

MIAMIBEACH

City Commission Meeting

SUPPLEMENTAL MATERIAL

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
October 27, 2010

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

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

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ATTENTION ALL LOBBYISTS

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

ITA AGENDA

C7 - Resolutions

- C7D A Resolution Approving And Authorizing The Mayor And City Clerk To Execute A First Amendment To The **Interlocal** Agreement Between The City And The School Board Of **Miami-Dade** County, Florida, Providing For The School Board's Construction Of Certain Improvements On The City's Right Of Way Along Portions Of **Prairie Avenue** And **Dade Boulevard** (As Originally Approved Pursuant To City Resolution No. 2007-26478); Said Amendment Providing For The City's Design And Construction Of Certain Remaining Improvements On The Right Of Way, In Consideration Of The Board's Payment Of \$215,074.
(City Attorney's Office)
(Memorandum, Resolution & Agreement)

R5 - Ordinances

R5D2 Amend Zoning District Map - 1600 Lenox Avenue

An Ordinance Amending The Official Zoning District Map, Referenced In Section 142-72 Of The Code Of The City Of Miami Beach, Florida, By Changing The Zoning District Classification For The For The Parcel Known As "1600 Lenox Avenue," More Particularly Described In The Legal Description Attached As Exhibit " A Hereto, From The Current Zoning Classification RM-1, "Residential Multifamily Low Intensity," To The Proposed Zoning Classification CD-1, "Commercial, Low Intensity," With A Restriction Limiting The Property To Commercial Uses And No More Than 10 Residential Units Per Acre As Provided For In The Voluntary Covenant; Providing For Codification, Repealer, Severability And An Effective Date.

(Planning Department)

(Declarations of Restrictions - Replacement for Pages 248 - 252)

R51 Bed and Breakfast Inns

An Ordinance Amending The Code Of The City Of Miami Beach Code, By Amending Chapter 142, Zoning Districts And Regulations, Article V, Specialized Use Regulations, Division 7, Bed And Breakfast Inns, Section 142-1401, Conditions For Bed And Breakfast Inns, By Modifying The Conditions For Bed And Breakfast Inns To Widen The Eligibility For Alterations; Providing For Repealer; Codification; Severability; And An Effective Date.

(Planning Department)

(Supplemental Memo & Planning Board Version Ordinance)

R5L Alcoholic Beverages And Nudity Regulations - Applicant: Leroy Griffith

An Ordinance Amending Chapter 6, "Alcoholic Beverages," Of The Code Of The City Of Miami Beach, Florida, By Amending Sections 6-40 And 6-41 "Total Nudity And Sexual Conduct Prohibited," And "Provisions Pertaining To Establishments Permitting Partial Or Total Nudity," To Allow Establishments Licensed As Alcoholic Beverage Establishments To Offer Partial And Total Nude Adult Entertainment; Providing For Codification, Repealer, Nonseverability, And An Effective Date.

(Planning Department)

(Letter from Daniel R. Aaronson & CD with Supporting Exhibits)

Condensed Title:

A Resolution to execute the First Amendment to the Interlocal Agreement between the City of Miami Beach and the School Board of Miami-Dade County, Florida, providing for the City's design and construction of certain improvements along Prairie Avenue and funding of such improvements by the School Board of Miami-Dade County in the amount of \$215,074.

Key Intended Outcome Supported:

Increased Community Satisfaction with City Government.
Supporting Data (Surveys, Environmental Scan, etc.): According to the 2009 Customer Satisfaction Survey, 64.9% of respondents rated the value of City services for the tax dollars spent as excellent or good.

Issue:

Shall the City Commission approve the Resolution?

Item Summary/Recommendation:

On March 14, 2007, the Mayor and City Commission approved the City's draft of an Interlocal Agreement (ILA) between the City and the School Board of Miami-Dade County (the Board). The Agreement provided for the following:

1. Certain improvements to be designed and contracted by the Board, at its expense, along Dade Boulevard and Prairie Avenue
2. A permanent easement granted by the City to the Board in order for the Board to construct, operate, and maintain a bus drop-off area along Dade Boulevard (the City Easement).
3. A permanent access easement granted by the Board to the City over a portion of the School property, to access Fire Station No. 2 and the Public Works yard from Dade Boulevard, as well as to access that portion of the City's water and sewer system located within the School property.

The improvements along Dade Boulevard were completed as part of the High School Project; however, the improvements along Prairie Avenue, were not completed because the City had to build stormwater improvements from 23rd Street to Dade Boulevard including a stormwater pump station and there were disagreements as to the amount of contributions from the Board to finish the Board's construction obligations on Prairie Avenue. In a Board meeting on May 12, 2010, the Board authorized its Superintendent to finalize negotiations with the City with regard to the proposed Amendment; following meetings between the representatives of the City and the Board, the Board has also opined that the action delegated to the Superintendent also includes the authority to execute and ratify the final version of the ILA on behalf of the Board.

The proposed First Amendment to the ILA was negotiated between the City and the Board's staff and drafted by the City Attorney's Office.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.

Advisory Board Recommendation:

N/A

Financial Information:


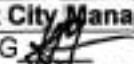

Source of Funds:		Amount	Account
	1		
	2		
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Fred Beckmann, ext 6012

Sign-Offs:

Department Director FHB 	Assistant City Manager JGG 	City Manager JMG 
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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: October 27, 2010

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF **MIAMI** BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FIRST AMENDMENT TO THE **INTERLOCAL** AGREEMENT BETWEEN THE CITY OF **MIAMI** BEACH AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AS ORIGINALLY APPROVED BY THE CITY COMMISSION ON MARCH 14, 2007, PURSUANT TO RESOLUTION NO. 2007-26478; SAID AMENDMENT PROVIDING, IN PART, FOR THE CITY'S DESIGN AND CONSTRUCTION OF CERTAIN REMAINING PUBLIC IMPROVEMENTS ALONG PRAIRIE AVENUE (AS ORIGINALLY CONTEMPLATED PURSUANT TO THE **MIAMI** BEACH SENIOR **HIGH** SCHOOL EXPANSION PROJECT), SUBJECT TO FUNDING OF SUCH IMPROVEMENTS BY THE SCHOOL BOARD, IN THE AMOUNT OF \$215,074.

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

ANALYSIS

Approximately five years ago, the School Board of Miami-Dade County (the "Board") commenced construction on improvements and expansions to Miami Beach Senior High School (the "School"). At that time, the City learned that the Board had plans to make certain improvements on Prairie Avenue and on Dade Boulevard, both utilizing City property and/or City right-of-ways, without the previous approval of the City. The City asked the Board to cease construction activities until such time as the various issues could be reviewed and agreed upon between the City and the Board.

As a result of the City's intervention, the original Board plans for School site improvements were altered to incorporate several items that were intended to mitigate the impact of the School construction on the adjacent neighborhood. Among the items which were incorporated into the site plan by the Board were:

- An estate fence at the perimeter of the School property on Prairie Avenue
- Landscape on the School side of the estate fence on Prairie Avenue in order to screen the parking lot and to act as a litter capture buffer
- Enhanced tree plantings in the swale area adjacent to the estate fence on the City right-of-way on Prairie Avenue
- The addition of a sidewalk on Prairie Avenue

The City and Board also came to agreement upon a new bus lane and bus drop-off area on Dade Boulevard, and a shared access to the eastern side of the School property (adjacent to Fire Station #2).

The parties agreed to memorialize their respective responsibilities and obligations in an Interlocal Agreement. However, an issue which was in dispute at the time of the meetings to address the Board improvements was which party would be responsible for maintenance of landscape; specifically on Prairie Avenue. The Board's position was that, as the City had required the landscape, the City should be responsible. However, at the time, the City stated its intention not to accept responsibility for the maintenance of the landscape improvements on Prairie Avenue.

The Board proceeded to approve an Interlocal Agreement on May 18, 2005, which incorporated all of the enhancements to Prairie Avenue discussed previously, as well as the aforesaid easements (for the bus lane and the shared eastern access). The version of the Interlocal Agreement which was approved by the Board also included language that held the City responsible for maintenance of landscape on Prairie Avenue. As this language was not consented to by the City at the time, the Interlocal Agreement was not presented for approval to the City Commission.

Notwithstanding the above, in order that construction of the School not be delayed, the City consented to the Board proceeding with construction of the proposed improvements, pending further discussion regarding outstanding issues.

As construction progressed, the Board undertook several of its building and site improvements, some of which included the removal of a number of trees on Prairie Avenue, in preparation for construction of the planned Prairie Avenue drop off lane, the estate fence, and required landscaping. This particular activity, as well as the overall site construction activity, triggered a new level of concern and interest among adjacent residents who, through the Bayshore Homeowners Association (BHA), expressed their displeasure with planned improvements for the School; both to the Board and to the City. The renewed expression of concern by the BHA occurred in mid 2006 and, since that point in time, the City and various BHA representatives and Board representatives have met to discuss the BHA concerns and possible further mitigation efforts.

While the BHA raised a series of concerns and questions about site improvements, the principle points of discussion and concern focused on planned Prairie Avenue improvements and, specifically, a parent drop off lane to be constructed adjacent to Prairie Avenue, and the landscape treatment which would be implemented. The BHA concerns were principally focused upon the visual and operating impact associated with the School and undertaking additional improvements to further mitigate what they believed to be a serious neighborhood impact.

To address the concerns of the BHA, the City and Board agreed that, of the improvements to be constructed on Prairie Avenue, the Board would assume cost responsibility for construction except the planned reduction in width and repaving of Prairie Avenue. The road expenses would be borne by the City.

Based on the above, the City presented the Interlocal Agreement to the Mayor and City Commission at its regular meeting on March 14, 2007, and it was approved pursuant to Resolution No. 2007-26478. However, as the version of the Agreement approved by the City was not the version previously approved by the Board in 2005, the City and Board have not executed a final Interlocal Agreement (which is one of the actions that will occur if the City Commission approves the First Amendment before it today)

The Agreement provided for the Board to design and construct the following proposed improvements:

1. Certain improvements to be designed and contracted by the Board, at its expense, along Dade Boulevard and Prairie Avenue (as further defined in nos. 1-7 below).
2. A permanent easement granted by the City to the Board in order for the Board to construct, operate, and maintain a bus drop-off area along Dade Boulevard (the City Easement).
3. A permanent access easement granted by the Board to the City over a portion of the School property, to access Fire Station No. 2 and the Public Works yard from Dade Boulevard, as well as to access that portion of the City's water and sewer system located within the School property (the Board easement).

In order to be ready for the start of the school year, the Board proceeded with the construction of the following improvements along Dade Boulevard, which have now been completed:

1. Construction of new bus drop-off area.
2. Relocation of existing trees to public right-of-way.
3. 6' sidewalk parallel to School property and southernmost edge of walk occurring 10' from back of existing Dade Boulevard curb.
4. Pedestrian crossing markings with ADA compliant concrete ramps.
5. Irrigation system in public right-of-way with own water meter, electronic controller, etc., (to be conveyed to the City).
6. Construction of new one-way shared entry drive to School service yard and City's public works yard.
7. New landscaping in adjacent public right-of-way.

The required improvements along Prairie Avenue have, to date, not been completed by the Board, because the City had to first install stormwater improvements along Prairie Avenue, from 23rd Street to Dade Boulevard, including the construction of a new stormwater pump station, which have now been completed. There was also a disagreement as to the amount of funding the Board was to provide for the construction improvement obligations along Prairie Avenue.

As the Board is now completing the final phase of the School, there is a need to address and finalize the parties' remaining obligations including, without limitation, the design and construction of the remaining improvements and the conveyance of the respective easements; the execution of a final version of the original Interlocal Agreement; and, concurrent therewith, the execution of the proposed Amendment to the Interlocal Agreement.

The proposed First Amendment to the Interlocal Agreement provides the following:

1. In consideration for the Board's payment of \$215,000.74 (not to be exceeded), the City will agree to assume the design and construction of certain remaining improvements along Prairie Avenue.
2. Concurrent with the parties' execution of this First Amendment, the City and the Board also agree to execute, and thereby ratify, the terms (as amended) of the version of the Interlocal Agreement that was approved by the City Commission pursuant to Resolution No. 2007-26478
3. The Amendment will also clarify the parties' ongoing obligations with regard to the exchange of the respective easements.

At its meeting on May 12, 2010, the Board authorized its Superintendent to finalize negotiations with the City with regard to the proposed Amendment. Following meetings between the

representatives of the City and the Board, the Board has also informed the City that the action delegated to the Superintendent also includes the authority to execute and ratify the final version of the Interlocal Agreement on behalf of the Board.

Upon approval of the First Amendment by the City Commission; execution of same by the parties hereto (as well as execution by the parties of the version of the Interlocal Agreement that was approved by the City on March 14, 2007, pursuant to Resolution No. 2007-26478); and the City's receipt of payment by the Board, in the amount of \$215,074, the City agrees to undertake design and construct the following remaining improvements along Prairie Avenue:

1. Construction of new parent drop-off with decorative pavers, including sidewalk at the locations, a paver pedestrian crossing at two locations (at 23rd street and north edge of student parking).
2. Irrigation system in public right-of-way with own water meter, electronic controller, etc.
3. Landscaping, consisting of 4' high shrubbery (adjacent to property line in school property) and 12'-14' high shade trees at 20' o.c. (in swale area) from a tree species pallet as approved by the City, and new sod turf on adjacent public right-of-way.
4. Milling & resurfacing of Prairie Avenue to shift center line of road 4' West, which will result in an overall width reduction of Prairie Avenue of 8'.

The First Amendment also provides for the conveyance of the following easements between the City and the Board:

1. Easement(s) from Board to City for permanent access to City Public Works property through school property, and for access to City's water and sewer system (located within school's property); and
2. Easement(s) from City to Board for bus drop-off along Dade Boulevard, and for parent drop-off area along Prairie Avenue.

In full disclosure, it should be noted that neither the original Interlocal Agreement (the City's approved version from 2007), or the proposed First Amendment, addresses the issue of the Board's still-unfulfilled monetary contribution for its share of remediation required pursuant to the drainage issues that arose on Prairie Avenue, as a result of construction of the School. In order to get the original Interlocal Agreement and this First Amendment executed, and address the remaining issues and obligations of the parties thereunder, the City and Board have separated the Prairie Avenue drainage issue from the discussion. However, the Board's contribution with regard to the City's remediation of the Prairie Avenue drainage issues (caused by the School construction) is still an important issue, and remains outstanding.

CONCLUSION

The Administration recommends that the Mayor and City Commission approve and authorize the Mayor and City Clerk to execute the First Amendment to the Interlocal Agreement between the City of Miami Beach and the School Board of Miami-Dade County, Florida, providing for the City's design and construction of certain remaining public improvements along Prairie Avenue, subject to funding of such improvements by the School Board of Miami-Dade County, in the amount of \$215,074.

JMG/JGG/FHB

Exhibit " A
Resolution and City Interlocal Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE FIRST AMENDMENT TO THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, AS ORIGINALLY APPROVED BY THE CITY COMMISSION ON MARCH 14, 2007, PURSUANT TO RESOLUTION NO. 2007-26478; SAID AMENDMENT PROVIDING, IN PART, FOR THE CITY'S DESIGN AND CONSTRUCTION OF CERTAIN REMAINING PUBLIC IMPROVEMENTS ALONG PRAIRIE AVENUE (AS ORIGINALLY CONTEMPLATED PURSUANT TO THE MIAMI BEACH SENIOR HIGH SCHOOL EXPANSION PROJECT), SUBJECT TO FUNDING OF SUCH IMPROVEMENTS BY THE SCHOOL BOARD, IN THE AMOUNT OF \$215,074.

WHEREAS, on March 14, 2007, pursuant to Resolution No. 2007-21478, the Mayor and City Commission approved an Interlocal Agreement (ILA) between the City and the School Board of Miami-Dade County (the Board) which, in part (and concurrent with the Board's expansion and renovation of Miami Beach Senior High School [the School]), required the Board to design and construct certain improvements within the public right of ways adjacent to the School, along portions of Prairie Avenue and Dade Boulevard; and

WHEREAS, in addition to the aforestated improvements, the Agreement also provided for conveyance of the following easements:

1. a permanent easement granted by the City to the Board in order for the Board to construct, operate, and maintain a bus drop-off area along Dade Boulevard; and
2. a permanent access easement granted by the Board to the City over a portion of the School property, to access Fire Station No. 2 and the Public Works yard from Dade Boulevard, as well as to access that portion of the City's water and sewer system located within the School property; and

WHEREAS, at a prior Board meeting on May 18, 2005, pursuant to Board Agenda Item F-5, the Board approved a different version of the Interlocal Agreement (containing different language pertaining to the type and description of some of the improvements that the Board was responsible for designing and constructing, which was not included in the version of the Agreement approved by the City Commission on March 14, 2007); and

WHEREAS, the City and Board have never executed a final version of the Interlocal Agreement; notwithstanding this, the City permitted the Board to proceed with construction of the contemplated improvements; and

WHEREAS, to date, the Board has designed and constructed the following improvements along Dade Boulevard, which have now been completed:

1. construction of new bus drop-off area;
2. relocation of existing trees to public right-of-way;
3. 6' sidewalk parallel to School property and southernmost edge of walk occurring 10' from back of existing Dade Boulevard curb;
4. pedestrian crossing markings with ADA compliant concrete ramps;
5. irrigation system in public right-of-way with own water meter, electronic controller, etc., (to be conveyed to the City);
6. construction of new one-way shared entry drive to School service yard and City's public works yard;
7. new landscaping in adjacent public right-of-way; and

WHEREAS, the remaining contemplated public improvements along Prairie Avenue have not been completed by the Board, because the City had to first install stormwater improvements, from 23rd Street to Dade Boulevard, including the construction of a new stormwater pump station; and

WHEREAS, the Board is now completing the final phase of the School project, and there is a need to address and finalize the parties' remaining obligations under the Interlocal Agreement, including, without limitation, the design and construction of the remaining improvements along Prairie Avenue; the conveyance of the respective easements; the execution of a final version of the original Interlocal Agreement; and, concurrent therewith, the execution of an amendment to said Interlocal Agreement; and

WHEREAS, the City and the Board have negotiated and hereby recommend execution of the attached First Amendment to the Interlocal Agreement; and

WHEREAS, upon approval of this First Amendment by the City Commission, and execution of same by the parties hereto, the Board and City have also agreed to execute the version of the original Interlocal Agreement that was approved by the City on March 14, 2007, pursuant to Resolution No. 2007-26478; and

WHEREAS, pursuant to the terms of the First Amendment, and in consideration of payment by the Board, in the amount of \$215,074, the City agrees to design and construct the following remaining improvements along Prairie Avenue:

- a. construction of new parent drop-off with decorative pavers, including sidewalk at the locations, a paver pedestrian crossing at two locations (at 23rd street and north edge of student parking);
- b. irrigation system in public right-of-way with own water meter, electronic controller, etc.; and
- c. landscaping, consisting of 4' high shrubbery (adjacent to property line in school property), and 12'-14' high shade trees at 20' o.c. (in swale area) from a tree species pallet as approved by the City, and new sod turf on adjacent public right-of-way; and
- d. milling & resurfacing of Prairie Avenue to shift center line of road 4' West, which will result in an overall width reduction of Prairie Avenue of 8'; and

WHEREAS, the First Amendment also provides for the exchange of the following easements:

- a. easement(s) from Board to City for permanent access to City's public works property through school property, and for access to City's water and sewer system (located within School's property); and
- b. easement(s) from City to Board for bus drop-off along Dade Boulevard, and for the parent drop-off area along Prairie Avenue

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the Mayor and City Clerk to execute the First Amendment to the Interlocal Agreement between the City of Miami Beach and the School Board of Miami-Dade County, Florida (as originally approved by the City Commission on March 14, 2007 pursuant to Resolution No. 2007-26478); said Amendment providing, in part, for the City's design and construction of certain remaining public improvements along Prairie Avenue (as originally contemplated pursuant to the Miami Beach Senior High School Expansion Project), subject to funding of such improvements by the School Board, in the amount of \$215,074.

PASSED AND ADOPTED THIS _____ DAY OF _____ 2010.


ATTEST:

CITY CLERK

MAYOR

T:\AGENDA\2010\October 27\Consent\School Board ILA Amendment RESO.doc

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



City Attorney

10/26/10

Date

FIRST AMENDMENT TO **INTERLOCAL** AGREEMENT

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT (the First Amendment or the Amendment) is made and entered into this _____ day of _____, 2010, by and between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation of the State of Florida (the City), and **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**, a body corporate and politic existing under the laws of the State of Florida, (the Board).

WITNESSETH

WHEREAS, the Board is the owner of certain land and facilities located in the City of Miami Beach, Florida, and known as Miami Beach Senior High School (the School); and

WHEREAS, since approximately 2005, the Board has been in the process of constructing a replacement School on the existing School land (the Project) and is now completing the final phase of the Project; and

WHEREAS, as part of the Project, the City and Board agreed that the Board would design and construct certain improvements within certain portions of the public right-of-ways along Prairie Avenue and Dade Boulevard (the Improvements); and

WHEREAS, in conjunction with the Board's agreement to design and construct the Improvements, the City and Board also agreed to exchange the following easements:

1. a permanent easement granted by the City to the Board in order for the Board to construct, operate, and maintain a bus drop-off area along Dade Boulevard (the City Easement); and
2. a permanent access easement granted by the Board to the City over a portion of the School property, to access Fire Station No. 2 and the Public Works yard from Dade Boulevard, as well as to access that portion of the City's water and sewer system located within the School property; and

WHEREAS, the City and Board's respective rights and obligations as to the design and construction of the Improvements and the conveyance of the aforesaid easements were memorialized in an Interlocal Agreement; and

WHEREAS, accordingly, the City's draft of the Interlocal Agreement was presented to the Mayor and City Commission at its regular meeting on March 14, 2007, and approved pursuant to Resolution No. 2007-26478; a true and correct

copy of the Interlocal Agreement approved by the City Commission is attached and incorporated as Exhibit "A" hereto; and

WHEREAS, notwithstanding the preceding, at its meeting on May 18, 2005, pursuant to Board Agenda Item F-5 the Board approved a different version of the Interlocal Agreement (containing different language pertaining to the type and description of some of the Improvements that the Board was responsible for designing and constructing, which was not included in the version of the Agreement approved by the City Commission on March 14, 2007); and

WHEREAS, the Board proceeded with the construction of the Project without objection from the City notwithstanding the fact that a final and fully executed version of the Interlocal Agreement had not been signed by the parties; and

WHEREAS, as the Board is now completing the final phase of the Project, there is a need to address and finalize the parties' remaining obligations under the Interlocal Agreement (including, without limitation, the design and construction of the remaining Improvements and the conveyance of the respective easements); execute a final version of the Interlocal Agreement; and, concurrent therewith, execute certain amendments to said Interlocal with regard to the remaining Improvements; and

WHEREAS, accordingly, the City and the Board have negotiated and hereby recommend execution of this First Amendment to the Interlocal Agreement, which provides the following:

1. in consideration for the Board's payment of \$215,000.74 (not to be exceeded), the City will agree to assume the design and construction of certain remaining Improvements, as set forth and defined herein;
2. concurrent with the parties' execution of this First Amendment, the City and the Board have also agreed to execute, and thereby ratify, the terms (as amended herein) of the version of the Interlocal Agreement that was approved by the City Commission pursuant to Resolution No. 2007-26478 (attached as Exhibit " A hereto); and
3. the Amendment will also clarify the parties' ongoing obligations with regard to the exchange of the respective easements; and

WHEREAS, at its meeting of May 12, 2010, pursuant to Agenda Item F-4, Board Action No. _____, the Board authorized its Superintendent to finalize negotiations with the City with regard to the terms and conditions of the proposed Amendment; and that at its meeting of May 18, 2005, pursuant to Agenda Item F-5, Board Action No. _____, the Board authorized the Superintendent to execute and ratify an Interlocal Agreement on behalf of the

Board to provide the necessary improvements along Dade Boulevard and Prairie Avenue, as set forth therein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The parties agree that the above recitals are true and correct and are incorporated herein by reference.
2. Upon approval of this First Amendment by the Mayor and City Commission, and concurrent with the City and Board's execution thereof, the City and Board shall also, as a condition of this First Amendment, execute the Interlocal Agreement approved by the City Commission on March 14, 2007, pursuant to Resolution No. 2007-26478 (attached as Exhibit " A hereto), which Agreement, as amended herein, shall be the agreement which governs and binds the parties as to their respective remaining obligations to each other regarding the Project; including the design and construction of the remaining Improvements and the grant and conveyance of the City Easement and the Board Easement. Upon execution by the City and Board, a fully executed copy of the Interlocal Agreement shall replace and supercede the copy attached and incorporated as Exhibit " A hereto.
3. Article II of the Interlocal Agreement, entitled "Term," shall be amended to provide that, pursuant to acknowledgment and agreement of the parties herein, the Commencement Date of the Agreement shall be as of the date that the Agreement was approved by the City Commission, or March 14,2007.
4. Article III of the Interlocal Agreement, entitled "Improvements," is amended as follows:

ARTICLE III IMPROVEMENTS

The Project which is being executed by the Board, requires that certain improvements within the public rights-of-way along portions of Prairie Avenue and Dade Boulevard be made. The following improvements, which are beinghave been designed and constructed by the Board, are specifically and as defined in the drawings referenced in Exhibit "B" Exhibit "B-1", attached hereto and incorporated herein (said improvements may also be referred to herein as the Board Improvements); ~~which drawings the parties agree and acknowledge are subject to and conditioned upon the preparation of final construction drawings and the approval and issuance of a City building permit for same. The Project improvements are generally defined as follows:-~~

Improvements along Prairie Avenue:

- ~~1. Construction of new parent drop off with decorative pavers, including sidewalk at the locations illustrated in Exhibit B attached, a paver pedestrian crossing at two locations (at 23rd street and north edge of student parking), at the Board's sole expense;~~
- ~~2.1. Estate fencing along School property with a landscaping strip between the fence and the parking lot as illustrated in attached Exhibits B-1 and B-2, (except in front of the Fine Arts Building), at the Board's sole expense;~~
- ~~2. Irrigation system in public right-of-way with own water meter, electronic controller, etc., to be conveyed to the City, at the Board's sole expense; and~~
- ~~3. Landscaping, consisting of 4' high shrubbery (adjacent to property line in school property) and 12' 14' high shade trees at 20' o.c. (in swale area) from a tree species pallet as approved by the City, and new sod turf on adjacent public right-of-way, at the Board's sole expense.~~
- ~~6. Milling & resurfacing of Prairie Avenue to shift center line of road 4' West, at the City's sole expense, which will result in an overall width reduction of Prairie Avenue of 8'.~~

Improvements along Dade Boulevard:

- ~~7.2. Construction of new bus drop-off area, where the City will grant the City Easement to accommodate the bus drop-off area;~~
- ~~8.3. Relocation of existing trees to public right-of-way;~~
- ~~9.4. 6' sidewalk parallel to School property and southernmost edge of walk occurring 10' from back of existing Dade Boulevard curb;~~
- ~~10.5. Pedestrian crossing markings with ADA compliant concrete ramps;~~
- ~~11.6. Irrigation system in public right-of-way with own water meter, electronic controller, etc., to be conveyed to the City;~~
- ~~12.7. Construction of new one-way shared entry drive to School service yard and City's public works yard. Board will grant a permanent access easement to City, via the Board Easement, for access purposes. The City shall have the opportunity to seek and obtain permission to convert the one-way shared entry drive into a two-way drive by obtaining approval from relevant authorities (i.e.: Miami-Dade County Public Works - Traffic Division). The Board further agrees to fully cooperate with the City in facilitating and obtaining such permission from all relevant authorities; and~~
- ~~8. New landscaping in adjacent public right-of-way as per permitted construction drawings~~

Upon approval of this First Amendment by the City Commission; execution of same by the parties hereto (as well as execution by the parties of the version of the Interlocal Agreement that was approved by the City on March 14, 2007, pursuant to Resolution No. 2007-26478); and the City's receipt of payment by the Board, in the amount of \$215,074, the City agrees to design and construct the

following improvements (also referenced to in this Amendment as the "City Work," as same are more specifically defined in the drawings referenced in **Exhibit "B-2"** attached hereto and incorporated herein, and which drawings have been mutually agreed upon and approved by the City and Board):

Improvements along Prairie Avenue:

1. Construction of new parent drop-off with decorative pavers, including sidewalk at the locations illustrated in the drawings referenced in Exhibit "B-2", a paver pedestrian crossing at two locations (at 23rd street and north edge of student parking);
 2. Irrigation system in public right-of-way with own water meter, electronic controller, etc.;
 3. Landscaping, consisting of 4' high shrubbery (adjacent to property line in school property) and 12'-14' high shade trees at 20' o.c. (in swale area) from a tree species pallet as approved by the City, and new sod turf on adjacent public right-of-way; and
 4. Milling & resurfacing of Prairie Avenue to shift center line of road 4' West, at the City's sole expense, which will result in an overall width reduction of Prairie Avenue of 8'.
5. Exhibit "B" (entitled "Scope of Services") of the Interlocal Agreement is deleted in its entirety, and is replaced with Exhibit "B-1" (referencing the approved scope of work and drawings for the Improvements which been designed and constructed by the Board), and Exhibit "B-2" (referencing the approved scope of work and drawings for the remaining Improvements to be constructed by the City (i.e. the City Work), upon receipt of payment by the Board, in the amount set forth herein).
6. The City agrees that it shall indemnify, hold harmless, and defend the Board, from and against any and all claims, suits, actions, damages, or causes of action arising from or in connection with the City Work, to the extent of the limitations included within Section 768.28, Florida Statutes; provided, however, that nothing in this Agreement is intended to, nor shall, operate as a waiver of the sovereign immunity on behalf of the City.
7. Article IV of the Interlocal Agreement has been intentionally omitted.
8. Article V (a) of the Interlocal Agreement is amended to add the following subsection (3):
3. As pre-condition to the granting of the Board easements to the City, the City shall provide the Board the location of all City utilities within the Board property including, without limitation, the ones located in the School's play field and the ones along Dade Boulevard.

9. Article V (b) of the Interlocal Agreement is amended to add the following subsection (2):

2. In addition to the easement from the City to the Board along Dade Boulevard, the City shall also grant the Board an easement along Prairie Avenue for the entire area identified as the parent drop off.

10. Each party hereby acknowledges approval of the respective Easement forms attached to this Agreement as Exhibit "C" and incorporated herein by reference.

11. The second paragraph of Article VI of the Interlocal Agreement deleted in its entirety and replaced with the following new paragraph:

The City further agrees to maintain the irrigation system(s) within the rights-of-way along Prairie Avenue, and, upon a acceptance of same and conveyance by the Board, the irrigation system along Dade Boulevard.

12. Except as amended herein, all other terms and conditions of the Interlocal Agreement shall remain unchanged and in full force and effect.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the City and Board have caused this Agreement to be executed by their respective and duly authorized officers the day and year first hereinabove written.

CITY:
CITY OF MIAMI BEACH, FLORIDA

BOARD:
THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

By: _____
Matti Herrera Bower, Mayor

By: _____
Alberto M. Carvalho
Superintendent of Schools

ATTEST:

By: _____
Robert Parcher, City Clerk

~~TO THE CITY:
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:~~

~~By: _____
City Attorney~~

TO THE BOARD:
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
School Board Attorney

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

10/22/10

Date

Exhibit "B-1"

Board Improvements filed with the City of Miami Beach

Exhibit "B-2"

City Work



CFN 2010R0723942
 OR Bk 27466 Pss 2119 - 2124 (6 Pgs)
 RECORDED 10/25/2010 13:11:04
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

This instrument was prepared by:
 Name: Matthew Amster, Esq.
 Address: Bercow Radell & Fernandez, PA
 200 South Biscayne Boulevard
 Suite 850
 Miami, Florida 33131

(Space reserved for Clerk)

DECLARATION OF RESTRICTIONS

WHEREAS, 1600 Lenox Investors, LLC ("Owner"), holds the fee simple title to the land described in **Exhibit "A,"** attached hereto and with address of 1600 Lenox Avenue, Miami Beach, Florida, which is supported by the attorney's opinion, and

WHEREAS, the land located at 1600 Lenox Avenue is hereinafter referred to as the "Property," and

WHEREAS, the Property is located in the first commercial subdivision in the City of Miami Beach ("City"), was originally zoned for commercial uses, and is presently designated as RM-1, "Multi-Family Residential, Low Intensity," on the Future Land Use Map of the Comprehensive Plan of the City, and zoned RM-1, "~~Residential~~ Multifamily Low Intensity," on the Official Zoning District Map and

WHEREAS, the Property contains a one-story commercial building built in 1937 that has continuously contained commercial uses to this day, and

WHEREAS, the commercial building is a contributing structure in the database of historic structures in the City, and

WHEREAS, Owner applied for and obtained historic designation of the Property from the City to preserve the historic structure, and

WHEREAS, Owner is nearing completion of a restoration of the commercial building in accordance with the original construction plans, and

WHEREAS, Owner seeks to redesignate the Property from RM-1 to CD-1, "Commercial, Low Intensity," on the City's Future Land Use Map and rezone the Property from RM-1 to CD-1, "Commercial, Low Intensity," on the City's Official Zoning District Map, and



Section-Township-Range:34-53-42
 Folio number: 02-3234-018-0190

Agenda Item R5D2
 Date 10-27-10

Declaration of Restrictions
Page 2

(Space reserved for Clerk)

IN ORDER TO ASSURE the City that the representations made **by** the Owner concerning **the** rezoning of the Property will be abided **by, the** Owner **freely**, voluntarily and without duress makes the following Declaration of Restrictions covering and running with the Property and shall be applicable to and regulate uses and structures on ~~the~~ Property. Whenever the word "Owner" is used herein such provision shall refer to all persons and entities with rights of use or **any** interest in the Property and their heirs, successors in interest **and/or** assigns. No person or entity shall use or engage in activity on the Property contrary to the **terms** of this Declaration.

- (1) The foregoing whereas clauses are true and correct and incorporated herein by reference.
- (2) Owner shall limit residential uses to no more than 10 units per acre on the Property.
- (3) Owner shall not apply for a dance hall license or operate a dance **hall** on the Property.
- (4) Owner shall not apply for an entertainment license or operate an entertainment establishment on the Property.
- (5) Owner shall not apply for a neighborhood impact establishment or operate a neighborhood impact establishment on the Property.
- (6) Owner shall not install or utilize temporary or permanent outdoor speakers on the Property.
- (7) Owner shall not have or permit any live or amplified music outdoors on the Property.
- (8) In the event a restaurant occupies the easternmost portion of the building, Owner shall make the doorway facing Lenox Avenue **an** emergency exit only.
- (9) For any restaurant **use,** **Owner** shall ensure that the service **door(s)** on the north elevation remain closed at **all** times, except when in active use.
- (10) Owner shall close any sidewalk **café(s)** at 12:00 AM and any indoor **restaurants** at 2:00 AM.

(Space reserved for Clerk)

-
- (11) Owner shall prohibit trash collection from any **dumpster(s)** before **7:00 AM** and after **8:00 PM**.
 - (12) Owner shall prohibit delivery trucks before **7:00 AM** and after **8:00 PM**.
 - (13) Owner shall prohibit and not operate the following uses on the Property: package stores, pawnshops, check cashing stores, secondhand stores, warehouses, and any use selling **gasoline**.
 - (14) In the event a food store or convenience store selling alcoholic beverages occupies any unit in the building, the food store or convenience store shall prohibit the sale of single cans of beer.
 - (15) **Covenant Running with the Land.** This Declaration on the part of the Owner shall constitute a covenant **running** with the land and shall be recorded, at Owner's expense, in the public records of Miami-Dade County, Florida and shall remain in full force and effect and be **binding** upon the undersigned Owner, and its heirs, successors and **assigns** until such time as the same is modified or released as provided for herein, These restrictions during their lifetime shall be for the benefit of, and limitation upon, all present and **future** owners of the real property.
 - (16) **Term.** This Declaration is to run with the land and shall be binding on all parties and all persons claiming under it for a period of thirty (30) years **from** the date this Declaration is recorded, after which time it shall be extended automatically for successive periods of ten (10) years each, unless an instrument signed by the then **owner(s)** of the Property has been recorded agreeing to change the covenant in whole, or in part.
 - (17) **Modification, Amendment, Release.** This Declaration of Restrictions may be modified, amended or released as to the land herein described, or any portion thereof, by a written instrument executed by the then **owner(s)** of all of the Property, including joinders of all mortgagees, if any, providing that same has been approved by the City of Miami Beach City Commission, or such other board with jurisdiction over the matter, at a public hearing, which public hearing shall be applied for by and at the expense of the owners. Should this instrument be so modified, amended or released, the City Manager, or his successor, or other administrative officer with jurisdiction over the matter, shall execute a written **instrument** in recordable **form** effectuating and acknowledging such modification, amendment or release.



(Space reserved for Clerk)

- (18) **Enforcement.** An action to enforce the terms and conditions of this Declaration may be brought by the City and may be, at law or in equity, against any party or person violating or attempting to violate any provision of **this** Declaration or provisions of the building, zoning or land development regulations, either to restrain violations or to recover damages. The **prevailing** party in the action shall be entitled to recover costs and reasonable attorneys' fees, at all levels of trial ~~and~~ appeal. This enforcement provision shall be in addition to any other remedies available under the law.
- (19) **Severability.** Invalidation of any provision of this Declaration by judgment of Court shall not affect any of the other provisions of this Declaration, which shall remain in **full** force and effect.
- (20) **Recording.** This Declaration shall be filed in the public records of **Miami-Dade** County, Florida at the cost of the Owner. **This** Declaration shall become effective immediately upon recordation.
- (21) **Inspection.** It is understood and agreed that any official of the City of Miami Beach has the right at **any time** during normal business hours of entering and investigating the use of the Property, to determine whether the conditions of this Declaration and the requirements of the City's building, zoning and land development regulations are being complied with.

Approved _____ 10/14/2010
 Planning Director Date

Approve _____ form and language and for
 execution
 for _____
 City Attorney
 Dated: Oct. 14, 2010

[Execution Pages Follow]

(Space reserved for Clerk)

**ACKNOWLEDGMENT
CORPORATION**

Signed, witnessed, executed and acknowledged on this 25 day of October, 2010.

IN WITNESS WHEREOF, 1600 Lenox Investors, LLC (Corporate name) has caused these presents to be signed in its name by its proper officials.

Witnesses:

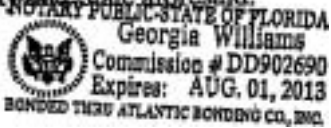
[Signature]
 Signature
BOAD SARCHIK
 Print Name
Georgia Williams
 Signature
Georgia Williams
 Print Name

1600 Lenox Investors, LLC
 Name of Corporation
 Address:
c/o Greenstreet Partners, LP
2601 S. Bayshore Dr., 9th Floor, Suite 800
Miami, Florida 33133
 By [Signature]
 Title: President of Greenstreet Management, Inc.,
the General Partner of Greenstreet Capital, L.P.,
the Managing Member of Greenstreet Sobe
Investments, LLC, the Managing Member of
1600 Lenox Investors, LLC
 Print Name: _____

STATE OF Florida
COUNTY OF Miami-Dade

The foregoing instrument was acknowledged before me by Jeffrey Sarchik the President of Greenstreet Management, Inc. corporation, on behalf of the corporation. He/She is personally known to me or has produced _____, as identification.

Witness my signature and official seal this 25th day of October, 2010, in the County and State aforesaid.



Georgia Williams
 Notary Public
Georgia Williams
 Print Name

My commission Expires Aug. 1, 2013

Section-Township-Range: 34-53-42
Folio number: 02-3234-018-0190

[Handwritten mark]

Exhibit "A"

Legal Description

Lot 1, in Block 46, of COMMERCIAL SUBDIVISION OF THE ALTON BEACH REALTY COMPANY, according to the Plat thereof, as recorded in Plat Book 6, at Page 5, of the Public Records of Dade County, Florida now known as Miami-Dade County, Florida.

STATE OF FLORIDA, COUNTY OF DADE
I CERTIFY that this is a true and correct copy of the
original filed in this office on _____
_____ A.D. 20____
WITNESS my hand and Official Seal
HARVEY RUBIN, CLERK of Circuit and County Courts.
By _____ D.C.



JA

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: October 27, 2010



SUBJECT: **Bed & Breakfast Inns - SUPPLEMENTAL/ADDENDUM - R51**

The purpose of this Commission memorandum is to supplement and correct the memorandum presented in the regular agenda. The previous staff report inadvertently omitted the Planning Board recommendation, which was to permit limited assembly uses within Bed & Breakfast Inns as conditional uses, consisting of private functions not open to the public, up until 12:00 midnight.

PLANNING BOARD ACTION

At the August 24, 2010 meeting the Planning Board reviewed the proposed ordinance, and recommended its approval, including the provision which proposes to permit assembly uses consisting of private functions not open to the public, as a Conditional Use (vote: 6-1, Stolar against). Planning Department staff had recommended that the accessory party use provision be removed, and there was a lengthy discussion over this aspect of the ordinance, how it would be applied and enforced, and its potential negative effects upon the surrounding neighborhood. During the discussion, Mr. Davidson and his attorney Neisen Kasdin had expressed their willingness to go forward to the Commission without the inclusion of the accessory party provision, if that was what the Planning Board was recommending. However, at the end of the discussion, the Planning Board decided contrary to the staff recommendation, and added back in to the ordinance the ability to host private commercial events with Conditional Use approval.

A separate, Planning Board version of the ordinance is attached to this supplemental memo, which would permit the hosting of private special events for a variety of corporate and entertainment purposes. The ordinance in the regular agenda is the Administration version, which would not permit such accessory party uses within these facilities. Under the Administration version, such party uses would not be permitted, even as a conditional use, and the use of such facilities would continue to be governed by the existing rules for commercial uses, special events, and film and print permits, if applicable.

ADMINISTRATION RECOMMENDATION

Notwithstanding the Planning Board's advisory recommendation, the Administration recommends that the City Commission approve the Administration version of the ordinance upon first reading, and set a second reading and public hearing for November 17, 2010.

JMG/JGG/RGL
JMG/JGG/RGL

T:\AGENDA\2010\October 27\Regular\Bed & Breakfast Ord MEMO rev 10-25 rev.docx

Agenda Item R51

Date 10-27-10

PLANNING BOARD VERSION (INCLUDING ACCESSORY COMMERCIAL USES)

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND **CITY COMMISSION** OF THE CITY OF **MIAMI** BEACH, FLORIDA, AMENDING THE CODE OF THE **CITY** OF MIAMI BEACH CODE, BY AMENDING CHAPTER 142, ZONING DISTRICTS AND REGULATIONS, ARTICLE V, SPECIALIZED USE REGULATIONS, DIVISION 7, BED AND BREAKFAST INNS, SECTION 142-1401. CONDITIONS FOR BED AND BREAKFAST INNS, BY MODIFYING THE CONDITIONS FOR BED AND BREAKFAST INNS TO WIDEN THE ELIGIBILITY FOR ALTERATIONS, AND PERMITTING LIMITED ASSEMBLY TYPE ACCESSORY USES, PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations allow for Bed and Breakfast Inns in certain zoning districts under certain conditions; and

WHEREAS, a broadening of the conditions for Bed and Breakfast Inns may be desired in order to permit other buildings not built as single family homes but currently existing as non-apartment uses within historic districts; and

WHEREAS, it would be necessary to amend this portion of the City Code to permit expanded eligibility for these buildings; and

WHEREAS, it may also be a desired policy decision to permit limit accessory assembly uses in Bed and Breakfast inns;

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

SECTION 1. That Miami Beach City Code, Chapter 142, Zoning Districts and Regulations, Article V, Specialized Use Regulations, Division 7, Bed and Breakfast Inns, Section 142-1401. Conditions for bed and breakfast inns, is hereby amended as follows:

Sec. 142-1401. Conditions for bed and breakfast inns.

Bed and breakfast inns are permitted with the following conditions:

- (1) The use shall be situated in a contributing building ~~listed as "historic" in the city historic properties database as maintained by the planning, design and historic preservation division~~ and located in a locally designated historic preservation district. The use may also be situated

in a noncontributing building ~~listed as "non-historic altered"~~ if it is restored to its original historic appearance and re-categorized as "contributing historic."

- (2) The owner of the bed and breakfast inn shall permanently reside in the structure.
- (3) (a) The structure shall have originally been constructed as a single-family residence; or;

(b) The existing structure is not classified by the City as an apartment building as defined in Section 114-1 of the City Code.

The structure may have original auxiliary structures such as a detached garage or servant's residence, but shall not have noncontributing multifamily or commercial auxiliary structures.

- (4) The structure shall maintain public rooms (living room/dining room) for use of the guests.
- (5) The size and number of guestrooms in a bed and breakfast inn shall conform to the following:
- a. The structure shall be allowed to maintain (or restore) the original number and size of bedrooms which, with the exception of rooms occupied by the owner, may be rented to guests.
 - b. Historic auxiliary structures, such as detached garages and servants' residences, may be converted to guestrooms. New bedrooms constructed shall have a minimum size of 200 square feet and shall have a private bathroom.
 - c. Architecturally compatible additions not exceeding 25 percent of the floor area of the historic building shall be permitted to accommodate emergency stairs, other fire safety requirements, and new bathrooms. Additions shall be consistent with required setbacks and shall not be located on primary or highly visible elevations.
 - d. If there is evidence of interior alterations and original building plans are not available, the guestrooms shall be restored to the probable size and configuration as proposed by a preservation architect and subject to approval by the historic preservation/design review board.
- (6) There shall be no cooking facilities/equipment in guestrooms. One small refrigerator with maximum capacity of five cubic feet shall be permitted in each guestroom. All cooking equipment which may exist shall be removed from the structure with the exception of the single main kitchen of the house.

- (7) The bed and breakfast inn may serve breakfast and/or dinner to registered guests only. No other meals shall be provided. The room rate shall be inclusive of meal(s) if they are to be made available; there shall be no additional charge for any meal. Permitted meals may be served in common rooms, guestrooms or on outside terraces (see subsection 142-1401(9)). The meal service is not considered an accessory use and is not entitled to an outside sign.
- (8) Permitted meals may be served in areas outside of the building under the following conditions:
- a. Existing paved patios shall be restored but not enlarged. If no paved surface exists, one consistent with neighboring properties may be installed.
 - b. The area shall be landscaped and reviewed under the design review process. Landscape design shall effectively buffer the outdoor area used for meals from adjacent properties.
 - c. Any meal served outdoors shall be carried out from inside facilities. Outdoor cooking, food preparation, and/or serving/buffet tables are prohibited.
- (9) Notwithstanding (7) and (8) above, bed and breakfast inns may be permitted to have limited assembly uses if approved by the Planning Board as a conditional use, consisting of private events by invitation only not open to members of the general public, up until 12:00 midnight.
- ~~(109)~~ The entire building shall be substantially rehabilitated and conform to the South Florida Building Code, property maintenance standards, the fire prevention and life safety code and the U.S. Secretary of the Interior's Standards for Rehabilitation of Historic Buildings, as amended. In addition, the entire main structure shall have central air conditioning and any habitable portion of auxiliary structures shall have air conditioning units.
- ~~(110)~~ Building identification sign for a bed and breakfast inn shall be the same as allowed for an apartment building in the zoning district in which it is located.
- ~~(124)~~ The maximum amount of time that any person other than the owner may stay in a bed and breakfast inn during a one-year period shall not exceed three months.
- ~~(132)~~ The required off-street parking for a licensed bed and breakfast inn shall be the same as for a single-family residence. There shall be no designated loading zones on any public right-of-way and required parking spaces shall not be constructed on swales, public easements or rights-of-way.

SECTION 2. REPEALER.

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

SECTION 3. CODIFICATION.

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

SECTION 4. SEVERABILITY.

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

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____ 2010.

MAYOR

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM
AND LANGUAGE & FOR EXECUTION



City Attorney *JA* Date 10/26/10

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GH

Law Offices
BENJAMIN & AARONSON, P.A.
One Financial Plaza
Suite 1615
Fort Lauderdale, Florida 33394

Daniel R. Aaronson*
James S. Benjamin

Telephone (954) 779-1700
Fax (954) 779-1771

Peter Patanzo
*Also licensed in New Jersey and Georgia

October 25, 2010

Gary Held, Esq.
City Attorney's Office
1700 Convention Center Drive
Miami Beach, Florida 33139

RE: Club Madonna

Dear Mr. Held:

Enclosed please find ten copies of the CD that contain case law and studies that I wish for the City Commission to have available for review as to item **R5L**, Ordinance on Alcohol and Nudity which will be subject of discussion on October 27, 2010. Per our conversation of October 25, 2010, you agreed that I could provide you with these copies along with a Table of Contents and you would see that they got distributed properly to the City Clerk, etc.

Thank you for your cooperation in this matter.

Sincerely,



Daniel R. Aaronson
Attorney for Club Madonna

RECEIVED
10 OCT 26 AM 10:03
CITY ATTORNEY'S OFFICE

Agenda Item R5L
Date 10-27-10

MATERIALS SUBMITTED IN SUPPORT OF AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING CHAPTER 6, "ALCOHOLIC BEVERAGES," OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, TO ALLOW ESTABLISHMENTS LICENSED TO PROVIDE TOTAL NUDE ENTERTAINMENT TO SERVE ALCOHOLIC BEVERAGES TO THEIR CUSTOMERS.

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3. Curriculum Vitae of Daniel G. Linz. Ph. D
4. Consumers of Erotic Entertainment. A Survey of the Patrons of the Mons Venus in Tampa, Florida, taken by Randy Fisher, Ph. D
5. Affidavit of Randy Fisher, Ph D.
6. Contradictory and inconclusive Findings, by Bruce McLaughlin Consulting Services.
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11. Curriculum Vitae of Dr. Rebekah J. Thomas
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13. Flanigan's Enterprises, Inc. V. Fulton County, 242 F.3d 976 (11th Cir. 2001)
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24. Pasco County, Florida - Contemplated Amendments to the Adult Use Regulations Predicate Commentary- Volume IA
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26. Peek-A-Boo Lounge of Bradenton, Inc. et. al. v. Manatee County, 2003 WL 21649675
27. Positive Economic Impact of the Mons Ven8us: The Impact of the Performers Incomes
28. Summary of Secondary Affects Analyses. By McLaughlin Consulting Services, Inc..
29. Testimony of Dr. Daniel Linz -University of CA, Santa Barbara- Chair, Law and Society Program; Professor, Department of Communication, taken by John Feegal (Curriculum Vitae included)
30. The Effects of the Mons Venus Adult Cabaret on Neighborhood Crime Volumes, in Tampa, Florida; Empirical Analysis of Longitudinal Data, taken by Terry Danner
31. The Effects of the Mons Venus Adult Cabaret on Neighborhood Crime Volumes in Tampa, Florida: A 2001 Updated: An Empirical Analysis of Longitudinal Data, taken by Dr. Terry Danner
32. The Pornographic Tradition-Formative Influences in the 15th and 19th Century European Literature, by Marianna Beck, Ph.D.
33. Thirteen Steps to a Successful Experiment, entered into the record of adoption for Oak Park Ordinance 01-07. March 20.2001
34. Three Studies of the Secondary Effects of Adult Nightclubs in Charlotte-Mecklenburg County

35. United States v. Playboy Entertainment Group, Inc. 592 U.S. 803, 120 S.Ct. 1878,146 L.Ed.2d 865 (2000) and Playboy Entertainment Group, Inc. v. United States, 30 F.Supp.2d 702
36. Using Crime Mapping to Measure the Negative Secondary Effects of Adult Businesses in Fort Wayne, Indiana: A Quasi-Experimental Methodology
37. XLP Corporation v. The County of Lake, 317 Ill.App.3d 881,743 NE. 2d 162, (2000)
38. Daytona Grand Inc. d/b/a Lollipop's Gentleman's Club. vs. City of Daytona Beach, Florida 410 F.Supp.2d 1173. (2006)
39. Article "Club, Porn Fight Dropped." Myrtle Beach Sun News, 3-11-06
40. Article; "Experts: Porn Shops Don't Hike Crimes." JournalInquirer.com, 4-17- 06.
41. Plaintiffs' Amended Experts' Reports on Secondary Effects Studies for Daytona Beach Ordinances 81-334, 02-496 and 03-375
42. A Public Health Analysis Of Rancho Cordova Proposed -Adult Business Ordinance Number 22-2004, J.R. Greenwood, Ph.D. M.P.H.
43. An Analysis of Miami-Dade Ordinance 96-13, J.R. Greenwood, Ph.D., M.P.H.
44. Summarizing and Evaluating Studies and Reports that Examine Whether Adult Businesses Cause Adverse Secondary Effects
45. The economic impact of three adult oriented clubs in Rancho Cordova.