



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: July 29, 2010

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for July 29, 2010, at 3:30 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

OLD BUSINESS

1. Discussion regarding Parking Revenue Bonds

Patricia Walker – Chief Financial Officer

NEW BUSINESS

2. Discussion regarding Paid Time Off for Living Wage

Patricia Walker – Chief Financial Officer

3. Discussion regarding the current vending machine service contract

Anna Parekh – Director of Real Estate Housing and Community Development

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

Anna Parekh – Director of Real Estate Housing and Community Development

5. Discussion regarding lease with Leonardo Salon, Inc.

Anna Parekh – Director of Real Estate Housing and Community Development

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

Anna Parekh – Director of Real Estate Housing and Community Development

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

Fred Beckmann – Public Works Director

8. Discussion regarding visitor parking stickers available for residential areas

Saul Frances – Parking Director

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

Jorge Gomez – Assistant City Manager
Kevin Crowder – Economic Development Div Director

10. Request for approval to issue a Request for Proposals (RFP) to provide parking cashiers/attendants and supervisors for the City's parking garages.

- a) criteria for evaluations
- b) add a labor peace clause

Saul Frances – Parking Director

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

Max Sklar – Cultural Arts & Tourism Development Director

Finance and Citywide Projects Committee Meetings for 2010:

August 25, 2010 @ 1:00 pm

September 30, 2010

October 14, 2010

November 3, 2010

December 16, 2010

JMG/PDW/rs/th

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305-604-2489 (voice), 305-673-7524 (fax) or 305-673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

Cc. Mayor and Members of the City Commission
Management Team

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MIAMI BEACH

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: *J. Hernandez for*
Jorge M. Gonzalez, City Manager

DATE: July 29, 2010

SUBJECT: **DISCUSSION REGARDING THE CITY'S CURRENT VENDING MACHINE SERVICE CONTRACT AT CITY FACILITIES**

Background

On July 27, 2005, the Mayor and City Commission authorized the Administration to negotiate and enter into a contract with Brothers Vending, Inc., for the operation of vending and snack machines at various locations on City-owned properties and facilities. The initial contract term was for two (2) years, commencing on November 1, 2005 and expiring on October 31, 2007, with three (3) additional one (1) year renewal options, all of which have since been exercised. The third and final renewal term is set to expire on October 30, 2010, with no further renewals remaining.

The current contract with Brother's Vending provides for two streams of revenue to the City. There is a contract Minimum Guarantee (MG), which at the present time is \$2,400 per month (\$28,800 annually), that is applied against the commission paid to the City for all sales. The commission is currently set at 30% of Gross Metered Receipts (PGMR) in excess of the MG. Based on these provisions, the City received \$29,639 in FY 2008/09.

On January 13, 2010, the City of Miami Beach approved an Agreement with the Superlative Group (Consultant) to proceed with Phase 2 of a citywide marketing/corporate sponsorship program to identify top product/sponsorship opportunities including, but not limited to, developing municipal marketing materials; developing competitive processes; negotiating packages; and presentation of prospective marketing partners for the City's consideration. One of the priorities for the Municipal Marketing Program is an "official beverage sponsor" partnership. This type of sponsorship will require the City to demonstrate that, in addition to our brand presence, there are sales volume opportunities. As such, it is important that all current beverage vending contracts in public places in the City be reviewed and considered in the context of the potential "official beverage" sponsorship opportunity.

In consideration of these developments involving the corporate sponsorship program, the Administration is recommending to the Finance and Citywide Project Committee to retain Brothers Vending on a month-to-month contract, until such time that the City develops and issues a competitive process for the broader sponsorship program for an "official beverage" sponsor.

JMG/HF/AP/KOB

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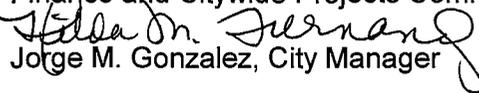


MIAMI BEACH

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: 
Jorge M. Gonzalez, City Manager

DATE: July 29, 2010

SUBJECT: **DISCUSSION REGARDING A LEASE AGREEMENT WITH DAVID L. WRUBEL, CPA, PA, FOR USE OF THE 5TH 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 8th Floor penthouse set at \$30 PSF. The highest and best use for the entire building was deemed to be "office", with the notation that the ground floor potential use as retail commercial is not practical due to the restrictions of the historic designation of the building.

On July 14, 2010, the Mayor and City Commission adopted Resolution No. 2010-27452, approving the proposed lease agreement (attached hereto) on first reading; setting a public hearing on September 15, 2010, for second reading (and final approval) of the lease agreement; and forwarded the proposed lease agreement to the F&CPC for discussion.

PROPOSED LEASE

On May 25, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with a Letter of Intent (LOI) on behalf of David L. Wrubel, CPA, PA., a Miami Beach certified public accounting firm, who expressed an interest in the 5th Floor that is currently vacant and available.

Koniver Stern recommended that the City consider the proposed lease terms based on the City's ability to secure a viable tenant during this economic time and at a competitive PSF rate. Because the subject space, which is the sole remaining vacant space in the building, was never renovated by the City and requires extensive tenant improvements, the Tenant is also investing a minimum of \$35,370 in tenant improvements (in exchange for a rent credit). Property Management has estimated that it would cost the City approximately \$37,600 to build out the 5th Floor. Staff recommended that the build-out of the space be handled and permitted by the prospective tenant.

The Administration proceeded to negotiate a proposed lease agreement for City Commission approval. A summary of the proposed lease terms are as follows:

TENANT: David L. Wrubel, CPA, PA, a Florida corporation.

DEMISED PREMISES: 1,518 SF on the 5th Floor of Historic City Hall, located at 1130 Washington Avenue.

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

LEASE COMMENCEMENT DATE: October 1, 2010.

RENT COMMENCEMENT DATE: October 1, 2011.

RENT: \$23.30 PSF; \$35,369.40 annually;

BASE RENT: \$16,075.62 annually, payable in monthly installments of \$1,339.63. Base Rent shall be increased annually, commencing on the third anniversary of the Commencement Date of the Lease and on each anniversary Commencement Date thereafter, in increments of three (3%) percent per year.

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

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

SECURITY DEPOSIT: Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of \$5,894.90 (equal to two months Rent and Additional Rent costs).

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

IMPROVEMENTS: Tenant agrees to make certain improvement to the Demised Premises in the minimum amount of \$35,370.00 (an amount equal to, and in exchange for, one year's Rent).

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

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

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

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

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

Tax Stop.

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

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

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

CONCLUSION

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 David L. Wrubel, CPA, PA, for use of the 5th Floor with the proposed terms, as delineated herein, be approved.

F&CPC Memorandum
David L. Wrubel
July 29, 2010
Page 4 of 29

Should the F&CPC recommend approval of this lease, and should the City Commission approve this lease on second reading, Historic City Hall will be fully occupied with no space remaining available for lease.

The proposed lease was approved on first reading on July 14, 2010. Should the proposed lease be approved by the F&CPC, the lease will be considered at the September 15, 2010 Commission meeting on second reading/public hearing.

JMG/HMF/AP/RR

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LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day of September, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **DAVID L. WRUBEL, CPA, PA**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.

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

Approximately 1,518 square feet of City-owned property (the "Building" a.k.a. "Historic City Hall"), located at 1130 Washington Avenue, 5th Floor, Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of three (3) years, commencing on the 1st day of October, 2010 (the "Commencement Date"), and ending on the 30th day of September, 2013. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1st day of October, and ending on the 30th day of September.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for two (2) additional three (3) year renewal terms. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

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

3. Rent.

Tenant's payment of Rent, as defined in this Section 3, shall commence on October 1, 2011 (the "Rent Commencement Date") and, thereafter, on each first day of subsequent months.

3.1 Base Rent:

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Sixteen Thousand Seventy Five Dollars and 62/100 (\$16,075.62) per year, payable in monthly installments of One Thousand Three Hundred Thirty Nine Dollars and 63/100 (\$1,339.63).

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

3.2 Additional Rent:

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

3.2.1 Operating Expenses:

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

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, electric service, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any

services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

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

3.2.2 Property Taxes:

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

3.2.3 Insurance:

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

3.3 Sales Taxes:

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

3.4 Enforcement.

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

remedies enforced by law.

4. Location for Payments.

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

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

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

5. Parking.

Tenant may request, from the City's Parking Department, the use of no more than four (4) parking spaces, if available, at Municipal Parking Garage G-2 located at the intersection of 12th Street and Drexel Avenue. Rates for said spaces are subject to change, and are currently Seventy Dollars (\$70.00) per month, plus applicable sales and use tax per space.

6. Security Deposit.

Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Five Thousand Eight Hundred Ninety Four Dollars and 90/100 (\$5,894.90). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the 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 accounting, consulting and income tax preparation services. Said Premises shall be open for operation a minimum of five (5) days a week, with minimum hours of operation being as follows:

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

Tenant shall not otherwise modify the days or hours of operation without the

prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

- 7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

- 8.1 Tenant accepts the Demised Premises in their present “**AS IS**” condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager’s sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant’s sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.
- 8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City’s sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event,

to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

8.4 Tenant Improvements.

Tenant agrees to make certain improvements (Tenant Improvements) to the Demised Premises (valued by the parties at approximately Thirty Five Thousand Three Hundred Seventy Dollars and 00/100 (\$35,370.00), as delineated in "Exhibit 8.4", attached hereto and incorporated herein (the Tenant Improvements). The Tenant Improvements shall be made in accordance with the following timeline:

- Tenant shall obtain a building permit no later than ninety (90) days from the Commencement Date of this Agreement;
- Tenant shall commence making the Tenant Improvements no later than forty five (45) days from the date the building permit is issued (the "Building Permit Date"); and
- Tenant Improvements shall be completed, and Tenant shall obtain final approval by the City's Building Department for said Tenant Improvements, no later than ninety (90) days from the Building Permit Date.

Failure to comply with this timeline and complete the Tenant Improvements within the time period specified shall constitute an event of default hereunder.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons.

Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

- 9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.
- 9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

- 10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:
- 10.1.1 Comprehensive General Liability, in the minimum amount of One Million (\$1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.
- 10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.
- 10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture, and other property removable by Tenant under the provisions of this Agreement).
- 10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the

City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

11. Property Taxes and Assessments.

For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

11.4 Tax Stop.

Notwithstanding the preceding Section 11.3, the City shall be responsible for payment of the Property Tax Payment up to an amount not to exceed Three Dollars (\$3.00) per square foot (Tax Stop Amount) with Tenant to be responsible for anything in excess of that amount. Tenant shall promptly reimburse the City for its portion of the Property Tax Payment (if any) upon receipt of the City's invoice for same.

12. Assignment and Subletting.

Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if

granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement.

13. Operation, Maintenance and Repair.

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

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

13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.

13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.

13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised

Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.

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

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

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

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

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

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

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

16. Intentionally Omitted.

17. Condemnation.

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

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

18. Default.

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

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

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

18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written

notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;

- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 18.1.6 Tenant shall become insolvent;
- 18.1.7 Tenant shall make an assignment for benefit of creditors;
- 18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

- 19.1 Rights on Default:
In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;
 - 19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.
 - 19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which

event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.
- 19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the due date.
- 19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant

as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.

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

19.2 Default by City:

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

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

19.3 Tenant's Rights on Default:

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

20. Indemnity Against Costs and Charges.

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

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

21. Indemnification Against Claims.

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

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

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

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

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

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

22. Signs and Advertising.

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

23. Effect of Conveyance.

The term "City" and/or "Landlord" as used in the Agreement means only the owner

for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

- 24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered 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.

26. Waiver.

26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

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

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

27. Notices.

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

LANDLORD:

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

With copy to:

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

TENANT: David L. Wrubel, CPA, P.A.
1130 Washington Avenue, 5th Floor
Miami Beach, Florida 33139

With copy to: David L. Wrubel
1063 West 47th Street
Miami Beach, Florida 33140

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

28. Entire and Binding Agreement.

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

29. Provisions Severable.

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

30. Captions.

The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

31. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

32. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of \$10,000.00 for any action or claim for breach

of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

33. Surrender of the Demised Premises.

Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.

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

35. Venue:

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

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

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

37. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

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

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

Attest:

CITY OF MIAMI BEACH, FLORIDA

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

Attest:

DAVID L. WRUBEL, CPA, PA

WITNESS

David L. Wrubel, President

(PRINT NAME)

EXHIBIT 1

5th Floor

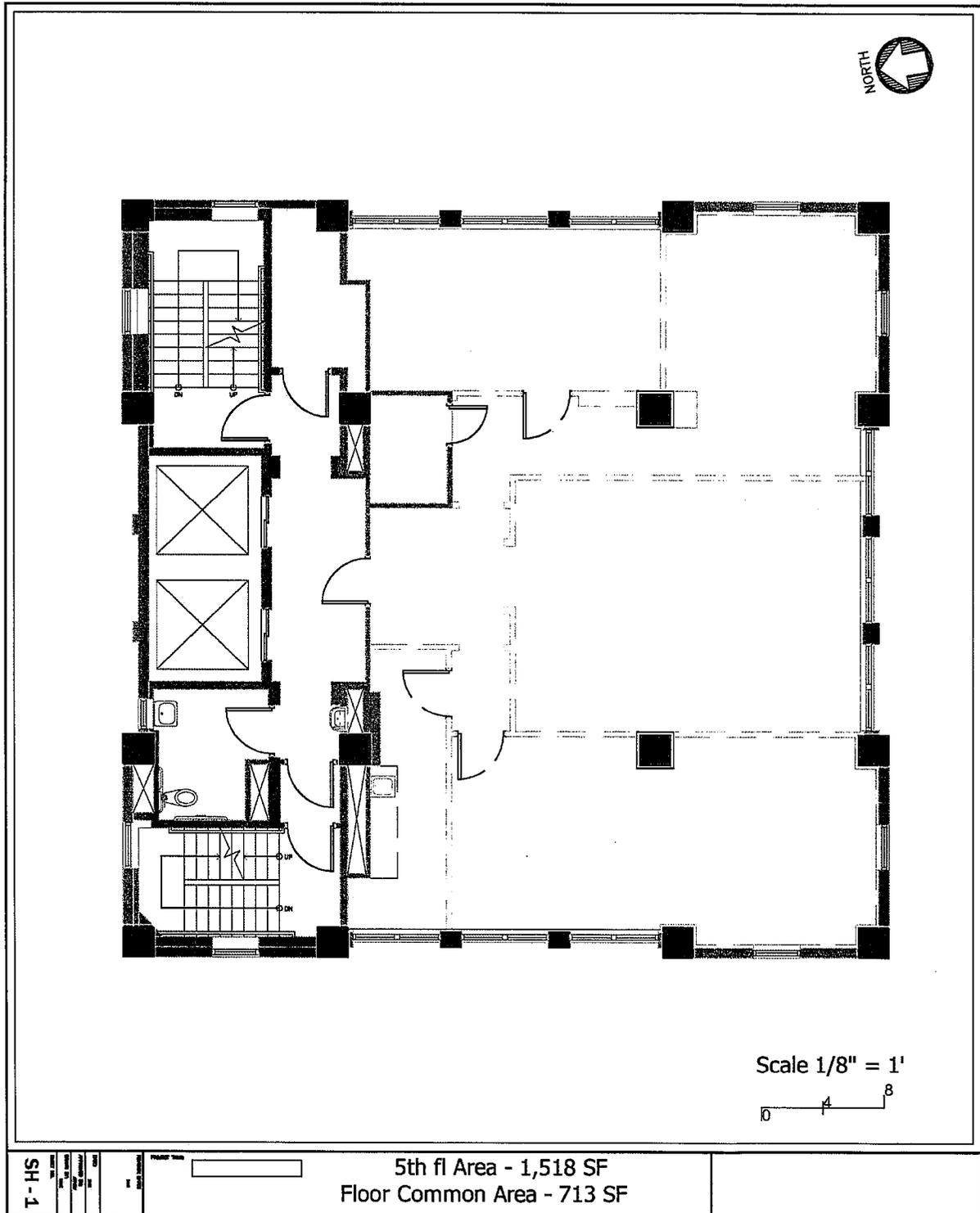


EXHIBIT 8.4
Tenant Improvement(s)
(page 1 of 3)



Wrubel Offices
1130 Washington Ave
5th Floor
Miami Beach, FL 33139

PRELIMINARY SCHEDULE OF VALUES PRESENTATION

EXHIBIT 8.4

Tenant Improvement(s)

(page 2 of 3)



PRELIMINARY SCHEDULE OF VALUES

DIVISION	COMMENTS	QTY	RATE	TOTAL
GENERAL REQUIREMENTS				
01201	Supervision / Project Management / Admin / Overhead			\$ 3,225.00
01251	General Labor			\$ 600.00
01252	Final Clean			\$ 550.00
01702	Site Protection			\$ 700.00
01529	Jobsite Debris Hauling	LEED approved rolloff containers	2 \$425.00	\$ 850.00
01061	Permitting Fees / Plans Processing	By others		NIC
01901	General Liability Insurance Premium			\$ 650.00
SITEWORK				
02220	Demolition			\$ 2,950.00
WOODS & PLASTICS				
06180	Laminated Plastics	Break Room - allowance (per sketch)		\$ 1,800.00
	Additional storage	floor to ceiling / 18" depth		\$ 1,000.00
	Reception			\$ 1,400.00
06200	Finish Carpentry	New wood base in common areas		\$ 750.00
THERMAL & MOISTURE PROTECTION				
07200	Insulation	Existing to remain		NIC
DOORS & WINDOWS				
08200	Interior Wood Doors and Frames / hardware	Hollow metal frames, paint grade solid core doors	4 \$950.00	\$ 3,800.00
08201	Entry Door	Existing to remain		NIC
08900	Glass & Glazing	Glass panel at east office		\$ 750.00
FINISHES				
09200	Framing & Drywall	Hang new drywall over existing studs, exterior walls		\$ 4,550.00
09510	Acoustical Ceiling	Allowance - Patching due to demo		\$ 600.00
09600	Stone/Tile Flooring			NIC
09680	Carpet, VCT Flooring and Vinyl Base	Allowance	1518 \$2.75	\$ 4,174.50
09900	Painting	Repaint entire suite and new base		\$ 2,420.00
SPECIALTIES				
10440	Signs			NIC
10520	Fire Extinguishers	no cabinets included		\$ 350.00
EQUIPMENT				
11450	Appliances	Refrigerator / Dishwasher By Others		NIC
FURNISHINGS				
12490	Window Treatments	Allowance		\$ 2,500.00
MECHANICAL				
15050	HVAC	Existing to remain		NIC
15400	Plumbing Labor			\$ 2,500.00
15410	Plumbing Fixtures	New sink and faucet		Included
15500	Fire Sprinklers	Existing to remain		NIC
ELECTRICAL				
16050	Electrical Labor	Allowance		\$ 10,000.00
16400	Low Voltage Wiring	Allowance		\$ 5,000.00
16500	Lighting Fixtures	Allowance 2' x 4' Parabolic louvers	25 \$110.00	\$ 2,750.00
16900	Fire Alarm	Existing to remain		NIC
Subtotal				\$ 57,969.50
Contractor Fee			7.50%	\$ 4,347.71
TOTAL				\$ 62,317.21

EXHIBIT 8.4

Tenant Improvement(s)

(page 3 of 3)

Alternatives/Exclusions:

- 1 No corridor work included
- 2 Permit fees / architecture / engineering
- 3 GC not responsible for existing systems installed by previous contractor

Notes:

- 1 This pricing is based on site visit walkthrough (6/23/10) and layout sketch provided
- 2 Soundproofing NIC. Specification required
- 3 Upon receipt of final approved, permitted Construction Documents, pricing may require adjustments.
- 4 Pricing assumes existing construction and conditions are in compliance with all current applicable construction codes unless otherwise noted in above pricing.
- 5 Asbestos / hazardous materials survey / abatement is not included.
- 6 Environmental / governmental / water / sewer impact fees are not included.
- 7 All work is priced during normal business hours in a single phase vacant space (i.e. all furniture, equipment, FF & E) personnel / staff are not on site.
- 8 All furniture / equipment moving, installation and coordination by others.
- 9 All telephone, computer, security and television, audio / visual equipment / wiring removal, relocation and installation by other.
- 10 If x-raying of the slab for floor outlets and plumbing lines is required, pricing is based on one (1) set of x-rays. If additional x-rays are required due to conflicts or obstructions they will be priced accordingly.
- 11 It is assumed that all materials and equipment can be delivered on site through loading docks / service elevators and no additional hoisting equipment is required.
- 12 All existing Mechanical, Electrical, Plumbing and Fire suppression systems are assumed to be in good working order and code worthy. Refurbishment or repair if required is not included. Any additional tests or balanced required are not included.
- 13 The base cost proposal does NOT include special ventilation requirements such as removing exterior glass and installing exhaust fans, rerouting fresh air / return ductwork, etc..
- 14 The base proposal does NOT include provisions / funds for security, elevator, building management or tenant personnel time / coordination that may be required to complete the scope of work. If these persons involvement is required, the cost of such time / coordination that may be required to complete the scope of work. If these persons involvement is required, the cost of such
- 15 This cost proposal is based on completing the scope of work in a standard time frame. Accelerated / compressed scheduling due to lead times, permitting, contract execution, work stoppages etc. may result in additional cost such as overtime and quick shipment of materials to be paid by the tenant / owner.
- 16 This cost proposal is based on the quantities and scope of work shown. Changes in the quantities / scope of work may result in the unit costs changing.
- 17 The ceiling space on the floors below are assumed to be accessible and to have sufficient space to accommodate the new under slab electrical work or piping lines and allow adequate slope as will be required. Relocation of any obstructions / rerouting of the plumbing lines or patching of hard ceilings, if required will be priced on a case by case basis.
- 18 Normal floor preparations and ramping for carpet is included. Leveling of the floor slab if required is NIC.
- 19 This cost proposal is valid for 30 days from the date of the proposal.
- 20 This cost proposal is based on the execution of a standard AIA document A111 (Standard Form of Agreement between Owner and Contractor) or other standard AIA documents prior to commencement of work.
- 21 It is assumed that all samples, submittals, shop drawings etc.. will be reviewed by the Architect and / or Engineer with a timeframe that coincides with the project schedule at no charge to AMICON Construction Services. It is also assumed that CAD files and / or PDF files will be provided to AMICON Construction Services as needed at no additional charge.
- 22 Change Orders will be billed at a cost of the work which includes additional General Conditions related to the changes in the scope of work (excluding supervision) and a 10% fee which covers supervision, overhead and profit.
- 23 Change Orders resulting in a reduction in the scope of work / contract amount will be credited back at the cost of the work as credited back to AMICON Construction Services by its suppliers and vendors. No fees or general conditions will be credited back for items that reduce the scope of work / contract amount.
- 24 All applicable sales taxes are included

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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: July 29, 2010

SUBJECT: **DISCUSSION REGARDING A LEASE AGREEMENT WITH LEONARDO SALON, INC., FOR USE OF THE CITY-OWNED PROPERTY LOCATED AT 1701 MERIDIAN AVENUE, UNIT 1 (A/K/A 765 17TH STREET)**

BACKGROUND

On October 17, 2001, the City Commission passed Resolution No. 2001-24661 authorizing the purchase of the building at 1701 Meridian Avenue (a.k.a. 777 Building) in order to address the City's ongoing need for administrative office space expansion. At the time, the preservation of a retail environment on the ground floor of the property was considered and it was determined that retention of the retail space was conducive to maintaining and enhancing the pedestrian character of the linkage between Lincoln Road Mall and the Civic/Convention Center area.

At the October 21, 2008 meeting of the Finance & Citywide Projects Committee (F&CPC), and subsequently at their meeting of March 10, 2009, and following a comprehensive review of the City's office space use, the Committee agreed with City staff's recommendation that usage of the ground floor of 1701 Meridian Avenue Building remain a primary use for commercial retail space. Additionally, the Committee recommended that any commercial leases (including renewals and/or extensions) for use of space at the Building be handled as it is in the private sector and not through a competitive bid process.

On July 14, 2010, the Mayor and City Commission adopted Resolution No. 2010-27453, approving the proposed lease agreement (attached hereto) on first reading; setting a public hearing on September 15, 2010, for second reading (and final approval) of the lease agreement; and forwarded the proposed lease agreement to the F&CPC for discussion.

PROPOSED LEASE

On June 8, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with a Letter of Intent (LOI) on behalf of Leonardo Salon, Inc., who expressed an interest in the ground floor retail space located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street), formerly occupied by Steve's Hair Salon which is currently vacant and available. Leonardo Salon is a Miami Beach based hair salon established in 2001 and currently operating at 701 Lincoln Road, #109. Koniver Stern recommended that the City consider the proposed lease terms based on the City's ability to secure a viable tenant during this economic time and at a competitive PSF rate. The average PSF rate for ground floor retail in the Building is \$42.00.

The Administration proceeded to negotiate a proposed lease agreement for City Commission approval. A summary of the proposed lease terms are as follows:

TENANT: Leonardo Salon, Inc., a Florida corporation.

DEMISED PREMISES: 1,326.78 SF on the ground floor of the 777 Building, located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street).

TERM: Initial term of four (4) years and 364 days, with one (1) additional five (5) year renewal option, at the City's sole discretion.

LEASE COMMENCEMENT DATE: October 2, 2010.

RENT COMMENCEMENT DATE: The earlier of (i) 60 days from Lease Commence Date or, (ii) the date Tenant opens for business.

RENT: \$43.00 PSF; \$57,051.54 annually;

BASE RENT: \$40,600.86 annually, payable in monthly installments of \$3,383.41. Base Rent shall be increased annually, on the anniversary of the Commencement Date of the Lease, in increments of three (3%) percent per year.

ADDITIONAL RENT: \$16,450.68 annually, payable in monthly installments of \$1,370.89. Any increase in Operating Expenses and Insurance will result in an increase to Tenant's proportionate share.

PARKING: Tenant may request from the City's Parking Department, the use of no more than three (3) parking spaces. Rates for said spaces are subject to change, and are currently \$70 per month plus applicable sales tax.

SECURITY DEPOSIT: Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of \$14,262.54 (equal to three months Rent and Additional Rent costs).

USES: The Demised Premises shall be used by the Tenant solely for the purposes of operating a hair salon, including retail sales of related items. The Demised Premises shall be open a minimum of five days a week (Tuesday-Saturday) from 10:00AM to 6:00PM.

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

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

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

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

All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other

property removable by Tenant under the provisions of this Agreement) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant, subject to adjustment for inflation.

PROPERTY TAXES: Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be payable by Tenant immediately upon receipt of notice from the City. Tenant's property taxes payments are included within Additional Rent costs.

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

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

CONCLUSION

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 ground floor retail uses envisioned for the Building. 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 Leonardo Salon, Inc., with the proposed terms, as delineated herein, be approved.

The proposed lease was approved on first reading on July 14, 2010. Should the proposed lease be approved by the F&CPC, the lease will be considered at the September 15, 2010 Commission meeting on second reading/public hearing.

JMG/HMF/AP/RR

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day of September, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **LEONARDO SALON, INC.**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.

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

1,326.78 square feet of City-owned property (the "Building"), located at 1701 Meridian Avenue, Unit 1 (a.k.a. 765 17th Street), Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of four (4) years and 364 days, commencing on the 2nd day of October, 2010 (the "Commencement Date"), and ending on the 30th day of September, 2015. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1st day of October, and ending on the 30th day of September.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for one (1) additional five (5) year renewal term. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

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

3. Rent.

3.1 Base Rent:

Tenant's payment of Rent, as defined in this Section 3, shall commence on the earlier of (i) the date Tenant opens for business, or (ii) 60 days after the Commencement Date (the "Rent Commencement Date" and, thereafter, on each first day of subsequent months.

Notwithstanding the preceding sentence, Tenant agrees to prepay the first month's Rent payment (the "Prepaid Rent") prior to the Commencement Date.

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Forty Thousand Six Hundred Dollars and 86/100 (\$40,600.86) per year, payable in monthly installments of Three Thousand Three Hundred Eighty Three Dollars and 41/100 (\$3,383.41).

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

3.2 Additional Rent:

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

3.2.1 Operating Expenses:

Throughout the Term herein, the Operating Expenses for the Demised Premises shall be Five Thousand Three Hundred Seven Dollars and 12/100 (\$5,307.12) per year, payable in monthly installments of Four Hundred Forty Two Dollars and 26/100 (\$442.26), for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural

portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

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

Tenant agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Tenant's pro-rata share of Operating Expenses shall increase or decrease accordingly.

3.2.2 Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The 2009 Property Tax Payment is Nine Thousand Nine Hundred Forty Nine Dollars and 46/100 (\$9,949.46), payable in monthly installments of Eight Hundred Twenty Nine Dollars and 12 /100 (\$829.12).

3.2.3 Insurance:

The Additional Rent shall also include Tenant's pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of Ninety Nine Dollars and 51/100 (\$99.51). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility.

3.3 Sales Taxes:

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

3.4 Enforcement.

Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the

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

4. Location for Payments.

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

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

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

5. Parking.

Tenant may request, from the City's Parking Department, the use of no more than three (3) parking spaces, if available, within the Municipal Parking Garage. Rates for said spaces are subject to change, and are currently Seventy (\$70.00) Dollars per month, plus applicable sales and use tax per space.

6. Security Deposit / Guaranty.

- 6.1 Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Fourteen Thousand Two Hundred Sixty Two Dollars and 54/100 (\$14,262.54). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

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

- 6.2 Upon execution of this Agreement, Tenant shall execute and deliver to City the Guaranty, in the form attached as Exhibit 6.2 hereto.

7. Use and Possession of Demised Premises.

- 7.1 The Demised Premises shall be used by the Tenant solely for the purpose(s) of operating a hair salon, including retail sales of related items. Said Premises shall be open for operation a minimum of five (5) days a week, with minimum hours of operation being as follows:

Tuesday - Friday: 10:00 AM to 7:00 PM
Saturday 10:00 AM to 7:00 PM

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

- 7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

- 8.1 Tenant accepts the Demised Premises in their present "**AS IS**" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from,

connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

- 8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.
- 8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

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

this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

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

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

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

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

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

11. Property Taxes and Assessments.

For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

12. Assignment and Subletting.

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

13. Operation, Maintenance and Repair.

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

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

If the City provides a separate air-conditioning unit for the Demised Premises, Tenant agrees and understands that Tenant shall be solely responsible for the maintenance, repair and replacement of the heating/ventilation/air-conditioning (HVAC) equipment servicing the Demised Premises, at Tenant's sole expense.

Tenant further agrees and understands that, if the City provides a separate HVAC unit for the Demised Premises, the City, at its sole discretion, may require that Tenant obtain, at any time during the Term of this Agreement, and continuously maintain in good standing, at Tenant's expense, throughout the Term of this Agreement, a maintenance and repair contract, approved by the City, with a service company previously approved in writing by the City, providing for the preventative maintenance and repair of all HVAC equipment servicing the Demised Premises. In the event that the City notifies Tenant that it will require Tenant to contract for said maintenance and repair services, Tenant shall provide to the City, in writing, within ten (10) business days, the name(s) and telephone number(s) of service company(ies) for the City's review and approval. Tenant shall provide a copy of a current, enforceable and fully executed maintenance and repair contract, no later than ten (10) business days after receipt of the City's approval of the service company, as proof of Tenant's compliance with this provision.

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

- 13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses).
Tenant is solely responsible for, and shall promptly pay when due all charges for electricity, gas, cable, telephone, internet, janitorial garage service and any other utility service provided to the Demised Premises, including, without limitation, all hook-up fees and impact fees, **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

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

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

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

14. Governmental Regulations.

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

15. Liens.

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

immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

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

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

18. Default.

18.1 Default by Tenant:

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

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

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

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

of time acceptable to the City, at its sole discretion;

- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 18.1.6 Tenant shall become insolvent;
- 18.1.7 Tenant shall make an assignment for benefit of creditors;
- 18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

- 19.1 Rights on Default:
In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;
 - 19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.
 - 19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents

therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.

- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.
- 19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the due date.
- 19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of

the month following the payment of the expense by the City.

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

19.2 Default by City:

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

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

19.3 Tenant's Rights on Default:

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

20. Indemnity Against Costs and Charges.

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

- 20.2 If Tenant shall at any time be in default hereunder, and if the City shall deem

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

21. Indemnification Against Claims.

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

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

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

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

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

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

22. Signs and Advertising.

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

23. Effect of Conveyance.

The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that

in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered 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.

26. Waiver.

26.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect.

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

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

27. Notices.

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

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

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

TENANT: Leonardo Salon, Inc.
765 17th Street
Miami Beach, Florida 33139

With copy to:

Giuseppa Tantino, President

_____, Florida 33_____

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

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

Attest:

LEONARDO SALON, INC.

Signature/Secretary

Giuseppa Tantino, President

Print Name

CORPORATE SEAL
(affix seal here)

EXHIBIT 1

Demised Premises

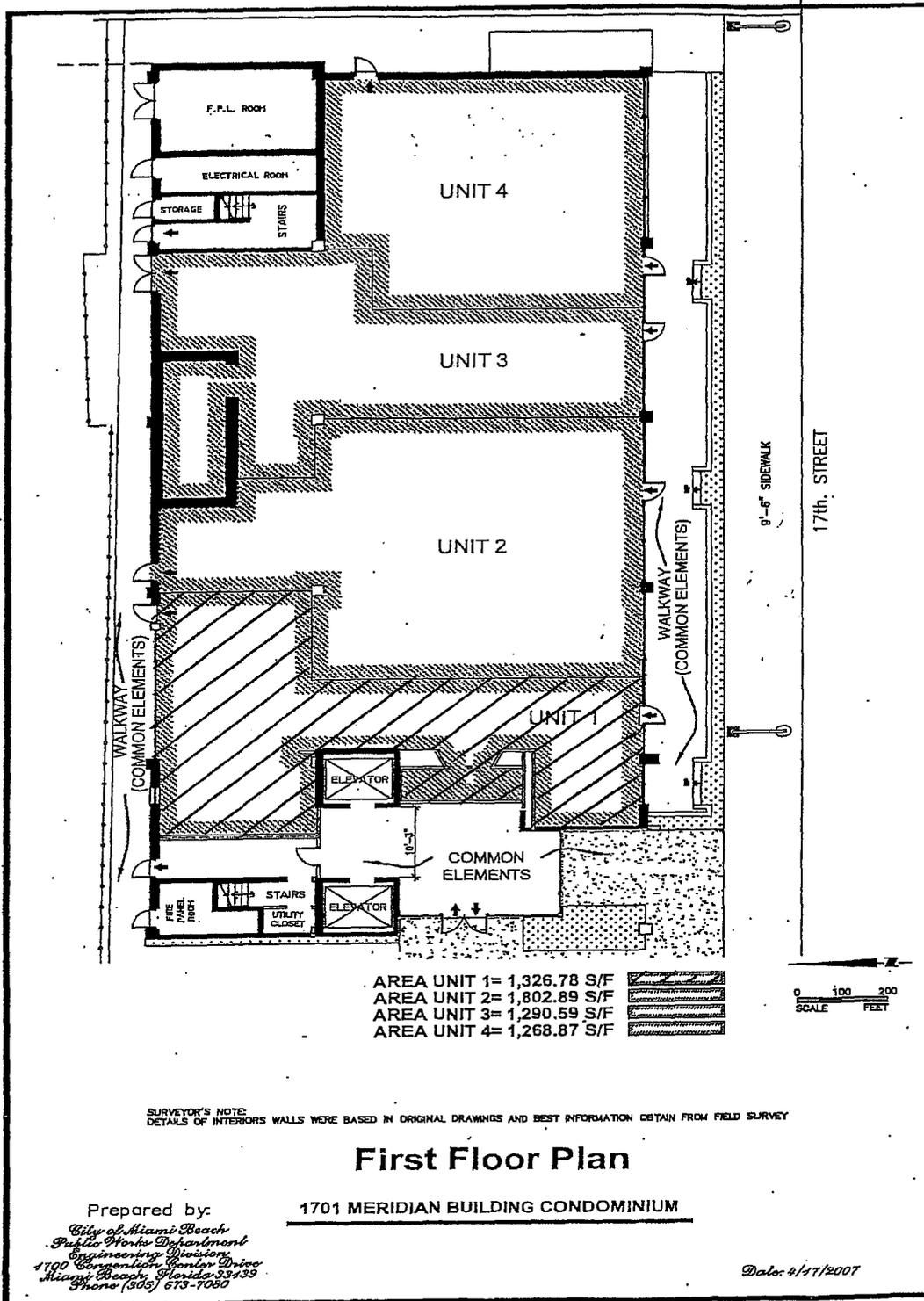


EXHIBIT 6.2

Lease Guaranty

"Lease is herein defined to be that certain Lease Agreement dated September 15, 2010, and entered into by Leonardo Salon, Inc., as Tenant, and the City of Miami Beach, as Landlord with respect to certain Demised Premises located at 1701 Meridian Avenue, Unit 1 (a/k/a 765 17th Street), Miami Beach, Florida, 33139.

In order to induce the Landlord to enter into the Lease, and for the Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the undersigned, individually, hereby irrevocably guarantees prompt payment when and as due of all rents and other monetary obligations, and the performance of all other obligations, required to be paid or performed by the Tenant pursuant to the Lease for the entire Term and all extensions and renewals thereof and agrees to pay and perform as a primary obliger all liabilities, obligations and duties of Tenant pursuant to the Lease, including, without limitation, payment of Rent.

The undersigned expressly agrees that the validity and enforceability of this Guaranty and the obligations and liability of the Guarantor hereunder shall in no way be terminated, affected or impaired by reason of any modification, indulgence, compromise, settlement, variation of terms, renewal or extension of the Lease and the undersigned hereby consents to any such modification, renewal and extension and shall not be affected by any termination of the Lease. Action or suit may be brought against the undersigned and reduced to final judgment with or without first concurrently proceeding against the Tenant under the Lease. This Guaranty creates, joint and several, personal liability to all the undersigned for payment and performance as herein before stated, and the undersigned hereby waives and renounces any and all exemption rights under or by virtue of the Laws of any state or the United States and further waives all notice, demand, protest, presentment, notice of demand, notice of default, diligence, protest, presentment and nonpayment. Any notices or communications to the Tenant under the Lease shall be deemed to constitute notice or communication to the undersigned individually. Landlord and Tenant, without notice to or consent by the undersigned, may at any time and from time to time, enter into modifications, extensions, amendments or other covenants respecting the Lease and the undersigned shall not be released thereby, but shall continue to be fully liable for the payment and performance of all liabilities, obligations, and duties of Tenant pursuant to the Lease as so modified, extended or amended. The force and effect of this Guaranty shall not be affected by the execution of other guaranties securing the same obligations, liabilities and duties. This Guaranty shall be cumulative of any such guaranties and the liability of all the guarantors of the Lease shall be joint and several. The Landlord in its sole discretion shall be entitled to release, compromise or settle the obligations, liabilities, and duties of any one or more of such guarantors and such action shall not affect the right of Landlord, to enforce the Lease against the Tenant and any other guarantors. If any party executing the Guarantee is a corporation or partnership, then the undersigned officer or partner hereby represents and warrants that the Board of Directors of such corporation or the partners of such partnership, have authorized the execution on its behalf and acknowledge the benefit and consideration to the undersigned.

The undersigned agree to pay reasonable attorney's fees, plus expenses incurred by Landlord in the enforcement of any right of Landlord hereunder or in the defense of any action against Landlord hereunder.

This instrument shall inure to the benefit of the Landlord under the Lease, its successors and assigns, and shall bind the undersigned, and heirs, successors and assigns. If more than one party has executed this Guaranty, then the liability of all such parties who have signed below shall be joint and several.

This Guaranty is made and entered into this 15th day of September, 2010.

By: _____
Giuseppa Tantino

By: _____

SS # _____

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Jorge M. Gonzalez, City Manager

DATE: July 29, 2010

SUBJECT: **DISCUSSION REGARDING A LEASE AGREEMENT WITH MASSAGE PARTNERS, INC., FOR USE OF THE CITY-OWNED PROPERTY LOCATED AT 1701 MERIDIAN AVENUE, UNIT 2 (A/K/A 767 17TH STREET)**

BACKGROUND

On October 17, 2001, the City Commission passed Resolution No. 2001-24661 authorizing the purchase of the building at 1701 Meridian Avenue (a.k.a. 777 Building) in order to address the City's ongoing need for administrative office space expansion. At the time, the preservation of a retail environment on the ground floor of the property was considered and it was determined that retention of the retail space was conducive to maintaining and enhancing the pedestrian character of the linkage between Lincoln Road Mall and the Civic/Convention Center area.

At the October 21, 2008 meeting of the Finance & Citywide Projects Committee (F&CPC), and subsequently at their meeting of March 10, 2009, and following a comprehensive review of the City's office space use, the Committee agreed with City staff's recommendation that usage of the ground floor of 1701 Meridian Avenue Building remain a primary use for commercial retail space. Additionally, the Committee recommended that any commercial leases (including renewals and/or extensions) for use of space at the Building be handled as it is in the private sector and not through a competitive bid process.

On July 14, 2010, the Mayor and City Commission adopted Resolution No. 2010-27454, approving the proposed lease agreement on first reading; setting a public hearing on September 15, 2010, for second reading (and final approval) of the lease agreement; and forwarded the proposed lease agreement to the F&CPC for discussion.

The subject lease was contingent on the proposed tenant securing and producing a fully executed franchise agreement with Massage Envy. The proposed tenant has provided the City with a copy of a fully executed franchise agreement which is dated June 2, 2010. Additionally, while the draft lease agreement approved on first reading identified the tenant as an individual (Jon Krutchik), it was anticipated that prior to second and final reading of the lease, the tenant would be a corporate entity. The proposed tenant incorporated on June 30, 2010, as Massage Partners, Inc., whose President is Jon Krutchik and whose Vice President is Michael Muskat.

PROPOSED LEASE

On April 30, 2010, Koniver Stern Group, the City's contracted real estate broker, presented the City with the first of several Letters of Intent (LOI) on behalf of Jon Krutchik, a potential Massage Envy Spa franchisee, who expressed an interest in the ground floor retail space located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), formerly occupied by Permit Doctor which is currently vacant and available. Koniver Stern recommended that the City consider the proposed lease terms based on the City's ability to secure a viable tenant during this economic time and at a competitive PSF rate. The average PSF rate for ground floor retail in the Building is \$42.00. The prospective tenant

has offered to pay \$40.00 PSF, which the Administration and the City's Broker are recommending due to the fact that the prospective tenant will be undertaking significant renovations to upgrade the current condition of the retail space. The proposed tenant improvement rent credit is less than the cost of the build-out which the proposed tenant will be ultimately responsible to perform in order to comply with its master franchisor agreement. While preliminary estimates of the franchisee's requirements for start-up costs are \$296,000, the Administration recommends that a one year rent abatement credit (\$72,115.60) be granted. The minimum projected hard construction costs are \$81,000. An updated budget and scope of improvements will be provided by the tenant prior to final approval and a timeline for deliverables will be contractually required.

Since approval on first reading, the City has been working with the proposed tenant to incorporate an escrow requirement or some other mechanism to ensure that funds to cover the minimum projected hard costs are secured in favor of the City. The tenant is agreeable to such a structure, contingent on the City considering a term that is concurrent with the current Franchise Agreement. The Franchise Agreement has a term of ten (10) years. The term proposed on first reading was four (4) years and 364 days with a five (5) year renewal at our sole option. As they have proposed, the lease term would now be no more than nine (9) years and 364 days (or the same expiration date as their Franchise Agreement); this is the same or less than the total term time previously approved on first reading, but does not provide for a renewal provision. It should be noted that all termination provisions would still apply. The concept of a franchisee pursuing a lease term concurrent with their franchise term is common in the private sector.

The Administration proceeded to negotiate a proposed lease agreement (attached hereto). A summary of the proposed lease terms are as follows:

TENANT: Massage Partners, Inc., a Florida corporation.

DEMISED PREMISES: 1,802.89 SF on the ground floor of the 777 Building, located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street).

TERM: No more than nine years and 364 days, to be concurrent with Franchise Agreement Term (revised since first reading).

LEASE COMMENCEMENT DATE: October 2, 2010.

RENT COMMENCEMENT DATE: October 1, 2011.

RENT: \$40.00 PSF; \$72,115.60 annually;

BASE RENT: \$49,763.08 annually, payable in monthly installments of \$4,146.92. Base Rent shall be increased annually, commencing on the third anniversary of the Commencement Date of the Lease and on each anniversary Commencement Date thereafter, in increments of three (3%) percent per year.

ADDITIONAL RENT: \$22,352.52 annually, payable in monthly installments of \$1,862.71. Any increase in Operating Expenses and Insurance will result in an increase to Tenant's proportionate share.

PARKING: Tenant may request from the City's Parking Department, the use of no more than five (5) parking spaces. Rates for said spaces are subject to change,

and are currently \$70 per month plus applicable sales tax.

SECURITY DEPOSIT: Prior to the execution of the Lease, Tenant will furnish the City with a Security Deposit in the sum of \$18,028.89 (equal to three months Rent and Additional Rent costs).

USES: The Demised Premises shall be used by the Tenant for the purpose(s) of operating a massage therapy clinic and providing facial services. The Demised Premises shall be open on Monday-Friday from 8AM to 10PM and Saturday and Sunday from 9AM to 9PM.

IMPROVEMENTS: Tenant agrees to make certain improvement to the Demised Premises in the minimum amount of \$81,000.00 (an amount greater than one year's Rent) in exchange for a one year credit against Rent.

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

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

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

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

PROPERTY TAXES: Tenant shall pay its proportionate share of the property tax bill. Any property tax payment shall be payable by Tenant immediately upon receipt of notice from the City. Tenant's property taxes payments are included within Additional Rent costs.

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

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

CONCLUSION

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 ground floor retail uses envisioned

F&CPC Memorandum
Massage Partners, Inc.
July 29, 2010
Page 4 of 30

for the Building. 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 Massage Partners, Inc., with the proposed terms, as delineated herein, including the proposed creation of an escrow, and the change to the lease term be approved.

The proposed lease was approved on first reading on July 14, 2010. Should the proposed lease be approved by the F&CPC, the lease will be considered at the September 15, 2010 Commission meeting on second reading/public hearing.

JMG/HMF/AP/RR

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LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day of September, 2010, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **MASSAGE PARTNERS, INC.**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.

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

1,802.89 square feet of City-owned property (the "Building"), located at 1701 Meridian Avenue, Unit 2 (a.k.a. 767 17th Street), Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of four (4) years and 364 days, commencing on the 2nd day of October, 2010 (the "Commencement Date"), and ending on the 30th day of September, 2015. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1st day of October, and ending on the 30th day of September.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for one (1) additional five (5) year renewal term. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

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

3. Rent.

3.1 Base Rent:

Tenant's payment of Rent, as defined in this Section 3, shall commence on October 1, 2011 (the "Rent Commencement Date") and, thereafter, on each first day of subsequent months.

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Forty Nine Thousand Seven Hundred Sixty Three Dollars and 08/100 (\$49,763.08) per year, payable in monthly installments of Four Thousand One Hundred Forty Six Dollars and 92/100 (\$4,146.92).

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

3.2 Additional Rent:

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

3.2.1 Operating Expenses:

Throughout the Term herein, the Operating Expenses for the Demised Premises shall be Seven Thousand Two Hundred Eleven Dollars and 56/100 (\$7,211.56) per year, payable in monthly installments of Six Hundred Dollars and 96/100 (\$600.96), for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to

employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

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

Tenant agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Tenant’s pro-rata share of Operating Expenses shall increase or decrease accordingly.

3.2.2 Property Taxes:

The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The 2009 Property Tax Payment is Thirteen Thousand Five Hundred Eighteen Dollars and 36/100 (\$13,518.36), payable in monthly installments of One Thousand One Hundred Twenty Six Dollars and 53 /100 (\$1,126.53).

3.2.3 Insurance:

The Additional Rent shall also include Tenant’s pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of One Hundred Thirty Five Dollars and 22/100 (\$135.22). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant’s sole expense and responsibility.

3.3 Sales Taxes:

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

3.4 Enforcement.

Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City

may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.

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

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

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

5. Parking.

Tenant may request, from the City's Parking Department, the use of no more than five (5) parking spaces, if available, within the Municipal Parking Garage. Rates for said spaces are subject to change, and are currently Seventy (\$70.00) Dollars per month, plus applicable sales and use tax per space.

6. Security Deposit / Guaranty.

- 6.1 Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Eighteen Thousand Twenty Eight Dollars and 89/100 (\$18,028.89). Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

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 aforesated, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

- 6.2 Upon execution of this Agreement, Tenant shall execute and deliver to City the Guaranty, in the form attached as Exhibit 6.2 hereto.

7. Use and Possession of Demised Premises.

- 7.1 The Demised Premises shall be used by the Tenant for the purpose(s) of operating a massage therapy clinic and providing facials. Said Premises shall be open for operation as follows:

Monday - Friday: 8:00 AM to 10:00 PM
Saturday & Sunday: 9:00 AM to 9:00 PM

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

- 7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided herein, then the City may declare this Agreement in default pursuant to Section 18 or, without notice to Tenant, restrain such improper use by injunction or other legal action.

8. Improvements.

- 8.1 Tenant accepts the Demised Premises in their present "AS IS" condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole expense and responsibility. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred (\$500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

8.4 Tenant Improvements.

Tenant agrees to make certain improvements (Tenant Improvements) to the Demised Premises (valued by the parties at approximately Eight One Thousand Dollars and 00/100 (\$81,000.00), as delineated in "Exhibit 8.4", attached hereto and incorporated herein (the Tenant Improvements). The Tenant Improvements shall be made in accordance with the following timeline:

- Tenant shall obtain a building permit no later than ninety (90) days from the Commencement Date of this Agreement;
- Tenant shall commence making the Tenant Improvements no later than forty five (45) days from the date the building permit is issued (the "Building Permit Date"); and
- Tenant Improvements shall be completed, and Tenant shall obtain final approval by the City's Building Department for said Tenant Improvements, no later than one hundred eighty (180) days from the Building Permit Date.

Failure to comply with the timeline and complete the Tenant Improvements within the time period specified shall constitute an event of default hereunder.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same; preventing waste; making such repairs as the City may consider necessary; and for the purpose of preventing fire, theft or vandalism. The City agrees that, whenever reasonably possible, it shall use

reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

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

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

10. Tenant's Insurance.

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

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

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

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

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

11. Property Taxes and Assessments.

For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

12. Assignment and Subletting.

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

13. Operation, Maintenance and Repair.

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

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

If the City provides a separate air-conditioning unit for the Demised Premises, Tenant agrees and understands that Tenant shall be solely responsible for the maintenance, repair and replacement of the heating/ventilation/air-conditioning (HVAC) equipment servicing the Demised Premises, at Tenant's sole expense.

Tenant further agrees and understands that, if the City provides a separate HVAC unit for the Demised Premises, the City, at its sole discretion, may require that Tenant obtain, at any time during the Term of this Agreement, and continuously maintain in good standing, at Tenant's expense, throughout the Term of this Agreement, a maintenance and repair contract, approved by the City, with a service company previously approved in writing by the City, providing for the preventative maintenance and repair of all HVAC equipment servicing the Demised Premises. In the event that the City notifies Tenant that it will require Tenant to contract for said maintenance and repair services, Tenant shall provide to the City, in writing, within ten (10) business days, the name(s) and telephone number(s) of service company(ies) for the City's review and approval. Tenant shall provide a copy of a current, enforceable and fully executed maintenance and repair contract, no later than ten (10) business days after receipt of the City's approval of the service company, as proof of Tenant's compliance with this provision.

- 13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired,

restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

- 13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than the original work or installations and shall be done in good and workmanlike manner.
- 13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.
- 13.5 It shall be Tenant's sole obligation and responsibility to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all applicable building codes and life safety codes of governmental authorities having jurisdiction.
- 13.6 Tenant Responsibilities for Utilities (not included within Operating Expenses). Tenant is solely responsible for, and shall promptly pay when due all charges for electricity, gas, cable, telephone, internet, janitorial garage service and any other utility service provided to the Demised Premises, including, without limitation, all hook-up fees and impact fees, **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

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

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

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

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

be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.

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

16. Intentionally Omitted.

17. Condemnation.

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

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

18. Default.

18.1. Default by Tenant:

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

- 18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;
- 18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;
- 18.1.3 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;
- 18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;
- 18.1.5 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of any state for the purpose of discharging or extending the time for payment of debts;
- 18.1.6 Tenant shall become insolvent;
- 18.1.7 Tenant shall make an assignment for benefit of creditors;
- 18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or
- 18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

19.1 Rights on Default:

In the event of any default by Tenant as provided herein, City shall have the option to do any of the following, in addition to and not in limitation of, any other remedy permitted by law or by this Agreement;

- 19.1.1 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon the Demised Premises and expel or remove Tenant and its effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.
- 19.1.2 Declare the entire amount of the Base Rent and Additional Rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or receivership.
- 19.1.3 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore; remove Tenant's property there from; and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, the City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.
- 19.1.4 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding Tenant liable for the deficiency, if any.
- 19.1.5 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of

this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. In addition, there will be a late charge of Fifty (\$50.00) Dollars for any payments submitted after the due date.

19.1.6 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to the City on the first day of the month following the payment of the expense by the City.

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

19.2 Default by City:

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

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

19.3 Tenant's Rights on Default:

If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect

damages, including reasonable attorney fees and costs, to terminate this Agreement; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

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

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

21. Indemnification Against Claims.

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

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

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

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

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

under this Agreement.

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

22. Signs and Advertising.

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

23. Effect of Conveyance.

The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered 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.

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 captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

31. Number and Gender.

Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

32. Limitation of Liability.

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.00. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of \$10,000.00 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

33. Surrender of the Demised Premises.

Tenant shall, on or before the last day of the Term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Section. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the Term as provided in this Section, Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.

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

35. Venue:

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

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

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

37. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
IN WITNESS WHEREOF, the parties hereto have caused their names to be signed

and their seals to be affixed, all as of the day and year first above written, indicating their agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

Attest:

MESSAGE PARTNERS, INC.

Michael Muskat, Vice President

Jon Krutchik, President

CORPORATE SEAL
(affix seal here)

EXHIBIT 1

Demised Premises

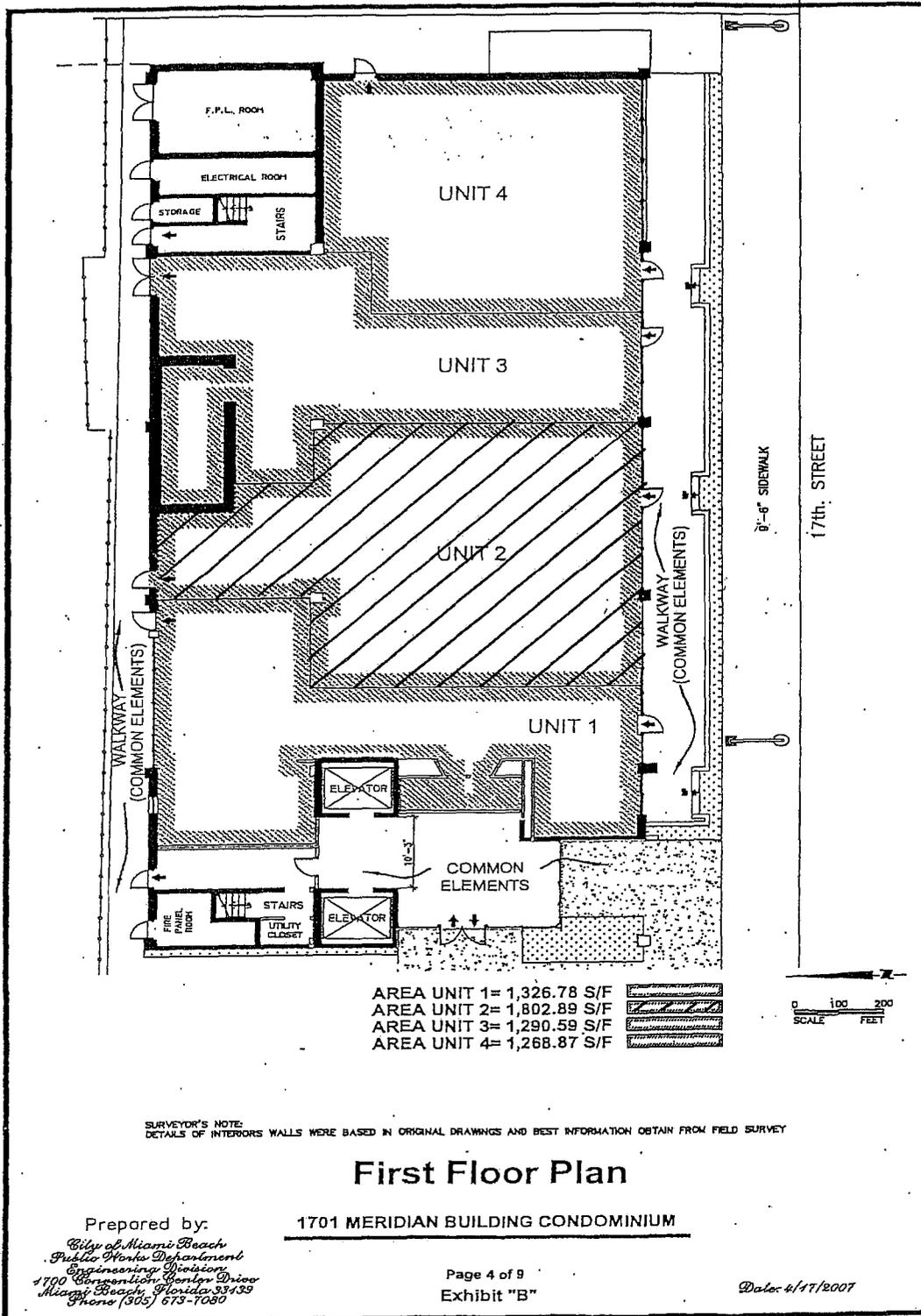


EXHIBIT 6.2

Lease Guaranty

"Lease is herein defined to be that certain Lease Agreement dated September 15, 2010, and entered into by Massage Partners, Inc., as Tenant, and the City of Miami Beach, as Landlord with respect to certain Demised Premises located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), Miami Beach, Florida, 33139.

In order to induce the Landlord to enter into the Lease, and for the Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the undersigned, individually, hereby irrevocably guarantees prompt payment when and as due of all rents and other monetary obligations, and the performance of all other obligations, required to be paid or performed by the Tenant pursuant to the Lease for the entire Term and all extensions and renewals thereof and agrees to pay and perform as a primary obligor all liabilities, obligations and duties of Tenant pursuant to the Lease, including, without limitation, payment of Rent.

The undersigned expressly agrees that the validity and enforceability of this Guaranty and the obligations and liability of the Guarantor hereunder shall in no way be terminated, affected or impaired by reason of any modification, indulgence, compromise, settlement, variation of terms, renewal or extension of the Lease and the undersigned hereby consents to any such modification, renewal and extension and shall not be affected by any termination of the Lease. Action or suit may be brought against the undersigned and reduced to final judgment with or without first concurrently proceeding against the Tenant under the Lease. This Guaranty creates, joint and several, personal liability to all the undersigned for payment and performance as herein before stated, and the undersigned hereby waives and renounces any and all exemption rights under or by virtue of the Laws of any state or the United States and further waives all notice, demand, protest, presentment, notice of demand, notice of default, diligence, protest, presentment and nonpayment. Any notices or communications to the Tenant under the Lease shall be deemed to constitute notice or communication to the undersigned individually. Landlord and Tenant, without notice to or consent by the undersigned, may at any time and from time to time, enter into modifications, extensions, amendments or other covenants respecting the Lease and the undersigned shall not be released thereby, but shall continue to be fully liable for the payment and performance of all liabilities, obligations, and duties of Tenant pursuant to the Lease as so modified, extended or amended. The force and effect of this Guaranty shall not be affected by the execution of other guaranties securing the same obligations, liabilities and duties. This Guaranty shall be cumulative of any such guaranties and the liability of all the guarantors of the Lease shall be joint and several. The Landlord in its sole discretion shall be entitled to release, compromise or settle the obligations, liabilities, and duties of any one or more of such guarantors and such action shall not affect the right of Landlord, to enforce the Lease against the Tenant and any other guarantors. If any party executing the Guarantee is a corporation or partnership, then the undersigned officer or partner hereby represents and warrants that the Board of Directors of such corporation or the partners of such partnership, have authorized the execution on its behalf and acknowledge the benefit and consideration to the undersigned.

The undersigned agree to pay reasonable attorney's fees, plus expenses incurred by Landlord in the enforcement of any right of Landlord hereunder or in the defense of any action against Landlord hereunder.

This instrument shall inure to the benefit of the Landlord under the Lease, its successors and assigns, and shall bind the undersigned, and heirs, successors and assigns. If more than one party has executed this Guaranty, then the liability of all such parties who have signed below shall be joint and several.

This Guaranty is made and entered into this 15th day of September, 2010.

By: _____
Jon Krutchik

By: _____
Michael Muskat

SS # _____

SS # _____

EXHIBIT 8.4
Tenant Improvement(s)
(page 1 of _)

TO BE SUBMITTED BY TENANT

EXHIBIT 8.4
Tenant Improvement(s)
(page 2 of _)

TO BE SUBMITTED BY TENANT

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

TO BE SUBMITTED BY TENANT

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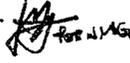


MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager 

DATE: July 29, 2010

SUBJECT: Additional Parking Garage Lighting Improvements through Ameresco

BACKGROUND

On May 25, 2010, the City executed an agreement with Ameresco, Inc., for the purpose of providing energy conservation measures (ECMs), consisting of services, systems and facilities designed to reduce energy consumption and costs in buildings owned and operated by the City.

Under the Agreement, Ameresco shall design, procure, fabricate and install the six (6) ECMs specified below and provide training, commissioning, maintenance and monitoring and the services to deliver the guaranteed annual energy savings.

ECM	Description	Cost
1	Facility Lighting and Lighting Control Upgrades	\$3,723,710
3	Domestic Water Conservation	\$434,614
5	HVAC Control	\$2,066,976
7	Geothermal Cooling - Police Station	\$0
10	Power Transformer Replacement	\$1,415,076
6a	Geothermal Cooling - Convention Center	\$2,827,271
6b	Chiller Plant Optimization	\$377,020
6c	District Cooling Plant	\$2,369,592
Total		\$13,214,259

During the development of ECMs Facility Lighting and Lighting Control Upgrades three existing parking garages were not evaluated. The City Commission meeting on May 12, 2010, the possibility of expanding ECM 1 to include all existing parking garages, was referred to the Finance and Citywide Projects Committee for consideration.

ANALYSIS

The City has received the attached proposal from Ameresco. Under the proposal, Ameresco would install more efficient lighting systems within the parking garage at 7th Street, 13th Street and 42nd Street that would reduce the cost of energy, operations and maintenance for the City. The proposed capital cost for this additional scope of work is \$302,650, with guaranteed annual energy savings of \$36,792 within a ten (10) year term.

As part of our due diligence, City staff has reviewed the cost backup sheets and the cash flow analysis. City staff considers the proposed cost for the additional scope of work of \$302,650 and the ten (10) year guaranteed annual energy savings of \$36,792 to be fair and reasonable.

Funding options will be discussed at the meeting.

CONCLUSION

The City Administration recommends approval to add the lighting improvements to parking garages at 7th Street, 13th Street and 42nd Street as ECM. Additional parking garage improvements at a cost of \$302,650 with a ten (10) year guaranteed annual energy savings of \$36,792.

Attached: Ameresco's Additional ECM Parking Garage Lighting Improvements


JMGJGG(FHB)

Additional ECM: Parking Garage Lighting Improvements



Executive Summary

Ameresco appreciates the opportunity to review these additional garages as a possible addition to the existing energy performance contract that the City awarded to Ameresco on May 26, 2010. During the development and review of the Garages at 7th Street, 13th Street, and 42nd Street, Ameresco found several different lamp/ballast/fixture combinations throughout these City of Miami Beach (the City) facilities. Ameresco proposes to install a more energy efficient lighting system within these facilities that will reduce the cost of energy, operation, and maintenance for the City. The proposed capital cost of this additional scope is \$302,650 which will be funded by guaranteed annual energy savings of \$36,792 within a ten year term. (Please See Appendix, Item II, Cash Flow Model).

The goal of a successful lighting retrofit project is to provide recommended light levels for safe and comfortable use of all areas, while reducing the amount of energy consumed by the lighting system. This may mean that areas not meeting minimum standards would require improved lighting.

Many different fixture combinations were identified during our site visits, some of which do not perform at currently achievable levels of efficiency. Wherever possible, Ameresco will standardize lamp and ballast types and sizes to simplify the stocking and replacement of lamps and ballasts for maintenance personnel.

The parking garage lighting will be replaced with a combination of linear fluorescent and induction fixtures and the perimeter fixtures in the parking decks will be equipped with photo sensors that will make use of daylighting to decrease energy consumption. When there is sufficient light along the perimeter, the photo sensors will turn the perimeter lights off – thus saving energy and extending the useful life of the fixture.

The following discussion of the existing and proposed lighting systems explains Ameresco's recommendations for the most appropriate fixture replacements and upgrades.

ECM Overview

Ameresco requested from the City of Miami Beach Real Estate division, additional information about parking garages located within the City of Miami Beach. After obtaining information on four parking garages that were not covered in Phase I of the Performance Contracting project with the City, Ameresco identified the following garages as potential candidates to implement Energy Conservation Measures (ECM): 7th Street and



Collins Parking Garage, 13th Street and Collins Parking Garage, and the 42nd Street and Sheridan Avenue Parking Garage. During the development of this ECM, Ameresco found predominately High Pressure Sodium (HPS) and Metal Halide (MH) lights in general areas of the parking garages, while Linear Fluorescent F32T8 were mostly found in stairwells, administration and lobby areas. Ameresco proposes to install a new lighting system that will provide the City of Miami Beach with a high quality visual environment that is energy efficient, low maintenance, and cost effective. This upgrade to the lighting system will also improve the overall color rendering and consistency of the lighting.

Ameresco's strategy will combine the use of photocells in outdoor fixtures in all garages, on perimeter light fixtures at the 13th Street and Collins Parking Garage and the 42nd Street Northwest stairways, where daylight impact is noticeable.

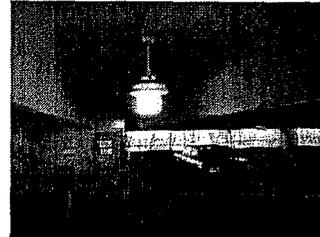
ECM Detail

Existing System

7th Street and Collins Parking Garage

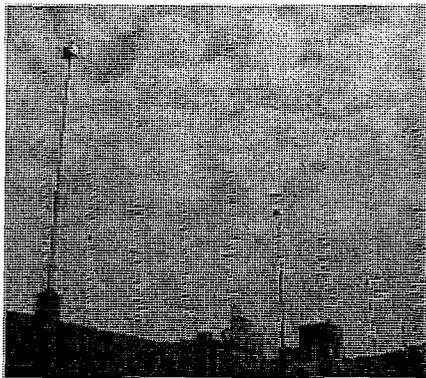
This parking garage operates 24 hours a day, 365 days a year. Lighting in this garage operates 24 hours a day, 365 days a year. An architectural feature of this building consists in vines growing on the building walls. This feature blocks any sun light from infiltrating into the parking areas during the day, allowing only a reduced amount of daylight coming in.

General parking areas consist of Halophane High Pressure Sodium 100 Watt pendant type fixtures. These fixtures have been installed at a height of 8 feet to avoid obstruction of the light pattern by the garage structure beams. As a typical High Pressure Sodium light, the light color is yellow with a very low Color Rendition Index (CRI) ranging between 20 and 30%.



Stairwells in this garage are lit by 48" Linear Fluorescent vapor tight fixtures with two bulb F32T8 and standard electronic ballast. Color temperature on these fixtures is 4,100 K, with an estimated Color Rendition Index (CRI) ranging between 80 and 85%. A similar type of fixture illuminates the roof level elevator waiting rooms on the Northeast and Southwest corners of the building.

The garage administration office lighting system consists of 2 x 4 Linear Fluorescent four (4) bulb recessed troffer-style fixtures with clear acrylic lenses and F32T8 with standard electronic ballast.

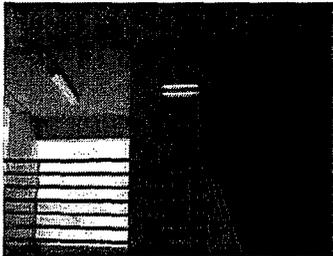
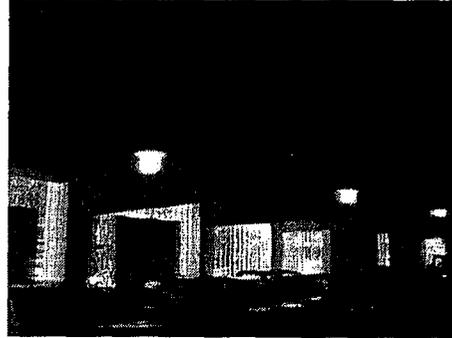


The open roof level of this parking garage is illuminated by eight (8) double head Wall-pack 250 Watts Metal Halide pole mounted fixtures. The fixture heads are installed back to back, completely surface mounted to the pole side end, directing most of the light onto the parking roof level walls and towards the atmosphere outside of the building. Only some of the light is being diffused onto the parking floor. Our team observed that these lights remain on during day time.

13th Street and Collins Parking Garage

This parking garage operates 24 hours a day, 365 days a year. Excluding the building outdoor perimeter lights, lighting in this garage operate 24 hours a day, 365 days a year. The building architecture of open perimeters allows a significant amount of daylight to infiltrate the general parking areas in the building.

General parking areas consist of Halophane High Pressure Sodium 100 Watt pendant type fixtures. These fixtures have been installed at a height of 8 feet to avoid obstruction of the light pattern by the garage structure beams. As a typical High Pressure Sodium light, the light color is yellow with a very low Color Rendition Index (CRI) ranging between 20 and 30%. There are several ceiling mounted vapor tight 48" Linear Fluorescent two bulb F32T8 fixtures with standard electronic ballast scattered among the High Pressure Sodium Halophane fixtures in this general parking area. These light fixtures have a 4,100 K Color Temperature with Color Rendition Index (CRI) ranging between 80 and 90%.



Stairwells in this garage are illuminated by 24" Linear Fluorescent vapor tight two bulb F17T8 with standard electronic ballast, while lighting system in stairwell resting areas consists of 48" Linear Fluorescent vapor tight two bulb F32T8 with standard electronic ballast. Color temperature on these fixtures is 4,100 K, with an estimated Color Rendition Index (CRI) ranging between 80 and 85%.

The building perimeter currently has Metal Halide 100 Watt reflective fixtures around the building. These fixtures are currently controlled by timers located inside the garage electrical room. The timer has been set to activate the electrical circuit at 7:00 P.M. each day and to deactivate the electrical circuit at 6:00 A.M. each day.

The garage administration office lighting system consists of 2 x 4 Linear Fluorescent four (4) bulb recessed troffer-style fixtures with clear acrylic lenses and F32T8 with standard electronic ballast.

The open roof level of this parking garage is lit by four (4) single head Wall-pack 250 Watts Metal Halide pole mounted fixtures. The fixture head is installed completely surface mounted to the pole side end, directing most of the light onto the parking roof level walls and towards the beach. Only some of the light is being diffused onto the parking floor. Our team observed that these lights remain on during day time.

42nd Street and Sheridan Avenue Parking Garage

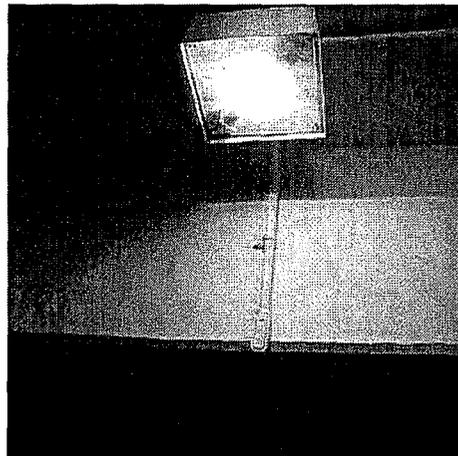
This parking garage operates for the general public Monday through Friday 6:30 A.M. to 9:00 P.M. Nevertheless, the garage remains in operation for those customers with annual admission on a 24 hours a day basis, weekdays and weekends. The building architecture of open perimeters allows a significant amount of daylight to infiltrate the general parking areas in the building.

Lighting circuits in this garage are tied to a lighting control system, which turns on and off the dedicated lighting circuits in the facility. This lighting control panel is located in the main electrical distribution of the garage.

General parking areas consist of Halophane High Pressure Sodium 100 Watt pendant type fixtures. These fixtures have been installed at a height of 8 feet to avoid obstruction of the light pattern by the garage structure beams. As a typical High Pressure Sodium light, the light color is yellow with a very low Color Rendition Index (CRI) ranging between 20 and 30%. The lighting control panel shuts down approximately 75% of the parking area light fixtures every day from 7:00 A.M. to 6:00 P.M.

There are three stairwells in this parking garage. The North stairway is surrounded by general garage areas and day light exposure is minimal, except on the exit to the garage roof level exit. The middle stairway is also surrounded by general parking garage areas with minimal exposure to day light, except on the exit to the roof level. On the other hand, the Northwest stairway is on a corner of the building and totally open to day light infiltration. Stairwells on this parking garage are illuminated by wall or ceiling mounted 100 Watts Metal Halide light fixtures.

Due to the poor daylight infiltration at the North and Middle stairwells, these light fixtures necessitate operation on a 24/7 basis. Northwest stairwells and the elevator waiting areas along this stairway, remain working 24/7, even when day light is sufficient throughout the floors during the day.



The garage administration office in this building houses the Parking Enforcement Headquarters for the City of Miami Beach. The lighting system in these offices consist of 2 x 4 Linear Fluorescent four (4) bulb recessed troffer-style fixtures with clear acrylic lenses and F32T8 with standard electronic ballast. The Parking Enforcement Headquarters is sub-divided into eight areas: the control room, which operates the surveillance system 24/7; the main office area, which

is in the main entrance to the office space; the bicycles storage room; the locker rooms; two restrooms; and two supervisor's offices. All the areas in this office are illuminated 24 hours a day, 365 days a year. Except for the control room and the main general office area, all other areas have intermittent occupancy.



The open roof level of this parking garage is illuminated by five (5) pole lights with decorative round dark-sky 250 Watts Metal Halide fixtures. The light is well diffused downwards towards the parking lot floor. This circuit is controlled by the lighting control panel, which turns these lights on from 7:00 P.M. to 6:00 A.M. every day.

Proposed System

Ameresco has tailored our proposed lighting retrofits to create the ideal lighting environment for each area. Several technologies have been analyzed for each of the applications in these parking garages; however, for our recommendations, we have selected those retrofits that would provide the City of Miami Beach with the best Return on Investment for the life cycle cost and utilization while providing the best quality of light available.

7th Street and Collins Parking Garage

Ameresco proposes to replace the existing pendant Halophane 100 Watts High Pressure Sodium light fixtures in the parking garage general areas with pendant mounted Vapor Tight two bulb F32T8 Linear Fluorescent high lumen and high ballast factor light fixtures, similar to the Optimum Lighting OV Series. The new light is equivalent in intensity; however, its 5,000 K Color Temperature provides a better color rendition index of over 90%.

Ameresco proposes to retrofit all existing 48" Linear Fluorescent F32T8 fixtures 32 Watt bulbs and standard electronic ballast with high output 28 Watt bulbs and energy efficient ballast with low ballast factor. Lighting levels will be maintained, while energy usage will be reduced.

Ameresco proposes to replace all the existing wall or ceiling mounted 100 Watt Metal Halide light fixtures with 80 Watt Induction fixture similar to the Global Induction GLGL-80. The proposed fixtures will provide greater illumination than the existing fixtures. This is based on current output lumens, whereas lumen depreciation over the life of the fixture and better color rendition index will be provided as a result of this retrofit. Additionally, the Induction technology has an expected life of 100,000 hours, compared to 20,000 hours of the existing Metal Halide.

Ameresco proposes to replace all the existing pole mounted outdoor Metal Halide 250 Watt fixtures with 100 Watt Shoebox Induction fixtures similar to the GLSB-100. The proposed fixture will provide an equal amount of illumination than that which is existing, based on output lumens, lumen depreciation over the life of the fixture, and better color rendition index than currently in place. In fact, the proposed Shoebox fixture will direct all the light from the light bulb onto the parking lot floor. Additionally, the Induction technology has an expected life of 100,000 hours, compared to the 20,000 hours of rating of the existing Metal Halide.

Replacements of fixtures will only be done, when applicable to ensure that light levels will be maintained at IES recommended levels.

13th Street and Collins Parking Garage

Ameresco proposes to replace the existing pendant Halophane 100 Watts High Pressure Sodium light fixtures in the parking garage general areas with pendant mounted Vapor Tight two bulb F32T8 Linear Fluorescent high lumen and high ballast factor light fixtures, similar to the Optimum Lighting OV Series. The new light is equivalent in intensity; however, its 5,000 K Color Temperature provides a better Color Rendition Index of over 90%. Photocells will be installed in the perimeter lighting circuits that will shut these light fixtures off, upon sufficient daylight infiltration to the garage parking area.

Ameresco proposes to retrofit all existing 48" Linear Fluorescent F32T8 fixtures 32 Watt bulbs and standard electronic ballast with high output 28 Watt bulbs, and energy efficient ballast with low ballast factor. Lighting levels will be maintained, while energy usage will be reduced.

Ameresco proposes to replace all the existing pole mounted outdoor Metal Halide 250 Watt fixtures with 100 Watt Shoebox Induction fixtures similar to the GLSB-100. The proposed fixture will provide an equal amount of illumination than existing, based on output lumens; lumen depreciation over the life of the fixture; and better color rendition index than currently existing. In fact, the proposed Shoebox fixture will direct all the light from the light bulb onto the parking lot floor. Additionally, the Induction technology has an expected life of 100,000 hours, compared to the 20,000 hours of rating of the existing Metal Halide.

Replacements of fixtures will only be done when applicable to ensure that light levels will be maintained at IES recommended levels.

42nd Street and Sheridan Avenue Parking Garage

Ameresco proposes to replace the existing pendant Halophane 100 Watts High Pressure Sodium light fixtures in the parking garage general areas with pendant mounted Vapor Tight two bulb F32T8 Linear Fluorescent high lumen and high ballast factor light fixtures, similar to the Optimum Lighting OV Series. The new light is equivalent in intensity; however, its 5,000 K Color Temperature provides a better Color Rendition Index of over 90%.

Ameresco proposes to retrofit all existing 48" Linear Fluorescent F32T8 fixtures 32 Watt bulbs and standard electronic ballast with high output 28 Watt bulbs, and energy efficient ballast with low ballast factor. Lighting levels will be maintained, while energy usage will be reduced.

Ameresco proposes to replace all the existing wall or ceiling mounted 100 Watt Metal Halide light fixtures with 80 Watt Induction fixture similar to the Global Induction GLGL-80. The proposed fixture will provide much more illumination than existing, based on output lumens; lumen depreciation over the life of the fixture; and better color rendition index than currently existing. Additionally, the Induction technology has an expected life of 100,000 hours, compared to 20,000 hours of the existing Metal Halide.

Ameresco proposes to install a photocell in the Northwest stairway that will shut the entire light circuit off, upon sufficient infiltration of daylight.

Ameresco proposes to retrofit the existing pole mounted dark sky decorative light fixtures on the roof level of this parking garage with an Induction 100 Watts retrofit kit. The new light will efficiently utilize the existing fixture reflector. An additional benefit from the Induction light will be a better color rendition index and 100,000 hours of useful life.

Appendix for Additional ECM: Garage Lighting System Improvements

- I. Manufacturer Specification Sheets
- II. Proposed Cash Flow Model

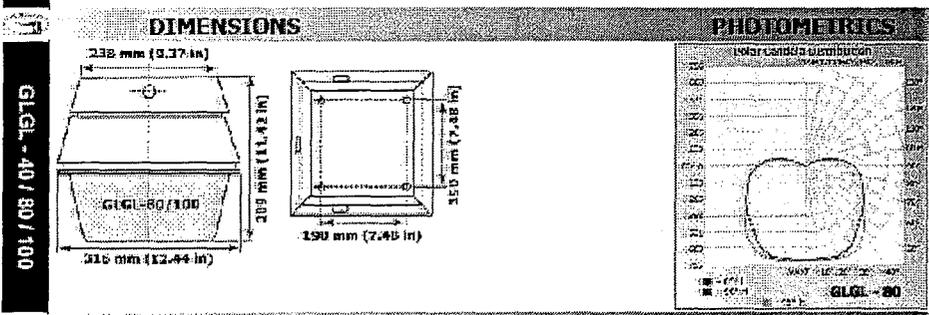
GLOBAL LIGHTING

Global Induction Lighting US
PO Box 681, Tallahassee, FL 32303
Telephone: 850-383-8293 • Fax: 850-222-2892
email: info@gilus.us • Online: www.gilus.us



GLGL-40/80/100

- Features**
- Die cast aluminium housing with powder coated finish for corrosion-resistance.
 - UV stabilized, polycarbonate lens.
 - IP-43 rating suitable for use in sheltered locations such as parking garages or under canopies.
- Lamp and Ballast**
- Global's 40W, 80W or 100W round tubular induction lamp features high lighting efficiency.
 - 10 Year or 60,000 hour (whichever occurs first) warranty (estimated lifespan 100,000 hours).
 - Electronic ballast features high power factor (>0.95), flicker free, instant on/instant re-strike.
 - Ambient temperature for lighting fixture: -40C~+40C.
- Applications**
- Parking garages, gas stations, warehouses, stairwells, schools, washrooms, breezeways, etc.



FIXTURE SPECIFICATIONS

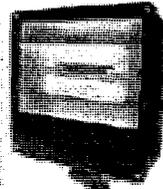
Global Code	Type	Lamp	Voltage	Colour Temp.	Note
GLGL-40	Garage Lighting	40W - Round	120~277	5,000K *Colour Temperatures of 2,720 to 6500K available on request	UV Stabilized Polycarbonate Lens
GLGL-80		80W - Round			
GLGL-100		100W - Round			

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Telephone: 850-383-0293 • Fax: 850-222-2892
email: info@gilus.us • Online: www.gilus.us

Shoebx Light

EXTERIOR LIGHTING



IP RATING 65



GLSB-100

SHOEBX LIGHT

Features

- Die cast, aluminium housing with powder coated finish for corrosion-resistance.
- Clear tempered glass lens.
- Anodized aluminium reflector designed to optimize light distribution.

Lamp and Ballast

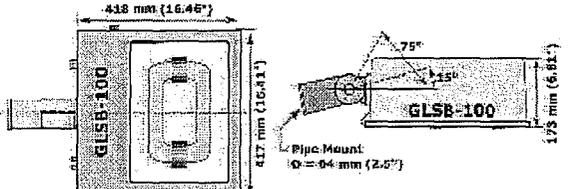
- Global's 100W rectangular induction lamp features high lighting efficiency.
- 10 Year or 60,000 hour (whichever occurs first) warranty (estimated lifespan 100,000 hours).
- Electronic ballast features high power factor (>0.95), flicker free, instant on/instant re-strike.
- Ambient temperature for lighting fixture: -40C~+40C.

Applications

- Parking lots, billboards, plazas, entrances, driveways, off-street areas, parks, tennis courts, etc.

DIMENSIONS

PHOTOMETRICS

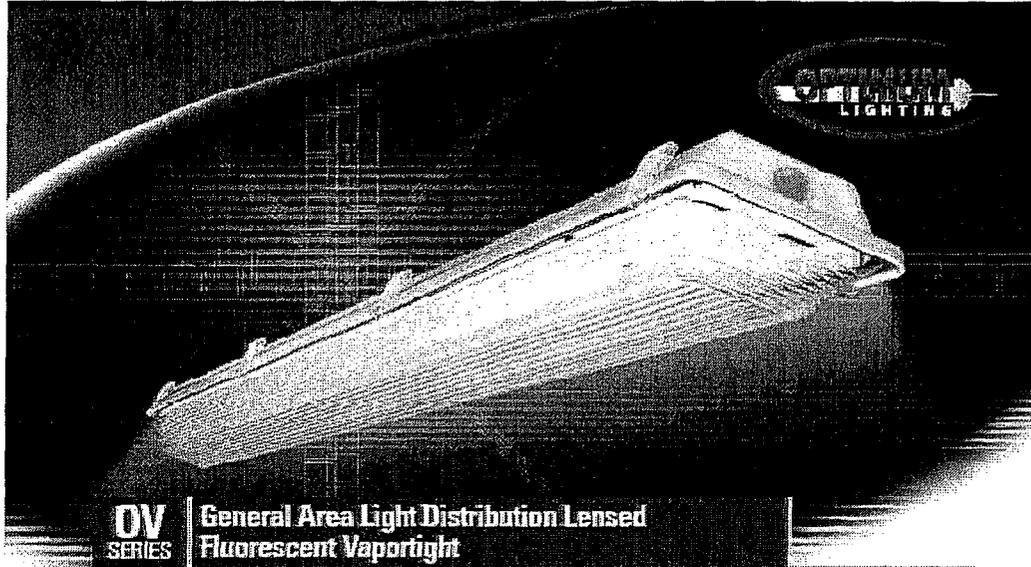


GLSB-100

Available Soon

FIXTURE SPECIFICATIONS

Global Code	Type	Lamp	Voltage	Colour Temp.*	Note
GLSB-100	Shoebx Light	100W - Rectangular	120~277	5,000K *Colour temperatures of 4100K or 6500K available by special order	Tempered Glass Lens



Product Description

A highly durable and efficient gasketed vaporlight fixture designed to maximize light distribution and withstand the harshest of conditions. The compact size of the OV allows for installation in areas with size constraints. The OV is perfect for replacing low wattage High Intensity Discharge fixtures.

Applications include: parking garages, tunnels, car washes, subways and washbays.

Light Distribution - The Linear Prism design of the lens allows for optimal light output and superior distribution.

Mounting Methods

OV fixtures are available with durable stainless steel mounting hardware. This mounting option allows the fixture to be hung without holes being drilled through the housing, thus maintaining the fixture's IP ratings and integrity.

Product Construction

The OV's housing is composed of highly durable Fiberglass Reinforced Plastic, while the standard diffuser is a heavy-duty injection molded polycarbonate. Both the interior gear tray and reflector are designed for easy installation and removal.

Optical Reflector system (optional) is precision brake formed of the selected aluminum material. The one piece reflector is removable without the use of tools.

Lampholders are made of a Polycarbonate material; these locking-style lampholders are utilized to ensure positive lamp retention. Additionally, the material contributes to a longer life product in high temperature applications.

Lens - Standard Lens is Impact Resistant, Linearly Ribbed Acrylic. Optional lenses are available, see ordering information.

Ballasts are electronic programmed-start (TSHO) or instant-start (T8) as a standard. Optional ballasts are available; consult factory for available systems and system specifications. Available voltages: 320v, 277v, 347v, voltage sensing 120-277v and 347-480v.

Listings - All fixtures are UL and CUL listed, IP65 and/or IP67.



**VAPOR/VANDAL
FIXTURES**

CASH FLOW ANALYSIS FOR POTENTIAL ENERGY SAVINGS PROJECTS
July 22, 2010

ECM No.	ECM Description	In/Out	Simple Payback	ECM Investment Class	ECM Energy Savings	Annual O&M Savings	Total Savings
11a	Additional Parking - Fluorescent	I	7.0		\$ 290,802	\$ 35,471	\$ 3,321
TOTAL ALL ABOUT ECM FINANCED AMOUNT					\$ 290,802	\$ 35,471	\$ 3,321
Interest During Construction - Accrued					\$ 11,588		
Less: Customer Contributions					\$ 0		
TOTAL ECM INCLUDING IDC					\$ 302,390	\$ 35,471	\$ 3,321

Financing Assumptions	
Total Financed Amount Plus Interest	\$ 302,390
Tax-Exempt Lease	
Payments per year (1, 4, 12)	12
Iss. Advance (1), In Advance (0)	0
Term (years)	10
Interest Rate	4.00%
Construction Term (months)	12
Construction Financing Rate	4.00%
Accrued (1) Capitalized (0) Deferred (2)	1
Financing Date	07/21/10

Operational Assumptions	
Monitoring & Verification Costs (base yr)	\$ 3,659
Operations & Maintenance Costs (base yr)	\$ -
Other Operating Costs (base yr)	\$ -
Energy Savings	3.73%
O&M Savings	3.0%
Monitoring & Verification	3.0%
Operations & Maintenance	3.0%
Other Operating Costs	3.0%

	1	2	3	4	5	6	7	8	9	10	Total
Savings (I)											
Energy Savings	\$ 36,802	\$ 38,183	\$ 39,612	\$ 41,099	\$ 42,640	\$ 44,239	\$ 45,898	\$ 47,619	\$ 49,405	\$ 51,258	\$ 456,755
O&M Savings	\$ 1,301	\$ 1,402	\$ 1,484	\$ 1,547	\$ 1,631	\$ 1,727	\$ 1,823	\$ 1,924	\$ 2,024	\$ 2,125	\$ 15,299
Total Annual Savings	\$ 38,103	\$ 39,585	\$ 41,097	\$ 42,646	\$ 44,271	\$ 46,017	\$ 47,723	\$ 49,543	\$ 51,429	\$ 53,383	\$ 472,054
Costs											
Monitoring & Verification	\$ 3,768	\$ 3,881	\$ 3,998	\$ 4,118	\$ 4,241	\$ 4,368	\$ 4,500	\$ 4,635	\$ 4,774	\$ 4,917	\$ 43,999
Other Operations & Maintenance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Operating Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Operating Costs	\$ 3,768	\$ 3,881	\$ 3,998	\$ 4,118	\$ 4,241	\$ 4,368	\$ 4,500	\$ 4,635	\$ 4,774	\$ 4,917	\$ 43,999
Principal	\$ 19,156	\$ 21,248	\$ 23,496	\$ 25,898	\$ 28,453	\$ 31,177	\$ 34,070	\$ 37,141	\$ 40,399	\$ 43,842	\$ 302,630
Interest	\$ 11,728	\$ 10,954	\$ 10,063	\$ 9,060	\$ 7,958	\$ 6,841	\$ 5,713	\$ 4,568	\$ 3,416	\$ 2,258	\$ 69,752
Total Lease Payments	\$ 30,884	\$ 32,202	\$ 33,559	\$ 34,958	\$ 36,410	\$ 37,948	\$ 39,523	\$ 41,156	\$ 42,815	\$ 44,500	\$ 372,382
Total Program and Financing Costs	\$ 34,652	\$ 36,083	\$ 37,557	\$ 39,076	\$ 40,651	\$ 42,286	\$ 43,973	\$ 45,711	\$ 47,509	\$ 49,367	\$ 416,991
Net Cash Flow Benefit	\$ 3,451	\$ 3,502	\$ 3,539	\$ 3,528	\$ 3,520	\$ 3,509	\$ 3,500	\$ 3,508	\$ 3,500	\$ 3,500	\$ 28,792
Discounted Savings	\$ 34,672	\$ 36,083	\$ 37,557	\$ 39,136	\$ 40,872	\$ 42,767	\$ 44,823	\$ 47,043	\$ 49,429	\$ 51,981	\$ 415,561

Note:
(1) - Lease Payment is based upon current interest rate conditions which are subject to market changes thereby increasing or decreasing the economic value of the ECMs.

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MIAMI BEACH

OFFICE OF THE CITY MANAGER

COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager *JMG* for JMG

DATE: July 29, 2010

SUBJECT: **REFERRAL TO THE FINANCE AND CITYWIDE PROJECTS COMMITTEE – DISCUSSION REGARDING VISITOR PARKING STICKERS AVAILABLE FOR RESIDENTIAL AREAS**

At the request of Commissioner Wolfson, the Mayor and Commission, on May 12, 2010, referred the above captioned item to the Finance and Citywide Projects Committee for discussion.

Existing Conditions

In addition to the daily scratch-off hang-tags that may be purchased by residential parking zone participants at cost of \$1.00 per day (plus sales tax), the Parking Department also offers a Caregiver Permit Program which allows residents receiving services from licensed agencies that have been authorized by a licensed physician to purchase a caregiver parking permit at a cost of \$25.00 (plus sales tax) for six (6) months. The resident may renew the permit thereafter upon resubmitting updated documentation to the Parking Department.

Caregiver Parking Permit Program – Proposed Enhancements

The following are proposed enhancements to the Caregiver Parking Permit Program to address special needs particularly for the elderly.

Bona fide residents requiring home medical care/assistance from either established caregiver agencies **and/or family members/friends that assist in the care and/or support of the resident** are eligible for a caregiver permit, one per person and limited to two [2] per household, upon proof of residency and submittal of the completed City of Miami Beach Parking Department application. The Caregiver Parking Permit exempts the caregiver's vehicle from both daytime and/or overnight residential parking program restrictions; however, it does not exempt the vehicle from paying at parking meters or at prohibited parking areas (e.g., parking meters/pay stations; fire hydrants, crosswalks; pavement marking, including yellow curbs).

Program Participation Requirements are:

- Utility bill or bank statement within 30 days of issuance.
- Ages 62 or over and/or Medicare/Medicaid participants.
- Completed and notarized application by the patient's physician.

Caregiver Permit Restrictions:

- Caregiver Permits may only be issued for the duration stated on the physician's letter not to exceed six (6) months; subsequent renewals are required beyond six (6) months.

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

To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305-604-2489 (voice) or 305-673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

- One Caregiver Parking Permit per person or two (2) per household
- Each Caregiver Parking Permit costs is \$25.00, excluding sales tax, and is valid for six months.
- Residents are responsible for the Caregiver Parking Permits issued to them. Permits are not specific to one caregiver's vehicle; thus, different caregivers may use the same permit.
- Caregiver Parking Permits are only valid at the authorized zone listed on the permit.
- Lost or stolen permits are subject to a \$25.00 replacement fee and limited upon the manager or supervisor's discretion.

The Administration is seeking input from the Finance and Citywide Projects Committee regarding the proposed enhancements to the existing Caregiver Parking Permit Program.

C: Mayor and Members of the City Commission
Hilda M. Fernandez, Assistant City Manager
Jorge Gomez, Assistant City Manager
Jose Smith, City Attorney
Robert Parcher, City Clerk
Dolores Mejia, Special Projects Administrator

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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

FROM: Jorge M. Gonzalez, City Manager 

DATE: July 29, 2010

SUBJECT: **A DISCUSSION OF A LAND EXCHANGE AND DEVELOPMENT AGREEMENT AMONG MIAMI-DADE COUNTY, THE CITY OF MIAMI BEACH AND SOUTH BEACH HEIGHTS II; INVOLVING THE PROPERTIES AT 615 COLLINS AVENUE (P.E.T. CENTER), 710-720 ALTON ROAD (MIAMI BEACH HEALTH CENTER) AND 725-745 ALTON ROAD (VACANT PRIVATE LAND)**

BACKGROUND

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

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

Property Characteristics

Below is information regarding the characteristics of each property, including each parcel's assessed value as determined by the Miami-Dade County Property Appraiser's Office, as well as the appraised fair market value as of April 17, 2009 as determined by Delahanty & Associates.

Property	Lot Size	Building Size	2009 Property Appraiser Tax Assessed Value	April 2009 Delahanty Appraisal	Delahanty Estimate Per SqFt
P.E.T. Center	14,000	4,537	\$5,568,138	\$5,354,936	\$364.29
710 Alton	8,500	8,153	\$1,677,971		
720 Alton	17,000	16,344	\$2,655,130		
West Alton Property	25,500	24,497	\$4,333,101	\$7,100,000	\$278.43
725 Alton	15,000	n/a	\$2,252,752		
745 Alton	7,500	n/a	\$1,127,096		
East Alton Property	22,500	n/a	\$3,379,848	\$6,255,000	\$278.00

Key Terms of the Proposed Agreement

P.E.T. Center Property (615 Collins Avenue)

- South Beach Heights II ("Developer") will acquire fee simple title to the P.E.T. Center property;
- County agrees to convey fee simple title of the P.E.T. Center property to Developer.
- City will release its reversionary interest in the P.E.T. Center property;

West Alton Property (710-720 Alton Road)

- Developer will acquire fee simple title to the West Alton property;
- County agrees to convey fee simple title of the West Alton property to Developer.

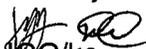
East Alton Property (725-745 Alton Road)

- Developer agrees to convey fee simple title to the East Alton property to the County
- City will accept a reversionary interest in the East Alton property.
- Crescent Heights will construct a new facility on the East Alton property at its cost and expense.
- County agrees to contribute approximately \$450,000 from its General Obligation Bond previously earmarked for improvements to the existing Miami Beach Community Health Center (MBCHC) facility towards the development of the new health center on the East Alton property.
- The new facility on the East Alton property shall be leased to the MBCHC and the County Health Department.

CONCLUSION

Additional considerations for the Finance and Citywide Projects Committee regarding the proposed Agreement include whether fee simple title to the East Alton Property should be transferred to the City rather than the County, eliminating the need for continued reversionary interest by the City. As an alternative, title to the East Alton Property could be transferred to the MBCHC, which could in turn lease a portion of the new facility to the County Health Department. If this transaction proceeds, the Administration also recommends the inclusion of provisions concerning updating the appraisals and cost estimates in the Agreement. Additionally, there are also other matters involving the parties of which resolution as part of this negotiation would promote the interests of all concerned.

The Administration is seeking direction and input on this proposal from the Finance and Citywide Projects Committee.


JMG/JGG/kc

Attachment

LAND EXCHANGE AND DEVELOPMENT AGREEMENT

This Land Exchange and Development Agreement ("Agreement") is made as of the ____ day of _____, 2010 among Miami-Dade County ("County"), the City of Miami Beach ("City") and South Beach Heights II _____, a _____ ("Developer") (collectively, the "Parties").

WHEREAS, the County owns the real property at 615 Collins Avenue, Miami Beach, FL (the "P.E.T. Center Property", see "Exhibit A");

WHEREAS, the County leases the P.E.T. Center Property to the County Health Department;

WHEREAS, the City has a reversionary interest in the P.E.T. Center Property so that in the event the P.E.T. Center Property ceases to be used as a medical clinic, title to the P.E.T. Center Property shall automatically revert back to the City;

WHEREAS, the County owns the real property at 710 Alton Road, Miami Beach, FL (the "West Alton Property", see "Exhibit B")

WHEREAS, the County leases the West Alton Property to the Miami Beach Community Health Center ("MBCHC");

WHEREAS, the facilities located on the West Alton Property are undersized, substandard and in need of improvement to adequately serve the population of Miami Beach;

WHEREAS, Developer owns the real property at 745 Alton Road (the "East Alton Property", see "Exhibit C");

WHEREAS, the East Alton Property currently consist of vacant, unimproved land that is suitable for redevelopment;

WHEREAS, the general location of the P.E.T. Center Property, the West Alton Property and the East Alton Property in relation to one another is depicted on the sketch attached hereto as Exhibit "D";

WHEREAS, the Parties desire to develop a new, state of the art facility to house the MBCHC on the East Alton Property (the "New Health Center" or "Project");

The Parties agree as follows:

A. OBLIGATIONS OF DEVELOPER.

1. Developer agrees to acquire fee simple title to the P.E.T. Center Property from the County.

2. Developer agrees to acquire fee simple title to the West Alton Property from the County.

3. Developer agrees to convey fee simple title to the East Alton Property to the County.

4. Cresecent Heights agrees to construct at its cost and expense a new facility on the East Alton Property which will be leased by the County to the MBCHC and the County Health Department. Developer has produced a preliminary design for the New Health Center which the City and the County have reviewed and approved, a copy of which is attached as Exhibit E. Subject to permitting and design review, Developer agrees to construct the New Health Center as depicted in Exhibit E.

B. OBLIGATIONS OF THE COUNTY

1. The County agrees to convey fee simple title to the P.E.T. Center Property to Developer. In connection with the conveyance, the County agrees to terminate the current lease with the Health Department on or before the Closing Date (defined below). In connection with the New Health Center, the County agrees to lease a portion of the New Health Center to the Health Department for use as a new P.E.T. Center.

2. The County agrees to convey fee simple title to the West Alton Property to Developer. In connection with the conveyance of the West Alton Property, the County agrees to terminate the current lease with MBCHC on or before the Closing Date (defined below). In connection with the New Health Center, the County agrees to lease a portion of the New Health Center to the MBCHC.

3. The County agrees to accept the dedication of the East Alton Property from Developer pursuant to a special warranty deed.

4. Prior to the commencement of construction of the New Health Center, the County agrees to contribute approximately \$450,000 from its General Obligation Bond which was previously earmarked for improvements to MBCHC's existing building towards development of the New Health Center on the East Alton Property. Said payment shall be used for the construction of the New Health Center.

C. OBLIGATIONS OF THE CITY

1. The City will release its reversionary interest in the P.E.T. Center Property.

2. The City will accept a reversionary interest in the East Alton Property.

D. EXECUTION AND CLOSING

1. Title.

- 1.1 The following shall apply in connection with the conveyance of title to each property to be conveyed by Developer and County, respectively, pursuant to this Agreement:
 - 1.1.1 As soon as practicable, but no later than three (3) days after the execution of this Agreement by all Parties (the "Effective Date"), the party conveying a parcel (Developer or County, as the case may be) ("Grantor") shall provide to the grantee thereof ("Grantee ") a copy of Grantor's existing title insurance policy for the property being conveyed with legible copies of all exception documents referenced therein, if in Grantor's possession, custody or control. Developer shall obtain a title commitment (the "Commitment") to issue an ALTA Form B policy of owner's title insurance in an amount agreed upon, for each property to be conveyed hereunder without standard exceptions and with such endorsements approved for issuance in Florida under applicable title insurance regulations as each Grantee may reasonably require. The Commitment shall be prepared by a title company designated by Developer and reasonably acceptable to County and City (the "Title Company"), and certified to a date subsequent to the Effective Date. Immediately prior to the "Closing" (as defined below), the Commitment shall be endorsed to advance its effective date, and, at Closing, the Commitment shall be marked up in order to assure Grantee that (A) the title to the property is in the condition required hereunder as of the date of Closing (the "Closing Date") and (B) such coverage shall extend during the period between the most recent effective date of the Commitment and the recording of the deed to the property conveying same to Grantee. The policies of title insurance shall be issued at the sole expense of Developer.
 - 1.1.2 Within thirty (30) days after the Effective Date, each Grantee, at its cost and expense, may obtain a certified survey prepared by a licensed registered surveyor. Within three (3) days after execution hereof, each Grantor shall provide Grantee with copies of any surveys or boundary information which Grantor may have as to the property to be conveyed hereunder, as well as copies of any other information, studies, and reports relating to the property which are in Grantor's possession, custody or control.
- 1.2 Each Grantee shall have thirty (30) days from the date Grantee is furnished with the Commitment, and/or updated survey, together with all underlying documents thereto, in which to examine the same and satisfy itself as to the marketability and status of Grantor's title. In the event Grantee notes any objections to the marketability or insurability of such title, or in the event that there are any matters of record which could, in Grantee's reasonable judgment, interfere with the use of the property for Grantee's intended use of the property (the "Intended Use"), Grantee shall notify Grantor in writing thereof ("Grantee's Title Notice"). Failure by Grantee to give Grantee's Title Notice (or to object to any matter referenced in

the Commitment) to Grantor on or before said date shall constitute Grantee's final and irrevocable approval of the condition of title (and to any such unobjected to matter) in and to the property. If Grantee's Title Notice shall be timely given, Grantor shall have a period of sixty (60) days following Grantor's receipt of Grantee's Title Notice, to remove, correct, cure or satisfy any title exceptions that were identified in Grantee's Title Notice, it being nevertheless agreed that Grantor shall have no obligation to undertake any action or to incur any expense in order to effectuate any such removal, correction, cure or satisfaction (except that notwithstanding the foregoing Grantor shall be required to remove or discharge any mortgages or judgments, as well as any other liens in an ascertainable dollar amount created by Grantor). In the event that Grantor elects not to attempt to remove, correct, cure or satisfy the matters raised in Grantee's Title Notice, or if having elected to do so, does not within said sixty (60) day period effectuate any such removal, correction, cure or satisfaction as aforesaid, Grantee shall have the right at its sole option either (a) to terminate this Agreement, in which event neither party shall thereafter have any further obligation hereunder, except for those which expressly survive the termination of this Agreement, or (b) to accept such title as is disclosed by the Commitment without title correction, thereby waiving any rights against Grantor with respect thereto. Said election shall be made by Grantee within three (3) days following Grantee's receipt of written notification by Grantor that Grantor has not effectuated (or has elected not to effectuate) title correction. In the event that Grantor (even though under no duty to do so) shall undertake title correction as aforesaid, and shall be successful, this Agreement shall continue in full force and effect and Grantee shall close the transaction contemplated hereby in accordance with the terms hereof. In the event that Grantor shall only be partially successful in obtaining title correction, Grantee shall have the same alternative rights as Grantee would have had in the event Grantor had declined to seek title correction (as set forth above). Grantee shall make its election within three (3) days after Grantee's receipt of written notice from Grantor to Grantee of the extent to which title has been corrected.

- 1.3 If any title update subsequent to the Grantee's Title Notice shall disclose any liens or encumbrances which render title unmarketable and/or uninsurable, and which Grantor is obligated or desires to pay and discharge, the existence of any such liens and encumbrances shall not be deemed objections to title, if (a) Grantor shall simultaneously either deliver to Grantee at the Closing instruments in recordable form sufficient to satisfy such liens and encumbrances of record together with the cost of recording or filing said instruments; or, (b) provided that Grantor has made arrangements with the Title Company in advance of Closing, Grantor will deposit with said company sufficient monies, acceptable to the Title Company and required by it to insure the recording of such satisfactions and the issuance of title insurance to Grantee either free of any such liens and encumbrances, or with insurance against enforcement of same. Unpaid liens for taxes, water charges, sewer rents and assessments which are the obligation of Grantor to satisfy and discharge shall not be objections to title, but the amount thereof, plus interest and penalties thereon, shall be subject to the provisions for apportionment of taxes,

water charges and sewer rents contained herein. Unpaid franchise tax of any corporation in the chain of title, or estate, income or other taxes which may be liens against the property as of the Closing Date shall not be an objection to title, provided the Title Company agrees to insure against the collection of said taxes from the property and in such event if required by the Title Company, Grantor agrees to deposit at Closing with the Title Company an amount deemed reasonable by it to secure the payment of such unpaid franchise tax or other tax.

- 1.4 In the event that a Grantor is unable to convey title in accordance with the terms of this Agreement, or if any representation of Grantor herein is untrue in any material respect on the Closing Date and Grantor does not correct same (it being understood Grantor will be entitled to a reasonable adjournment of Closing to cure any such untrue representations, not to exceed 60 days), this Agreement, at the election of the Grantee, shall be deemed canceled, in which event neither party shall have any further claim against the other by reason of this Agreement except for those obligations which expressly survive the termination of this Agreement.
- 1.5 It is agreed that the closing on the conveyance of all properties subject to this Agreement shall occur simultaneously. The obligation to convey title to a property shall be contingent on the conveyance of all properties to be conveyed hereunder.

2. Closing.

- 2.1 The conveyances of title to the properties to be conveyed hereunder shall be consummated ("Closing") via escrow through the Escrow Agent on the Closing Date. The Closing Date shall be ____ (___) days after the issuance of a partial certificate of occupancy or certificate of occupancy for the New Health Center.
- 2.2 At the time of Closing ("Closing Date"), each Grantor shall execute and deliver to Grantee the following:
 - 2.2.1 a statutory special warranty deed conveying the property to Grantee, which deed shall convey title to the property subject only to those easements and restrictions of record set forth in the Commitment to which Grantee has not objected or has accepted pursuant to Section 1.2 hereof (the "Permitted Exceptions");
 - 2.2.2 such reasonable and customary affidavits, indemnifications, and undertakings as the Title Company may require to issue its ALTA owner's policy of title insurance without its standard exceptions and to insure the "gap";
 - 2.2.3 an affidavit that Grantor is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code.

2.2.4 a closing statement setting forth all closing adjustments described in this Agreement; and

2.2.5 such evidence of Grantor's authority to convey the property as Title Company and/or Grantee may reasonably request.

2.2.6 an assignment of all rights, licenses, permits and intangible property applicable to the property, at Grantee's election.

3. Proration of Costs.

3.1 All real estate taxes for the property being conveyed for years prior to the year of the Closing Date shall be paid by Grantor. Grantor shall also pay the entire amount of any special assessments levied against the property as of the Closing Date, whether payable in installments or not. Current real estate taxes as set forth in the tax bills shall be prorated and adjusted as of the Closing Date between the parties, in the customary manner for proration of real estate taxes in Miami-Dade County, with credit for the maximum discount available. If the Closing occurs on a date when the current year's millage is not fixed, but the current year's assessment is available, taxes will be prorated based upon such assessment and the prior year's millage. If the current year's assessment is not available, then taxes will be prorated on the prior year's taxes. However, any tax proration based on such an estimate, at request of Grantee or Grantor, shall be readjusted within thirty (30) days from receipt of the final tax bill.

3.2 Developer shall pay all transfer taxes, revenue or documentary stamps, surtaxes and other similar charges incurred in conveying the properties to be conveyed hereunder. Each Grantor shall pay for all costs of recording any documents to correct any title defects pursuant to Section 1.2 hereof. Each Grantee shall pay for recording the deed evidencing the conveyance of the property.

3.3 Developer shall pay the costs and the premium for the title policies to be issued pursuant to Section 1.1.1 hereof. Each Grantee shall pay the cost of the survey described in Section 1.1.2 hereof in the event such Grantee elects to obtain an updated survey.

4. Representations and Warranties. As an inducement to each Grantee to enter into this Agreement, each Grantor covenants with, and represents and warrants to Grantee that:

4.1 Grantor is owner of the property to be conveyed by it hereunder and has the right to execute this Agreement and convey the property.

4.2 There is no pending litigation and no threatened or contemplated litigation involving all or any portion of the property to be conveyed by it hereunder.

- 4.3 Grantor has not received any notice that the property to be conveyed by it hereunder or any portion thereof is situated, used or operated in violation of any law, court order, regulation, ordinance or requirement of any city, county, state or other governmental authority.
- 4.4 Grantor shall deliver to Grantee at Closing exclusive possession of the property to be conveyed by it hereunder free and clear of any tenancy or right of occupancy.
- 4.5 No unrecorded commitments have been made to any governmental authority, utility company, school board, church or other religious body, or any homeowners or homeowners' association, or to any other organization, group or individual relating to the property to be conveyed by it hereunder which would impose an obligation upon Grantee or its successors or assigns to make any contributions or dedications of money or land or to construct, install or maintain any improvements of a public or private nature on or off the property, and no governmental authority has imposed any requirement that any developer of the property pay directly or indirectly any special fees or contributions or incur any expenses or obligations in connection with the development of the property to be conveyed by it hereunder.
- 4.6 Grantor is not aware of any impact fees or any other fees, costs or assessments, other than current real estate taxes, due to any governmental entity with respect to the property to be conveyed by it hereunder.
- 4.7 Grantor has received no notice of any special assessments affecting the property to be conveyed by it hereunder nor notice that any federal, state or local taxing authority has asserted any tax deficiency, lien or assessment against the property which has not been paid or for which payment adequate provision has not been made.
- 4.8 Grantor has not received any written notice nor has any knowledge that the property, to be conveyed by it hereunder contains any hazardous waste or hazardous substance, as such terms are defined in the Resource Conservation and Recovery Act of 1976, 42 USC 6901 et seq., as amended, the Comprehensive Environmental Recovery Compensation and Liability Act of 1980, 42 USC 9601 et seq., the Superfund Amendments and Reauthorization Act, Public Law 99-499 as amended, or any other federal, state, or local environmental laws, regulations, codes, or ordinance, and no pollutants, contaminants, or hazardous or toxic wastes, substances, or materials are present in, on, or under the property.

5. Default. If a Grantor shall default in any of its obligations hereunder, Grantee may seek the right of specific performance. Provided however, if the right to specific performance is not available as a result of Grantor's wrongful conveyance of the property to a third party, Grantee shall have all rights and remedies available at law or in equity.

6. Inspection.

- 6.1 Each Grantee and/or its agents shall, during the entire term of this Agreement, have the right and license at its sole liability and expense, upon prior written notice to Grantor and without interfering with the business operations of the property, to enter upon the property for the purpose of making non-intrusive (e.g. a Phase I ESA is permitted but not a Phase II without Grantor's express written consent not to be unreasonably withheld, delayed or denied), surveys, architectural and engineering studies, environmental and other inspections as Grantee may deem necessary and appropriate to assure the suitability of the property for Grantee's Intended Use, including, without limitation, the availability of utilities, the surface and subsurface conditions, the zoning of the property, environmental matters effecting the property, and other items or matters as Grantee may deem advisable (hereinafter collectively referred to as "Inspections"). Grantee shall indemnify, defend and hold Grantor harmless from and against any and all loss, costs, damages, liabilities and expenses (including reasonable attorneys fees and court costs) suffered by Grantor relating to personal injury or property damage resulting from Grantee's activities hereunder. This indemnification shall survive Closing or the termination of this Agreement for a period of 180 days therefrom. In the event that Grantee's inspection reports reveal the presence of hazardous waste or substances and recommend remediation, Grantor agrees to perform such remediation at its sole cost and expense prior to Closing. Provided however, Grantor's obligation to pay for remediation shall not exceed \$ _____. In the event the cost of remediation shall exceed \$ _____ and Grantor elects not to remediate, Grantee shall have the right at its sole option either (a) to terminate this Agreement, and neither party shall thereafter have any further liability hereunder, except for those which expressly survive the termination of this Agreement; or (b) to accept the condition of the property in "As Is condition" and proceed to Closing with a credit on the Closing Statement of \$ _____ in full satisfaction and discharge of Grantor's obligation to remediate. Grantee shall make its election within three (3) Business Days after receipt of written notice from Grantor regarding its decision concerning remediation. If necessary, the Closing Date shall be extended as may be required to permit Grantor to complete the necessary remediation.
- 6.2 Grantee shall have ____ days from Effective Date of this Agreement (the "Inspection Period") in which to conduct the Inspections. If during said Inspection Period, a Grantee determines, in its sole discretion, that the property is not satisfactory for any reason or no reason, Grantee may, upon written notice to Grantor given on or before the expiration of Inspection Period, terminate this Agreement, whereupon upon delivery to Grantor of such letter of termination, all parties hereto shall be relieved of all obligations hereunder, except for those that expressly survive. In the event Grantee fails to so notify Grantor of termination by the end of the Inspection Period, then Grantee's right to terminate this Agreement shall terminate.

6.3 Grantee shall at Closing accept the property in "AS IS" condition as exists on the date hereof, subject to reasonable wear and tear between the date hereof and the Closing Date. Each Grantee acknowledges that it will have the Inspection Period to inspect the property or cause an inspection thereof to be made on Grantee's behalf and it is understood and agreed that neither Grantor nor any person acting or purporting to act for Grantor has made or now makes any representation as to the physical condition (latent or patent or otherwise), income, expense, operation, legality of current rents, or any other matter or thing affecting or relating to the property except as herein specifically set forth. Each Grantee hereby expressly acknowledges that no such representations have been made and Grantee further agrees to take the property "as is" as of the date hereof and subject to normal use, wear, tear, and deterioration between now and Closing. Grantee agrees that Grantor is not liable or bound in any manner by any financial or written statements, representations, or information pertaining to the property furnished by any real estate broker, agent, employee, trustee, servant or other person, unless the same are specifically set forth herein. It is understood and agreed that all understandings and agreements heretofore had between the parties are hereby merged in this Agreement which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying upon any statement or representation made by the other not embodied in this Agreement.

7. Governmental Approvals. During the term of this Agreement and prior to Closing, the Parties understand and agree that Developer will seek land use approvals for the P.E.T Center Property, West Alton Property and the East Alton Property. City and County agree to cooperate with Developer in the pursuit of such approvals and to expedite the review of such approvals.

7.1 P.E.T Center Property and West Alton Property. Developer, at its sole expense, shall have the right, during the term of this Agreement, to take all steps necessary to seek any and all land use approvals as may be required or desired by Developer in connection with its Intended Use of the P.E.T. Center Property and West Alton Property as well as such zoning, site plan, environmental, and other permits and approvals as Developer may deem appropriate. County and City will cooperate with Developer with respect to Developer's efforts to obtain such approvals.

7.2 East Alton Property. Developer, at its sole expense, shall be obligated, during the term of this Agreement, to take all steps necessary to seek any and all land use approvals as may be required to construct the New Health Center on the East Alton Property, including zoning, site plan, environmental, and other permits and approvals as City may require. The design and approval process for the New Health Center shall be as follows.

7.2.1. Developer shall be solely responsible for the design of the Project, and such design shall be substantially in accordance with the site plan and specifications included as Exhibits E and F. Throughout the design,

development and construction of the Project, Developer shall be solely responsible for obtaining all final non-appealable approvals and shall use its best efforts to expedite the approval process. Developer will select, at its sole discretion, all contractors, including a general contractor, and all subcontractors, architects, engineers and consultants as developer deems necessary.

- 7.2.2. Developer shall consult with the County regarding design of the New Health Center. At least thirty (30) days prior to submitting an application for a certificate of appropriateness with the City, Developer shall provide the County with such application for review and comment. The County shall have ten (10) days to review the application and provide written comments to Developer regarding same. Provided the application is substantially in accordance with the site plan included as Exhibit E, the County agrees that it will not object to any provision of the application. If the County does not provide any written comments within ten (10) days of receipt of the application, the application shall be considered approved by the County.
- 7.2.3. Upon receipt of the City's approval of the certificate of appropriateness for the New Health Center, Developer shall prepare final plans and specifications for construction of the New Health Center, consistent with the approved certificate of appropriateness. Developer shall consult with the County regarding the final plans and specifications for the New Health Center. At least thirty (30) days prior to submitting the final plans and specifications to the City, Developer shall provide the County with such plans and specifications for review and comment. The County shall have ten (10) days to review the final plans and specifications and provide written comments to Developer regarding same. Provided the final plans and specifications are substantially in accordance with the site plan included as Exhibit E and the specifications included as Exhibit F, the County agrees that it will not object to any provision of the final plans and specifications. If the County does not provide any written comments within ten (10) days of receipt of the final plans and specifications, the final plans and specifications shall be considered approved by the County.
- 7.2.4. If City denies Developer's application for a certificate of appropriateness, or if Developer, in its sole discretion, determines that the City has conditioned approval of the certificate of appropriateness upon unreasonable conditions, Developer may terminate this agreement by providing notice to the County and City pursuant to Section D.10 of this Agreement, whereupon this Agreement shall terminate and the parties shall be released from all further obligations, each to the other.
- 7.2.5. Upon City's issuance of building permits for the New Health Center, Developer shall construct the New Health Center, consistent with the

approved building permits in a commercially reasonable manner. Developer shall consult with the County regarding construction of the New Health Center.

8. Agreements Affecting property.

8.1 Prior to Closing, each Grantor shall not:

8.1.1 create on the property to be conveyed hereunder, any easements, liens, mortgages, encumbrances or other interests that would affect the property or a Grantor's ability to comply with the terms of this Agreement; and

8.1.2 enter into any contracts or other commitments regarding the property, to be conveyed hereunder, either with any governmental authorities (including, but not limited to, zoning changes, site plan approvals, density shifts, or platting or replatting) or with any private person or party.

8.2 At all times during the term of this Agreement each Grantor shall: (i) not sell the property to another party, and (ii) promptly disclose in writing to Grantee any change in any facts or circumstances of which Grantor becomes aware which would make any of the warranties set forth in Section 4 inaccurate, incomplete or misleading to the detriment of Grantee.

9. Brokers. Each party warrants and represents that there are no brokers or finder fees payable as a consequence of this transaction. Each party hereto shall indemnify, defend and hold the other party hereto harmless from any and all other claims for commissions or fees by brokers made against the other party, and resulting loss, cost (including reasonable attorney's fees) and damages, which claim shall have arisen out of any written document or alleged oral agreement entered or purported to have been entered into by the indemnifying party and the person claiming such commission if the transaction contemplated hereunder by the parties is consummated.

10. Notice.

10.1 All notices which are required or desired to be given hereunder shall be in writing and shall be deemed given: (i) upon the day of personal delivery or refusal to accept personal delivery, or (ii) upon confirmed delivery of a facsimile transmission, or (iii) one Business Day (as hereinafter defined) after deposit with a nationally recognized overnight courier service marked for overnight delivery, or (iv) three Business Days after deposit in a United States Postal receptacle if sent certified mail, return receipt requested. Any of the foregoing methods may be used to give such notice. Notices shall be deemed given if sent to the following addresses:

To Developer: _____

Attn: _____
Fax: _____

With a copy to: AKERMAN SENTERFITT
One SE Third Avenue
Suite 2500
Miami, FL 33131
Attn: Neisen O. Kasdin, Esq.
Fax: (305) 3494-4756

To County: _____

Attn: _____
Fax: _____

With a copy to: _____

Attn: _____
Fax: _____

To City: _____

Attn: _____
Fax: _____

With a copy to: _____

Attn: _____
Fax: _____

10.2 Either party may change their addresses as set forth above which change shall be effective five Business Days after notice of such change is given.

11. Casualty and Condemnation. Until the Closing and the delivery of the deed, all risk of loss or destruction shall be borne by the Grantor of the property to be conveyed hereunder. In the event that notice of any action, suit or proceeding shall be given to Grantor or Grantee prior to the Closing Date for the purpose of condemning more than five percent (5%) of the property or of any portion of the property which would interfere with the Intended Use, in

Grantee's reasonable discretion, then Grantee shall have the right to terminate its obligations hereunder by notifying Grantor thereof within 15 business days after receiving notice of such condemnation proceeding, and upon such termination, this Agreement shall terminate, and the parties shall have no further liability to each other hereunder, except for those obligations which expressly survive a termination of this Agreement. In the event Grantee shall not elect to terminate this Agreement, or in the event such condemnation is not such as to permit Grantee to terminate this Agreement hereunder, then Grantee and Grantor shall proceed with the transaction contemplated herein and Grantee shall receive the condemnation proceeds or, in the event of casualty the insurance proceeds together with any deductible under such insurance policy. Grantor shall notify Grantee immediately upon Grantor's receiving notice of, or information on, any threatened taking of any of the property or immediately after the occurrence of any casualty.

12. Survival. The covenants, warranties, representations and obligations contained within this Agreement shall survive the consummation of the transaction contemplated herein for a period of one hundred eighty (180) days subsequent to closing.

13. Radon Notice. Florida Statute 404.056 requires that the following notification be provided in all contracts for sale and purchase of a building: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

14. Tax Deferred Exchange. County and City agree to cooperate with Developer to permit the conveyance of the East Alton Road Property to be consummated as a tax-deferred exchange under Section 1031 of the Internal Revenue Code and in conjunction therewith to execute such documents as Developer may reasonably request (such cooperation may include, without limitation, accepting a conveyance from a party other than Developer). In no event, however, shall (a) County and/or City shall bear any expense associated with the exchange transaction, (b) County and/or City be obligated to take title to Crescent Height's exchange property, (c) the consummation of such tax-free exchange materially delay the conveyance to County of the property to be conveyed to it hereunder, and (d) County and/or City have any liability to Developer or any other party for the qualification of the exchange transaction for tax-free exchange treatment under Section 1031 of the Internal Revenue Code or under any other provision.

15. Confidential Information. Each Grantee represents and warrants that it will keep all information and/or reports and/or documents obtained from a Grantor or its agents (or related to or connected with the property (including without limitation the existence of this Agreement) strictly confidential and will not disclose any such information to any person or entity (except to its attorneys, consultants and advisors; provided that any such parties similarly agree to treat such material confidentially), without the prior written consent of the Grantor.

16. No Recording. This Agreement shall not be recorded or filed in the public records of any jurisdiction by either party and any attempt to do so may be treated by the other party as a breach of this Agreement.

E. GENERAL

1. Florida Law. This Agreement will be governed by and construed in accordance with the laws of the State of Florida.

2. Binding Agreement. This Agreement will be binding on the County, the City and Developer and their respective successors and assigns. In the event of a breach of any obligation hereunder, the other party will have all rights and remedies available at law or in equity.

3. Counterparts. This document may be executed in any number of counterparts, each of which will be deemed an original, all of which counterparts taken together will constitute a single document. Signed copies of this Agreement may be delivered by electronic means (facsimile or e-mailed pdf) and signatures on such copies will be deemed originals.

4. Further Assurances. Each party shall execute all such certificates and other documents and shall do all such filing, recording, publishing and other acts as may be necessary to complete the purpose of this Agreement and the undertakings set forth herein.

5. Jurisdiction and Venue. Any suit involving any dispute or matter arising under this Agreement may only be brought in the United States District Court for the Southern District of Florida or Florida state court having jurisdiction over the subject matter of the dispute or matter. The parties hereby consent to the exercise of personal jurisdiction by any such court with respect to any such proceeding.

6. Litigation. In the event of any litigation between the parties, the prevailing party shall be awarded all costs and reasonable attorneys' fees at all levels.

7. Arbitration. Any dispute arising from this Agreement, which cannot be resolved by the parties thereto within fourteen (14) days after written notice by either of such parties, shall be settled by binding arbitration in Miami-Dade County, Florida, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrators may be entered in any court of competent jurisdiction. Any arbitrator must have at least ten (10) years professional experience relating to the development and construction industry. The cost of any arbitration proceeding under this Section shall be shared equally by the parties to such a dispute. The parties agree that all of the negotiations and proceedings relating to such disputes and all testimony, transcripts and other documents relating to such arbitration shall be treated as confidential and will not be disclosed or otherwise divulged to any other person except as necessary in connection with such negotiations.

8. Complete Agreement. This Agreement constitutes the complete and exclusive agreement between the parties hereto. It supersedes all prior written and oral statements, including any prior representation, statement, condition or warranty. Except as expressly provided herein, this Agreement may not be amended without the written consent of the parties.

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

Witnesses:

Miami-Dade County

By: _____
Name: _____
Its: _____

Witnesses:

City of Miami Beach

By: _____
Name: _____
Its: _____

Witnesses

Developer ____, a _____

By: _____
Name: _____
Its: _____

EXHIBIT "A"

P.E.T. Center Property

EXHIBIT "B"

West Alton Property

EXHIBIT "C"

East Alton Property

EXHIBIT "D"

**Location map of the P.E.T. Center Property,
the West Alton Property and the East Alton Property**

EXHIBIT "E"

Site Plan for the New Health Center

EXHIBIT "F"
Specifications for the New Health Center

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MIAMI BEACH

PARKING DEPARTMENT

MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jorge M. Gonzalez, City Manager *JMG for JMG*

DATE: July 29, 2010

SUBJECT: Request for Approval to issue a Request for Proposal (RFP) to provide Parking Cashiers/Attendants and Supervisors for the City's Parking Garages.

At the June 9, 2010 City Commission meeting, subject item was referred to the Finance and Citywide Projects Committee for discussion.

R
JMG/JGG/SF/rar

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Attachment

Condensed Title:

Request For Approval To Issue A Request For Proposals (RFP) To Provide Parking Cashiers/Attendants And Supervisors For The City's Parking Garages.

Key Intended Outcome Supported:

Maintain or improve traffic flow and improve parking availability.
Supporting Data (Surveys, Environmental Scan, etc.):
 There had been an overall increase of 9.57% in total vehicle entries in City garages between 2004 and 2007, thus maintaining the need for parking attendant and cashiers.

Issue:

Shall the Commission approve the issuance of an RFP?

Item Summary/Recommendation:

At its February 3, 2010 meeting, the City Commission passed a motion to reject the proposed Agreement with Lanier Parking Solutions, Inc., pursuant to Request for Proposals (RFP) No. 41-08/09, to provide Parking Cashiers/Attendants, and Supervisors for the City's Parking System.

The City Commission also, at its February 3, 2010 meeting, passed the following motions:

1. Authorized the City Manager to continue under the contract with Impark, but to negotiate an amendment to the contract to change the rate; include a provision that Impark acknowledges and understands that new RFP will be issued;
2. Directed the City Attorney to follow-up with regard to the protest made by Mr. Chester Escobar of Impark that, given the City Commission's determination to re-bid, the current lawsuit by Impark against the City may be rendered moot, and therefore the lawsuit should be voluntarily dismissed by Impark; and
3. To explore the issuance of a new RFP using the "cost plus" concept.

The Administration recommends that the Mayor and City Commission provide comment and direction relative to the scope of services, evaluation criteria, and cost plus requirements of the RFP; and approve the issuance of the RFP as a "cost plus" procurement process for the acquisition of cashiers/attendants, and supervisors for the City's Parking Garages.

APPROVE THE ISSUANCE OF THE RFP.

Advisory Board Recommendation:

N/A

Financial Information:

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

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Saul Frances, Parking Department

Sign-Offs:

Department Director	Assistant City Manager	City Manager
SF <i>[Signature]</i> GL <i>[Signature]</i>	JGG <i>[Signature]</i> PDW <i>[Signature]</i>	JMG <i>[Signature]</i>

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MIAMI BEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: June 9, 2010

SUBJECT: **REQUEST FOR APPROVAL TO ISSUE A REQUEST FOR PROPOSALS (RFP) TO PROVIDE PARKING CASHIERS/ATTENDANTS AND SUPERVISORS FOR THE CITY'S PARKING GARAGES.**

BACKGROUND

At its February 3, 2010 meeting, the City Commission passed a motion to reject the proposed Agreement with Lanier Parking Solutions, Inc., pursuant to Request for Proposals (RFP) No. 41-08/09, to provide Parking Cashiers/Attendants, and Supervisors for the City's Parking System.

The City Commission also, at its February 3, 2010 meeting, passed the following motions:

1. Authorized the City Manager to continue under the contract with Impark, but to negotiate an amendment to the contract to change the rate; include a provision that Impark acknowledges and understands that new RFP will be issued;
2. Directed the City Attorney to follow-up with regard to the protest made by Mr. Chester Escobar of Impark that, given the City Commission's determination to re-bid, the current lawsuit by Impark against the City may be rendered moot, and therefore the lawsuit should be voluntarily dismissed by Impark; and
3. To explore the issuance of a new RFP using the "cost plus" concept.

ANALYSIS

Based on the direction given by the City Commission at its February 3, 2010 Commission meeting, the Administration recommends the issuance of a Request for Proposals (RFP) under a "cost plus" procurement process for the acquisition of parking cashiers/attendants, and supervisors for the City's parking garages.

The City's existing contract for cashiers, attendants, and supervisors will remain in effect until such time that a new contract is awarded by the Mayor and City Commission as a result of this RFP process.

SECTION II -- SCOPE OF SERVICES

The City of Miami Beach is actively seeking proposals from qualified parking companies/operators to supply trained parking cashiers, attendants, and supervisors for the City of Miami Beach Parking System, in accordance with the terms, conditions, and specifications contained in this Request for Proposals. The Proposer(s) should base their Price Proposal Form on the following guaranteed minimum number of hours annually:

Cashiers/Attendants:	64,000	80%
Supervisors:	16,000	20%
Total:	80,000	100%

A. INTENT

It is the intent of the City to enter into a three (3) year Agreement with the successful Proposer to provide the necessary labor pool of cashiers, attendants, and supervisors for the City operated cashiered/attended parking facilities, with an option for an additional two (2) one-year renewal options, at the sole discretion of the City.

B. RESPONSIBILITY OF THE FIRM

The successful Proposer shall be responsible for the following:

1. To provide trained and uniformed parking cashiers, attendants, and supervisors at each of the designated parking facilities, Monday through Sunday, including holidays and during Special Events. The parking facilities are located at:
 - A. 7th Street & Collins Avenue Garage
 - B. 17th Street Garage
 - C. 13th Street Garage
 - D. 42nd Street Garage
 - E. 12th Street & Drexel Garage
 - F. City Hall Garage
 - G. "5th and Alton" Garage
 - H. Pennsylvania Avenue Garage
 - I. Preferred Parking Surface Lot (Convention Center Lot).
 - J. Anchor Garage - 16th Street and Collins Avenue.
 - K. Multiple municipal surface parking lots, including during special events and/or seasonally.

2. The parking cashiers, attendants, and supervisors must:
 - A. Maintain a neat, well-groomed appearance at all times.
 - B. Collect parking fees, validate tickets, and perform related duties.
 - C. Provide financial and ticket reports at the conclusion of each shift to the satisfaction of the City.
 - D. Submit monies representative of the shift's activity to the shift/facility supervisor, and assist in the recordation and deposit of the daily shift cash receipts.
 - E. Maintain a clean work area including the adjacent booth area and access control equipment. Each shift shall be responsible to maintain the fee computer as to cleanliness, dust, and appropriate use.

- F. Provide directions and general information to the public.
 - G. Maintain a friendly, courteous and service-oriented attitude at all times.
 - H. Consistently demonstrate the ability to communicate effectively in the English language with the general public, supervisors, and City management.
 - I. All cashiers, attendants, and supervisors shall be qualified to complete all required cash and ticket reports. Such qualification shall be to ensure the accurate and complete recordation of such reports. Ability to add, subtract, multiply, and divide in a consistent and accurate manner is essential.
 - J. All cashiers, attendants, and supervisors must be trained in CPR and emergency procedures.
 - K. All cashiers, attendants, and supervisor are required to know City parking policies pertinent to:
 - 1. Monthly Parking Program
 - 2. City Decals and Permit Parkers
 - 3. Special Event Parking
 - 4. iPark
 - 5. Hotel Hang-Tag Program; and
 - 6. All programs implemented by the City
 - L. All cashiers, attendants, and supervisors must be familiar with the location, hours of operation, and rates of all City parking facilities.
 - M. All cashiers, attendants, and supervisors will be trained in operating the City's gated parking revenue control equipment.
 - N. Perform all other related duties as assigned by the City.
3. The successful Proposer shall provide and require its employees to wear a uniform:
- Sport/polo shirt or collared shirt (no t-shirts), dark pants, shorts or skirt. The Firm's employees will be issued official City of Miami Beach photo identifications and these shall be required to be worn daily as part of the employee's official uniform. The successful Proposer must include its name on the badge or uniform. The City reserves the right for final approval of the uniform selected by the Firm.
4. The Successful Proposer will provide one (1) trained working supervisor per location as requested on each shift. The responsibilities of the supervisors will be:
- a. Attendance verification: Verify at the beginning of each shift that all booths are staffed. If personnel are absent or call in sick, it is the responsibility of the supervisor to replace the parking cashier immediately. The supervisor shall issue a bank for each cashier/attendant per shift.
 - b. Scheduling of shift locations and replacements for daily and weekly schedule and scheduling for vacations and emergencies.
 - c. The shift supervisors shall be an employee of the successful Proposer and shall serve as the City contact for any problems or questions during each shift.

- d. Provide required assistance to parking cashiers and attendants during shift closeout procedures. Prepare all deposits for shift cash receipts as required by the City.
 - e. Perform the duties of a parking cashier and/or attendant.
 - f. Perform related duties as requested by City staff.
5. If applicable, the successful Proposer shall make best efforts to transition employees of the existing service provider who choose to migrate to the selected Firm.
 6. All contract employees must report any facility maintenance issues, including but not limited to graffiti; light bulb replacement; restriping, signage, etc. that needs to be addressed.
 7. The successful Proposer shall schedule monthly performance meetings with City management to review performance issues.
 8. The successful Proposer shall notify the City of a 24 hour contact via telephone and/or pager. A minimum of two contact names must remain on file with the City at all times.
 9. The successful Proposer shall respond to any complaint received from the general public or the City of Miami Beach, in writing, within 24 hours of receipt of complaint.
 10. All training is the responsibility of the Firm. The successful Proposer will provide written rules of conduct for its personnel. All rules of conduct for the successful Proposer must be approved by the City's Parking Director.
 11. The successful Proposer must provide a Facilities Operation Manual to each employee and a permanent manual containing standard operating procedures shall be stored in each cashier booth and central facility office.
 12. All employees of the successful Proposer shall be bonded and insured.
 13. Smoking and/or eating on the job or in a parking facility is strictly prohibited.
 14. The successful Proposer must supply a \$100.00 bank for each shift at each facility. The \$100.00 bank shall consist of sufficient variety of currency and/or coin to properly provide change. The City reserves the right to alter the composition of the \$100 bank; however, typically, eighty one-dollar bills and two rolls of quarters will be required.
 15. The successful Proposer shall be responsible for all pay-on-foot stations, including but not limited to: providing all funds necessary for replenishing all cash for change bins; balance all transactions at all pay-on-foot stations at applicable facilities; and perform all other related duties pertaining to pay-on-foot stations as assigned by the City. The successful proposer must have sufficient cash on hand to ensure that at no time any pay-on-foot stations are depleted of change (smaller bill denominations).
 16. The successful Proposer shall maintain a trained and courteous workforce.

17. The successful Proposer shall ensure that each cashier booth and facility office is equipped with the following:
 - A. City of Miami Beach Parking Guide
 - B. Chamber of Commerce Visitor Guide
 - C. Any other materials provided by the City.

18. The successful Proposer shall be responsible for any cash shortages or missing tickets. Missing tickets shall be calculated at the maximum daily parking rate. All shortages shall be delivered to the City of Miami Beach Parking Department c/o the Finance Manager within 72 hours of notice of the shortage by the City to the Firm.

19. The successful Proposer shall provide continuous and on-going procedural and equipment training to its employees assigned to the City of Miami Beach. The successful Proposer shall provide a roster of all trained employees to the City. Employees receiving training at the City's parking facilities must be scheduled to work at City parking facilities. Under no circumstances is the successful Proposer to train employees at City parking facilities and relocate the employee to another contract or client for any period of time without the expressed written consent of the City.

20. The successful Proposer shall provide sufficient vehicles, as determined by the City, for their employees to ensure the effective and efficient transport of cashiers, attendants, and supervisors to assigned locations throughout all shifts.

21. The successful Proposer shall perform a background check, firm/type of background check to be approved by the City, on all of its employees, as part of their employment process. The employee must agree to submit to the successful completion of these screening processes as a condition of their employment within the first thirty (30) days of said employment. The successful Proposer may also be required to conduct other screening and/or investigative measures, at the request of the City.

22. The successful Proposer **must** provide the following services outlined herein. The cost of said services must be identified and included as a component of the Total "Cost Plus" Annual Rate for up to 80,000 Hours found on the Price Proposal Form contained herein. Additionally, the cost of each service should be itemized in the space provided below. **The City reserves the right to select any service or combination thereof, including all or none; and deduct the cost of those services not selected.**
 - a. Project Manager (PM) - The successful Proposer shall provide a full-time on-site Project Manager with experience handling the type of services requested by the City who will have full authority to act on behalf of the Firm. The Project Manager shall be scheduled at the sole and absolute discretion of the City.

\$ _____

- b. Human Resources Coordinator - The successful proposer shall provide an HRC to address and enhance the Firm's recruitment, retention, and training efforts.
\$ _____
- c. Motorist Assistance Program (MAP) - The successful proposer shall provide a motorist assistance program which includes but is not limited to flat tire assistance/repair, lock-out; fuel; battery jump start, and/or towing of the vehicle to a service facility.
\$ _____
- d. Cardio Pulmonary Resuscitation (CPR) Certification - The successful proposer shall have all contract personnel CPR certified.
\$ _____
- e. Training - The successful proposer shall provide training, including but is not limited to: Customer Service, Gated Revenue Control Equipment, and any other training the City deems relevant and appropriate in its sole discretion.
\$ _____
- f. Vehicles - The successful proposer must provide two (2) late model passenger vans or comparable vehicles to transport contract employees and/or equipment.
\$ _____
- g. Compensation for Contract Employees - The successful proposer must provide an Employee Recognition Program; Monthly Birthday Event (for all contract employees with a birthday in each respective month).
\$ _____
- h. Mystery Shopper Reporting - The successful proposer shall contract an independent third party to perform a minimum of ten (10) "Shopper" reports per month, system-wide. A sample "Shopper" survey must be included in the Firm's proposal. Shopper reports must specify that these are actual customers and must be documented visits to one of the facilities where labor is provided. Telephone calls for information or visits/interaction with city staff is not permitted.
\$ _____
- i. Uniforms: The successful proposer must provide uniforms which shall be approved in the sole and absolute discretion of the City.
\$ _____
- j. The successful proposer will provide umbrellas for all facilities scheduled with contract employees and/or requested by the City. Any replacement umbrellas, due to wear and tear, needed after the initial inventory has been installed, must also be provided by the successful proposer. The type and design of all umbrellas shall be approved in the sole and absolute discretion of the City.
\$ _____

C. RESPONSIBILITY OF THE CITY

The City shall be responsible for the following:

1. The City of Miami Beach will provide a clean and safe workplace.
2. The City has the right to refuse any personnel supplied by the Firm. Any person employed by the successful Proposer whom the Parking Director or his/her designee may deem temporarily or permanently incompetent or unfit to perform the work, shall be removed promptly from the job and such person shall not again be placed with the City.
3. The City shall make every effort to notify the successful Proposer of any special events and their specific parking requirements at least one week (seven calendar days) prior to commencement of the event.
4. The City shall provide the successful Proposer with a calendar of events at the City of Miami Beach Convention Center, The Fillmore at the Miami Beach Jackie Gleason, and Lincoln Theatre. The City shall also provide the successful Proposer with a copy of the City of Miami Beach annual calendar.
5. The City shall provide a comprehensive list of events requiring the staffing of surface parking lots.
6. The City shall continuously work with the successful Proposer to assure that residents and visitors are served in an efficient, professional, and courteous manner.
7. The City reserves the right to require the successful Proposer to conduct investigative measures, including, audits, and/or surveillance to ensure the integrity of the system and their employees.
8. The City will at no time be responsible for any and all overtime payroll expense incurred by the Firm.

D. PERFORMANCE STANDARDS

1. **Uniforms/Name-tags:**
All employees must be in full uniform with their respective name-tag at the start of their shift. Failure to do so may result in a request to replace said employee with one in full uniform/name-tag.
2. **Customer Service/Conduct:**
All employees must comport themselves in a respectful and courteous manner when addressing the public/customers. Conduct unbecoming shall include: rudeness, belligerence, hostility, quarrelsome, antagonistic, aggression, sarcasm, contempt, and mocking. All employees shall further refrain from smoking, eating, and/or drinking while on-duty. Complaints pertaining to customer service, including but not limited to the behavior outlined above shall be immediately addressed by the Firm.

The City reserves the right at its sole discretion to determine if the employee is unfit or incompetent to perform the duties and may require the immediate removal of the employee and replacement with another within one (1) hour of said request.

3. **Most Favored Customer:**

The successful Proposer warrants and represents that the prices, warranties, benefits and terms set forth in this Agreement are at least equal to or more favorable to the City than the prices, warranties, benefits and terms now charged or offered by the Firm, or that may be charged or offered during the term of this Agreement for the same or substantially similar services as defined in this Agreement.

If at a time during the term of this Agreement, the successful Proposer enters into an agreement on a basis that provides prices, warranties, benefits and terms more favorable than those provided the City hereunder, then the successful Proposer shall within thirty (30) calendar days thereafter notify the City of such fact, and regardless of whether such notice is sent by the successful Proposer or received by the successful Proposer or received by the City, this contract shall be deemed to be automatically amended, effective retroactively to the effective date of the more favorable agreement, to provide the same prices, warranties, benefits and terms to the City; provided that the City shall have the right and option to decline to accept any such change, in which event such amendment shall be deemed null and void.

If the successful Proposer is of the opinion that an apparently more favorable price, warranty, benefit or term of this Agreement is not in fact more favored treatment, the successful Proposer will promptly notify the City in writing, setting forth in detail the reasons that the successful Proposer believes said apparently more favored treatment is not in fact more favored treatment.

The City after due consideration of such written explanation may decline to accept such explanation and thereupon this Agreement shall be deemed to be automatically amended effective retroactively to the effective date of the more favorable agreement, provide the same prices, warranties, benefits and terms to the City. The provisions of this Article shall survive the closing and termination of this Agreement.

CRITERIA FOR EVALUATION

The Evaluation Committee shall base its recommendations on the following factors:

<u>Evaluation Criteria:</u>	<u>Weight</u>
Experience and Qualifications of the Proposer.....	10 pts
Experience and Qualifications of Management Team.....	10 pts
Annual Contract Cost for Guaranteed Hours and Hourly Billing Rates for Additional Hours.....	60 pts
Methodology and Approach.....	10 pts
Past Performance (based on surveys and the Administration's due diligence).....	<u>10 pts</u>
Total:	100 pts

PRICE PROPOSAL FORM

The Proposer(s) should base their Price Proposal Form on the following guaranteed minimum number of hours annually:

Cashiers/Attendants:	64,000	80%
Supervisors:	16,000	20%
Total:	80,000	100%

Employee hourly rates (hourly rate paid to the employee) and related payroll taxes/costs shall be a pass through cost to the City. The following are the fixed costs which shall be considered a pass through to the City:

- Hourly rate paid to employees must be compliant with the City's Living Wage Ordinance Requirement (LWOR). The hourly rate for Cashiers/Attendants must be in Year One: either \$10.16 which includes benefits or \$11.41 which does not include benefits (\$10.16 + \$1.25); in Year Two either: \$10.72 which includes benefits or \$12.17 (\$10.72 + \$1.45) which does not include benefits; and in Year 3 either: \$11.28 which includes benefits or \$12.92 which does not include benefits or as amended. The hourly rate for Supervisors must be at least living wage.

Any and all other costs, including unemployment insurance; workman's compensation; operating costs; employee benefits; overhead; and profits shall be considered Additional Costs and must be itemized in the Price Proposal Form. **If there is additional space needed for itemization you must use additional sheets and attach it to the Price Proposal Form.** No additions, deletions, or revisions to your proposal, including the Price Proposal Form shall be permitted after the submission deadline. The Additional Costs shall be invoiced in biweekly periods (26 biweekly periods annually) based on the portion of the guaranteed number of annual hours (80,000) invoiced.

Each Proposer shall be evaluated on their Total Contract Cost for Guaranteed Hours and Hourly Billing Rates for Additional Cashier/Attendant and Supervisor Hours; therefore, each Proposer must fully complete the Price Proposal Form. The Total Annual Contract Cost for Guaranteed Hours must contain any and all costs to the City is comprised of the following categories:

The following categories which have an assigned fixed value(s) may not be altered by the Proposer. The Proposer may only submit values for the categories that are blank in Sections "B. Supervisors"; "C. Additional Costs"; D. Hourly Billing Rate for Additional Cashiers/Attendants hours"; and "E. Hourly Billing Rate for Additional Supervisor Hours".

Cashiers/Attendants (Year 1):

The successful proposer shall pay the City's Living Wage Hourly Rate to their employees. The City's Living Wage Hourly Rate and their related payroll taxes (fixed costs) have been identified above.

A. Cashier/Attendants:		w/Benefits	w/o Benefits	<u>ANNUAL COST</u>
1.	Hourly Rate Paid to Employee (Year 1):	\$10.16	\$11.41	
2.	Minimum Health Benefits to Employee:	\$ 1.25	N/A	
3.	Itemized Employee Payroll Taxes/Cost			
a.	FICA* 6.20% Cost per hour:	\$ 0.71	\$ 0.71	
b.	MICA* 1.45% Cost per hour:	\$ <u>0.17</u>	\$ <u>0.17</u>	
4.	Cashier/Attendant Employee Hourly Rate (No. A1 + A2 + A3):	\$12.29	\$12.29	
Cashier/Attd Hours		x	Hourly Rate =	Cashier/Attd Annual Cost
64,000		x	\$12.29 =	\$786,560
				\$ _____ (A)

B. Supervisors:				
1.	Hourly Rate Paid to Employee (must be at least the living wage as above):	(1)	\$ _____	
2.	Itemized Employee Payroll Taxes/Cost			
a.	FICA* 6.20% Cost per hour:	(2a)	\$ _____	
b.	MICA* 1.45% Cost per hour:	(2b)	\$ _____	
3.	Employee Hourly Rate (No. B1 + B2 = B3):	(3)	\$ _____	
Supervisor Hours		x	Hourly Rate =	Cashier/Attd Annual Cost
16,000		x	\$ _____ (3)=	\$ _____ (B)

C. Additional Costs:				
1.	Unemployment Insurance	(1)	\$ _____	
2.	Workman's Compensation	(2)	\$ _____	
3.	Operating Expenses	(3a-c)	\$ _____	
	(a.) _____		\$ _____	
	(b.) _____		\$ _____	
	(c.) _____		\$ _____	
4.	Overhead	(4a-c)	\$ _____	
	(a.) _____		\$ _____	
	(b.) _____		\$ _____	
	(c.) _____		\$ _____	
5.	Employee Benefits (**Note Below)	(5a-c)	\$ _____	
	(a.) _____		\$ _____	
	(b.) _____		\$ _____	
	(c.) _____		\$ _____	
6.	Profit:	(6)	\$ _____	
Annual Total of Additional Costs				\$ _____ (C)

Price Proposal for Annual Contract Cost for Guaranteed Hours (80,000) \$ _____
 TOTAL A+B+C

ADDITIONAL HOURS

D. Hourly Billing Rate for additional Cashier/Attendant Hours over 64,000: \$ _____

E. Hourly Billing Rate for additional Supervisor Hours over 16,000: \$ _____
 (SEE NOTES ON THE FOLLOWING PAGE)

Notes:

1. Any and all other expenses to the City above and beyond the fixed costs identified above, including unemployment insurance; workman's compensation; operating expenses; overhead; additional employee benefits; and profit, must be identified as Additional Costs that will be invoiced bi-weekly based on the portion of the guaranteed number of annual hours (80,000) invoiced that period. **If there is additional itemization, please add additional lines and sheets as necessary, but do NOT alter the format of the Price Proposal format. No revisions to your proposal, including the Price Proposal Form shall be permitted after the submission deadline.**

2. FICA/MICA are reflected at current rates.

3. In the Employee Benefits Section (C5) of Additional Costs, please include each of the following, if applicable:

- a) portion of health benefits that exceeds \$1.25 per hour for Cashiers/Attendants with benefits, if any (itemize and include costs on a separate line).
- b) all health benefits for supervisors, if any (itemize and include costs on a separate line).
- c) other non-health benefits for cashiers/attendants and supervisors, if any (itemize and include costs on a separate line for each).

MINIMUM REQUIREMENT/QUALIFICATION:

- A. The Proposers shall have a record of satisfactory performance in the past three consecutive years providing trained cashiers/attendants and supervisors with experience in self-parking operations at surface parking lots and garages with gated parking revenue control equipment to a public agency and/or private concern.
- B. The Proposers shall be fully licensed in the state of Florida to perform the work described herein.
- C. List the present contracts held and contracts previously held during the past three years, specifically listing any similar contracts held. Identify the firm/organization, type of labor furnished, contact person, address, phone number, length of time contract held and total dollar amount of the contracts listed.
- D. Describe in detail the daily oversight of your attendants/cashiers and supervisors; contract management best practices; how you measure your staff's performance; and how you hold staff (at each and every level) accountable.
- E. Each Proposer is required, before submitting a proposal, to examine carefully the requirements set forth in this document and to be familiar with all the terms and conditions that are contained within this RFP. The Proposer shall submit the following detailed information with the proposal:
 1. Describe your approach to the project and your management plan for

both regularly attended facilities/garages and special event staffing. Include your staffing strategies, implementation of the contract, training, supervision and continued support throughout the year. Describe your plan in detail for recruiting, training, and retaining cashiers/attendants and supervisors.

2. A brief history of the company, name(s) of owner and principal(s) and number of years in business. Include the location(s) of the offices.
3. The number of employees that are employed by your Firm /Company on a full-time and part-time basis. Describe your active trained work pool that can be immediately deployed.
4. Number of personnel on file for each type of work. Example: Clerical: 58, Manual labor: 37, etc.
5. Complete the price proposal form as provided.

CONCLUSION

The Administration recommends that the Mayor and City Commission provide comment and direction relative to the scope of services, evaluation criteria, and cost plus requirements of this RFP; and approve the issuance of the RFP as the procurement process for the acquisition of cashiers/attendants, and supervisors for the City's Parking Garages.

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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

FROM: *Stella M. Hernandez for*
Jorge M. Gonzalez, City Manager

DATE: July 29, 2010

SUBJECT: **A DISCUSSION PERTAINING TO THE REQUEST FOR PROPOSALS (RFP) NO. 24-09/10, FOR MANAGEMENT AND/OR DEVELOPMENT OF THE BYRON CARLYLE THEATER COMPLEX.**

BACKGROUND

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

It should be noted that currently there are some personnel expenses that are shared between the Byron Carlyle and the Colony theaters. With the privatization of the Byron Carlyle there would be some additional expenses that the Colony would have to absorb. However, staff anticipates that the Colony would benefit from additional bookings that would help to offset the expenses. At this time, staff estimates an additional \$5,200 in expenses (net of new revenues) at the Colony if an agreement were awarded to a private company.

RFP – 2008:

Subsequently, at the July 9, 2008 Finance and Citywide Projects Committee meeting, the Committee recommended the issuance of a Request for Proposals (RFP) and directed staff to place this item on the July 16, 2008 City Commission agenda. RFP No. 39-07/08 was issued on July 22, 2008 and two proposals were received. The evaluation committee unanimously recommended to reject both proposals and to request the re-issuance of a new RFP for the Management and/or Development of the Byron Carlyle Theater Complex. The Finance and Citywide Projects Committee considered this matter at its meeting on March 10, 2009, and also recommended that the City reject both proposals and issue a new RFP. It was recommended that the new RFP should encourage potentially different uses for the facility, and should request superior evidence of financial capacity of the proposers and demonstrated capacity to sustain the proposed programming.

Visioning Sessions:

Following discussion at the April 22, 2009 City Commission meeting, the Mayor and Commission directed the Administration to engage the community in a discussion of possible alternative uses for the Byron Carlyle Theater before issuing another RFP. Staff of the Department of Tourism and Cultural Development, in conjunction with Planning Department

staff, convened two public visioning sessions to discuss the future of the theater. The first was held on June 17, 2009 at 9 a.m. in the City Commission chambers with 25 representatives of the various nonprofit arts groups which apply for grants funding through the Cultural Arts Council. The second was held on June 24, 2009 at 6:30 p.m. at the Byron Carlyle Theater. Both meetings were publicly noticed on the City's website and in the Miami Herald. To publicize the June 24 meeting, 3,000 palm cards in both English and Spanish were distributed to North Beach businesses, residents and facilities, including the North Shore Park Youth Center, the Hispanic Community Center and the Normandy Pool. Twenty-five (25) residents attended this second meeting. At both meetings each individual in attendance was invited to speak, and questionnaires were distributed requesting opinions and comments on current and future uses.

The comments of the arts groups were typical: users of the Theater like its size but complained about its lack of wing space, limited backstage area and rental costs; non-users complained about its location, neighborhood ambience and lack of parking. The responses at the second community meeting were a bit more surprising, especially considering that over 90% of the residents in attendance had never attended a single performance at the Theater: the desire for the Byron Carlyle to remain a theater of some kind seemed to be unanimous. A few individuals suggested dinner cinema/theater or cinema brewpub concepts, and several expressed interest in film screenings, or in moving the Cinematheque there. A couple of people asked for a resident theater company. Nearly everyone wanted to see a café or restaurant included in future plans.

Other Uses for Facility:

Previously, the City Commission had also directed staff to contact educational institutions to inquire about whether they might have an interest in the facility. Contacted institutions included the University of Miami, Miami-Dade College, Florida International University, Florida Atlantic University, Barry University, the University of Florida, University of South Florida, University of Central Florida, Nova Southeastern University, St. Thomas University and Johnson & Wales University.

In terms of the discussion regarding reactivating a movie theater at the Byron Carlyle Theater, City Staff contacted theater chains to gauge their interest in the facility. Muvico was the only major movie theater chain that expressed the slightest interest; however, they would require the City to fund the build-out of any improvements they require. While it seems to be a desire to have a major movie theater chain like an AMC, Regal, Cobb or Muvico, industry conditions don't support that type of operation, as no major chain will likely operate a single theater venue. While build-out of the Byron Carlyle to accommodate additional screens is an option that some may explore, that process will take much longer and/or may require capital investment from the City.

Neighborhoods and Community Affairs Committee/2009:

This subject was discussed again at the October 2009 Neighborhoods and Community Affairs Committee meeting following a discussion at the September 9, 2009 City Commission meeting regarding the potential marketing of the property by a broker for either rental or sale. At the time, the City had just received an "Opinion of Value" for the property.

Much of the subsequent Committee discussion centered on reactivating a movie theater operation at the Byron Carlyle with potentially some food, beverage and alcohol component,

rather than selling the facility. Also discussed was the possibility of removing Global Spectrum from managing the facility to make it less expensive for users to rent, as well as whether or not the City should assume responsibility for directly programming the facility, instead of operating it as a rental facility. The Administration advised the Committee that eliminating Global Spectrum and/or having the City program the facility would require additional staff, which carries a cost that is not currently funded. The Administration also advised the Committee that the Cultural Arts Council (CAC) approved a new grant category for Fiscal Year 2010/11 called the "Byron Bonus" which would fund the rental fees and hard costs associated with renting the Byron Carlyle for any non-profit groups awarded funding in this category.

The Committee directed staff to return to the Neighborhoods/Community Affairs Committee with its suggestions for the programming and management of the Byron Carlyle Theater, such as having an organization selected to be responsible for also making the facility available for other programming. It was understood by staff that the expectation was that the organization selected would assume all costs, providing a savings to the City.

At the January 19, 2010, Neighborhoods and Community Affairs Committee, the Administration reviewed the history of this item and also explained that recently a number of organizations toured the facility. Some of the organizations were referred by members of the City Commission, while others were initiated through the Tourism and Cultural Development Department. The Committee unanimously recommended that the Administration immediately issue an RFP for management and/or development of the Byron Carlyle Theater. Additionally, the Committee unanimously recommended the Administration simultaneously work with the City's broker in order to determine if there is a commercial client interested in leasing or purchasing the facility. All options would be presented to the City Commission for consideration.

The Koniver Stern Group conducted a site visit of the facility, but has not been successful in finding an interested commercial entity to date.

ISSUANCE OF SECOND RFP

On February 3, 2010, the Mayor and City Commission approved the issuance of Request for proposals (RFP) No. 24-09/10, for Management and/or Development of the Byron Carlyle Theater Complex. RFP No. 24-09/10 was issued on February 18, 2010, with an opening date of April 19, 2010. A pre-proposal conference to provide information to the proposers submitting a response was held on March 8, 2010. Additionally, four (4) site visits were offered to potential proposers on March 8, 2010, March 23, 2010, March 30, 2010, and April 8, 2010.

Summary:

The City was interested in proposals for use of the existing theater portion of the building as a theater or with some similar cultural use. Proposers were encouraged to submit proposals that will address the needs of the community and provide both daytime and nighttime uses if possible. The City would also consider proposals that incorporate the closed, western portion of the building, or for only the western portion of the building, for a use compatible to the theater use. The City was open to proposals that consider the use of the current theater facility on the eastern portion of the complex only, the unrenovated western portion of the facility only, or for the overall complex. Proposers had the ability to submit proposals for the use or development of the entire complex or only for one of the two portions of the complex.

Collaborations among theater, film, dance, and other performing and/or presenting cultural organizations are encouraged. The proposer would be responsible for any and all renovation or alteration to the portions of the facility requested via this RFP, including funding for any renovation or alteration; maintenance and equipment; marketing; coordination of utilization; and any and all other responsibilities as may be required for the proposed use.

It was anticipated that the successful proposer would negotiate with the City for a long-term contract with an initial term of five (5) years, with an option to renew for an additional five (5) year term, at the City's sole discretion.

Goals and Objectives:

The goal of this RFP was the selection of a public or private (not-for-profit or for-profit) entity to develop and implement active cultural uses for all or part of the complex, while managing and operating all or a portion of the complex in a first class, high quality, state-of-the-art manner that meets the needs of the residents, visitors, tourists, City businesses, and the general public. To that end, proposals were to present a comprehensive, well-articulated program for use and/or development of a portion or all of the complex, complete with supporting documentation, including design sketches, if necessary, that demonstrated how the proposed project would enhance the vitality of the 71st Street corridor and neighboring business district (refer to the North Beach Town Center Plan provided with the RFP). As previously stated, the City would accept proposals for the use and development of the entire complex or only for one portion of the complex.

Proposers had to present their experience, reputation and financial and managerial capability appropriate for the successful development and operation of a project of the type they are proposing, and they had to present uses for the portion(s) of the site for which they were submitting this proposal. If renovations were anticipated, the proposers had to demonstrate their experience in previously overseeing a similar renovation project.

The City had multiple objectives which proposers had to successfully address in their response to this RFP, including, among others:

- How they will efficiently operate the facility, while eliminating or minimizing direct costs to the City;
- How they will properly maintain and safeguard the City's capital investment in the facility through the exercise of the highest standards of maintenance and preservation and, as the need arises, make or recommend capital improvements;
- How they will manage day-to-day operations of all or the portion of the facility for which the proposer is submitting a proposal;
- How they will achieve the greatest possible profit by developing and implementing innovative ways to generate revenue and penetrate new markets, attract new events and promote the facility to maximize usage, during daytime and evening hours;
- How they will actively solicit, promote or co-promote the facility and any proposed program(s)/services.

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

1. Bollywood/Hollywood Productions, Inc.
2. Broward Stage Door Theatre Co, Inc
3. New Theatre

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

CONCLUSION

The Scope of Services for this RFP sought proposals for cultural-themed uses for the facility. Both non-profit proposals received include no funding for the City. If no fee to the City is an option for potential users, the Administration believes that eliminating a cultural theme focus could yield additional proposals that might generate a greater economic impact for the neighborhood. Before proceeding with the typical due-diligence process of the RFP, the Administration is seeking direction from the Finance Committee on whether to pursue alternative options.