



# MIAMIBEACH

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

## COMMITTEE MEMORANDUM

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

FROM: City Manager Jorge M. Gonzalez

DATE: May 20, 2010

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for May 20, 2010, at 3:30 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

### OLD BUSINESS

### NEW BUSINESS

**1. Discussion Item: Update on Revenue Parking Bonds**

Patricia Walker — Chief Financial Officer

**2. Discussion regarding a Lease Agreement between the City and Rubin & Bickman, PLLC, for use of 1,515 sf of City-owned property located at 1130 Washington Avenue, 4th Floor**

Anna Parekh – Director of Real Estate Housing and Community Development

**3. Discussion regarding a Lease Agreement between the City and Strang Adams, P.A., for the use of 858 sf of City-owned property located at 1130 Washington Avenue, 3rd Floor East**

Anna Parekh – Director of Real Estate Housing and Community Development

**4. Review and discuss an amendment to the code of The City of Miami Beach; Amending Chapter 82, "Public Property," Article II "Sale or Lease of Public Property," Sections 82-36 through 82-40, Amending the procedures for sale or lease of City Property**

Raul Aguila – Deputy City Attorney

**Finance and Citywide Projects Committee Meetings for 2010:**

**June 3, 2010**

**July 1, 2010**

**July 6, 2010**

**July 7, 2010**

**July 8, 2010**

**July 29, 2010**

**September 30, 2010**

**October 26, 2010**

**November 15, 2010**

**December 16, 2010**

JMG/PDW/rs/th

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Cc. Mayor and Members of the City Commission  
Management Team

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**Discussion Item**

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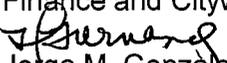


# MIAMI BEACH

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

## COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM:   
Jorge M. Gonzalez, City Manager

DATE: May 20, 2010

SUBJECT: **DISCUSSION REGARDING A LEASE AGREEMENT WITH RUBIN & BICKMAN, PLLC, FOR USE OF THE 4<sup>TH</sup> FLOOR OF HISTORIC CITY HALL**

### **BACKGROUND**

At the October 21, 2008 meeting of the Finance & Citywide Projects Committee (F&CPC), and subsequently at their meeting of March 10, 2009, and following a comprehensive review of the City's office space use, it was determined that Historic City Hall would not be fully re-occupied by City offices, resulting in leasable space availability for non-City uses. The Committee directed the Administration to advertise and market the available leasable space, a total of approximately 14,194 square feet, including the ground floor, but exclusive of the second floor space utilized by the Clerk of the Courts.

At the meeting, the Committee also approved the Administration's recommendation that the process of developing lease agreements based on supply and demand be utilized for the leasing and occupancy of these available spaces, and that any future commercial leases (including renewals and/or extensions) for use of space at Historic City Hall be handled as it is in the private sector and not through a competitive bid process, with the Administration ensuring that market rates are negotiated and operating expenses included. All leases would continue to require City Commission approval per City Code.

Staff marketed the location using typical real estate marketing tools. However, based on the fluctuations of the real estate market in this economic environment, the City requested an appraisal, which was performed by Bondarenko & Associates, Inc. to determine the market rent value; with a revised appraisal provided on July 7, 2009 to reflect changing conditions. The resulting market rental rates of \$25-\$30 PSF were determined to be based on gross rent, full service. The \$25 PSF market rent for floors 1 – 7 was set as an average, with a premium for the 8<sup>th</sup> Floor penthouse set at \$30 PSF. The highest and best use for the entire building was deemed to be "office", with the notation that the ground floor potential use as retail commercial is not practical due to the restrictions of the historic designation of the building.

On May 12, 2010, the Mayor and City Commission adopted Resolution No. 2010-27395, approving the proposed lease agreement (attached hereto) on first reading; setting a public hearing on June 9, 2010, for second reading (and final approval) of the lease agreement; and forwarded the proposed lease agreement to the F&CPC for discussion.

### **REVIEW PROCESS - LEASES**

The Administration typically requests that the majority of proposed leases be reviewed by the F&CPC prior to first reading by the City Commission. Historically, the lease approval process included the following four (4) steps:

- 1) Referral of the lease discussion item to the F&CPC by the City Commission;
- 2) Discussion of the proposed lease by the F&CPC;
- 3) Approval, on first reading, of the proposed lease and setting of a public hearing;
- 4) Approval, on second reading, of the lease following a duly notice public hearing.

Steps 1 and 2 above, while not mandatory pursuant to the Shapiro Ordinance, were deemed appropriate and prudent especially when applied to those leases where the proposed Rent (Base Rent and/or Additional Rent) was symbolic (\$1.00 per year as is the case with most not-for-profits), thus providing the Administration with the F&CPC's direction with regard to the "public benefit component" and "benchmark" terms to be included in the lease to offset the below market rates. The application of steps 1 and 2 above to all commercial leases paying average market rates may have a detrimental effect on the City's ability to remain competitive with the private sector in the current economic market.

For example, a four (4) month delay in obtaining approval of a lease is not typical in the commercial real estate market. Lessees that require new space because they are at the end of a current lease often cannot wait four months after the conclusion of negotiations (which in itself may take some time) to obtain approval, move-out and move-in. If the delay results in additional expenses to remain in their leased space, then these potential lessees may pursue other, competitive options.

The proposed tenants, Rubin & Bickman, were vacating existing space and required a move-in as soon as possible. As the lease terms were comparable to lease terms previously approved for other tenants of the building, and consistent with prior direction, the item was placed directly for first reading consideration.

### **PROPOSED LEASE**

On April 16, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with a Letter of Intent (LOI) on behalf of Rubin & Bickman, a South Florida law firm, who expressed an interest in the 4<sup>th</sup> floor that is currently vacant and available. Koniver Stern recommended that the City consider the proposed lease terms based on the City's ability to secure a viable tenant during this economic time, and at a competitive PSF rate. This rate reflects the location of the floor at a lower level with limited views.

A summary of the proposed lease terms are as follows:

**TENANT:** Rubin & Bickman, PLLC, a Florida limited liability company.

**DEMISED PREMISES:** 1,518 SF on the 4<sup>th</sup> Floor of Historic City Hall, located at 1130 Washington Avenue.

**TERM:** Initial term of three (3) years and twenty one (21) days, with two (2) additional three (3) year renewal options, at the City's sole discretion.

**LEASE COMMENCEMENT DATE:** June 10, 2010.

**RENT COMMENCEMENT DATE:** October 1, 2010.

**RENT:** \$22.50 PSF; \$34,155.00 annually;

**BASE RENT:** \$14,861.22 annually, payable in monthly installments of \$1,238.43. Base Rent (excludes Operating Expenses, Property Taxes and

Insurance) shall be increased annually, on the anniversary of the Commencement Date, in increments of three (3%) percent per year.

**ADDITIONAL RENT:** \$19,293.78 annually, payable in monthly installments of \$1,607.82. Any increase in Operating Expenses and Insurance will result in an increase to Tenant's proportionate share.

**PARKING:** Tenant may request, from the City's Parking Department, the use of no more than four (4) parking spaces. Rates for said spaces are subject to change, and are currently \$70 per month plus applicable sales tax.

**SECURITY DEPOSIT:** Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of \$5,692.50 (equal to two months Rent and Additional Rent costs).

**USES:** The Demised Premises shall be used by the Tenant as office for providing legal services. The Demised Premises shall be open a minimum of five days a week (Monday-Friday) from 9:00AM to 5:00PM.

**IMPROVEMENTS:** No significant improvement and/or build-out are anticipated.

**INSURANCE:** Tenant shall comply with the following insurance requirements throughout the Term:

Comprehensive General Liability in the minimum amount of \$1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach must be named as additional insured parties on this policy, subject to adjustment for inflation.

Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant, subject to adjustment for inflation.

**PROPERTY TAXES:** Property taxes for Property Tax Year 2009 are estimated at Zero Dollars (\$0.00). Notwithstanding, the City makes no warranty or representation, that the Historic City Hall building, the Land, and/or the proposed lease premises will not be subject to ad valorem (or other) taxes in subsequent years. In the event Miami-Dade County assesses the property, Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be payable by Tenant immediately upon receipt of notice from the City.

Tax Stop.

Notwithstanding the preceding, in the event the property is subject to Miami-Dade County property taxes, the City shall be responsible for payment of the

Property Tax Payment up to an amount not to exceed Three Dollars (\$3.00) per square foot (Tax Stop Amount), with Tenant to be responsible for anything in excess of that amount. Tenant shall promptly reimburse the City for its portion of the Property Tax Payment (if any) upon receipt of the City's invoice for same.

**UTILITIES:** Tenant retains sole responsibility for all utilities (not included as part of Operating Expenses) including janitorial, internet and telephone services.

**MAINTENANCE AND REPAIR:** Tenant shall be responsible for day-to-day maintenance and repairs of the Demised Premises, including, without limitation, all fixtures, appurtenances, equipment and furnishings.

**CONCLUSION**

The proposed lease terms are within the range of comparable spaces in the area, and reflect the current economic reality. This tenant's use is consistent with the uses envisioned for Historic City Hall. Given the economic environment that has produced a high inventory of vacant office space in the 33139 zip code, the Administration recommends that a lease agreement with Rubin & Bickman, PLLC, for use of the 4<sup>th</sup> Floor with the proposed terms, as delineated herein, be approved.

Should the City Commission approve this lease, and the lease for use of the remaining portion of the 3<sup>rd</sup> Floor, which is also on this agenda, only the 5<sup>th</sup> Floor of Historic City Hall will remain available for lease.

JMG/HMF/AP/RR

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 9<sup>th</sup> day of June, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **RUBIN & BICKMAN, PLLC**, a Florida limited liability company, (hereinafter referred to as "Tenant").

1. Demised Premises.

The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

Approximately 1,518 square feet of City-owned property (the "Building" a.k.a. "Historic City Hall"), located at 1130 Washington Avenue, 4<sup>th</sup> Floor, Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

- 2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of three (3) years and twenty one (21) days, commencing on the 10<sup>th</sup> day of June, 2010 (the "Commencement Date"), and ending on the 30<sup>th</sup> day of June, 2013. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1<sup>st</sup> day of July, and ending on the 30<sup>th</sup> day of June.
- 2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for two (2) additional three (3) year renewal terms. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Lease Agreement (upon expiration of the initial term or any renewal term), the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.

3. Rent.

Tenant's payment of Rent, as defined in this Section 3, shall commence on October 1, 2010 (the "Rent Commencement Date") and, thereafter, on each first day of subsequent months.

3.1 Base Rent:

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Fourteen Thousand Eight Hundred Sixty One Dollars and 22/100 (\$14,861.22) per year, payable in monthly installments of One Thousand Two Hundred Thirty Eight Dollars and 43/100 (\$1,238.43).

3.1.2 The Base Rent amount pursuant to this Section 3.1 shall be increased annually, on the anniversary of the Commencement Date of the Lease, in increments of three (3%) percent per year.

3.2 Additional Rent:

In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Operating Expenses:

Throughout the Term herein, the Operating Expenses for the Demised Premises shall be Sixteen Thousand Eight Hundred Nineteen Dollars and 44/100 (\$16,819.44) per year, payable in monthly installments of One Thousand Four Hundred One Dollars and 62/100 (\$1,401.62) per month, for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, electric service, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of

the Building, their employees, agents, servants, customers and other invitees.

"Common Facilities" shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

3.2.2 Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The Property Tax Payment for Property Tax Year 2009 is estimated at Zero Dollars (\$0.00). Notwithstanding the preceding sentence, the City makes no warranty or representation, whether express or implied, that the Historic City Hall building, the Land, and/or the Demised Premises will not be subject to ad valorem (or other) taxes in subsequent years.

3.2.3 Insurance:

The Additional Rent shall also include Tenant's pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of Two Hundred Six Dollars and 20/100 (\$206.20). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility.

3.3 Sales Taxes:

Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4 Enforcement.

Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.

All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach  
Revenue Manager  
1700 Convention Center Drive, 3<sup>rd</sup> Floor  
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.  
Tenant may request, from the City's Parking Department, the use of no more than four (4) parking spaces, if available, at Municipal Parking Garage G-2 located at the intersection of 12<sup>th</sup> Street and Drexel Avenue. Rates for said spaces are subject to change, and are currently Seventy Dollars (\$70.00) per month, plus applicable sales and use tax per space.
6. Security Deposit.  
Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Five Thousand Six Hundred Ninety Two Dollars and 50/100 (\$5,692.50). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the aforesaid, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

7. Use and Possession of Demised Premises.
  - 7.1 The Demised Premises shall be used by the Tenant as office space for providing legal services. Said Premises shall be open for operation a minimum of five (5) days a week, with minimum hours of operation being as follows:  

Monday - Friday:                      9:00 AM to 5:00 PM

Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.
  - 7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit

(nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

- 8.1 Tenant accepts the Demised Premises in their present "AS IS" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.
- 8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.
- 8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

- 9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.
- 9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.
- 9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

- 10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:
- 10.1.1 Comprehensive General Liability, in the minimum amount of One Million (\$1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.
- 10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
- 10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including

without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).

- 10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.
11. Property Taxes and Assessments.  
For the purposes of this Section and other provisions of this Agreement:
- 11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.
- 11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1<sup>st</sup> of each year.
- 11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.
- 11.4 Tax Stop.  
Notwithstanding the preceding Section 11.3, the City shall be responsible for payment of the Property Tax Payment up to an amount not to exceed Three Dollars (\$3.00) per square foot (Tax Stop Amount) with Tenant to be responsible for anything in excess of that amount. Tenant shall promptly reimburse the City for its portion of the Property Tax Payment (if any) upon

receipt of the City's invoice for same.

12. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

13. Operation, Maintenance and Repair.

- 13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Building, all heating/ventilation/air conditioning (HVAC) equipment servicing the Demised Premises, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

- 13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.
- 13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.
- 13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.

13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses). Tenant is solely responsible for, and shall promptly pay when due, all charges and impact fees for any and all utilities for the Demised Premises **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations. Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens. Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or

Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:

At the City's option, any of the following shall constitute an Event of Default under this Agreement:

18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due within fifteen (15) days of due date, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;

18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;

18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;

- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
  - 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
  - 18.1.6 Tenant shall become insolvent;
  - 18.1.7 Tenant shall make an assignment for benefit of creditors;
  - 18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
  - 18.1.9 The leasehold interest is levied on under execution.
19. Rights on Default.
- 19.1 Rights on Default:  
In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;
    - 19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.
    - 19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered,

construed and taken to be a debt provable in bankruptcy or receivership.

- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.
- 19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five (5) days from the due date. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the grace period.
- 19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.
- 19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by City:  
The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 Tenant's Rights on Default:  
If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 Tenant shall indemnify and save the City harmless from and against any and

all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

- 21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;
  - 21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;
  - 21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;
  - 21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.
- 21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.
22. Signs and Advertising.  
Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.
23. Effect of Conveyance.  
The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.
24. Damage to the Demised Premises.
- 24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as

possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenantable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

- 24.2 If the Demised Premises shall be rendered wholly untenantable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenantable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.
- 24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.
25. Quiet Enjoyment.  
Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.
26. Waiver.
- 26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.
- 26.2 A waiver of any term expressed herein shall not be implied by any neglect of

the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

- 26.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as Rent, unless such breach be expressly waived in writing by the City.

27. Notices.  
The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

LANDLORD: City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

With copy to: Director  
City of Miami Beach  
Office of Real Estate, Housing & Community Development  
1700 Convention Center Drive  
Miami Beach, Florida 33139

TENANT: Rubin & Bickman, PLLC  
1130 Washington Avenue, 4<sup>th</sup> Floor  
Miami Beach, Florida 33139

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

28. Entire and Binding Agreement.  
This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

29. Provisions Severable.  
If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

30. Captions.  
The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.
31. Number and Gender.  
Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.
32. Limitation of Liability.  
The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of \$10,000.00 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.
33. Surrender of the Demised Premises.  
Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.  
Time is of the essence in every particular and particularly where the obligation to pay money is involved.

35. Venue:  
This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

36. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

37. No Dangerous Materials.  
Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

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**IN WITNESS WHEREOF**, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest:

**CITY OF MIAMI BEACH, FLORIDA**

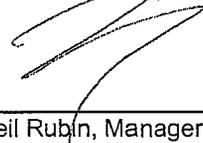
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Robert Parcher, CITY CLERK

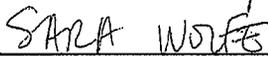
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Matti Herrera Bower, MAYOR

Attest:

**RUBIN & BICKMAN, PLLC**

  
\_\_\_\_\_  
WITNESS

  
\_\_\_\_\_  
Neil Rubin, Manager

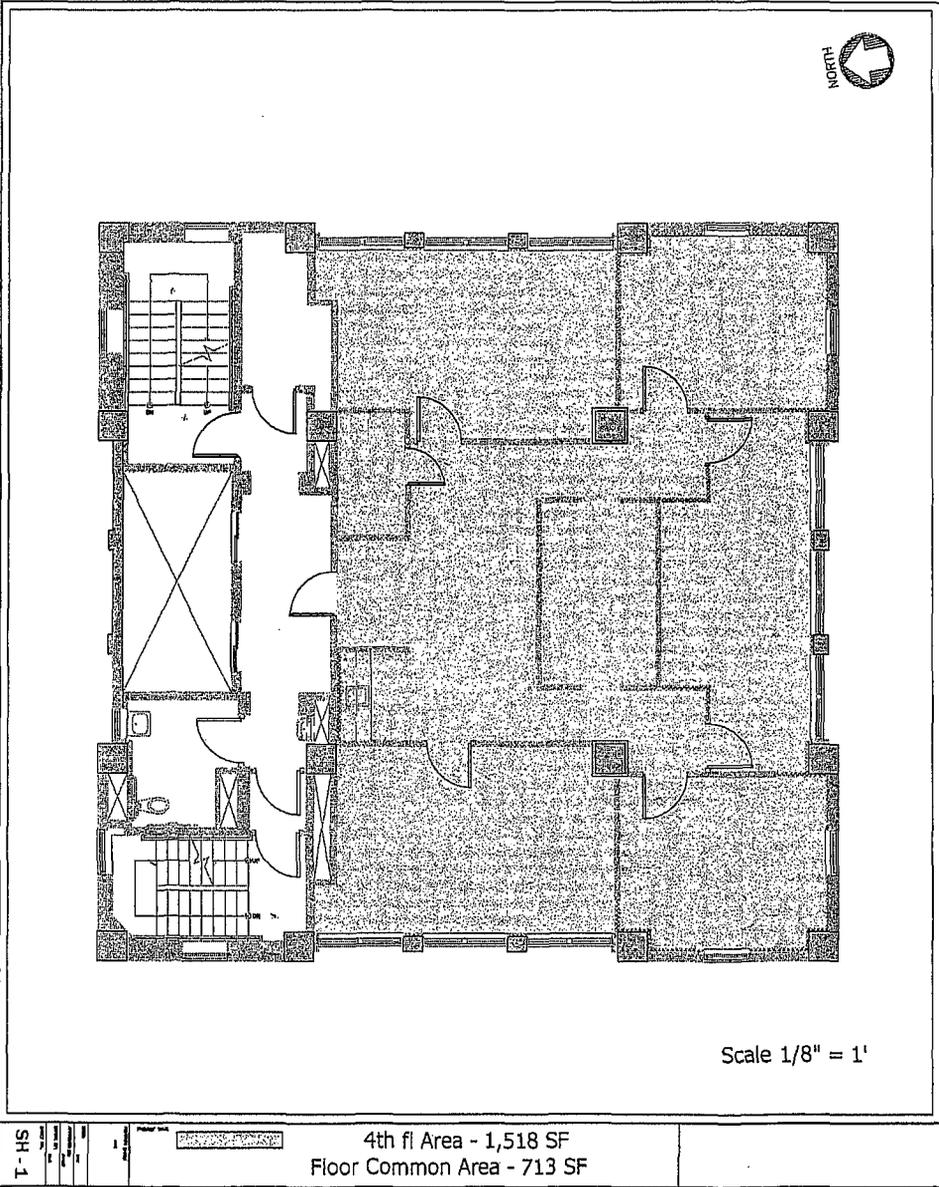
  
\_\_\_\_\_  
(PRINT NAME)

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

  
\_\_\_\_\_  
City Attorney

  
\_\_\_\_\_  
Date

**EXHIBIT 1**  
4<sup>th</sup> Floor



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# 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 Members

FROM:  Jorge M. Gonzalez, City Manager

DATE: May 20, 2010

SUBJECT: **DISCUSSION REGARDING A LEASE AGREEMENT WITH STRANG ADAMS, P.A.,  
FOR USE OF THE EAST PORTION OF THE 3<sup>RD</sup> FLOOR OF HISTORIC CITY HALL**

### BACKGROUND

At the October 21, 2008 meeting of the Finance & Citywide Projects Committee (F&CPC), and subsequently at their meeting of March 10, 2009, and following a comprehensive review of the City's office space use, it was determined that Historic City Hall would not be fully re-occupied by City offices, resulting in leasable space availability for non-City uses. The Committee directed the Administration to advertise and market the available leasable space, a total of approximately 14,194 square feet, including the ground floor, but exclusive of the second floor space utilized by the Clerk of the Courts.

At the meeting, the Committee also approved the Administration's recommendation that the process of developing lease agreements based on supply and demand be utilized for the leasing and occupancy of these available spaces, and that any future commercial leases (including renewals and/or extensions) for use of space at Historic City Hall be handled as it is in the private sector and not through a competitive bid process, with the Administration ensuring that market rates are negotiated and operating expenses included. All leases would continue to require City Commission approval per City Code.

Staff marketed the location using typical real estate marketing tools. However, based on the fluctuations of the real estate market in this economic environment, the City requested an appraisal, which was performed by Bondarenko & Associates, Inc. to determine the market rent value; with a revised appraisal provided on July 7, 2009 to reflect changing conditions. The resulting market rental rates of \$25-\$30 PSF were determined to be based on gross rent, full service. The \$25 PSF market rent for floors 1 – 7 was set as an average, with a premium for the 8<sup>th</sup> Floor penthouse set at \$30 PSF. The highest and best use for the entire building was deemed to be "office", with the notation that the ground floor potential use as retail commercial is not practical due to the restrictions of the historic designation of the building.

On May 12, 2010, the Mayor and City Commission adopted Resolution No. 2010-27396, approving the proposed lease agreement (attached hereto) on first reading; setting a public hearing on June 9, 2010, for second reading (and final approval) of the lease agreement; and forwarded the proposed lease agreement to the F&CPC for discussion.

### REVIEW PROCESS - LEASES

The Administration typically requests that the majority of proposed leases be reviewed by the F&CPC prior to first reading by the City Commission. Historically, the lease approval process included the following four (4) steps:

- 1) Referral of the lease discussion item to the F&CPC by the City Commission;
- 2) Discussion of the proposed lease by the F&CPC;
- 3) Approval, on first reading, of the proposed lease and setting of a public hearing;
- 4) Approval, on second reading, of the lease following a duly notice public hearing.

Steps 1 and 2 above, while not mandatory pursuant to the Shapiro Ordinance, were deemed appropriate and prudent especially when applied to those leases where the proposed Rent (Base Rent and/or Additional Rent) was symbolic (\$1.00 per year as is the case with most not-for-profits), thus providing the Administration with the F&CPC's direction with regard to the "public benefit component" and "benchmark" terms to be included in the lease to offset the below market rates. The application of steps 1 and 2 above to all commercial leases paying average market rates may have a detrimental effect on the City's ability to remain competitive with the private sector in the current economic market.

For example, a four (4) month delay in obtaining approval of a lease is not typical in the commercial real estate market. Lessees that require new space because they are at the end of a current lease often cannot wait four months after the conclusion of negotiations (which in itself may take some time) to obtain approval, move-out and move-in. If the delay results in additional expenses to remain in their leased space, then these potential lessees may pursue other, competitive options.

As the lease terms were comparable to lease terms previously approved for other tenants of the building, and consistent with prior direction, the item was placed directly for first reading consideration.

### **PROPOSED LEASE**

On April 26, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with a Letter of Intent (LOI) on behalf of Strang Adams, P.A., a South Florida law firm, who expressed an interest in a portion of the 3<sup>rd</sup> Floor that is currently vacant and available. Koniver Stern recommended that the City consider the proposed lease terms based on the City's ability to secure a viable tenant during this economic time, and at a competitive PSF rate, for a lower level floor with no views. Additionally, this provides a tenant for the vacant half of the floor, allowing the City to lease up the entire floor. The tenant is also investing a minimum of \$8,500.00 in tenant improvements which will be beneficial to the City as it remains an improvement to a portion of a floor that was only partially complete (in exchange for a rent credit). This portion of the 3<sup>rd</sup> Floor requires build out. Property Management estimated that it would cost the City \$19,226.00 to build out this portion of the 3<sup>rd</sup> Floor.

A summary of the proposed lease terms are as follows:

**TENANT:** Strang Adams, P.A., a Florida corporation.

**DEMISED PREMISES:** 858 SF on the east half of the 3<sup>rd</sup> Floor of Historic City Hall, located at 1130 Washington Avenue.

**TERM:** Initial term of three (3) years and twenty one (21) days, with two (2) additional three (3) year renewal options, at the City's sole discretion.

**LEASE COMMENCEMENT DATE:** June 10, 2010.

**RENT COMMENCEMENT DATE:** December 1, 2010.

- RENT:** \$23.78 PSF; \$20,403.24 annually;  
**BASE RENT:** \$9,498.06 annually, payable in monthly installments of \$791.50. Base Rent (excludes Operating Expenses, Property Taxes and Insurance) shall be increased annually, on the anniversary of the Commencement Date, in increments of three (3%) percent per year.
- ADDITIONAL RENT:** \$10,905.18 annually, payable in monthly installments of \$908.77. Any increase in Operating Expenses and Insurance will result in an increase to Tenant's proportionate share.
- PARKING:** Tenant may request, from the City's Parking Department, the use of no more than two (2) parking spaces. Rates for said spaces are subject to change, and are currently \$70 per month plus applicable sales tax.
- SECURITY DEPOSIT:** Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of \$3,400.54 (equal to two months Rent and Additional Rent costs).
- USES:** The Demised Premises shall be used by the Tenant as office for providing legal services. The Demised Premises shall be open a minimum of five days a week (Monday-Friday) from 9:00AM to 5:00PM.
- IMPROVEMENTS:** Tenant agrees to make certain improvement to the Demised Premises in the minimum amount of \$8,500.00 in exchange for a 10 week credit against Rent, in addition to the standard three month credit against Rent.
- INSURANCE:** Tenant shall comply with the following insurance requirements throughout the Term:
- Comprehensive General Liability in the minimum amount of \$1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach must be named as additional insured parties on this policy, subject to adjustment for inflation.
- Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
- All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant, subject to adjustment for inflation.
- PROPERTY TAXES:** Property taxes for Property Tax Year 2009 are estimated at Zero Dollars (\$0.00). Notwithstanding, the City makes no warranty or representation, that the Historic City Hall building, the Land, and/or the proposed lease premises will not be subject to ad valorem (or other) taxes in subsequent years. In the event Miami-Dade County assesses the property, Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be

payable by Tenant immediately upon receipt of notice from the City.

Tax Stop.

Notwithstanding the preceding, in the event the property is subject to Miami-Dade County property taxes, the City shall be responsible for payment of the Property Tax Payment up to an amount not to exceed Three Dollars (\$3.00) per square foot (Tax Stop Amount), with Tenant to be responsible for anything in excess of that amount. Tenant shall promptly reimburse the City for its portion of the Property Tax Payment (if any) upon receipt of the City's invoice for same.

**UTILITIES:** Tenant retains sole responsibility for all utilities (not included as part of Operating Expenses) including janitorial, internet and telephone services.

**MAINTENANCE AND REPAIR:** Tenant shall be responsible for day-to-day maintenance and repairs of the Demised Premises, including, without limitation, all fixtures, appurtenances, equipment and furnishings.

**CONCLUSION**

The proposed lease terms are within the range of comparable spaces in the area, and reflect the current economic reality. This tenant's use is consistent with the uses envisioned for Historic City Hall. Given the economic environment that has produced a high inventory of vacant office space in the 33139 zip code, the Administration recommends that a lease agreement with Strang Adams, P.A., for use of the east portion of the 3<sup>rd</sup> Floor with the proposed terms, as delineated herein, be approved.

Should the City Commission approve this lease, and the lease for use of the remaining portion of the 3<sup>rd</sup> Floor, which is also on this agenda, only the 5<sup>th</sup> Floor of Historic City Hall will remain available for lease.

JMG/HMF/AP/RR

## LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 9<sup>th</sup> day of June, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **STRANG ADAMS, P.A.**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.

The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises" and more fully described as follows:

Approximately 858 square feet of City-owned property (the "Building" a.k.a. "Historic City Hall"), located at 1130 Washington Avenue, 3<sup>rd</sup> Floor East Floor, Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

- 2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of three (3) years and twenty one (21) days, commencing on the 10<sup>th</sup> day of June, 2010 (the "Commencement Date"), and ending on the 30<sup>th</sup> day of June, 2013. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1<sup>st</sup> day of July, and ending on the 30<sup>th</sup> day of June.
- 2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for two (2) additional three (3) year renewal terms. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Lease Agreement (upon expiration of the initial term or any renewal term), the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.

3. Rent.  
Tenant's payment of Rent, as defined in this Section 3, shall commence on December 1, 2010 (the "Rent Commencement Date") and, thereafter, on each first day of subsequent months.

3.1 Base Rent:

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Nine Thousand Four Hundred Ninety Eight Dollars and 06/100 (\$9,498.06) per year, payable in monthly installments of Seven Hundred Ninety One Dollars and 50/100 (\$791.50).

3.1.2 The Base Rent amount pursuant to this Section 3.1 shall be increased annually, on the anniversary of the Commencement Date of the Lease, in increments of three (3%) percent per year.

3.2 Additional Rent:

In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Operating Expenses:

Throughout the Term herein, the Operating Expenses for the Demised Premises shall be Nine Thousand Five Hundred Six Dollars and 64/100 (\$9,506.64) per year, payable in monthly installments of Seven Hundred Ninety Two Dollars and 22/100 (\$792.22) per month, for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, electric service, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other

invitees.

"Common Facilities" shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

3.2.2 Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The Property Tax Payment for Property Tax Year 2009 is estimated at Zero Dollars (\$0.00). Notwithstanding the preceding sentence, the City makes no warranty or representation, whether express or implied, that the Historic City Hall building, the Land, and/or the Demised Premises will not be subject to ad valorem (or other) taxes in subsequent years.

3.2.3 Insurance:

The Additional Rent shall also include Tenant's pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of One Hundred Sixteen Dollars and 55/100 (\$116.55). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility.

3.3 Sales Taxes:

Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4 Enforcement.

Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.

All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach  
Revenue Manager  
1700 Convention Center Drive, 3<sup>rd</sup> Floor  
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.

Tenant may request, from the City's Parking Department, the use of no more than two (2) parking spaces, if available, at Municipal Parking Garage G-2 located at the intersection of 12<sup>th</sup> Street and Drexel Avenue. Rates for said spaces are subject to change, and are currently Seventy Dollars (\$70.00) per month, plus applicable sales and use tax per space.

6. Security Deposit.

Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Three Thousand Four Hundred Dollars and 54/100 (\$3,400.54). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the aforesaid, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant as office space for providing legal services. Said Premises shall be open for operation a minimum of five (5) days a week, with minimum hours of operation being as follows:

Monday - Friday: 9:00 AM to 5:00 PM

Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit

(nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

- 8.1 Tenant accepts the Demised Premises in their present "**AS IS**" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.
- 8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.
- 8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.
- 8.4 Tenant Improvements.  
Tenant agrees to make certain improvements (Tenant Improvements) to the

Demised Premises in the minimum amount of Eight Thousand Five Hundred Dollars (\$8,500.00), including, but not limited to, those improvements and their projected costs as delineated in "Exhibit 8.4", attached hereto and incorporated herein.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.

9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

9.4 Tenant specifically agrees to permit Landlord unobstructed and unrestricted access, as delineated in Subsection 9.1 herein, to the rooftop area above the second floor, via Tenant's southwestern most window of the Demised Premises.

10. Tenant's Insurance.

10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability, in the minimum amount of One Million (\$1,000,000) Dollars (subject to adjustment for inflation) per

- occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.
- 10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
- 10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).
- 10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.
11. Property Taxes and Assessments.  
For the purposes of this Section and other provisions of this Agreement:
- 11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.
- 11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1<sup>st</sup> of each year.
- 11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the

amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

- 11.4 Tax Stop.  
Notwithstanding the preceding Section 11.3, the City shall be responsible for payment of the Property Tax Payment up to an amount not to exceed Three Dollars (\$3.00) per square foot (Tax Stop Amount) with Tenant to be responsible for anything in excess of that amount. Tenant shall promptly reimburse the City for its portion of the Property Tax Payment (if any) upon receipt of the City's invoice for same.
12. Assignment and Subletting.  
Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.
13. Operation, Maintenance and Repair.
- 13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.
- The City shall be responsible for the maintenance of the roof, the exterior of the Building, all heating/ventilation/air conditioning (HVAC) equipment servicing the Demised Premises, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.
- 13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

- 13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.
- 13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.
- 13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.
- 13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses). Tenant is solely responsible for, and shall promptly pay when due, all charges and impact fees for any and all utilities for the Demised Premises **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).
- In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.
- In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.
- 13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**
14. Governmental Regulations. Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises, and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.
15. Liens. Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant

or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

17.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

18. Default.

18.1 Default by Tenant:

At the City's option, any of the following shall constitute an Event of Default under this Agreement:

18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due within fifteen (15) days of due date, and Tenant shall not have cured such failure within

- five (5) days after receipt of written notice from the City specifying such default;
- 18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;
- 18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;
- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 18.1.6 Tenant shall become insolvent;
- 18.1.7 Tenant shall make an assignment for benefit of creditors;
- 18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 18.1.9 The leasehold interest is levied on under execution.
19. Rights on Default.
- 19.1 Rights on Default:  
In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;
- 19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised

Premises, or otherwise.

- 19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.
- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.
- 19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five (5) days from the due date. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the grace period.
- 19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so.

Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.

- 19.1.7 The rights of the City under this Agreement shall be cumulative but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

19.2 Default by City:

The failure of the City to perform any of the covenants, conditions and agreements of this Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

- 20.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

20.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

21. Indemnification Against Claims.

21.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.

21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

22. Signs and Advertising.

Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other municipal, County, State and Federal laws.

23. Effect of Conveyance.

The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without

further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenable, as determined by the City Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

24.2 If the Demised Premises shall be rendered wholly untenable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the Rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenable, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.

24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

25. Quiet Enjoyment.

Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.



and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

29. Provisions Severable.  
If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
30. Captions.  
The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.
31. Number and Gender.  
Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.
32. Limitation of Liability.  
The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of \$10,000.00 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.
33. Surrender of the Demised Premises.  
Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the

termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.  
Time is of the essence in every particular and particularly where the obligation to pay money is involved.
35. Venue:  
This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

**CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.**

36. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.
37. No Dangerous Materials.  
Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or

any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

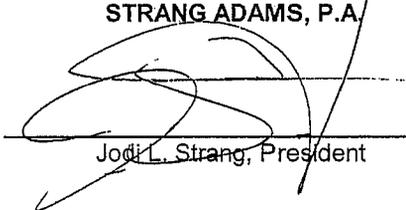
\_\_\_\_\_  
Robert Parcher, CITY CLERK

\_\_\_\_\_  
Matti Herrera Bower, MAYOR

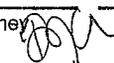
Attest:

STRANG ADAMS, P.A.

  
\_\_\_\_\_  
WITNESS  
  
\_\_\_\_\_  
SARA WOLFE  
(PRINT NAME)

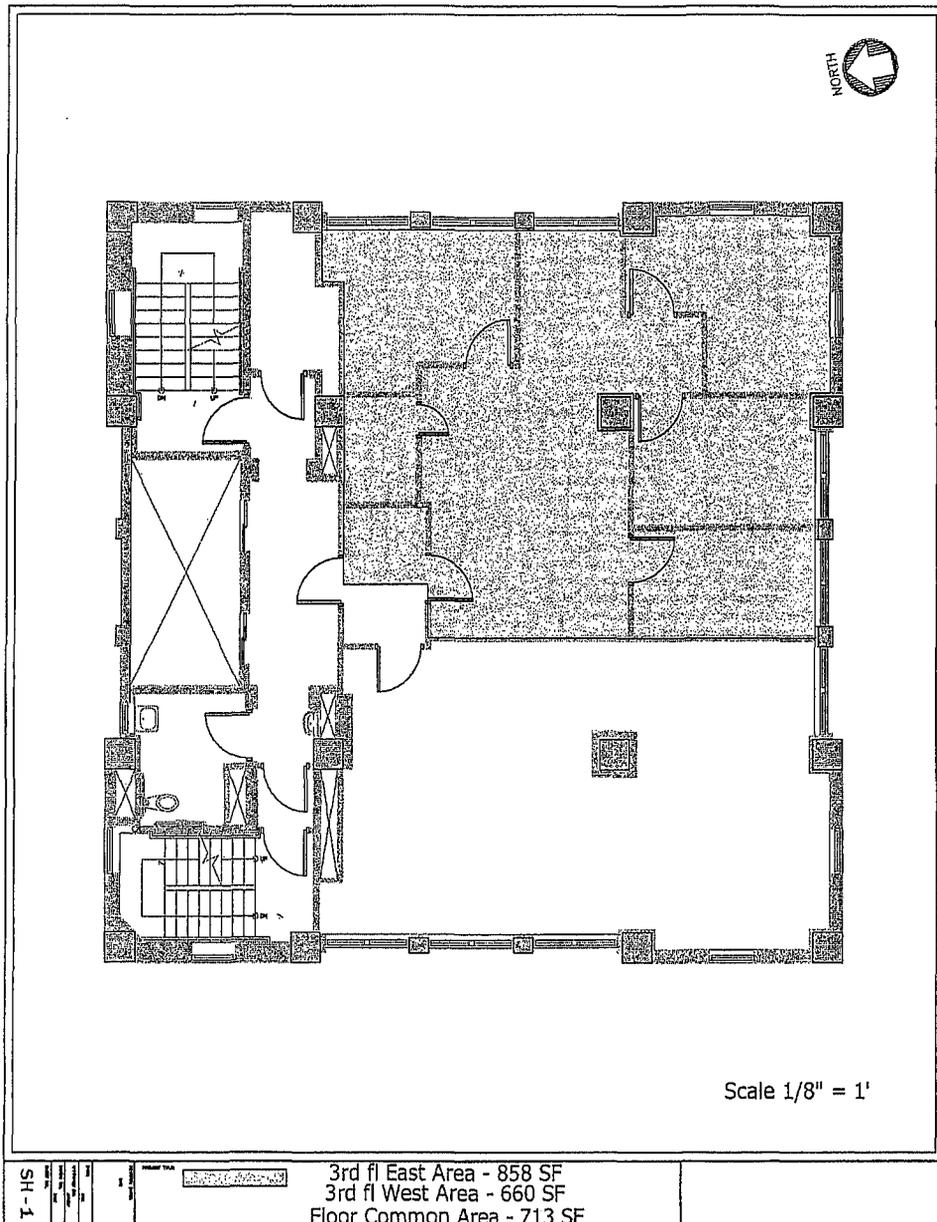
  
\_\_\_\_\_  
Jodi L. Strang, President

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney  Date 5/11/10

### EXHIBIT 1

3<sup>rd</sup> Floor East



**EXHIBIT 8.4**  
 Tenant Improvement(s)  
 (page 1 of 3)



All Painting Specialists  
 4045 Sheridan Avenue  
 #293  
 Miami Beach, FL 33140

**Estimate**

Date	Estimate #
4/27/2010	192

Name / Address
Strang Adams P.A. 357 Almeria Avenue Suite 101A Coral Gables, Florida 33134

Project

We hereby propose to to furnish the materials and perform the labor necessary for the completion of your painting project. All material is guaranteed to be as specified. We guarantee to perform your project in accordance with any specifications submitted by you and to complete the job in a top quality workmanlike manner

Item	Description	Total
Installation	New Office at 1130 Washington Avenue, 3rd Floor, Miami Beach, Florida 33139	
Installation	Install 4 single light doors with privacy or passage locks (includes materials and hardware)	1,300.00
Installation	Install approx. 434 lft of 3 1/2" x 1/2" baseboard and door casings (includes materials)	1,195.00
Installation	Install approx 858 sqft of 18x18 rectified tile (installation materials included. <u>PORCELAIN TILE NOT INCLUDED</u> )	2,574.00
<p>+ Tile = \$2.50 per Sq. Ft.            + \$2,145.<sup>00</sup>            = \$7,214.<sup>00</sup></p>		

Should you accept our proposal, please return this page including your signature and a 50% deposit.	<b>Total</b>	\$5,069.00
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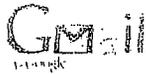
Customer Signature \_\_\_\_\_

Phone #	Fax #	E-mail
305-790-0355 / 786-210-5363	305-867-7450	ivyswanes@gmail.com

**EXHIBIT 8.4**  
Tenant Improvement(s)  
(page 2 of 3)

Gmail - All Painting Specialists

4/27/10 3:19 PM



Jodi Strang <jodlstrang.esq@gmail.com>

**All Painting Specialists**

1 message

Roger Zwickel <roger@rdesignstudioinc.com>  
To: jstrang@stranglaw.com

Tue, Apr 27, 2010 at 3:16 PM

**R**

DESIGN STUDIO INC.

5151 Collins Ave. Suite 220 Miami Beach FL 33140 Tel (305) 868-3419 Fax (305) 868-3493

Hey Jodi,

Electrical work to provide and install fluorescent lights and recessed high hats is approx \$2,500.00

Final price to be determine.

Call us if you have any questions.

Thank you,

Giselle

2 attachments

192.pdf  
38K

191.pdf  
31K

**EXHIBIT 8.4**  
 Tenant Improvement(s)  
 (page 3 of 3)



All Painting Specialists  
 4045 Sheridan Avenue  
 #293  
 Miami Beach, FL 33140

**Estimate**

Date	Estimate #
4/27/2010	191

Name / Address
Strang Adams P.A. 357 Almeria Avenue Suite 101A Coral Gables, Florida 33134

Project

We hereby propose to furnish the materials and perform the labor necessary for the completion of your painting project. All material is guaranteed to be as specified. We guarantee to perform your project in accordance with any specifications submitted by you and to complete the job in a top quality workmanlike manner.

Item	Description	Total
Paint	Job Address: New office at 1130 Washington Avenue, 3rd floor, Miami Beach FL 33139 Paint all walls in 3 offices, 1 meeting room, main reception area and small foyer (2 coats). Prep, prime, caulk and paint, all baseboard, 6 doors and trims	2,180.00

Should you accept our proposal, please return this page including your signature and a 50% deposit:	<b>Total</b>	\$2,180.00
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Customer Signature \_\_\_\_\_

Phone #	Fax #	E-mail
305-790-0355 / 786-210-5363	305-867-7450	hyswanes@gmail.com

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# MIAMI BEACH

OFFICE OF THE CITY ATTORNEY, Jose Smith, City Attorney  
Interoffice Memorandum

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**To:** Mayor and Members of the Finance  
and Citywide Projects Committee

**Date:** May 17, 2010

**From:** Jose Smith, City Attorney  
Raul J. Aguila, Deputy City Attorney

**Subject:** Proposed Amendment to Sections 82-36 through 82-40 of the City Code (the  
"Shapiro Ordinance")

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The City Attorney's Office has been working with the Administration on an amendment to the Shapiro Ordinance, which establishes the City Code procedures for sale or lease of public property.

If approved, the proposed amendment would streamline and simplify the current process for approval of City leases or sale of City properties.

In addition to some proposed clarifications and "clean-up" language, the primary substantive change to the current City Code provisions changes the "two (2) readings" requirement before the City Commission to 1) a discussion of the proposed lease or sale at the Finance and Citywide Projects Committee; and 2) following the Committee's review, one reading at the City Commission (which, unless waived by 5/7ths vote, is a public hearing).

The intended revision is intended to give the City Administration greater flexibility to negotiate and finalize lease and/or sale transactions in a more expedient manor; particularly where a lease and/or sale is time sensitive.

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA; AMENDING CHAPTER 82, "PUBLIC PROPERTY," ARTICLE II, "SALE OR LEASE OF PUBLIC PROPERTY," SECTIONS 82-36 THROUGH 82-40, AMENDING THE PROCEDURES FOR SALE OR LEASE OF CITY PROPERTY; PROVIDING FOR INCLUSION IN THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the Code of the City of Miami Beach provides specific procedures for the sale or lease of public property in Chapter 82 (the Ordinance); and

**WHEREAS**, the City Commission finds that it is in the best interest of the City to amend certain procedures therein for approval of leases or sale of public property.

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

**SECTION 1.** That Miami Beach City Code Chapter 82, "Public Property," Article II, "Sale or Lease of Public Property," Sections 82-36 through 82-40, is amended as follows:

**Sec. 82-36. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City property* includes but is not limited to any land, water or air rights.

*Lease of city property* means any right to lease city property by way of agreement, irrespective of consideration being paid to the city, and irrespective of the city's also utilizing or being allowed to utilize the property for any purpose during the term of the lease. For purposes of this article, the term "lease" shall not include special event permits;<sup>7</sup> revocable permits;<sup>1</sup> concession agreements;<sup>1</sup> convention center ~~or T.O.P.A.~~ use agreements or similar use agreements for short-term use of any of the City's cultural and/or parks and recreation facilities; management and operation agreements;<sup>7</sup> or leases for a term of not more than one (1) year, including option periods.

*Sale of city property* means any conveyance, transfer, gift, exchange or other transaction in which legal title passes from the city to any person or entity, whether or not the city retains

any partial title, interest, reservation, easement, right-of-way, dedication, restriction, or license in regard to the property. "Sale" shall include ~~vacations of alleys and rights of way, and terminations of public easements on private property (excluding grants and/or terminations of utility easements).~~

**Sec. 82-37. Committee Review and Public Hearing.**

Prior to the sale and/or lease of city property; 1) the proposed sale and/or lease shall be transmitted by the City Manager (without the need for referral by the City Commission) to the city's finance and citywide projects committee for its review; and 2) the city commission shall have read the title of the resolution approving such sale and/or lease on two separate dates and immediately following the second reading hold a public hearing, advertised not less than seven (457) days prior to the hearing, in order to obtain citizen input into any the proposed sale and/or lease. For leases of city property of five (5) years or less (including option periods), the conditions of this section 82-37(2) may be waived by a five-sevenths (5/7ths) vote of the city commission upon a finding by the city commission that the public interest would be served by waiving such conditions.

**Sec. 82-38. Planning Analysis.**

For any sale of city property, or lease of city property of more than five (5) years (including option periods), and in order for the city commission and the public to be fully apprised of all conditions relating to the proposed sale and/or lease of such city property, the ~~planning, design and historic preservation divisions~~ city's planning department shall prepare an written analysis, to be submitted to the city commission concurrent with its consideration of the proposed sale or lease, using the following criteria:

- (1) Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city's comprehensive plan.
- (2) The impact on adjacent propertyies (if any), including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level, ~~or~~ enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the ~~proponent~~ purchaser/lessee shall be responsible for obtaining and paying for a traffic impact analysis from a reputable traffic engineer.
- (3) A determination as to whether or not the proposed use ~~is in keeping with~~ involves a public purpose, or is in keeping with the ~~and~~ community's needs, such as expanding the city's revenue base, reducing city costs, creating jobs, creating a significant revenue stream, and/or improving the community's overall quality of life.

- (4) A Ddetermination as to whether or not the development proposed use is in keeping with the surrounding neighborhood, will block views or create other environmental intrusions, and evaluation of the design and aesthetic considerations of the proposed development or project.
- (5) The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.
- (6) ~~A determination as to whether or not alternatives are available for the proposed disposition, including assembly of adjacent properties, and whether the project could be accomplished under a private ownership assembly.~~
- (7) ~~Within the constraints of public objectives, the department should examine financial issues such as job generation, providing housing opportunities, and the return to the city for its disposition of the property.~~

(68)—Such other issues as the planning, design and historic preservation division city manager or his authorized designee, who shall be the city's planning director, may deem appropriate in analysis of the proposed disposition.

Notwithstanding any provision in this section 82-83, the city manager, in his/her reasonable judgment and discretion, may require the planning department to prepare a written analysis (using the criteria in subsections 1-6 above) on any proposed lease, regardless of the term, where the city manager determines that such analysis is in the best interest of the city.

**Sec. 82-39. Advertised public bidding process.**

a) There shall be no sale or lease of city property unless there has been an advertised public bidding process. ~~In addition, the sale or lease shall comply with all requirements of state, county and city laws and regulations.~~ For leases of city property, the conditions of this section 82-39(a) may be waived by a five-seventh (5/7ths) vote of the city commission, upon a finding by the city commission that the public interest would be served by waiving such conditions.

b) For any sale of city property, or lease of city property of more than five (5) years (including option periods), the city shall obtain there shall also be an independent appraisal of the fair market or rental value of the property. The appraiser must be experienced in determining a reasonable return for projects of a public/private joint venture nature. Should the purchaser or lessee be unwilling to pay the cost of such appraisal, then any such cost may be deducted from a bid bond or similar deposit made in a bid process. The appraisal shall include a determination of the value of the property based on proposed and possible uses including, without limitation, the highest and best use(s) of the property thereof, by the proposed purchaser or lessee. With regard to any lease of city property, the conditions of this section 82-39(b) may be waived by a five-sevenths (5/7ths) vote of the city

commission, upon a finding by the city commission that the public interest would be served by waiving such condition.

~~In regard to all leases of more than five years, including option periods, the conditions of this section, and in regard to leases of five years or less, including option periods, the conditions of this section, and the public hearing requirement in section 82-37, may be waived by a five-sevenths vote of the city commission upon a finding by the city commission that the public interest would be served by waiving such conditions. In regard to any sale, the conditions of only this section may be waived upon a five-sevenths vote of the city commission upon a finding by the city commission that the public interest would be served by waiving such conditions (of bidding and/or appraisal) for the disposition of the property.~~

#### **Sec. 82-40. Payment of costs.**

All costs associated with the sale or lease procedures addressed in this article shall be, at the option of the city manager, be paid by the purchaser or lessee prior to, or at the time of closing (for sales), or (for leases) execution of the lease agreement by lessee.

#### **SECTION 2. REPEALER.**

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

#### **SECTION 3. INCLUSION IN CODE OF THE CITY OF MIAMI BEACH, FLORIDA.**

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be renumbered or relettered to accomplish such intention; and that the word ordinance may be changed to section or other appropriate word.

#### **SECTION 4. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect ten days following adoption.

**PASSED and ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

F:\atto\AGUR\RESOS-ORD\Shapiro Ordinance - Amendments to entire Chapter 82 (Redline 1-19-10).doc