessary or reasonable.

A response to this RFQ shall not be construed as a contract nor indicate a commitment of any kind on the part of the Developer. The Developer reserves the right to reject any or all responses to this RFQ, or to accept any response deemed to be in the Developer's best interest.

You should be aware that this Project is being developed in conjunction with the City of Miami Beach, Florida. The City of Miami Beach is a municipal corporation of the State of Florida and is subject to the Public Records laws of the State. Any documents provided by Developer to the City of Miami Beach, which may include any and/or all documents that you provide, are subject to Florida's broad public records laws and must be provided to any person upon request.

End of Request for Qualifications

Attachment A

EVALUATION and SELECTION PROCESS

The procedure for RFQ response evaluation and selection is as follows:

1. Request for Qualifications issued.
2. Receipt of responses.
3. Opening of responses and determination if they meet the minimum standards of responsiveness.
4. An Evaluation Committee, consisting of three (3) members appointed by Developer and three (3) members appointed by the City Manager, shall meet to evaluate each response in accordance with the requirements of this RFQ. If further information is desired, Landscape Architect may be requested to make additional written submissions or oral presentations to the Evaluation Committee.
5. The Evaluation Committee will recommend the short list of Landscape Architects to receive RFP that Evaluation Committee deems to be in the best interest of the City and Developer.

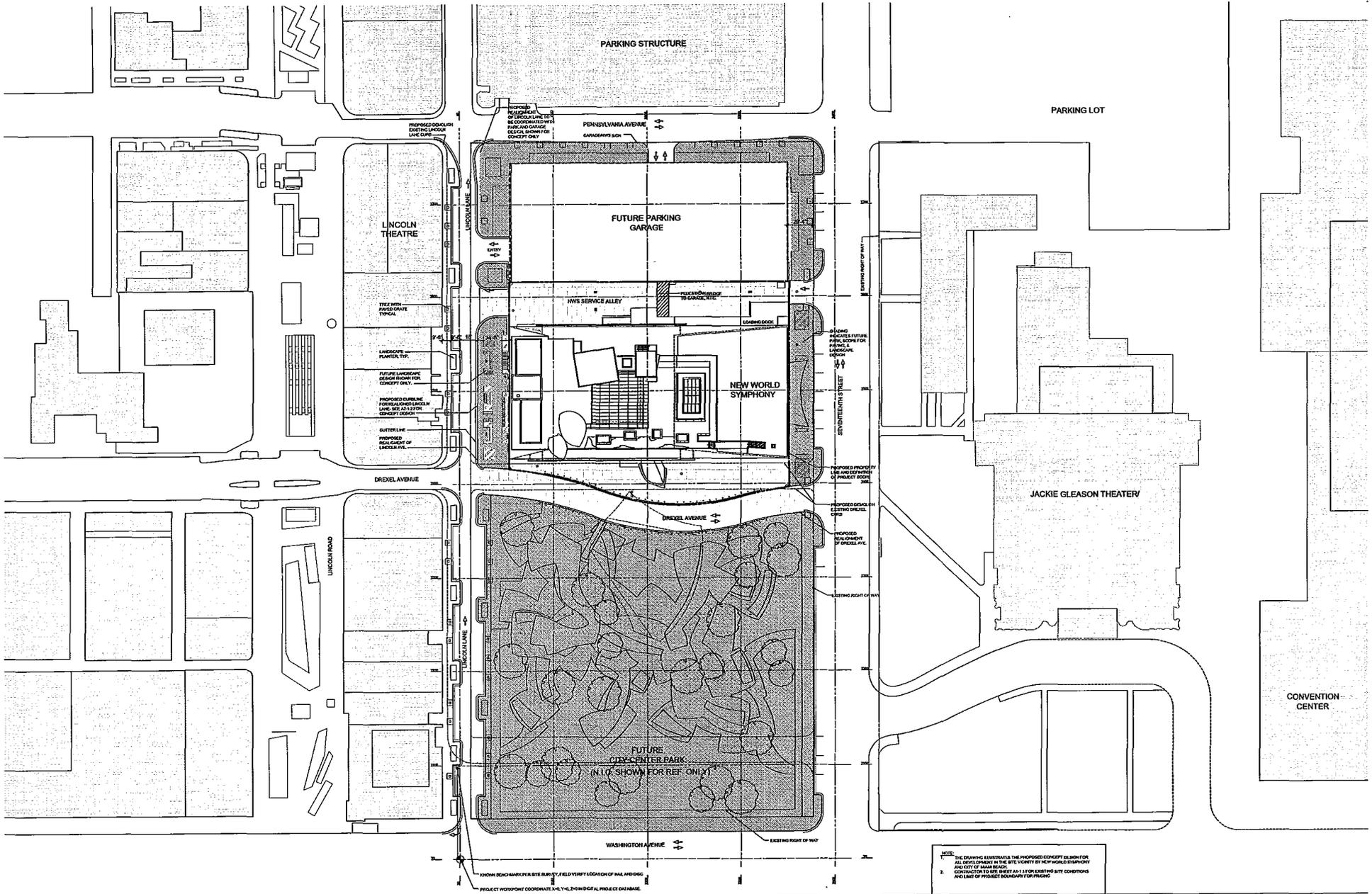
THE EVALUATION COMMITTEE SHALL BASE ITS RECOMMENDATIONS ON THE FOLLOWING FACTORS:

- A. The experience, qualifications and similar projects of the Principal in Charge (**15 points**).
- B. The experience, qualifications and similar projects of the Firm (**10 points**).
- C. The experience, qualifications and portfolio of similar projects of the Project Manager, as well as his/her familiarity with this project and a thorough understanding of the methodology and design approach to be used in this assignment (**20 points**). The experience and qualifications of the professional personnel assigned to the Project Team, as well as their familiarity with this project and a thorough understanding of the methodology and design approach to be used in this assignment (**10 points**).
- D. Risk Assessment Plan that reflects a clear understanding of project objectives; familiarity with the project site; a thorough understanding of all permitting and regulatory requirements and impacts; and other considerations that may impact the design and construction of the proposed improvements and client expectations (**20 points**).
- E. Ability to meet schedule and budget requirements as demonstrated by past performance on similar projects (**5 points**).
- F. Location of Headquarters of Applicant (**5 points**).
- G. Recent, current, and projected workloads of the Firms (**5 points**).
- H. The volume of work previously awarded to each Firm by the City (**5 points**).

Attachment B

Site Plan

Sheet A1-1.2 Proposed Future Vicinity Plan dated June 20, 2007



NOTE:
 1. THE DRAWING ILLUSTRATES THE PROPOSED CONCEPT DESIGN FOR ALL DEVELOPMENT IN THE SITE VICINITY BY NEW WORLD SYMPHONY AND CITY OF MIAMI BEACH.
 2. CONTRACTORS TO BE SEEN AS A PART OF THE SITE CONDITIONS AND LIMIT OF PROJECT BOUNDARY FOR PROGRAM.

GEHRY PARTNERS, LLP.
 ARCHITECT
 1300 BAY STREET
 MIAMI, FLORIDA 33131
 TEL: 305-441-3000 FAX: 305-443-3008

CELANESE, HURRAY, STEFICK LLP
 ARCHITECT
 1000 BAY STREET, 5TH FLOOR
 MIAMI, FLORIDA 33131
 TEL: (305) 561-0000 FAX: (305) 437-9878

THEATRE PROJECTS CONSULTANTS
 ARCHITECTS
 2000 BAY STREET, 5TH FLOOR
 MIAMI, FLORIDA 33131
 TEL: (305) 299-5000 FAX: (305) 299-5000

COOKPETER & ASSOCIATES (CA)
 ARCHITECTS
 1000 BAY STREET, 5TH FLOOR
 MIAMI, FLORIDA 33131
 TEL: (305) 441-3000 FAX: (305) 443-3008

LEACH-GATES INC.
 ARCHITECTS
 1000 BAY STREET, 5TH FLOOR
 MIAMI, FLORIDA 33131
 TEL: (305) 441-3000 FAX: (305) 443-3008

NEW WORLD SYMPHONY CAMPUS EXPANSION
 1872 DREXEL AVENUE
 MIAMI BEACH, FL 33139
 USA
 TEL: (305) 873-3330 FAX: (305) 873-6749
 WEBSITE: <http://www.nws.org>

| NO. | DATE | DESCRIPTION | BY | CHKD BY |
|-----|---------|-----------------|----|---------|
| 11 | 1/20/07 | BUILDING PERMIT | | |
| 12 | 1/20/07 | CD PROGRESS | | |
| 13 | 1/20/07 | CDP | | |
| 14 | | | | |
| 15 | | | | |
| 16 | | | | |
| 17 | | | | |
| 18 | | | | |
| 19 | | | | |
| 20 | | | | |

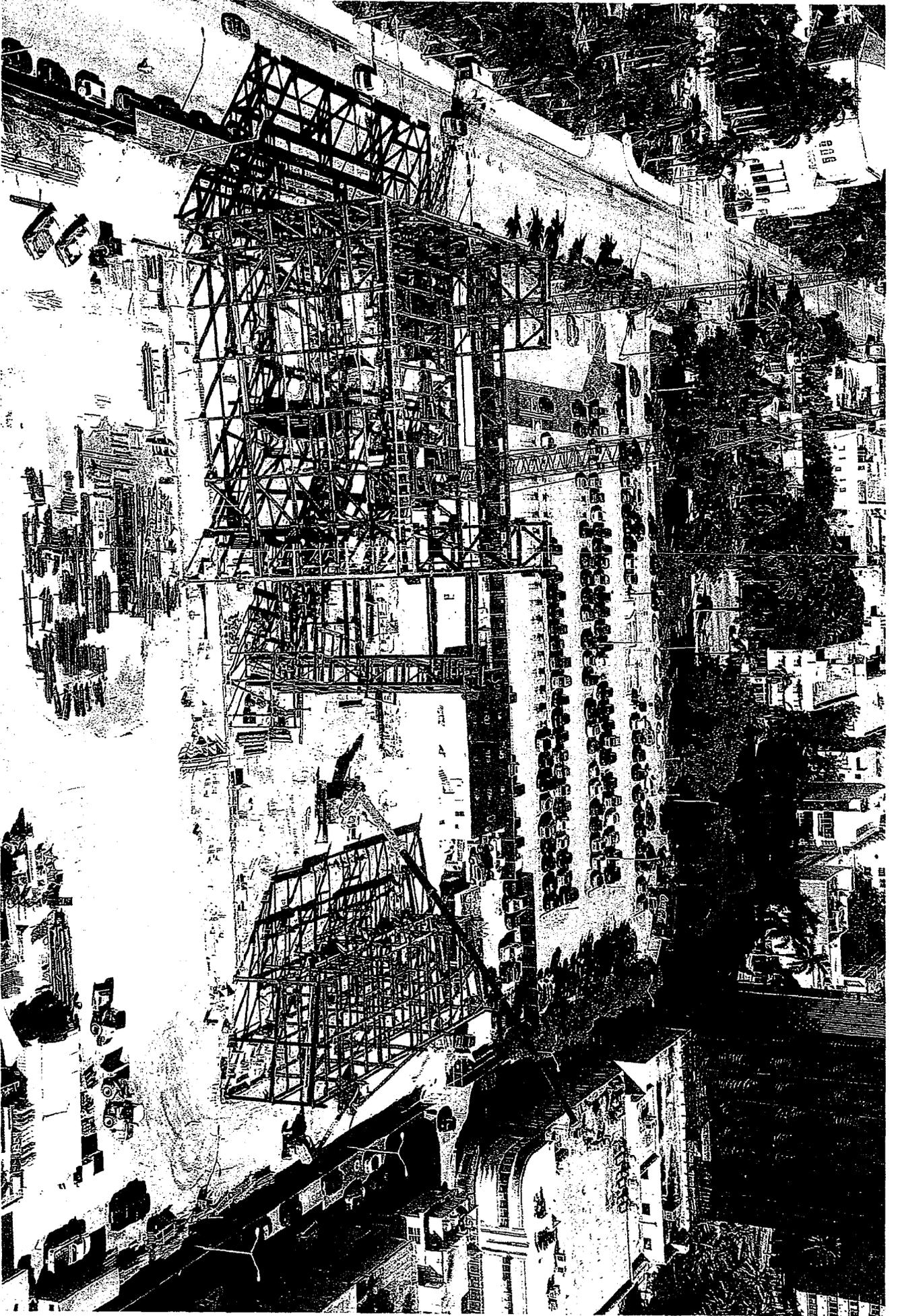
PROPOSED FUTURE VICINITY PLAN
 FOR REFERENCE ONLY

PROJECT NUMBER: 2003005
SCALE: 1/8"=1'-0"
DATE: June 20, 2007
ISSUE 15 GMP
PROJECT NAME: A1-1.2
 SHEET NUMBER: 30' x 42'
 © 2007 PARSONS LLP

Attachment C

Site Aerial Photographs

Two (2) pages Smith Aerial Photos dated November 3, 2008

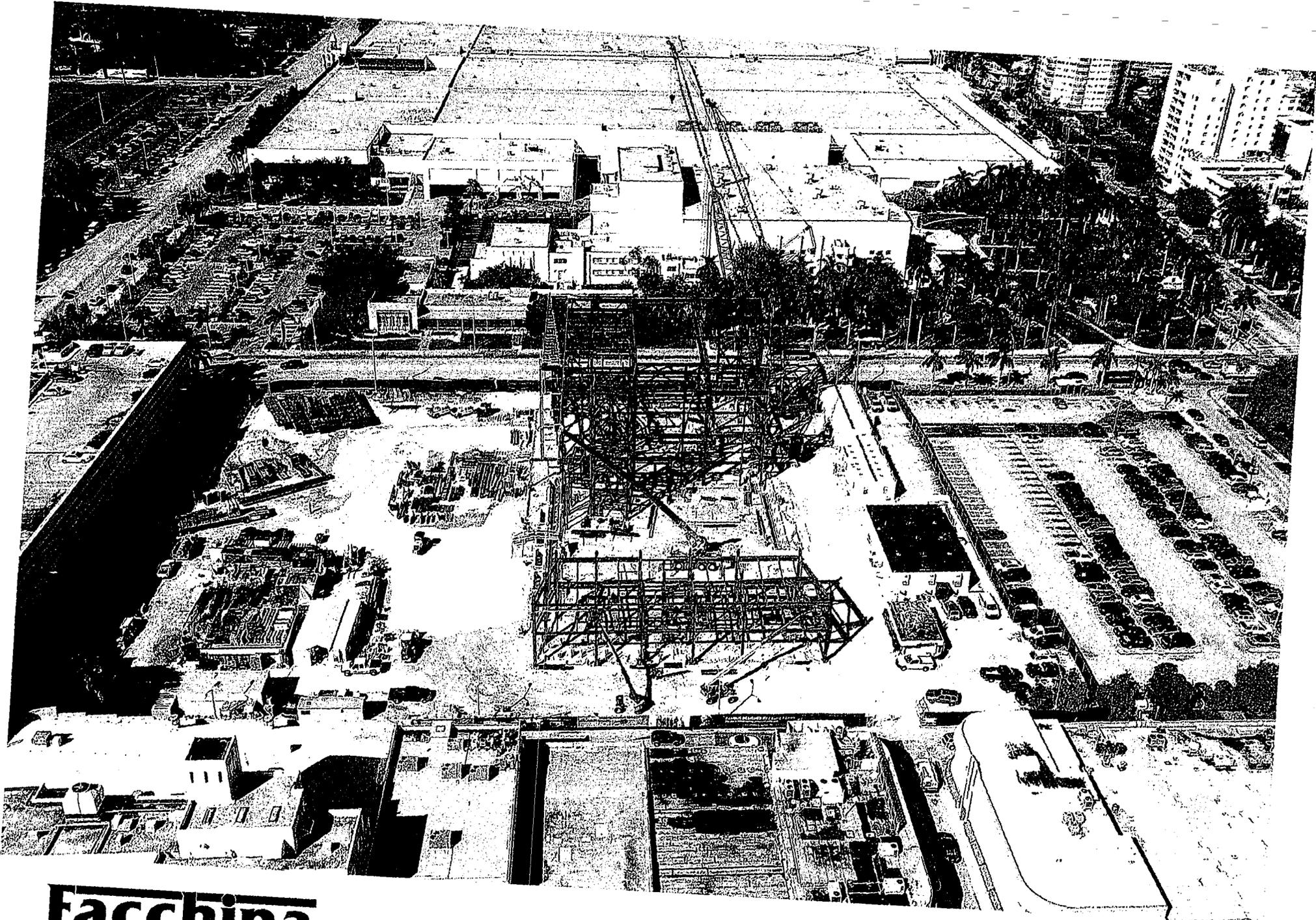


Facchina
CONSTRUCTION OF FLORIDA, L.L.C.

New World Symphony

SMITH
AERIAL
PHOTOS

11-03-08



Facchina
CONSTRUCTION OF FLORIDA, L.L.C.

New World Symphony

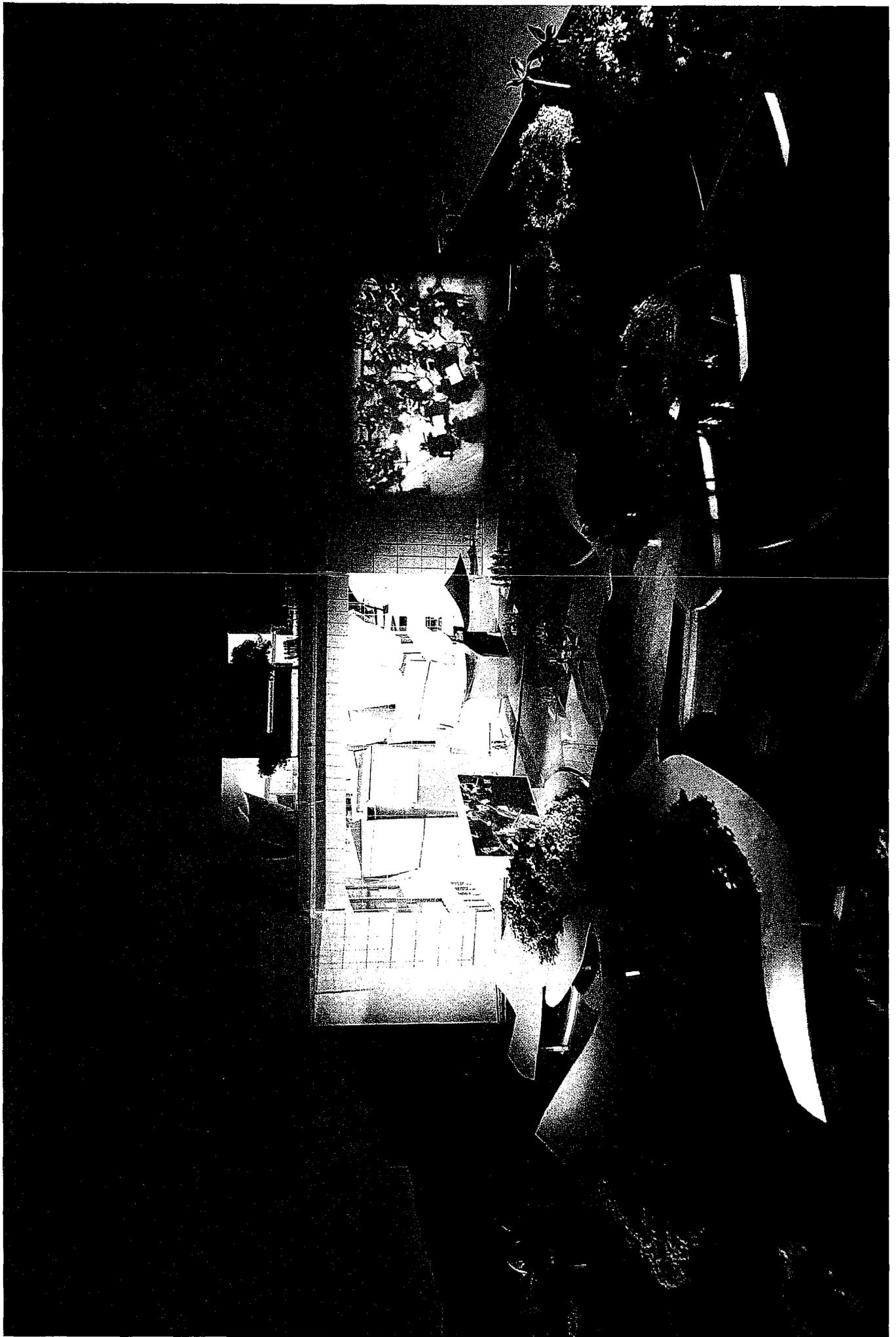
SMITH
AERIAL
PHOTOS

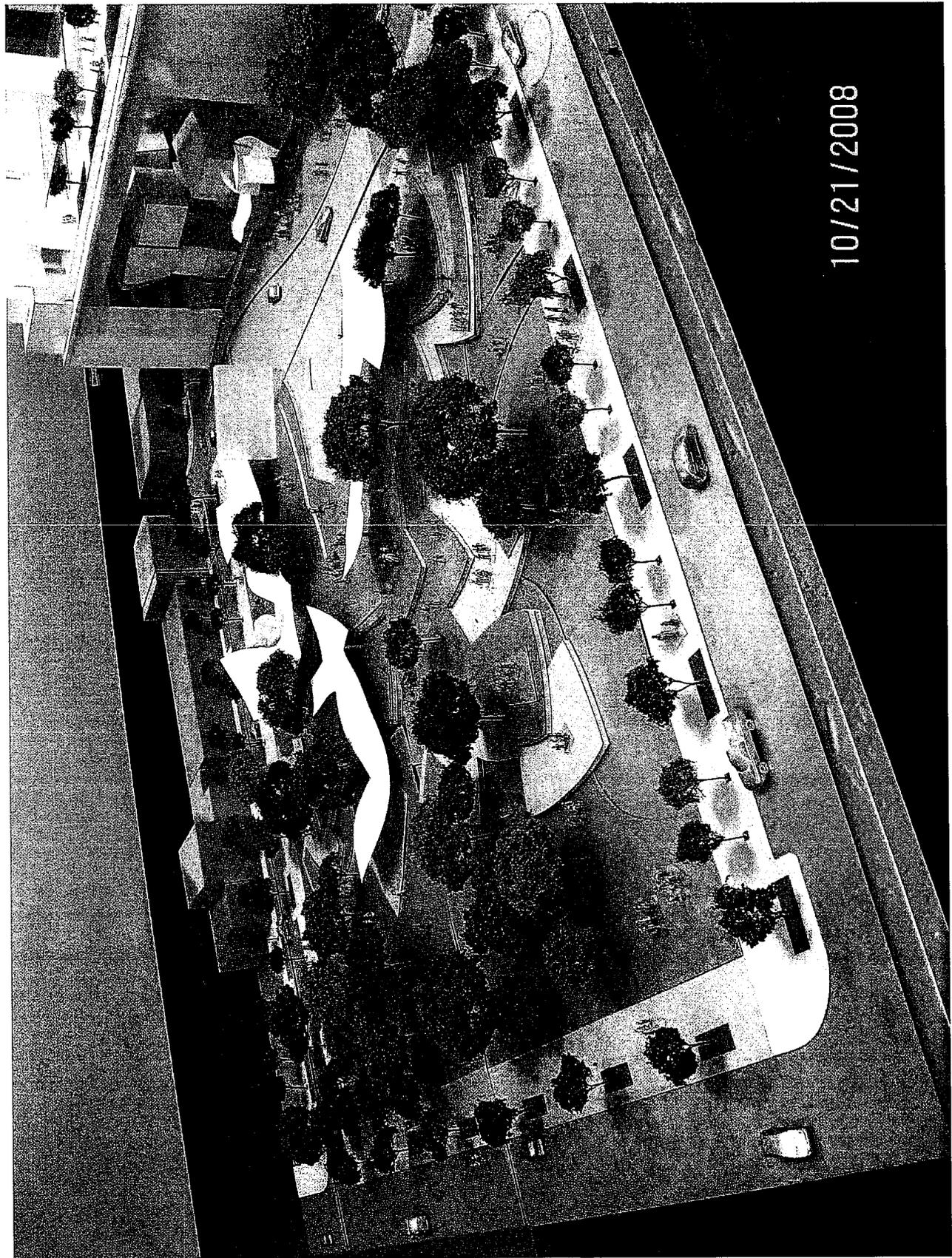
11-03-08

Attachment D

Model Pictures

Two (2) pages





10/21/2008

Attachment E

Regulatory Process

The following reviews and approvals may be required as a part of the approval process for the Lincoln Park design:

1. Project Kick-Off Meeting with the Developer and the City of Miami Beach (“City”).
2. Project Reconnaissance Visit(s) with the Developer and the City.
3. Visioning Session(s) with the Developer and the City to Review Park Concepts.
4. Development of Design Concept Alternatives with an estimate of probable costs for each Design Concept.
5. Review Meeting Prior to Community Design Workshops.
6. One (1) or Two (2) Community Design Workshops with public notice and public participation.
7. After Each Community Design Workshop, Meetings with the City to review public comments.
8. Submission of a draft Basis of Design Report (BODR) to the Developer and the City.
9. Review of BODR with City Departments and Divisions.
10. Submission of and Presentation of the BODR to the City Commission and City Approval.
11. City Design Review Board (DRB) Submission, Presentation and Approval.
12. After DRB Approval, Submission of 50% (preliminary) Plans and Specifications to the Developer and the City for Review and Approval.
13. Submission of 50% (Contract Documents), Plans and Specifications, to Utility Companies and obtain Approval from Utility Companies.
14. Submission of 75% Contract Documents (Plans and Specifications and other Bid Documents) to the Developer and the City for Review and Approval.
15. Submission of Final Contract Documents to the City Commission and or appropriate Committee for Approval.
16. Submission of Final Contract Documents to the City for the necessary Building Permit(s).

A City Building Permit Will Require Approval From but not limited to, the following Jurisdictional Regulatory Agencies:

- a. City Building Section
- b. City Electrical Section
- c. City Plumbing Section
- d. City Mechanical Section
- e. City Fire Section
- f. City Fire Marshal
- g. City Engineering Section
- h. City Accessibility Section
- i. City Structural Section
- j. City Zoning (and Planning Department)
- k. City Public Works Department/Miami-Dade County Public Works Department-Traffic Engineering Division (off-site impacts & pavement markings and signage only)
- l. City Concurrency Approval
- m. Miami-Dade County Water and Sewer Department (M-DWASD)
- n. Miami-Dade County Department of Environmental Resources (DERM) Paving & Drainage
- o. Miami-Dade County DERM Pollution
- p. Miami-Dade County DERM Asbestos (Does the City have a report that asbestos exist on this site?)

- q. Miami-Dade County DERM Tree Section including Tree Relocation Plan
 - r. Miami-Dade County DERM Sewer (Sewer Estoppel Notice)
 - s. State of Florida/Miami-Dade County Health Department
17. Assistance to the City in bidding and award services The selected Firm shall assist City in bidding and award of the contract. Such assistance shall include facilitating reviews of its contract documents with applicable Procurement, Risk Management, and Legal Department representatives. In addition, the selected Firm shall furnish camera ready contract documents for reproduction and distribution by the City, attend pre-bid conferences, assist with the preparation of necessary addenda, attend the bid opening, and assist with the bid evaluation and recommendation of award by the City. The selected Firm shall provide “As-Bid” documents for use during construction.
18. Certificate of Occupancy

**NEW WORLD SYMPHONY
Project Budget - GARAGE
January 19, 2007**

| | | Proposed Budget 11/18/2006 | Costs Spent Through | % Spent | Balance to Complete on Proposed Budget |
|--|---|---|--------------------------------|--------------------|---|
| 31-110-2 | Design Architect Fees - Gehry Partners | \$600,000 | | | \$600,000 |
| 31-110-Z | Design Architect Reimbursables | \$100,000 | | | \$100,000 |
| 31-110-5 | Design Architects Fees - Add'l Services | | | | \$0 |
| 31-210-1 | Structural Engineer Fees - GMS | \$100,000 | | | \$100,000 |
| 31-210-Z | Structural Engineer Reimbursables | \$15,000 | | | \$15,000 |
| 31-210-5 | Structural Engineer - Add'l Services | | | | \$0 |
| 31-220-1 | Mechanical Engineer Fees - Cosentini | \$40,000 | | | \$40,000 |
| 31-220-5 | Mechanical Engineer Fees - Add'l Services | | | | \$0 |
| 31-220-Z | Mechanical Engineer Reimbursables | \$15,000 | | | \$15,000 |
| 31-230-1 | Civil Engineer Fees | \$75,000 | | | \$75,000 |
| 31-230-5 | Civil Engineer - Add'l Services | | | | \$0 |
| 31-230-Z | Civil Engineer Reimbursables | \$5,000 | | | \$5,000 |
| 31-240-1 | Survey Engineering | \$15,000 | | | \$15,000 |
| 31-240-Z | Survey Engineering Reimbursables | \$2,000 | | | \$2,000 |
| 31-250-1 | Geotechnical Engineer Fees - ECS | \$15,000 | | | \$15,000 |
| 31-250-Z | Geotechnical Engineer Reimbursables | \$2,000 | | | \$2,000 |
| 31-250-5 | Geotechnical Engineer Add'l Services | | | | \$0 |
| 31-260-1 | Materials Testing | \$50,000 | | | \$50,000 |
| 31-260-Z | Materials Testing Reimbursables | \$5,000 | | | \$5,000 |
| 31-265-1 | Special Inspections | \$20,000 | | | \$20,000 |
| 31-320-1 | Elevator Consultants | \$35,000 | | | \$35,000 |
| 31-320-Z | Elevator Consultants Reimbursables | \$7,000 | | | \$7,000 |
| 31-320-A | Elevator Consultants - Add'l Services | | | | \$0 |
| 31-330-1 | Parking Consultants | \$75,000 | | | \$75,000 |
| 31-330-5 | Parking Consultants - Add'l Services | | | | \$0 |
| 31-330-Z | Parking Consultants Reimbursables | \$15,000 | | | \$15,000 |
| 31-340-1 | Traffic Survey Consultants | \$30,000 | | | \$30,000 |
| 31-340-Z | Traffic Survey Consultants Reimbursables | \$10,000 | | | \$10,000 |
| 31-390-1 | Threshold Inspector | \$100,000 | | | \$100,000 |
| 31-390-Z | Threshold Inspector Reimbursables | \$10,000 | | | \$10,000 |
| 31-400-1 | Other Miscellaneous Consultants | \$30,000 | | | \$30,000 |
| 31-440-1 | Blueprints/Reproduction | \$40,000 | | | \$40,000 |
| 31-470-1 | Models/Mockups | | | | \$0 |
| 31-475-1 | Design Contingency | \$100,000 | | | \$100,000 |
| TOTAL ARCH & ENGINEERING COST | | \$1,511,000 | | | \$1,511,000 |
| 32-100 | Construction Costs for Garage (\$60.00 per sf) | \$11,856,000 | | | \$11,856,000 |
| | Construction Costs for Retail | \$250,000 | | | \$250,000 |
| TOTAL CONSTRUCTION COST | | \$12,106,000 | | | \$12,106,000 |
| 32-500-1 | Construction Contingency (3%) | \$363,180 | | | \$363,180 |
| 32-600-1 | Utility Relocation - FP&L Vaults | \$287,500 | | | \$287,500 |
| TOTAL SITE COST | | \$650,680 | | | \$650,680 |
| 34-200-1 | Builder's Risk Insurance (Included in construction costs) | | | | \$0 |
| 34-300-1 | City of Miami Beach Building Permits (.863%) | \$104,475 | | | \$104,475 |
| 34-305-1 | Utility Tap Fees/Service Charges (.27%) | \$32,686 | | | \$32,686 |
| 34-320-1 | Impact Fees (Concurrency Fees) (.324%) | \$39,223 | | | \$39,223 |
| 34-325-1 | Road Impact Fees (.324%) | \$39,223 | | | \$39,223 |
| 34-330-1 | Public Space Art Fee | | | | \$0 |
| TOTAL TAX & INSURANCE COST | | \$215,608 | | | \$215,608 |

**NEW WORLD SYMPHONY
Project Budget - GARAGE
January 19, 2007**

| | Proposed Budget 11/18/2006 | Costs Spent Through | % Spent | Balance to Complete on Proposed Budget |
|---------------------------------------|--|---------------------|---------|--|
| 36-250-1 | Audit Costs (assume no cost to project) | | | \$0 |
| 36-320-1 | Legal Fees (assume no cost to project) | | | \$0 |
| 36-330-1 | Owner's Liability Insurance (assumed no cost to project) | | | \$0 |
| 36-380-1 | City Travel & Meeting Expenses | \$10,000 | | \$10,000 |
| TOTAL OWNER EXPENSES | | \$10,000 | | \$10,000 |
| 38-230-1 | Project Development Fee | \$149,560 | | \$149,560 |
| 38-320-Z | Project Travel and Reimbursable | \$39,749 | | \$39,749 |
| 38-230-2 | Incentive Fees | \$25,000 | | \$25,000 |
| 38-240-1 | Direct Payroll Expenses (DPE) | \$332,356 | | \$332,356 |
| 38-240-2 | Supplies | \$6,242 | | \$6,242 |
| 38-240-3 | Telephone/Postage/Deliveries | \$7,808 | | \$7,808 |
| 38-240-4 | Reproductions | \$3,000 | | \$3,000 |
| 38-240-5 | IT Services | \$5,042 | | \$5,042 |
| 38-240-6 | Office Furniture and Equipment | | | \$0 |
| 38-240-7 | Office Rent | | | \$0 |
| 38-240-8 | Office Buildout | | | \$0 |
| TOTAL GENERAL & ADMIN COST | | \$568,755 | | \$568,755 |
| 39-110-1 | Project Contingency (3%) NIC Construction and A&E | \$32,456 | | \$32,456 |
| TOTAL CONTINGENCY COST | | \$32,456 | | \$32,456 |
| TOTAL PROJECT COSTS | | | | \$15,094,499 |

City Proposed Total Garage Budget **\$15,210,135**

| | |
|---|-------------------|
| Assume 4,000 sf of retail space @ | |
| - Curtainwall 165' x 12' x \$65.00 | \$ 128,700 |
| - Separation Block Wall 225' x 12' x \$18.00 | \$ 48,600 |
| - Plumbing and Electrical | \$ 40,000 |
| - Fire Sprinklers 4,000 x \$3.50 | \$ 14,000 |
| Total upgrade for retail | \$ 231,300 |
| | |
| Assume 325 sf per parking space with 608 spaces | 197,600 s.f. |
| Construction costs run \$55.00 - \$65.00 per sf | |