MIAMIBEACH

City Commission Meeting
SUPPLEMENTAL MATERIAL 1
City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
March 13, 2013

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

Interim City Manager Kathie G. Brooks
City Attorney Jose Smith
City Clerk Rafael E. Granado

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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.

SUPPLEMENTAL AGENDA

C7 - Resolutions

C7B A Resolution Accepting The Recommendation Of The Neighborhood/Community Affairs Committee To Automatically Withdraw Items Referred To City Commission Committees If Not Heard Within Six (6) Months From Their Referral Date And Recommending Inclusion Of A Report In City Commission Agendas Transmitting A List Of Withdrawn Items.
(City Manager's Office)
(Resolution)

C7F A Resolution Approving, Pursuant To Section 2-367(d) Of The Miami Beach City Code, The Sole Source Purchase Of Beach Access Accessibility "Mobi-Mats" From Deschamps Mat Systems, Inc. (D.B.A. DMS), The Exclusive Distributor Of The Access Mats, In The Annual Estimated Amount Of $86,731.68, For A Period Of (3) Three Years.
(Property Management/Procurement)
(Resolution)

C7 - Resolutions (Continued)

C7H A Resolution To Accept The Recommendation Of The Finance And Citywide Projects Committee To Execute An Amendment To The Lease Agreement Between The City Of Miami Beach And Damian J. Gallo & Associates, Inc. D/B/A Permit Doctor, Dated July 30, 2003, Involving The Use Of Approximately 1,269 Square Feet Of Ground Floor Retail Space Located At 1701 Meridian Avenue, Unit 4 (A/K/A 775 17th Street), Miami Beach, Florida; Said Amendment Authorizing An Additional Use Of The Premises And Further Authorizing The City To Negotiate A Concession Agreement Allowing For An Outdoor Eating Area, Adjacent To The Leased Premises.

(Real Estate, Housing & Community Development)

(Resolution)

C7I A Resolution Accepting The Recommendation Of The Finance And Citywide Projects Committee And Approving And Authorizing The Mayor And City Clerk To Execute An Amendment To The Lease Agreement Between The City And MDGLCC Foundation, Inc., Dated March 10, 2010, Involving The Use Of Approximately 2,543 Square Feet Of Office Space Located At Historic City Hall, 1130 Washington Avenue, 1st Floor North, Miami Beach, Florida; Said Amendment Providing A Rent Reduction.

(Real Estate, Housing & Community Development)

(Resolution)

C7M A Resolution Approving And Authorizing The City Manager To Utilize Contract No. 12-20-0905 With The Florida Sheriffs Association For The Purchase Of 23 Vehicles At A Total Cost Of $419,377.00 And Waiving, By 5/7th Vote, The Formal Competitive Bidding Requirements, Finding Such Waiver To Be In The Best Interest Of The City.

(Fleet Management)

(Memorandum & Resolution)

R5 - Ordinances

R5E Hotel Parking Requirements

A Ordinance Amending The Code Of The City Of Miami Beach, Florida, By Amending Chapter 130 "Off-Street Parking," Article II, "Districts; Requirements," By Amending The Off-Street Parking Requirements For Hotels In All Districts; Providing For Repealer, Severability, Codification And An Effective Date. **5:15 p.m. Second Reading Public Hearing**

(Requested by Land Use & Development Committee)

(Ordinance: Revised Version Based Upon Discussion at First Reading)

R7 - Resolutions

R7A A Resolution [Granting Or Denying] An Appeal Request Filed By W. Tucker Gibbs, P.A., On Behalf Of Sunset Islands 3 And 4 Property Owners, Inc. And Olga Lens, Of The Design Review Board's Order Relative To DRB File No. 22889 For 1201-1237 20th Street, Palau At Sunset Harbor.
(Planning Department)
(Memorandum & Resolution)

R7I A Resolution Adopting The Second Amendment To The Capital Budget For Fiscal Year 2012/13.
(Budget & Performance Improvement)
(Resolution)

R7K A Resolution Accepting The Recommendation Of The Neighborhoods And Community Affairs Committee, Regarding The Relocation Of The Property Management Facility From The Sunset Harbour Neighborhood To The Public Works Operations Yard, Located At 451 Dade Boulevard, And The Relocation Of Property Management Vehicles And Employee Vehicles From The Sunset Harbour Garage To The 42nd Street Garage.
(Public Works)
(Memorandum & Resolution)

R7L A Resolution Accepting The Recommendation Of The Finance And Citywide Projects Committee Pertaining To That Certain Retail Lease Agreement By And Between The City Of Miami Beach, The Miami Beach Redevelopment Agency And Penn 17, LLC (Lessee), Dated September 16, 2011, Involving The Lease Of Approximately 7,655 Square Feet Of Ground Floor Retail Space At The Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida; Granting The Lessee The Following Amended Schedule Of Rent: 1) Applying One Third (1/3) Of The Lessee's Existing Security Deposit, Representing $47,844, Toward Base Rent Owed For The Month Of November 2012; 2) Deferring $8,474 For Common Area Maintenance (CAM) For November 2012, And Base Rent, Plus CAM, For December 2012, In The Total Amount Of $64,792 (Hereinafter Referred To As The Back-Due Rent); 3) Approving An Abatement Of Fifty Percent (50%) Of The Base Rent And CAM Due For The Six (6) Month Period Commencing January 13, 2013 Through July 12, 2013; 4) Deferring Fifty Percent (50%) Of The Base Rent And CAM For The Six (6) Month Period Commencing July 13, 2013 Through January 12, 2014; And, 5) Providing For Re-Payment By Lessee Of The One Third Security Deposit And Re-Payment Of The Back-Due Rent For November And December, 2012; All In Accordance With The Payment Schedule Attached As Exhibit "A" Hereto; Further Setting Of A Public Hearing By The City For April 17, 2013, Regarding Lessee's Proposal To Add An Entertainment Component As A New Proposed Use On The Lease Premises (And As Part Of Lessee's Proposal To "Re-Brand" And Re-Open The Premises), And As Required By Section 142-362 Of The City Code. **Joint City Commission and Redevelopment Agency**
(Real Estate, Housing & Community Development)
(Resolution)

R9 - New Business and Commission Requests

R9I Selection Of The City Manager.
(Requested by Mayor Matti Herrera Bower)
(Corrected Title)

Miami Beach Redevelopment Agency

1A A Resolution Of The Chairperson And Members Of The Miami Beach Redevelopment Agency (RDA), Accepting The Recommendation Of The City's Finance And Citywide Projects Committee Pertaining To A Proposed Amendment No. 3 To That Certain Retail Lease Agreement By And Between The City Of Miami Beach, The Miami Beach Redevelopment Agency, (Collectively, Lessor) And Penn 17, LLC (Lessee), Dated September 16, 2011, Involving The Lease Of Approximately 7,655 Square Feet Of Ground Floor Retail Space At The Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida; Recommending That, As Part Of Said Amendment, The Chairperson And Members Of The RDA Approve The Following Amended Schedule Of Rent: 1) Applying One Third (1/3) Of The Lessee's Existing Security Deposit, Representing $47,844, Toward Base Rent Owed For The Month Of November 2012; 2) Deferring $8,474 For Common Area Maintenance (CAM) For November 2012, And Base Rent, Plus CAM, For December 2012, In The Total Amount Of $64,792 (Hereinafter Referred To As The Back-Due Rent); 3) Approving An Abatement Of Fifty Percent (50%) Of The Base Rent And CAM Due For The Six (6) Month Period Commencing January 13, 2013 Through July 12, 2013; 4) Deferring Fifty Percent (50%) Of The Base Rent And CAM For The Six (6) Month Period Commencing July 13, 2013 Through January 12, 2014; And, 5) Providing For Re-Payment By Lessee Of The One Third Security Deposit And Re-Payment Of The Back-Due Rent For November And December, 2012; All In Accordance With The Payment Schedule Attached As Exhibit "A" Hereto; Further, Ratifying The Setting Of A Public Hearing By The City For April 17, 2013, Regarding Lessee's Proposal To Add An Entertainment Component As A New Proposed Use On The Lease Premises (And As Part Of Lessee's Proposal To "Re-Brand" And Re-Open The Premises), And As Required By Section 142-362 Of The City Code. **Joint City Commission & Redevelopment Agency**

(Real Estate, Housing & Community Development)
(Resolution)

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE TO AUTOMATICALLY WITHDRAW ITEMS REFERRED TO CITY COMMISSION COMMITTEES IF NOT HEARD WITHIN SIX (6) MONTHS FROM THEIR REFERRAL DATE AND RECOMMENDING INCLUSION OF A REPORT IN CITY COMMISSION AGENDAS TRANSMITTING A LIST OF WITHDRAWN ITEMS.

WHEREAS, the Neighborhood/Community Affairs Committee discussed City Commission Committee referrals at its February 19, 2013 meeting; and

WHEREAS, the Committee requested all items referred to various City Commission Committees should be heard as soon as possible regardless of whether the referring City Commissioner is present for the discussion; and

WHEREAS, the Committee also requested elected officials should be noticed of when their items will be discussed at committee and agreed that one courtesy deferral should be accommodated if the Commissioner is out of town or unable to attend; and

WHEREAS, the Committee unanimously passed a motion recommending that items referred to City Commission Committees be automatically withdrawn if not heard within six (6) months from their referral date and a report be included in the City Commission agenda transmitting a list of withdrawn items.

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, hereby accept the recommendation of the Neighborhood/Community Affairs Committee automatically withdrawing items referred to City Commission Committees if not heard within six (6) months from their referral date and recommending inclusion of a report in the City Commission agenda transmitting a list of withdrawn items.

PASSED and **ADOPTED** this _____ day of _____, 2013.

ATTEST:

_____
MATTI HERRERA BOWER
MAYOR

_____
RAFAEL GRANADO
CITY CLERK

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 3/8/13 Date

Agenda Item C7B
Date 3-13-13

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA APPROVING, PURSUANT TO SECTION 2-367 (d) OF THE MIAMI BEACH CITY CODE, THE SOLE SOURCE PURCHASE OF BEACH ACCESS ACCESSIBILITY "MOBI-MATS" FROM DESCHAMPS MAT SYSTEMS, INC. (D.B.A. DMS), THE EXCLUSIVE DISTRIBUTOR OF THE ACCESS MATS, IN THE ANNUAL ESTIMATED AMOUNT OF $86,731.68, FOR A PERIOD OF (3) THREE YEARS.

WHEREAS, each year the City participates in Miami-Dade County's Parking fines Reimbursement Program; and

WHEREAS, the Program is based on Section 316.008, Florida Statutes, and Section 30-447 of the Code of Miami-Dade County, which authorizes the charging of fines for misuse of specially marked parking spaces for people with disabilities; and

WHEREAS, on June 25, 2008, the City of Miami Beach entered into a new Interlocal Agreement with Miami-Dade County for the distribution of these funds; and

WHEREAS, a portion of the proceeds from the Parking Fines Reimbursement Program is provided to the City by Miami-Dade County for projects that benefit people with disabilities, in accordance with the Interlocal Agreement; and

WHEREAS, the City of Miami Beach Disability Access Committee ("the Committee") recommends the purchase and location of Mobi-Mats as the need arises; and

WHEREAS, the Mobi-Mats will make beach area accessible and meet ADA and Disabled Discrimination Act ("DDA") requirements; and

WHEREAS, "Mobi-Mats" by Deschamps Mats Systems, Inc. (DMS) is a durable, outdoor, light-weight access matting system, and the only other products on the market that resemble Mobi-Mat are the roll-up walkways that are made of heavy plastic lath; and

WHEREAS, Mobi-Mats are only available for purchase from DMS; and

WHEREAS, pursuant to Section 2-367(d) of the Miami Beach Code, the City Commission, may enter into contracts for goods and/or services where only one source for the products or service is evident; and

WHEREAS, the Procurement Director has determined that Deschamps Mats Systems, Inc. (DMS) is the sole source of supply of the Mobi-Mats; and

WHEREAS, additionally, the Administration has complied with the requirements for sole source purchases, pursuant to Section 2-367(d) of the Miami Beach City Code; and

WHEREAS, in its due diligence, on February 11, 2013, the Procurement Division issued an "Intent to Award Pursuant to Sole Source Exemption" notifying interested parties that the City intended to make a non-competitive award for the acquisition of the Mobi-Mats. No responses were received.

Agenda Item C7F
Date 3-13-13

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, hereby approve, pursuant to Section 2-367 (d) of the Miami Beach City Code, the sole source purchase of beach access accessibility "Mobi-mats" from Deschamps Mat Systems, Inc. (d.b.a. DMS), the exclusive distributor of the access mats, in the annual estimated amount of $86,731.68, for a period of (3) three years.

PASSED AND ADOPTED this ____ day of _____, 2013.

ATTEST:

_____ _____

CITY CLERK MAYOR

T:\AGENDA\2013\March 13\Mobi-Mats Sole Source RESO.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 3/8/13
Date

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, TO ACCEPT THE RECOMMENDATION OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE TO EXECUTE AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND DAMIAN J. GALLO & ASSOCIATES, INC. D/B/A PERMIT DOCTOR, DATED JULY 30, 2003, INVOLVING THE USE OF APPROXIMATELY 1,269 SQUARE FEET OF GROUND FLOOR RETAIL SPACE LOCATED AT 1701 MERIDIAN AVENUE, UNIT 4 (A/K/A 775 17TH STREET), MIAMI BEACH, FLORIDA; SAID AMENDMENT AUTHORIZING AN ADDITIONAL USE OF THE PREMISES AND FURTHER AUTHORIZING THE CITY TO NEGOTIATE A CONCESSION AGREEMENT ALLOWING FOR AN OUTDOOR EATING AREA, ADJACENT TO THE LEASED PREMISES

WHEREAS, on May 13, 2009, the Mayor and City Commission passed Resolution No. 2009-27071, approving a Consent to Assignment and Assumption of Lease Agreement whereby the Dade County Federal Credit Union assigned its lease to Damian J. Gallo & Associates, Inc. d/b/a Permit Doctor ("Tenant") for the use of approximately 1,269 square feet of ground floor retail space in the City-owned building located at 1701 Meridian Avenue; and

WHEREAS, the Lease automatically renewed on February 1, 2011, and expires on January 30, 2016, with no additional renewal options; and

WHEREAS, as stated in Section 7.1 of the Lease Agreement, the Demised Premises shall be used by Tenant solely for the purpose(s) of providing building plan and permit processing services; and

WHEREAS, the Tenant has requested permission from the City to expand the use of the Demised Premises to include a cafe in approximately the eastern 2/3's portion of space, to be separated by partition walls from the space within which Tenant will continue to operate its plan and permit processing services (d/b/a Permit Doctor); and

WHEREAS, the Tenant further requested to use the outdoor walkway, immediately outside and to the east of the Premises (perpendicular to the 17th Street sidewalk), as an outdoor eating area, containing four (4) tables/umbrellas and eight (8) chairs; and

WHEREAS, the Tenant is currently paying a market rental rate of $36.63 per square foot, on a triple net basis; and

WHEREAS, the additional use and outdoor eating area was discussed at the January 24, 2013 Finance and Citywide Projects Committee meeting, and the Committee recommended in favor of allowing the Tenant to use the Demised Premises for the dual purpose of plan/permit processing services (d/b/a Permit Doctor) as well as a café, subject to regulatory approvals at every level; and

WHEREAS, the Committee further recommended that the Tenant negotiate with the City Administration and the Legal Department on a concession agreement to use the outdoor space for an eating area, and that any such agreement should be subject to the City having the right to revoke said agreement.

Agenda Item C7H
Date 3-13-13

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the Mayor and City Commission hereby accept the recommendation of the Finance and Citywide Projects Committee and approve and authorize the Mayor and City Clerk to execute an Amendment to the Lease Agreement between the City of Miami Beach and Damian J. Gallo & Associates, Inc. d/b/a Permit Doctor, dated July 30, 2003, involving the use of approximately 1,269 square feet of ground floor retail space located at 1701 Meridian Avenue, Unit 4 (a/k/a 775 17th Street), Miami Beach, Florida; said amendment authorizing an additional use of the Premises and further authorizing the City to negotiate a concession agreement allowing for an outdoor eating area, adjacent to the Leased Premises.

PASSED and **ADOPTED** this _____ day of _____ 2013.

ATTEST:

_____ _____

Rafael Granado, CITY CLERK **Matti Herrera Bower, MAYOR**

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APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 3-7-13 Date

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE AND APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY AND MDGLCC FOUNDATION, INC., DATED MARCH 10, 2010, INVOLVING THE USE OF APPROXIMATELY 2,543 SQUARE FEET OF OFFICE SPACE LOCATED AT HISTORIC CITY HALL, 1130 WASHINGTON AVENUE, 1ST FLOOR NORTH, MIAMI BEACH, FLORIDA; SAID AMENDMENT PROVIDING FOR A RENT REDUCTION

WHEREAS, on March 10, 2010, the Mayor and City Commission passed Resolution No. 2010-27354, approving a Lease Agreement between the City and MDGLCC Foundation, Inc. ("MDGLCC") for the use of approximately 2,543 square feet of City-owned property, located at 1130 Washington Avenue, 1st Floor North, Miami Beach, Florida; and

WHEREAS, MDGLCC has expressed a need for a rent reduction in order to offset the cost of hiring additional staff, increase its hours of operation, and broaden its advertising; and

WHEREAS, MDGLCC currently pays annual rent, in the amount of $20.57 per square foot, payable in monthly installments of $4,360, consisting of $2,065 for base rent ($9.74/sf), $1,950 for common area maintenance ($9.20/sf), and $345 for insurance ($1.63/sf); and

WHEREAS, MDGLCC requested a rent reduction from $4,360 monthly to $2,500 monthly, representing a reduction in rent from $20.57 per square foot to $11.80 per square foot; and

WHEREAS, the requested rent reduction was discussed at the January 24, 2013 Finance and Citywide Projects Committee meeting, and the Committee recommended in favor of granting MDGLCC's request for a rent reduction from $20.57 per square foot to $11.80 per square foot.

NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the Mayor and City Commission hereby accept the recommendation of the Finance and Citywide Projects Committee and approve and authorize the Mayor and City Clerk to execute an Amendment to the Lease Agreement between the City and MDGLCC Foundation, Inc., dated March 10, 2010, involving the use of approximately 2,543 square feet of office space located at Historic City Hall, 1130 Washington Avenue, 1st Floor North, Miami Beach, Florida; said amendment providing for a rent reduction.

PASSED and **ADOPTED** this _____ day of _____ 2013.

ATTEST:

_____ _____

Rafael Granado, CITY CLERK **Matti Herrera Bower, MAYOR**

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APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

3-7-13

City Attorney Date

Agenda Item C7I

Date 3-13-13

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Condensed Title:

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Approving And Authorizing The City Manager To Utilize Contract No. 12-20-0905 With The Florida Sheriffs Association For The Purchase Of 23 Vehicles At A Total Cost Of $419,377.00 And Waiving, By 5/7th Vote, The Formal Competitive Bidding Requirements, Finding Such Waiver To Be In The Best Interest Of The City.

Key Intended Outcome Supported:

Increase visibility of Police; Maintain crime rates at or below national trends; Improve cleanliness of MB rights-of-way; Ensure compliance with code enforcement within a reasonable timeframe; Maintain MB public areas and rights-of-way, Citywide; Ensure safety and appearance of building structures and sites; Increase satisfaction with family recreational activities; Ensure well-maintained facilities; and Maintain City's infrastructure.

Supporting Data (Surveys, Environmental Scan, etc.):

A total of one hundred and twenty seven (127) vehicles are being replaced due to a combination of factors that include age, condition, and maintenance/repair/collision expenses, including forty-two (42) vehicles and equipment scheduled to be replaced in prior years, and eighty-five (85) vehicles and equipment scheduled to be replaced in FY 2012/13. All of the vehicles to be replaced have exceeded their life expectancy by an average of 2.4 years. Forty vehicles, or thirty two percent (32%) of the total vehicles and equipment being replaced, have exceeded their life expectancy by two or more years. Maintenance and repair expenses to date, as a percent of vehicle and equipment original acquisition cost, average 52%.

Item Summary/Recommendation:

Based on approved funding, Fleet Management Division ("Fleet Management") purchases vehicles for all City of Miami Beach departments and divisions. The City has historically pursued the purchase of vehicles through competitively awarded contracts by the State of Florida (State) and the Florida Sheriffs Association (FSA). Both the State and the FSA have staff dedicated to the complex tasks of developing specifications, aggregating volume from agencies across the state, competitive soliciting awards and managing contracts used by most public agencies in the State for the purchase of vehicles. Through the use of these contracts, the City benefits from the expertise and staff resources of the State and the FSA and the leveraged buying power of public agencies in the State resulting in cost-effective vehicle purchases.

In the due diligence process, vehicle pricing from both the FSA (Attachment A) and State (Attachment B) contracts was analyzed. While in most cases, the State pricing was more cost-effective, in the instances noted in the table below the pricing from the FSA contract was more cost-effective. However, as the FSA is not one of the agencies named in the City code as an agency from whose contracts piggyback purchases may be exercised, the City Manager's authority does not extend to purchases from the FSA. The City Attorney's Office has determined that, since City code does not explicitly allow for purchase from the FSA, approval of purchases from the FSA contract will require the waiver of competitive bidding requirements, by a 5/7th vote. Accordingly, this is a request for the City Commission to approve utilizing of the FSA contract 12-10-0905, a competitively awarded contract, for the purchase of those vehicles noted above as more cost-effective than prices in the State contract as noted in Attachment A.

Based on the analysis of the need for vehicles by various City Departments, the due diligence of staff, and pricing available through competitively awarded contracts established by the State and the FSA, it is recommended that the City Commission approve the purchases of the vehicles from the FSA contract as the most cost-effective alternative identified by the City. In addition to the cost-effective pricing, purchases through the FSA contract will allow the City to benefit from subject-matter expertise and dedicated staff resources of the FSA.

Financial Information:

Source of Funds:		Amount	Account
	1	$367,887	Fleet Management FY 2012/13 Capital Account No. 510-6173-000673
	2	$33,954	Fleet Management FY 2011/12 Capital Account No. 510-1780-000673
	3	$17,536	Stormwater Fund Capital Account No. 520-1720-000673
OBPI	Total	$419,377	

City Clerk's Office Legislative Tracking:

JJF/JCC Public Works, Ext. 3601

Sign-Offs:

Department Director	Assistant City Manager	City Manager
JJF AD	JGG	KGB

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MIAMIBEACH

AGENDA ITEM C7M
DATE 3-13-13

MIAMIBEACH

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: Kathie G. Brooks, Interim City Manager

DATE: March 13, 2013

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO UTILIZE CONTRACT NO. 12-20-0905 WITH THE FLORIDA SHERIFFS ASSOCIATION FOR THE PURCHASE OF 23 VEHICLES AT A TOTAL COST OF $419,377.00 AND WAIVING, BY 5/7TH VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENTS, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.**

ADMINISTRATION RECOMMENDATION

Approve the purchase.

FUNDING

Fleet Management FY 2012/13 Capital Account No. 510-6173-000673 - $367,887
Fleet Management FY 2011/12 Capital Account No. 510-1780-000673 - $33,954
Stormwater Fund Capital Account No. 520-1720-000673 - $17,536

BACKGROUND AND ANALYSIS

The Fleet Management Division ("Fleet Management") provides vehicles and equipment for all City of Miami Beach departments and divisions. In coordination with the various departments, Fleet Management develops a list of replacement vehicles and equipment which is submitted to the Commission for funding during the City's budget process each fiscal year. Replacement considerations are based on a combination of factors that include age, condition, maintenance/repair/collision expenses, and operating environment. The list of replacement vehicles and equipment, as well as any new vehicles and equipment submitted by a department as part of a service level enhancement initiative, are subject to approval by the City Commission during the annual budget process.

Upon approval of funds, the City has historically pursued the purchase of vehicles through competitively awarded contracts by the State of Florida (State) and the Florida Sheriffs Association (FSA). The State, through its Department of Management Services, competitively awards a comprehensive vehicle contract yearly to be used by all agencies and political subdivisions of the State. The FSA also competitively awards a vehicle contract yearly, based on the requirements of law enforcement agencies state-wide, for use by law enforcement and political subdivisions in the State. The FSA, founded in 1893 to promote effective law enforcement and public safety programs, is one of the largest law-enforcement associations in the nation. Both the State and the FSA have staff dedicated to the complex tasks of developing specifications, aggregating volume from agencies across the state, competitive soliciting awards and managing contracts used by most public agencies in the State for the purchase of vehicles. Unlike the State and the FSA, the City does not have the internal expertise, staffing resources or buying power of these

agencies. Nonetheless, through the use of these contracts, the City benefits from the expertise and staff resources of the State and the FSA and the leveraged buying power of public agencies in the State resulting in cost-effective vehicle purchases.

Based on budgeted requirements, the list of the 127 vehicles budgeted to be purchased from these contracts is included in the attachments to this memo. In the due diligence process, vehicle pricing from both the FSA (Attachment A) and State (Attachment B) contracts was analyzed.

While in most cases, the State pricing was more cost-effective, in the instances noted in the table below the pricing from the FSA contract was more cost-effective.

Description	Qty	State of Florida 071-000-13-0		Florida Sheriffs Association 12-20-0905	
		Price	Total	Price	Total
2013 Ford Focus P3F	18	$17,134.00	$308,412.00	$16,977.00	$305,586.00
2013 Ford F-150 Crew Cab 4WD	1	$29,778.40	$29,778.40	$29,654.00	$29,654.00
2013 Ford F-150 Reg Cab 2WD	1	$18,519.00	$18,519.00	$18,162.00	$18,162.00
2013 Ford F-150 Reg Cab 2WD	1	$17,584.00	$17,584.00	$17,536.00	$17,536.00
2013 Ford F-350 Super Duty DRW Util. Body (F3C)	1	$22,567.00	$22,567.00	$22,238.00	$22,238.00
2013 Ford F-350 4x4 Dump Body	1	$27,803.80	$27,803.80	$26,201.00	$26,201.00
	23	**Total:**	$424,664.20		**$419,377.00**

Pursuant to Section 2-369 of the Miami Beach City Code, purchases from State contracts may be approved by the City Manager. Those vehicles to be purchased from State contract are included in Attachment B. However, as the FSA is not one of the agencies named in the City code as an agency from whose contracts piggyback purchases may be exercised, the City Manager's authority does not extend to purchases from the FSA. The City Attorney's Office has determined that, since City code does not explicitly allow for purchase from the FSA, approval of purchases from the FSA contract will require the waiver of competitive bidding requirements, by a 5/7th vote. Accordingly, this is a request for the City Commission to approve utilizing of the FSA contract 12-10-0905, a competitively awarded contract, for the purchase of those vehicles noted above as more cost-effective than prices in the State contract as noted in Attachment A.

All of the vehicles for which replacements are included in either Attachment A and Attachment B have exceeded their life expectancy and currently average 2.4 years, or 17% beyond originally projected replacement date, with maintenance and repair expenses to date, as a percent of vehicle and equipment original acquisition cost, averaging 52%.

The following describes the 127 vehicles being replaced at this time:

Police: Of the seventy-three (73) vehicles being replaced, sixty-six (66), or 90% of the total, target Patrol and Criminal Investigation Division vehicles. Eight (8) of the sedan patrol vehicles are being replaced with Police Interceptor (PI) SUVs, as part of an effort to to provide

supervisory personnel with pursuit-rated vehicles that can also perform under the seasonal flooding and adverse post-storm conditions experienced in the City of Miami Beach. During the current budget process, the Police Department will discuss an initiative proposing to eventually convert as much as 40% of its patrol vehicles to SUVs.

Fire: Fourteen (14) vehicles are being replaced, including four (4), Ocean Rescue vehicles, seven (7) Fire Support Services and Fire Suppression vehicles, and one (1) utility cart.

Sanitation: Ten (10) vehicles are being replaced, including one (1) sweeper vacuum, three (3) utility carts, and six (6) pick-up trucks, including one addition approved as service enhancement during the FY 2013 budget process.

Other: Public Works is replacing six (6) vehicles, including four (4) pick-up trucks and two sedans. Parks and Recreation is replacing six (6) vehicles, including three (3) heavy duty trucks and three (3) utility carts. Property Management is replacing six (6) vehicles, including five (5) vans and one (1) pick-up truck. Neighborhood Services is replacing a passenger van. The balance of the total vehicles is for sedan replacements in the Planning, Parking, IT, Building and Code Enforcement Departments.

An additional eighty-two (82) vehicles and equipment are budgeted to be replaced later thjs year. However, Fleet Management and Procurement are still evaluating pricing and vendors.

CONCLUSION

Based on the analysis of the need for vehicles by various City Departments, the due diligence of staff and pricing available through competitively awarded contracts established by the State and the FSA, it is recommended that the City Commission approve and authorize the City Manager to utilize Contract No. 12-20-0905 with the Florida Sheriffs Association for the purchase of 23 vehicles at a total cost of $419,377.00 and waiving, by 5/7th vote, the formal competitive bidding requirements, finding such waiver to be in the best interest of the City.

Attachment A – List of Vehicles from Florida Sheriffs Contract
Attachment B – List of Vehicles from Florida State Contract

KGB/JGG/AD/KF/JC

T:\AGENDA\2013\March 13\Comm. Memo Florida Sheriffs Vehicle Purchase

ATTACHMENT A - VEHICLES PROPOSED FOR REPLACEMENT UTILIZING THE FSA CONTRACT

	EQUIP. #	Dept	Department Name	Year	Make	Model	Description	Meter	Life to Date Maintenance, Repairs & Accident Cost	Replacement Cost	Useful Life, Years	Past Useful Life, Years
1	4526	0427	Public Works - Stormwater Operations	2001	Ford	F-150	TRUCK 2WD 1/2 TON	89,188	$8,135	$17,536	6	5.5
2	4235	0520	Planning	2004	CHEVROLET	CAVALIER	CAR COMPACT	11,552	$6,775	$16,977	6	2.9
3	4240	0520	Planning	2004	FORD	TAURUS	CAR INTERMEDIATE	14,610	$4,200	$16,977	6	2.9
4	4236	0810	Public Works Administration	2004	CHEVROLET	CAVALIER	CAR COMPACT	21,300	$6,473	$16,977	6	2.9
5	4241	0810	Public Works Administration	2004	FORD	TAURUS	CAR INTERMEDIATE	33,908	$5,706	$16,977	6	2.9
6	4657	0815	Public Works Engineering	2004	FORD	F250	TRUCK 4WD 3/4 TON CREW CAB	35,491	$8,043	$29,654	6	2.7
7	4239	0840	Public Works - Streets	2004	CHEVROLET	Cavalier	Car - Compact	65,001	$6,076	$16,977	6	3.0
8	4646	0840	Public Works Streets	2004	FORD	F150	TRUCK 2WD 1/2 TON	47,737	$8,228	$18,162	6	2.9
9	4661	0940	Parks Green Space Management	2005	FORD	F350	TRUCK-DUMP SMALL	34,910	$15,142	$26,201	6	2.2
10	2880	1220	Fire - Rescue	2006	FORD	Taurus	CAR INTERMEDIATE	55,149	$4,410	$16,977	5	2.7
11	2880	1220	Fire Rescue	2006	FORD	Taurus	CAR COMPACT	58,546	$4,969	$16,977	6	1.7
12	4242	1230	Fire Prevention	2004	FORD	TAURUS	CAR INTERMEDIATE	30,854	$3,090	$16,977	5	2.6
13	4243	1230	Fire Prevention	2004	FORD	TAURUS	CAR INTERMEDIATE	65,848	$9,275	$16,977	6	2.9
14	4246	1230	Fire Prevention	2004	FORD	TAURUS	CAR INTERMEDIATE	77,332	$8,148	$16,977	6	2.9
15	4247	1230	Fire Prevention	2004	FORD	TAURUS	CAR INTERMEDIATE	89,333	$7,787	$16,977	6	2.9
16	1017	1240	Fire Support Services	2003	FORD	F350	TRUCK 2WD 1 TON	24,545	$7,542	$22,238	6	3.8
17	2900	1240	Fire Support Services	2005	FORD	500	CAR FWD FULL SIZE-ADMIN	86,154	$8,580	$16,977	6	2.8
18	1545	1510	Building Department	2004	FORD	RANGER	TRUCK 2WD COMPACT	30,541	$7,803	$16,977	6	2.6
19	4249	1510	Building Department	2004	FORD	TAURUS	CAR INTERMEDIATE	58,751	$8,070	$16,977	6	2.9
20	4182	1520	Code Compliance	2003	CHEVROLET	CAVALIER	CAR COMPACT	38,961	$9,949	$16,977	6	4.1
21	4188	1520	Code Compliance	2003	CHEVROLET	CAVALIER	CAR COMPACT	41,020	$8,762	$16,977	6	4.1
22	4200	1520	Code Compliance	2003	CHEVROLET	CAVALIER	CAR COMPACT	27,158	$10,526	$16,977	6	4.1
23	4218	1520	Code Compliance	2003	CHEVROLET	CAVALIER	CAR COMPACT	9,994	$5,991	$16,977	6	3.9
									TOTAL	$419,377		

ATTACHMENT B - VEHICLES TO BE REPLACED UTILIZING STATE CONTRACTS

	EQUIP. #	Dept	Department Name	Year	Make	Model	Description	Meter	Life to Date Maintenance, Repairs & Accident Cost	Replacement Cost	Useful Life, Years	Past Useful Life, Years
1	4595	0410	Public Works - Water Operations	2003	Ford	F-350	TRUCK 4WD 1 TON UTILITY BODY	37,917	$29,079	$44,595	7	2.5
2	4693	0430	Sanitation	2008	Ford	F-250	TRUCK 2WD 3/4 TON	50,147	$14,058	$27,176	6	0.1
3	1557	0560	Homeless Outreach	2006	FORD	E150	VAN 8 PASSENGER	66,829	$14,686	$26,476	6	1.5
4	4587	0940	Parks Green Space Management	2003	FORD	F450	TRUCK-DUMP SMALL	35,186	$21,051	$45,703	7	2.9
5	4588	0940	Parks Green Space Management	2003	FORD	F450	TRUCK-FLAT BED DUMP	72,029	$22,251	$45,703	7	2.9
6	0519	0940	Parks Green Space Management	2009	BOBCAT	2200G	UTILITY CART-GAS	280	$2,180	$11,930	3	0.3
7	0594	940	Parks Green Space Management	2009	BOBCAT	2200G	UTILITY CART-GAS	217	$1,663	$11,397	3	0.3
8	0514	0950	Parks & Recreation	2008	BOBCAT	2200G	UTILITY CART-GAS	520	$2,117	$11,192	3	2.0
9	2038	0960	Fire Ocean Rescue	2008	FORD	SPORT TRAC	TRUCK 4WD 1/2 TON	17,653	$6,121	$27,650	3	1.8
10	2039	0960	Fire Ocean Rescue	2008	FORD	SPORT TRAC	TRUCK 4WD 1/2 TON	15,484	$4,880	$27,650	3	1.8
11	2041	0960	Fire Ocean Rescue	2008	FORD	SPORT TRAC	TRUCK 4WD 1/2 TON	15,936	$6,103	$27,650	3	1.6
12	2042	0960	Fire Ocean Rescue	2008	FORD	SPORT TRAC	TRUCK 4WD 1/2 TON	16,078	$3,917	$27,650	3	1.6
13	2060	0960	Fire Ocean Rescue	2010	KAWASAKI	KAF950FAF	UTILITY CART-DIESEL	604	$4,826	$11,893	2	0.9
14	2896	1110	Police Chiefs Office	2006	FORD	500	CAR FWD FULL SIZE-ADMIN	114,598	$9,127	$17,574	5	1.9
15	2996	1110	Police Chiefs Office	2007	FORD	500	CAR FWD FULL SIZE-ADMIN	108,924	$5,799	$17,574	5	0.9
16	2500	1120	Police Patrol	2001	FORD	EXCURSION	SUV 4WD LARGE	42,734	$22,164	$36,465	5	7.3
17	2699	1120	Police Patrol	2005	FORD	EXPLORER	SUV 4WD MEDIUM	36,318	$8,796	$32,042	5	3.4
18	2923	1120	Police Patrol	2005	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	68,529	$11,860	$30,040	5	2.7
19	2955	1120	Police Patrol	2006	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	90,490	$17,398	$30,040	5	1.8
20	2956	1120	Police Patrol	2006	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	104,176	$11,706	$30,040	5	1.8
21	2957	1120	Police Patrol	2006	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	75,321	$12,271	$30,040	5	1.8

	EQUIP. #	Dept	Department Name	Year	Make	Model	Description	Meter	Life to Date Maintenance, Repairs & Accident Cost	Replacement Cost	Useful Life, Years	Past Useful Life, Years
22	2960	1120	Police Patrol	2006	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	93,971	$8,510	$30,040	5	1.8
23	2961	1120	Police Patrol	2006	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	70,759	$9,914	$32,692	5	1.8
24	2962	1120	Police Patrol	2006	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	92,645	$15,592	$32,692	5	1.8
25	2966	1120	Police Patrol	2006	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	106,787	$12,713	$32,692	5	1.8
26	2977	1120	Police Patrol	2006	CHEVROLET	IMPALA	CAR FWD FULL SIZE-PURSUIT	115,474	$8,629	$32,042	5	1.7
27	2978	1120	Police Patrol	2006	CHEVROLET	IMPALA	CAR FWD FULL SIZE-PURSUIT	100,327	$9,029	$32,042	5	1.7
28	2995	1120	Police Patrol	2007	FORD	500	CAR FWD FULL SIZE-ADMIN	82,045	$9,527	$16,849	5	1.1
29	3015	1120	Police Patrol	2007	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT K9	86,078	$12,712	$39,058	4	2.0
30	3027	1120	Police Patrol	2007	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT K9	118,027	$18,837	$39,059	4	2.0
31	3032	1120	Police Patrol	2007	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT K9	81,312	$18,034	$39,059	4	2.0
32	2712	1120	Police Patrol	2003	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	68,690	$7,413	$32,042	5	5.7
33	2786	1120	Police Patrol	2003	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	69,097	$9,533	$32,042	5	5.1
34	2826	1120	Police Patrol	2004	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	55,807	$6,900	$32,042	5	3.9
35	2847	1120	Police Patrol	2004	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	82,084	$11,258	$32,042	5	3.8
36	2864	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	70,124	$10,348	$32,042	5	3.3
37	2865	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	93,604	$14,770	$32,042	5	3.0
38	2866	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	67,278	$12,274	$32,042	5	2.8
39	2878	1120	Police Patrol	2006	Ford	Taurus	CAR INTERMEDIATE	46,386	$15,483	$29,298	5	2.7
40	2908	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	64,413	$8,863	$32,042	5	2.7
41	2910	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	76,373	$17,605	$32,042	5	2.7
42	2911	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	57,437	$7,592	$32,042	5	2.7
43	2913	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	91,682	$7,876	$32,042	5	2.7

	EQUIP. #	Dept	Department Name	Year	Make	Model	Description	Meter	Life to Date Maintenance, Repairs & Accident Cost	Replacement Cost	Useful Life, Years	Past Useful Life, Years
44	2915	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	73,385	$16,283	$32,042	5	2.7
45	2919	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	62,376	$6,255	$32,042	5	2.7
46	2921	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	64,384	$6,457	$32,042	5	2.7
47	2922	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	76,208	$11,614	$32,042	5	2.7
48	2926	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	85,614	$7,204	$32,042	5	2.7
49	2931	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	73,585	$13,391	$32,042	5	2.7
50	2932	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	70,740	$12,734	$32,042	5	2.7
51	2933	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	76,347	$12,323	$32,042	5	2.7
52	2939	1120	Police Patrol	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	67,730	$12,000	$32,042	5	2.7
53	2946	1120	Police Patrol	2006	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	91,627	$13,563	$32,042	5	2.7
54	2851	1122	Police Patrol - RDA South Pointe	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	65,608	$8,969	$32,042	5	3.5
55	2893	1122	Police Patrol - RDA South Pointe	2006	Ford	Taurus	CAR INTERMEDIATE	12,440	$5,440	$18,349	5	2.7
56	2943	1122	Police Patrol - RDA South Pointe	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	56,857	$11,072	$32,042	5	2.7
57	3028	1124	Police RDA City Center	2007	FORD	CROWN VIC	CAR FULL SIZE-PURSUIT	122,341	$9,355	$32,042	5	1.0
58	2854	1124	Police Patrol - RDA City Center	2005	Ford	Crown Victoria	CAR FULL SIZE-PURSUIT	77,664	$11,191	$32,042	5	3.5
59	2892	1124	Police Patrol - RDA City Center	2006	Ford	Taurus - Active (L)	CAR INTERMEDIATE	13,981	$5,802	$19,074	5	2.7
60	2487	1130	Police Support Services	2007	FORD	TAURUS	CAR INTERMEDIATE	89,005	$10,240	$20,568	5	1.9
61	2877	1130	Police Support Services	2006	FORD	TAURUS	CAR INTERMEDIATE	66,116	$9,678	$20,568	5	2.7
62	4544	1130	Police Support Services	2002	FORD	F150	TRUCK 4WD 1/2 TON	44,292	$7,803	$31,550	6	4.8
63	2567	1130	Police - Support Services	2003	Ford	Taurus	CAR INTERMEDIATE	42,498	$9,558	$19,074	5	5.1
64	2860	1130	Police - Support Services	2005	Ford	Taurus	CAR INTERMEDIATE	89,278	$8,338	$17,574	5	3.4
65	4527	1130	Police - Support Services	2001	Ford	F-350	TRUCK	14,147	$19,887	$32,190	5	2.6

	EQUIP. #	Dept	Department Name	Year	Make	Model	Description	Meter	Life to Date Maintenance, Repairs & Accident Cost	Replacement Cost	Useful Life, Years	Past Useful Life, Years
66	2488	1140	Police Criminal Investigation	2007	FORD	TAURUS	CAR INTERMEDIATE	87,281	$6,937	$20,568	5	1.9
67	2498	1140	Police Criminal Investigation	2007	CHEVROLET	HHR (black & unmarked)	CAR COMPACT	93,231	$7,635	$19,074	5	1.2
68	2858	1140	Police Criminal Investigation	2005	FORD	TAURUS	CAR INTERMEDIATE	80,850	$6,771	$20,568	5	3.4
69	2862	1140	Police Criminal Investigation	2005	FORD	TAURUS	CAR INTERMEDIATE	85,582	$11,884	$20,568	5	3.4
70	2890	1140	Police Criminal Investigation	2006	FORD	TAURUS	CAR INTERMEDIATE	86,108	$7,516	$20,568	5	2.7
71	2895	1140	Police Criminal Investigation	2006	CHEVROLET	IMPALA	CAR FWD FULL SIZE-ADMIN	109,049	$10,105	$20,568	5	2.5
72	3060	1140	Police Criminal Investigation	2007	FORD	FUSION	CAR INTERMEDIATE	105,015	$9,592	$20,568	5	0.8
73	3061	1140	Police Criminal Investigation	2007	FORD	FUSION	CAR INTERMEDIATE	89,007	$8,927	$20,568	5	0.8
74	3062	1140	Police Criminal Investigation	2007	FORD	FUSION	CAR INTERMEDIATE	98,637	$6,344	$20,568	5	0.8
75	3063	1140	Police Criminal Investigation	2007	FORD	FUSION	CAR INTERMEDIATE	86,043	$6,303	$20,568	5	0.8
76	3064	1140	Police Criminal Investigation	2007	FORD	FUSION	CAR INTERMEDIATE	74,963	$6,679	$20,568	5	0.8
77	3065	1140	Police Criminal Investigation	2007	FORD	FUSION	CAR INTERMEDIATE	81,755	$8,489	$20,568	5	0.8
78	2194	1140	Police - CID	2003	Chevrolet	Impala - Active	CAR INTERMEDIATE	94,811	$8,486	$20,568	5	5.3
79	2561	1140	Police - CID	2003	Ford	Taurus	CAR INTERMEDIATE	60,379	$8,462	$20,568	5	5.1
80	2566	1140	Police - CID	2003	Ford	Taurus	CAR INTERMEDIATE	72,331	$10,975	$20,568	5	5.1
81	2568	1140	Police - CID	2003	Ford	Taurus	CAR INTERMEDIATE	59,311	$7,520	$20,568	5	5.1
82	2569	1140	Police - CID	2003	Ford	Taurus	CAR INTERMEDIATE	62,746	$8,265	$20,568	5	5.1
83	2570	1140	Police - CID	2003	Ford	Taurus	CAR INTERMEDIATE	61,605	$6,487	$20,568	5	5.1
84	2883	1140	Police - CID	2006	Ford	Taurus	CAR INTERMEDIATE	86,225	$4,253	$20,568	5	2.7
85	2889	1140	Police - CID	2006	Ford	Taurus	CAR INTERMEDIATE	82,136	$10,775	$20,568	5	2.7
86	2881	1150	Police Technical Services	2006	FORD	TAURUS	CAR INTERMEDIATE	81,710	$8,963	$17,574	5	2.7
87	1016	1240	Fire Support Services	2003	FORD	F250	TRUCK 4WD 3/4 TON	40,194	$6,857	$23,125	6	4.3

	EQUIP. #	Dept	Department Name	Year	Make	Model	Description	Meter	Life to Date Maintenance, Repairs & Accident Cost	Replacement Cost	Useful Life, Years	Past Useful Life, Years
88	1524	1720	Property Management	2003	Ford	E-250	VAN	34,537	$7,987	$22,568	5	5.2
89	1525	1720	Property Management	2003	Ford	E-250	VAN	23,286	$7,813	$22,568	5	5.2
90	1532	1720	Property Management	2002	Ford	E-250	VAN	32,081	$6,518	$22,568	5	5.7
91	1541	1720	Property Management	2004	Ford	E-250	VAN	25,625	$7,876	$22,568	5	3.7
92	1556	1720	Property Management	2006	Ford	E-250	VAN	22,184	$3,628	$22,568	6	1.7
93	2898	1720	Property Management	2006	Ford	Explorer	SUV 4WD	89,372	$11,763	$28,455	6	0.9
94	2499	1750	IT - Communications	2007	Ford	FREESTYLE	CUV FWD	65,257	$7,658	$28,755	5	1.7
95	1408	1990	Parking RDA City Center	2004	KAWASAKI	KAF300-D2	UTILITY CART-GAS	1,780	$5,810	$11,893	3	5.9
96	4645	9962	Sanitation	2004	Ford	F-150	TRUCK 2WD 1/2 TON	57,480	$11,604	$18,768	6	3.0
97	4667	9962	Sanitation	2006	Ford	F-350	TRUCK 2WD 1 TON FLAT BED	36,144	$8,687	$26,637	6	1.5
98	4674	9962	Sanitation	2006	Ford	F-250	TRUCK 2WD 3/4 TON CREW CAB	64,064	$22,552	$27,176	6	1.0
99	NEW	9962	Sanitation							$25,596		
100	0392	9962	Sanitation	2006	TENNANT	ATLV 4300	SWEEPER VACUUM	500	$20,856	$45,000	5	1.8
101	0516	9962	Sanitation	2009	BOBCAT	2200G	UTILITY CART-GAS	2,783	$7,301	$11,273	3	0.9
102	0517	9962	Sanitation	2009	BOBCAT	2200G	UTILITY CART-GAS	50	$8,466	$11,273	3	0.9
103	0518	9962	Sanitation	2009	BOBCAT	2200G	UTILITY CART-GAS	20	$3,781	$11,273	3	0.3
104	4675	9969	Sanitation	2006	Ford	F-250	TRUCK 2WD 3/4 TON CREW CAB	48,561	$16,160	$27,176	6	1.0
									Total:	$2,742,684		

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO UTILIZE CONTRACT NO. 12-20-0905 WITH THE FLORIDA SHERIFFS ASSOCIATION FOR THE PURCHASE OF 23 VEHICLES AT A TOTAL COST OF $419,377.00 AND WAIVING, BY 5/7TH VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENTS, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

WHEREAS, upon approval of funds, the City has historically pursued the purchase of vehicles through competitively awarded contracts by the State of Florida (State) and the Florida Sheriffs Association (FSA); and

WHEREAS, the State, through its Department of Management Services, competitively awards a comprehensive vehicle contract yearly to be used by all agencies and political subdivisions of the State; and

WHEREAS, the FSA also competitively awards a vehicle contract yearly, based on the requirements of law enforcement agencies state-wide, for use by law enforcement and political subdivisions in the State; and

WHEREAS, the City benefits from the expertise and staff resources of the State and the FSA and the leveraged buying power of public agencies in the State resulting in cost-effective vehicle purchases; and

WHEREAS, in some cases, the City has the opportunity to purchase a number of vehicles more cost effectively by utilizing the FSA contract versus utilizing the State contract; and

WHEREAS, pursuant to Section 2-369 of the Miami Beach City Code, certain purchases from State contracts may be approved by the City Manager; and

WHEREAS, since the City Code does not explicitly allow for purchase from the FSA, approval of purchases from FSA Contract No. 12-20-0905 for 23 vehicles at a total cost of $419,377.00 will require the waiver of competitive bidding, by a 5/7th vote.

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 City Manager to utilize Contract No. 12-20-0905 with the Florida Sheriffs Association for the purchase of 23 vehicles at a total cost of $419,377.00 and waiving, by 5/7th vote, the formal competitive bidding requirements, finding such waiver to be in the best interest of the City.

PASSED AND ADOPTED THIS _____ DAY OF _____2013.

ATTEST:

_____ _____

CITY CLERK **MAYOR**

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

CITY ATTORNEY DT 3/8/13 DATE

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HOTEL PARKING REQUIREMENTS

[REVISED VERSION BASED UPON DISCUSSION AT FIRST READING]

ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY AMENDING CHAPTER 130 "OFF-STREET PARKING," ARTICLE II, "DISTRICTS; REQUIREMENTS," BY AMENDING THE OFF-STREET PARKING REQUIREMENTS FOR HOTELS IN ALL DISTRICTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, current parking requirements for hotels, and for convention hotels contain a requirement for parking spaces based upon the number of rooms within the hotel and additional parking requirements for accessory uses within hotels; and

WHEREAS, a review of parking requirements for hotels in other Florida cities and in other tourist destination cities throughout the country show that most of them have a lower parking requirement for the dense, walkable, urban districts than our current requirement of one parking space per hotel room (1:1); and

WHEREAS, parking requirements for accessory uses within hotels, such as retail, restaurants, clubs, etc., actually draw a large percentage of patrons from outside of the hotel, and would rationally need more parking than those that were primarily used by hotel guests and, therefore, such parking is necessary for the operation of a hotels, such requirements are not being amended; and

WHEREAS, the proposed changes are necessary in order to promote good hotel development.

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

Section 1. Sections 130-32, "Off Street parking requirements for Parking District No. 1," and 130-33, "Off-street parking requirements for parking districts nos. 2, 3, 4 and 5," are hereby amended as follows:

Section 130-32 - Off-street parking requirements for parking district no. 1.
Except as otherwise provided in these land development regulations, when any building or structure is erected or altered in parking district no. 1, accessory off-street parking spaces shall be provided for the building, structure or additional floor area as follows:

* * *

(26) Hotel, suites hotel, motel or motor lodge: 1 space per unit<u>, except as follows:</u>

Agenda Item R5E
Date 3-13-13

Properties located within a local historic district or National Register Historic District		
	Retaining , preserving and restoring a building or structure that is classified as 'Contributing' as of *[date of ordinance]*, as defined below.	.5 spaces per unit, up to a maximum of 100 units and 1 space per unit for all units in excess of 100 units.
	Other (e.g. new construction or substantial demolition of contributing building)	1 space per hotel unit.
Properties bounded by 62nd Street on the south, 73rd Street on the north, Indian Creek on the west and the Atlantic Ocean on the east		.5 spaces per unit, up to a maximum of 100 units and 1 space per unit for all units in excess of 100 units.
Properties located south of Fifth Street and properties zoned residential and located south of 17th Street, west of Alton Court, east of Biscayne Bay and north of 6th Street		1 space per unit
Properties not listed above		
	Hotels of 100 units or less, limited by covenant to no restaurants or pools open to the public, no outdoor bar counters, entertainment or special events , and located in a commercial zoning district within 1,000 feet of the boundary of an area that is (1) zoned CD-3 and (2) part of a historic district	.5 spaces per unit
	Within 150 feet of a single-family district or RM-1 district, notwithstanding the above	1 space per unit
	Other	1 space per unit

For purposes of this section, "retaining , preserving and restoring a building or structure that is classified as 'Contributing'" means that the following portions of such building or structure must remain substantially intact:

i. At least 75 percent of the front and street side facades;
ii. At least 75 percent of the original first floor slab;
iii. For structures that are set back two or more feet from interior side property lines, at least 66 percent of the remaining interior side walls; and
iv. All architecturally significant public interiors.

In addition to the above, in order for any hotel to receive the reduced rate of .5 spaces per unit, a hotel employee parking plan is required, which shall be subject to the review and approval of the Planning Department. Such hotel employee parking plan shall include mandatory measures to address employee parking, including but not limited to provision of transit passes, carpool or vanpool programs, off-site parking when available, monthly City parking passes, and/or other measures intended to limit the impact of employee parking on surrounding neighborhoods.

~~h~~However, suites hotel units as defined in section 142-1104 that are greater than 550 square feet and that contain full cooking facilities on lots that are greater than 50 feet in width, shall have the same parking requirement as apartment buildings in (6) b. and c. above. Required parking for hotel accessory uses shall be as follows:

a. Retail—Required parking shall be computed at 1 space per 400 square feet, minus 7.5 square feet per unit.
b. Auditorium, ballroom, convention hall, gymnasium, meeting rooms or other similar places of assembly—Required parking shall be 1 space per 4 seats or 1 space per 60 square feet of floor area where there is no seating, minus 1 seat or 15 square feet per unit.
c. Restaurant or other establishment for consumption of food or beverages on the premises—Required parking shall be 1 space per 4 seats minus 1 seat for every 2 units.
d. Required parking for all other uses shall be as set forth in this section.

These parking requirements for hotel accessory uses are only applicable to structures that are being newly constructed or substantially rehabilitated as hotels.

The zoning board of adjustment may grant a variance for the total amount of parking required for a hotel and related accessory uses by up to 20 percent.

* * *

Section 130-33 - Off-street parking requirements for parking districts nos. 2, 3, 4 and 5.

Except as otherwise provided in these land development regulations, when any building or structure is erected or altered in parking districts nos. 2, 3, 4 and 5 accessory off-street parking spaces shall be provided for the building, structure or additional floor area as follows. There shall be no off-street parking requirement for uses in this parking district except for those listed below:

* * *

(3) *Hotel, convention:* ~~For structures with less than 250 units,~~ one space per two (2) units; ~~for structures with 250 to 499 units, 0.75 space per unit; for structures with 500 units or more, 0.50 space per unit~~. Required parking for convention hotel accessory uses shall be as follows:

* * *

(4) *Hotel, suites hotel, motel or motor lodge:* One space per unit, except as follows:

Properties located within a local historic district or National Register Historic District north of 63rd Street		
	Retaining , preserving and restoring a building or structure that is classified as 'Contributing' as of	.5 spaces per unit, up to a maximum of 100 units and 1 space per unit for all units in excess of 100 units.

	[date of ordinance], as defined below.	
	Other (e.g. new construction or substantial demolition of contributing building)	1 space per hotel unit.
Properties bounded by 62nd Street on the south, 73rd Street on the north, Indian Creek on the west and the Atlantic Ocean on the east		.5 spaces per unit, up to a maximum of 100 units and 1 space per unit for all units in excess of 100 units.
Properties located south of Fifth Street and properties zoned residential and located south of 17th Street, west of Alton Court, east of Biscayne Bay and north of 6th Street		1 space per unit
Properties not listed above		
	Hotels of 100 units or less, limited by covenant to no restaurants or pools open to the public, no outdoor bar counters, entertainment or special events , and located in a commercial zoning district within 1,000 feet of the boundary of an area that is (1) zoned CD-3 and (2) part of a historic district	.5 spaces per unit
	Within 150 feet of a single-family district or RM-1 district, notwithstanding the above	1 space per unit
	Other	1 space per unit

For purposes of this section, "retaining , preserving and restoring a building or structure that is classified as 'Contributing'" means that the following portions of such building or structure must remain substantially intact:

i. At least 75 percent of the front and street side facades;
ii. At least 75 percent of the original first floor slab;
iii. For structures that are set back two or more feet from interior side property lines, at least 66 percent of the remaining interior side walls; and
iv. All architecturally significant public interiors.

In addition to the above, in order for any hotel to receive the reduced rate of .5 spaces per unit, a hotel employee parking plan is required, which shall be subject to the review and approval of the Planning Department. Such hotel employee parking plan shall include mandatory measures to address employee parking, including but not limited to provision of transit passes, carpool or vanpool programs, off-site parking when available, monthly City parking passes, and/or other measures intended to limit the impact of employee parking on surrounding neighborhoods.

~~h~~However, suites hotel units as defined in section 142-1105 that are greater than 550 square feet and that contain full cooking facilities in buildings on lots that are greater than 50 feet in width shall have the same parking requirement as apartment buildings in (1)b. and c. above. Required parking for hotel accessory uses shall be as follows:

a. Retail: Required parking shall be computed at one space per 400 square feet of floor area, minus seven and one-half square feet per unit.
b. Auditorium, ballroom, convention hall, gymnasium, meeting rooms or other similar places of assembly: Required parking shall be one space per four seats or one space per 60 square feet of floor area where there is no seating, minus one seat or 15 square feet per unit.
c. Restaurant or other establishment for consumption of food or beverages on the premises: Required parking shall be one space per four seats minus one seat for every two units.
d. Required parking for all other uses shall be as set forth in this section.

These parking requirements for hotel accessory uses are only applicable to structures that are being newly constructed or substantially rehabilitated as hotels. The zoning board of adjustment may grant a variance for the total amount of parking required for a hotel, suites hotel, motel or motor lodge and related accessory uses of up to 20 percent.

* * *

SECTION 2. Repealer.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same 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 _____, 2013.

_____

MAYOR

ATTEST:

_____

CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ 3/8/13

City Attorney Date

First Reading: February 6, 2013
Second Reading: March 13, 2013

Verified by: _____
Richard G Lorber, AICP, LEED AP
Acting Planning Director

Underscore denotes new language
Revised 3-8-13

T:\AGENDA\2013\March 13\Hotel Parking revised admin ORD 2nd reading rev.docx

Condensed Title:

A resolution, pursuant to Section 118-262 of the City Code, to review the Design Review Board order relative to DRB File No. 22889, rendered on October 8, 2012, as requested by W. Tucker Gibbs, PA on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens, as affected persons.

Key Intended Outcome Supported:

N/A

Item Summary/Recommendation:

Pursuant to City Code Section 118-262, W. Tucker Gibbs, PA on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens, as affected persons, is requesting that the City Commission review a Design Review Board decision rendered on October 8, 2012 (DRB File No. 22889) pertaining to the approval of a 5-story, mixed-use development project located at 1201-1237 20th Street – Palau at Sunset Harbour.

On January 16, 2013, the City Commission set the public hearing for March 13, 2013 to review the order of the Design Review Board pertaining to DRB File No. 22889 (1201-1237 20th Street – Palau at Sunset Harbour).

Based upon the issues raised in the petition, the Administration recommends that the City Commission deny the appeal.

Advisory Board Recommendation:

The Design Review Board approved the subject development project on October 2, 2012, subject to the conditions of the Final Order.

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Richard Lorber or William Cary

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

AGENDA ITEM R7A
DATE 3-13-13

MIAMIBEACH

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: Kathie G. Brooks, Interim City Manager

DATE: March 13, 2013

PUBLIC HEARING

SUBJECT: **Palau Appeal**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, [GRANTING OR DENYING] AN APPEAL REQUEST FILED BY W. TUCKER GIBBS, P.A., ON BEHALF OF SUNSET ISLANDS 3 AND 4 PROPERTY OWNERS, INC. AND OLGA LENS, OF THE DESIGN REVIEW BOARD'S ORDER RELATIVE TO DRB FILE NO. 22889 FOR 1201-1237 20TH STREET, PALAU AT SUNSET HARBOR.

ADMINISTRATION RECOMMENDATION

Based upon the issues raised in the petition, the Administration recommends that the City Commission deny the appeal.

BACKGROUND

On October 2, 2012, the Design Review Board (DRB) approved DRB File No. 22889, pertaining to a 5-story, mixed-use development project located at 1201-1237 20th Street – Palau at Sunset Harbour.

On October 23, 2012 a "Petition for Rehearing" was filed by MAC SH, LLC, and Sunset Islands 3 and 4 Property Owners, Inc. Such re-hearing request was considered by the DRB on December 4, 2012. Following denial of a motion to continue the hearing (which failed due to a tie vote), and denial of a motion to deny the Petition for Rehearing (which failed due to a tie vote), there being no further motions, it was determined by the attorney for the Board that the last decision of the Board stands as the decision of the Board (which was for approval of the application).

Pursuant to City Code Section 118-262, W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property owners, Inc. and Olga Lens, as affected persons, filed a "Request For City Commission Review of the Design Review Board Decision" ("Request") rendered on October 8, 2012 (DRB File No. 22889) pertaining to the approval of Palau project.

Section 118-262 of the Miami Beach City Code allows the applicant, the City Manager on behalf of the City Administration, the Miami Design Preservation League, Dade Heritage Trust or an 'Affected Person,' to seek review of any order of the Design Review Board by the City Commission. For purposes of Section 118-262, an "affected person" shall mean either:

(i) a person owning property within 375 feet of the applicant's project reviewed by the board, or

(ii) a person that appeared before the design review board (directly or represented by counsel), and whose appearance is confirmed in the record of the design review board's public hearing(s) for such project.

The Request alleges that the definition of 'affected person' has been satisfied because the named appellants appeared at the hearing before the DRB. (Request para. 4).

Pursuant to Section 118-262 of the Miami Beach Code, the review by the City Commission is not a "de novo" hearing, and it must be based upon the record of the hearing before the DRB. Section 118-262(b) states the following:

In order to reverse, or remand for amendment, modification or rehearing any decision of the Design Review Board, the City Commission shall find that the Design Review Board did not do one of the following:

1) provide procedural due process;
2) observe essential requirements of law; or
3) base its decision upon substantial, competent evidence.

In order to reverse or remand a decision of the DRB, a 5/7th vote of the City Commission is required.

ANALYSIS

The DRB's review of the subject project was based upon the information and exhibits submitted by the applicant, and the Board had before it the recommendation for approval with proposed conditions presented by its professional staff in the form of a comprehensive staff report, all of which constitute competent, substantial evidence in support of the decision. The Board agreed with the staff recommendation in the report.

The Request claims that several issues justify reversal or remand. This is not the case, as all issues raised were discussed and considered by the DRB as outlined below.

The Petition raises the following arguments on appeal:

1. DRB members failed to disclose ex parte communications as required by sections 2-511 through 2-513 of the City Code. (at Petition, page 14).
2. Palau failed to meet its initial burden to show that it met DRB review criteria requiring that it created or maintains important view corridors. (at Petition, page 18).
3. The DRB failed to evaluate the elimination and/or diminution of four view corridors as required by section 118-251(a)(12). (at Petition, page 19).
4. The design review staff report fails to address specific criteria requiring a building's massing to create or maintain important view corridors is not competent and substantial evidence of compliance with that review criteria (at Petition, page 21).
5. The DRB improperly delegated to design review staff its authority to evaluate and approve plans pursuant to DRB review criteria (at Petition, page 23).

These issues are each discussed below.

1. FAILURE TO DISCLOSE EX-PARTE COMMUNICATIONS AS REQUIRED BY SECTION 2-511 THROUGH 513 OF THE CITY CODE

Ex-parte communications were discussed at the August 7, 2012 meeting. At the beginning of the Board discussion, the Board Chairman indicated "We have met, most of us have met with your team to go over the project," Transcript at p. 150, (referring to the Palau development team), and another Board member individually indicated that she had not met with the applicant (see Transcript at p. 170). These statements by Board members satisfied the disclosure requirement in the City Code. If Appellants wanted the "reasonable opportunity to refute or respond to the communication," as provided by Section 2-512(a)(4), they should have taken this opportunity at the hearing. Further, if they thought ex parte contacts had occurred but had not been disclosed, they should have raised this possibility and objected at the hearing. Otherwise, this objection should be considered waived.

2. **FAILURE TO MEET ITS INITIAL BURDEN TO SHOW THAT IT MET DRB REVIEW CRITERIA REQUIRING THAT IT CREATED OR MAINTAINS IMPORTANT VIEW CORRIDORS.**

Appellants assert that "the applicant has the initial burden to show that it has met the DRB approval requirements," and "Palau failed to meet that burden by its failure to address the DRB review criteria and how it met each of those standards." Petition at 18. Palau, however, satisfied the requirement to meet its initial burden by providing the plans that showed which view corridors were provided and to what extent. There is no requirement that a separate document or explanation be provided showing how each design review criteria is satisfied. With respect to view corridors, the plans themselves are evidence of such proof.

3. **THE DRB FAILED TO EVALUATE THE ELIMINATION AND/OR DIMUNITION OF FOUR VIEW CORRIDORS PURSUANT TO SECTION 118-251(a)(12).**

Section 118-251(a)(12) provides: "The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s)."

First, it is important to understand that not all view corridors are protected. View corridors across or over another person's or entity's property are not always protected. View corridors in setback areas, or along sidewalks are likely protected. Each one is evaluated on its own merits. Views to the water from the adjacent property across the Palau property is not a protected view corridor, and a property owner does not have an inherent right to water views through another owner's property.

All relevant view corridors referenced in the Petition were discussed and reviewed by the DRB. The Board, at the August 7, 2012 meeting, did require that the northeast corner of the building be further setback in order to lessen the impact on the historic Sunset Island bridge, this change was made in the plans presented to the Board for the October 2, 2012 meeting, and the change fully satisfied the Board's request. The Board's review and discussion of views in the plans satisfied the design review criterion on this point.

4. **THE DESIGN REVIEW STAFF REPORT FAILS TO ADDRESS SPECIFIC CRITERIA REQUIRING A BUILDING'S MASSING TO CREATE OR MAINTAIN IMPORTANT VIEW CORRIDORS IS NOT COMPETENT AND SUBSTANTIAL EVIDENCE OF COMPLIANCE WITH THAT REVIEW CRITERIA.**

The staff evaluation contained in the staff report is competent substantial evidence. It is fact based, because it is based on a review of the application and its accompanying plans and surveys and accompanying documents, and is based upon field inspections, and thus is competent substantial evidence upon which the DRB can base its decision under Florida law. *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So.2d 202, 204-05 (Fla. 3d DCA 2003) ("the Chief of Police, the Director of Public Works, and the Chief Zoning Official, gave specific fact-based reasons for their recommendations that the application be rejected."); *Metropolitan Dade County v. Sportacres Development Group*, 698 So.2d 281, 282 (Fla. 3d DCA 1997) ("maps, reports and other information which, in conjunction with the testimony of the neighbors, if believed by the Commission, constituted competent substantial evidence."); Dade County v. United Resources, Inc., 374 So.2d 1046, 1050 (Fla. 3d DCA 1979) ("recommendations of professional staff"); *Norwood-Norland Homeowner's Ass'n v. Dade County*, 511 So.2d 1009, 1013 (Fla. 3d DCA 1987) ("Dade County Development Impact Committee report"); *Metropolitan Dade County v. Fuller*, 515 So.2d 1312, 1314 (Fla. 3d DCA 1987) ("staff recommendations").

5. THE DRB IMPROPERLY DELEGATED TO DESIGN REVIEW STAFF ITS AUTHORITY TO EVALUATE AND APPROVE PLANS PURSUANT TO DRB REVIEW CRITERIA.

The inclusion of conditions in the DRB Order that allows staff to make specific decisions on plans to be submitted is not an unlawful delegation of authority. These are minor matters within the scope of staff's authority, including materials, finishes, glazing (windows), railings, architectural projections, landscaping, walkways, fences, facades between buildings, and the compliance of the applicant with a condition imposed to enlarge a plaza and connect to a walkway. The DRB need not involve itself in every minor detail of the design of a proposed development. These matters are included in board orders to emphasize staff's review of them when the project is submitted for building permit. Unlawful delegations arise when insufficient standards are set out for the implementation of delegation by the person to whom authority was delegated. The design review criteria remain the standards against which either the Board at the time of design review approval, or the design review staff at time of building permit, and are sufficient to provide a lawful delegation of authority on these minor points.

A review of the transcripts for the DRB hearings indicates that the DRB observed the essential requirements of law, made its determinations based on substantial, competent evidence, and afforded all parties involved due process. Additionally, the Board held public hearings during which members of the public were afforded the opportunity to testify and present evidence. Based upon all of the competent, substantial evidence submitted, the Board determined that the proposed project would meet the Criteria for Design Review Approval in Section 118-252 of the Code, subject to the conditions in the Final Order.

CONCLUSION

Based upon the issues raised in the petition, the Administration recommends that the City Commission deny the appeal.

KGB/JGG/GMH/RGL/TRM

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MIAMIBEACH

City Clerk's Office

MEMORANDUM

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

FROM: Rafael E. Granado, City Clerk

DATE: February 27, 2013

SUBJECT: **Petition to Reverse Design Review Board (DRB) Decision Relative to File 22889, Palau Sunset Harbor.**

Attached is the Petition to Reverse Design Review Board Decision regarding Palau Sunset Harbor filed by W. Tucker Gibbs, Esq., attorney for The Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens. In addition, Mr. Gibbs has filed a lengthy Appendix (Volumes I & II), consisting of 352 pages, which has been be placed in your iPad Dropbox and linked to the City's webpage. If you would like a printed copy of the Appendix, please call me at 305.673.7411 or email me at rafaelgranado@miamibeachfl.gov.

If additional parties file pleadings on this matter, they will be forwarded to you as well.

This item is scheduled to be heard by the City Commission on March 13, 2013, at 5:01 p.m. as item R7A - A Resolution [Granting Or Denying] An Appeal Request Filed By W. Tucker Gibbs, P.A., On Behalf Of Sunset Islands 3 And 4 Property Owners, Inc. And Olga Lens, Of The Design Review Board's Order Relative To DRB File No. 22889 For 1201-1237 20th Street, Palau At Sunset Harbor.

REG/lc

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BEFORE THE MIAMI BEACH CITY COMMISSION
DESIGN REVIEW BOARD FILE 22889

RECEIVED
2013 FEB 27 PM 12:
CITY CLERK'S OFFICE

IN RE: PALAU SUNSET HARBOR

All of Lots 22, 23, and 24, and the north 70 feet of Lots 25 and 26, Block 15A, Island View Addition According to the Plat Thereof as Recorded in Plat Book 9, Page 144 of the Public Records of Miami-Dade County
1201-1237 20th Street, Miami Beach, Florida

_____/

PETITION TO REVERSE DESIGN REVIEW BOARD DECISION

The Sunset Islands 3 and 4 Property Owners, Inc. ("Sunset") and Olga Lens ("Lens") (collectively "neighbors"), pursuant to section 118-262, City of Miami Beach Land Development Regulations, requests that the City of Miami Beach City Commission ("commission") at its March 13, 2013 meeting reverse the decision of the Miami Beach Design Review Board ("DRB") to grant the application for design review approval for the Palau Sunset Harbor development (DRB File No. 22889) ("Palau development"), or in the alternative remand the matter back to the DRB with instructions for review consistent with the requests herein.

INTRODUCTION

Palau Sunset Harbor, LLC, ("Palau" or "applicant") applied for DRB approval for the Palau development, a large mixed use project proposed for property it owns at 1201-1237 20th Street, Miami Beach. The project would abut a well-established single-family residential neighborhood. The Palau development would not only destroy important view corridors to the water and from 20th Street to the historic Sunset Islands bridge but also block abutting neighbors' views even more than does the Sunset Harbor townhouses immediately to its west. Given the virtually unanimous objection to the project by its residential neighbors, no one was surprised that the Palau application consumed hours of contentious public hearings before the DRB. During the DRB review process not one neighbor spoke in favor of this massive development. Furthermore, the DRB decision-making process included: procedural error, a failure to correctly apply the law and on a key issue a failure to base its decision on competent substantial evidence.

At the core of any quasi-judicial body's review of an application is the basic guarantee that the process is fundamentally fair.[1] DRB members failed

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[1] The city commission's review of this matter pursuant to section 118-262 also fails to provide a party seeking its review with the due process one would expect in a quasi-judicial proceeding. In this process, the party initiates the commission's review by filing the petition (if represented by counsel) and must file "appropriate legal briefs" setting forth argument and facts in support

to make required disclosures of meetings with Palau representatives prior to the meetings of August 7 and October 2, 2012. Such *ex parte* communication is contrary to a fair and impartial quasi-judicial hearing process and a breach of the city's obligation to provide basic procedural due process.

The failure of the applicant and design review staff to address compliance with the specific DRB review criteria, and the failure of the order to show compliance with those criteria shows that the DRB did not observe the essential requirements of law when it approved the application. This warrants reversal of the DRB decision.

---

of its case. The petitioner must show that the DRB failed to provide due process, or did not observe the essential requirements of law, or failed to base its decision on competent substantial evidence. This mirrors the process and review standards of an appellate court. But that is where the similarities end. In an appellate proceeding, the petition is followed by a response to the arguments in the petition from the other side and that response brief is followed in many cases by a reply to those arguments. This process insures that all parties (and the court) know and understand all the arguments. This is transparent and open process that is fair and provides all parties procedural due process. Therefore, it leads to few if any surprises to either side. The Miami Beach process guarantees a closed and opaque process and is designed to keep information away from the petitioner. Here, the city and the applicant have all the information regarding the petitioner's arguments. But because there is no reciprocal obligation for the city or applicant to provide a response to the petition, the petitioner has no information regarding the city or applicant's arguments. The city commission is equally in the dark. All of this makes for a process that is skewed toward one side. That is a process that fails to meet the standards of basic fairness in order to afford all parties a fair, open and impartial hearing. In that hearing the "...the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive." *Rucker v City of Ocala*, 684 So. 2d 836, 841 (Fla. 1st DCA 1996).

Design review staff's conclusory statements on compliance with required review standards without any stated factual basis are not competent substantial evidence. Therefore, the DRB decision and order regarding the project's compliance with all the review criteria is not based on competent substantial evidence.

The DRB has no authority to delegate to city staff any of its duties to evaluate and make final determinations about whether the application meets DRB review criteria. This authority is vested only in the DRB, but that board through its order incorrectly delegated that power to the city's design review staff.

These fundamental failures on the part of the DRB warrant the reversal of that board's approval of the Palau application.

PARTIES

Sunset represents its members who are property owners on both Sunset Island 3 and Sunset Island 4 across the waterway from the proposed Palau development site. Its members include property owners within 375-feet of the site.

Lens owns the property at 2000 North Bay Road, across Sunset Drive from and within 375-feet of the proposed Palau development site.

Palau owns the property located at 1201-1237 20th Street, Miami Beach, Florida. It applied for and received DRB approval for the Palau development on that site.

On August 7, and October 2, 2012, the DRB held a publicly-noticed, quasi-judicial hearing and reviewed the application for design review approval for the Palau development. At that hearing the neighbors individually and through counsel appeared before the Design Review Board. Exhibit N, 68:15-70:1, 93:5-94:5, 71:10-77:11, 182:9-184:11, August 7, 2012 Transcript. Exhibit O, 56:14-59:23, 60:10-70:10, 72:7-76:12, 103:17-104:19, 130:21-146:12, October 2, 2012 Transcript Volume 1.

FACTUAL BACKGROUND

In late 2011, Palau applied to develop the property abutting the Sunset Islands and its historically-designated entrance. Exhibit A, Aerial map of area. The applicant proposed a bulky, 5-story, 109,279 square-foot (including approximately 13,056 square feet of commercial space) mixed-use development on this CD-2 (Commercial Medium Intensity zoning district)-zoned site. Exhibit B, Planning Board Staff Report, April 24, 2012.

The Palau site abuts RS-3 (property on N. Bay Road and Sunset Drive) and RS-4 (Sunset Island 4) single family residential neighborhoods to the east

and north and RM-3 multi-family property (Sunset Harbour Townhomes) to the west. Exhibit C, Zoning Map.

At the planning board the applicant sought a conditional use approval to allow development exceeding 50,000 square-feet plus the use of mechanical parking lifts, among other things. Exhibit D, Planning Board Staff Report, April 24, 2012.

Faced with strong neighborhood opposition, the planning board continued the matter several times. Neighbors sought a project that was less bulky and more in scale with the abutting single-family residential neighborhood. In particular, the neighbors cited the monolithic massing of the building and requested that the board require increased setbacks and more articulation to lessen the impact of the massive structure on its neighbors. Ultimately on May 22, 2012, the planning board approved the conditional use for a modified development with a specific condition relating to Design Review Board approval:

> "5. The applicant shall work with Design Review Staff to further modify the proposal to address the following, subject to review and approval of the Design Review Board:
>
> (a) Pulling back the massing, east of the World Savings Bank property, with emphasis on upper floor setback and the northeast corner of the building and adding more green space.

(b) Further modifying the ground floor area along the canal (terraces) to minimize the hardscape and increase the amount of open, landscaped area at grade level.

(c) Adding more canopy trees for increased shade to the landscape plan particularly along Sunset Drive. Also work with Sheryl Gold on this item.

(d) Removing parking on Sunset Drive.

(e) Reducing encroachment on the line of sight from Sunset Island 4.

(f) Working with Public Works staff to limit u-turns at the guardhouse."

Exhibit D, August 7, 2012 Design Review Board Staff Report.

With this directive from the planning board, the applicant made revisions to its plan and submitted it to the Design Review Board. That board held its initial hearing on the application on August 7, 2012.

At that hearing the neighbors focused on the zoning code charge to the DRB to examine development plans for consistency with the criteria in section 118-251 regarding aesthetics, safety and function of the structure and the physical attributes of the project in relation to the site, adjacent structures and the surrounding community. According the DRB review criteria, the development must not have a negative impact on adjacent neighborhoods. Under these standards, the developer must eliminate or mitigate aspects of the proposed project that adversely affect the surrounding area.

Neighbors presented expert testimony addressing the impacts of the project on the adjacent properties. Their expert and the city's design review staff found that the project failed to meet eight of the fifteen applicable standards. Exhibit E Alvarez Power Point Presentation, and Exhibit D, August 7, Design Review Board staff report). Neighbors also submitted a transcript of the expert testimony of University of Miami Professor of Architecture Francois Le Jeune at the May 22, 2012 Planning Board hearing on Palau's conditional use application. Professor Le Jeune stated that the project should be redesigned to reduce its mass and scale and maintain the view corridor from West Avenue toward the water and Sunset Island 4. Exhibit F, Excerpt of Francois Le Jeune Testimony, May 22, Planning Board hearing.

In their discussion of the DRB's neighborhood compatibility criteria the neighbors addressed the Palau project's impacts on the historic Sunset Islands neighborhood and the historic Sunset Island Bridge. In particular, the neighbors cited the 1996 Historic Designation Report. The report discussed the importance of "sensitive new construction" in the context of the neighborhood's character, which is defined by the elements of scale, proportion, massing, materials and details. Exhibit G Designation Report, 21. The report also examined "compatibility with the character of the Historic Sunset Islands Neighborhood," which positively influences proportion and

scale, massing and materials. Id., 22. In particular, the report noted: "When there is a combination of structural building types surrounding a project site, scale and proportion of the buildings closest to the proposed construction should be observed." Id.

The DRB voted to continue the item to its October 2 meeting based on the staff recommendation for a continuance so that the applicant could address staff's concerns about the proposal.

Prior to the October 2, 2012, DRB hearing, planning department staff had asked neighbor representatives to provide it with their concerns and how those concerns could be resolved. The neighbors submitted a proposed resolution approving the application with conditions. The proposed resolution set forth specific findings and the following conditions for approval:

a. The entire length of the building abutting and east of the World Savings Bank property shall be set back an additional 15 feet.
b. The entire length of the fifth floor of the northern side of the building facing Sunset Island No. 4 shall be set back an additional ten feet.
c. The entire length of the eastern portion of the building along Sunset Drive shall be stepped back as follows:
    i. First floor an additional ten feet (current proposed setback plus ten feet);

ii. Second and third floors an additional five feet (current proposed setback plus 15 feet);

iii. Fourth and fifth floors an additional five feet (current proposed setback plus 20 feet).

Exhibit H, Sunset Islands 3 &4 Proposed Resolution, October 2012.

Design review staff included the proposed resolution as an attachment to the October 2, 2012 staff report, noting that the neighboring residents continue to have serious concerns with the application. Exhibit I, 7, Staff Report, Design Review Board, October 2, 2012. In its analysis staff discussed one proposed finding regarding the comparison of the Palau project with the Sunset Harbor Townhomes development to its west but failed to address the other findings and conditions, including those relating to the Sunset Drive view corridor and the proposed setbacks. Id.

The applicant presented its revised plans to the DRB at the October 2, 2012 hearing. Design review staff determined that these plans adequately responded to their concerns and recommended approval of the application.

Notwithstanding the staff's position, the neighbors addressed the failure of the application to adequately address three of the DRB review criteria that focus on neighborhood compatibility:

a. Criteria 6 requires that the proposed structures must be compatible with adjacent structures and enhance the appearance

of surrounding properties. Yet neither the applicant nor the design review staff explained how this massive project is compatible with the abutting single-family properties and in what way it "enhanced" the appearance of these properties.

b. Criteria 7 states that the site plan layout must show efficient arrangement of land uses, especially the relationship with the surrounding neighborhood, impacts on adjacent buildings and lands, pedestrian sight lines and view corridors. But the plan for the project shows that existing site lines and view corridors are degraded or eliminated. The applicant did not address how it met this criterion. Design review staff also did not discuss or address and how the revised plans met this criterion in their written report[2] or in their presentation.

c. Criteria 12 says that the massing and orientation of structures must be sensitive to and compatible with the surrounding area and also create or maintain important view corridors. However, the massing and placement of the building fails to "create or maintain" important view corridors as it degrades the view corridor along Sunset Drive from 20th Street to the historic entrance to Sunset Islands 3 and 4.

Neighbors proposed a simple solution that would meet the three criteria at issue: Step back the proposed building along Sunset Drive an additional ten feet at the ground floor, an additional five feet on the second and third floors

[2] The staff report merely stated that the criterion is "satisfied". Exhibit I, 3.

and an additional five feet on the fourth and fifth floors. Exhibit H, 2, Proposed Resolution.

On October 8, 2012, the board rendered its order granting design review approval to the Palau pursuant to design review criteria set forth in section 118-251 of the Miami Beach Land Development Regulations and subject to conditions set forth therein.

On October 23, 2012, Sunset and another entity petitioned the DRB to rehear the matter pursuant to section 118-261.

On December 4, 2012, with only four of the seven members present, the DRB considered the petition for rehearing:

a. The DRB considered and denied a motion to continue the hearing by a 2-2 tie vote.
b. Without hearing argument or testimony and without any presentation of evidence the DRB considered and denied a motion to deny the petition for rehearing by a 2-2 tie vote.
c. There were no further motions. Therefore, the DRB counsel interpreted the DRB rules to determine that the last decision of the DRB shall stand and the request for rehearing be denied even though there was not a majority vote for such denial of the rehearing.

The DRB Order denying the rehearing was rendered on December 10, 2012, and Neighbors filed their request for city commission review of the

DRB decision pursuant to section 118-262. The city commission subsequently set the request for hearing on its March 13, 2013 agenda.

STANDARD OF REVIEW

This city commission's standard of review requires a determination of whether (1) the proceedings before the DRB afforded procedural due process; (2) the DRB observed the essential requirements of the law; and (3) the DRB's decision was supported by competent substantial evidence. Sec. 118-262(b), Miami Beach Land Development Regulations.

ARGUMENT

The DRB consideration of this matter was characterized by procedural errors. Its order fails to show that it correctly applied the DRB criteria and that its decision was supported by competent substantial evidence:

a. The failure to disclose *ex parte* communications pursuant to sections 2-511 through 513 of the Miami Beach Code of Ordinances is a failure to provide procedural due process and a failure of the DRB to observe the essential requirements of law in its evaluation of the Palau development application.

b. The applicant failed to meet its initial burden to show that it met the DRB review standards, warranting reversal of the DRB approval.
c. The failure of the DRB to evaluate the elimination and/or diminution of four view corridors pursuant to section 118-251(a)(12), is a failure to observe the essential requirements of law.
d. A staff report and presentation, which failed to examine or address the specific requirement for "the proposed structure" to have "an orientation and massing… which creates or maintains important view corridors" is not competent substantial evidence of compliance with that review criteria.
e. The DRB improperly delegated to design review staff its authority to evaluate and approve plans as meeting DRB review criteria.

DRB Members Failed to Disclose *Ex Parte* Communications as Required by Sections 2-511 through 2-513 of the City Code

Section 2-511 defines a prohibited *ex parte* communication as any written or oral communication with any member [of a city quasi-judicial board], which may directly or indirectly influence the disposition of an application, other than those made on the record during a public hearing.

Section 2-512(a) establishes a procedure "for all *ex parte* communication" with a board member of a quasi-judicial board, such as the Design Review Board. Section 2-512(a)(1) requires that "[t]he subject matter

of any *ex parte* communication, together with the identity of the person, group or entity with whom the communication took place, shall be disclosed and made a part of the record on file with the city prior to final action on the matter."

Section 2-512(a)(4) requires that "[a]ny *ex parte* communication or activity regarding a pending quasi-judicial matter and not physically made a part of the record on file with the city and available for public inspection prior to the public meeting on the matter shall be orally stated and disclosed on the record at the public meeting prior to the vote on the matter ..."

Based on information and belief, prior to the Design Review Board's hearings on the Palau matter (August 7, and October 2, 2012) representatives of the applicant Palau Sunset Harbor, LLC, met with and communicated with a member or members of the Design Review Board regarding the disposition of the Palau application. Design review staff acknowledges that such communication did indeed take place. And staff states that such meetings were disclosed by the chairman who stated at the August 7, 2012 meeting: "We have met -- most of us have met with your team to go over the project. We have heard everything everybody has to say here." Exhibit N, Transcript 150:14-19.

According to design review staff this general statement by the chair is a disclosure for all DRB members (despite lack of any legal authority for the chairman to speak for DRB members on their *ex parte* communications) and meets the code's requirement for "[t]he subject matter of any *ex parte* communication, together with the identity of the person, group or entity with whom the communication took place, shall be disclosed and made a part of the record." Exhibit L, 3, Staff Report, Design Review Board, December 4, 2012. This is a fundamental misreading of the code and law in that it assumes that the chairman has knowledge of each DRB member' *ex parte* communications. The chairman as a matter of law cannot speak for the members of the DRB regarding their *ex parte* communications. Such knowledge only can be gained either through *ex parte* discussions, discussions with staff, or discussions with fellow DRB members. Therefore, this staff interpretation[3] itself is an admission by the chair of a violation of the "Sunshine Law," which prohibits communication between two or more DRB members (including through third parties) on issues related to official DRB business. Section 286.011, Fla. Stats.

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[3] Palau accepts staff's interpretation that the chairman's statement is an accurate disclosure of the board members' *ex parte* communications. Exhibit M, 5, Palau Response to Petition for Rehearing.

Astoundingly, Palau erroneously claims that the incorporation of the August 7, hearing record at the October 2, 2012 DRB hearing applies to the disclosure of *ex parte* communications made *after* that August 7 meeting. This mocks any idea that this quasi-judicial process was fundamentally fair and that neighbors and other participants in this process had adequate notice of these post August 7 communications.

At best, the chairman's "disclosure" is limited to himself. At worst it is a violation of the Sunshine Law. In either event the chairman failed to disclose the subject matter of this communication, or the identity of the person, group or entity with which the communication took place. And no other board member made these required disclosures.

According to section 2-512(b) without such disclosure a presumption of prejudice arising from that/those *ex parte* communication(s) remains attached to that communication. These non-disclosed *ex parte* communications and the attached presumption of prejudice effectively impacted the neighbors' ability to obtain a fair hearing and denied them procedural due process. Furthermore, this direct violation of the city code and state law (if you accept staff's and Palau's position that the chairman spoke for the entire board when he made his "disclosure" statement) is a failure of the DRB to observe the essential requirements of law. (See also: *Jennings v. Dade County*, 589 So.2d 1337,

1339 (Fla. 3d DCA 1991). "Upon proof that a quasi-judicial officer received an ex parte contact, a presumption arises… that the contact was prejudicial. The aggrieved party will be entitled to a new and complete hearing before the commission [here, the DRB] unless the defendant proves that the communication was not prejudicial.").

Palau Failed to Meet Its Initial Burden to Show That It Met DRB Review Criteria Requiring That it Created or Maintains Important View Corridors

In the DRB review of the development proposal, the applicant has the initial burden to show that it has met the DRB approval requirements. *Irvine v. Duval County Planning Commission*, 495 So.2d 167 (Fla.1986). These requirements are set out in sections 118-251 through 264 of the Miami Beach Land Development Regulations. However, Palau failed to meet that burden by its failure to address the DRB review criteria and how it met each of those standards.

In particular, the applicant did not present any evidence that it complied with Section 118-251(a) (12). That criteria requires a showing that the orientation and massing of the proposed structure is (among other things) compatible with the surrounding area and that it "creates or maintains important view corridors." In its presentation the applicant failed to show that it complied with this requirement.

That failure warrants reversal of the DRB's approval of the application.

The DRB Failed to Evaluate the Elimination and/or Diminution of Four View Corridors as Required by Section 118-251(A) (12)

Section 118-251(a) requires the DRB to include the examination of architectural drawings for consistency with specific criteria with regard to the aesthetics, appearances, safety, and function of the proposed structure "and physical attributes of the project in relation to the site, adjacent structures and surrounding community."

Section 118-251(a) (12) states: "The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area **and which creates or maintains important view corridor(s)**." Emphasis added.

There is no indication in the record (including the transcripts or staff recommendations) or the final order of the Design Review Board to show that the proposed Palau development has an orientation and massing that "creates or maintains" important view corridors.

The orientation and massing of the Palau building eliminates four existing view corridors: (1) the West Avenue view corridor to the waterway that extends between the World Bank property and the Sunset Harbor Townhomes; (2) the view corridor to the waterway that extends between the

World Savings building and the existing incomplete structure to its east; (3) the view corridor to the waterway that extends between the existing incomplete structure and the Mark's Cleaners building to the east; and (4) the view corridor along Sunset Drive, from 20th Street to the historic Sunset Islands Bridge.

Furthermore, the orientation and massing of the proposed Palau building diminishes the existing view corridor along Sunset Drive, from 20th Street to the historic Sunset Islands Bridge.

The failure of the board to apply correctly section 118-251(a) (12), which requires the orientation and massing of the structures to "create or maintain important view corridors," is a failure to observe the essential requirements of law.

Both design review staff and Palau state that the DRB considered "view corridors" and required "that the northeast corner of the building be further setback in order to lessen the impact on the historic Sunset Island bridge." According to staff and Palau this change "fully satisfied the Board's request." Exhibit L, 2 December 4, 2012 Design Review Board Staff Report. But this DRB request was never characterized as preserving an important view corridor. It was a response to the building's impact on the historic bridge

itself, not the view corridor along Sunset Drive from 20th Street to the historic bridge.

In fact, there is no reference in the testimony presented by the staff or the developer at the October 2, 2012 hearing connecting this change in the plans to the creation or maintaining of important view corridors. There is no mention of the Sunset Drive view corridor by the staff or Palau representatives at either the August 7, or October 2, 2012 DRB hearings.

The Design Review Staff Report Fails to Address Specific Criteria Requiring a Building's Massing to "Create or Maintain Important View Corridors" and is Not Competent and Substantial Evidence of Compliance With That Review Criteria.

Competent substantial evidence is defined as that evidence relied upon to sustain the ultimate finding that is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957). Competent substantial evidence is not opinion unsubstantiated by facts. *City of Apopka v. Orange County*, 299 So.2d 657, 660 (Fla. 4th DCA 1974).

The failure of the applicant and city staff to present evidence to the board that the Palau development meets the specific requirements of section 118-251(a) (12) -- that the orientation and massing of the structures creates or maintains important view corridors -- is a failure to present competent

substantial evidence to the DRB to support its decision that the Palau development is consistent with that standard.

The October 2, 2012 staff report's statement that criteria 12 was "satisfied" is not competent substantial evidence of that assertion because it is opinion with no stated factual basis.

Any claim of deference to design review staff's interpretation of the design review criteria fails where the staff has not even addressed a key component of the criteria at issue. Note that the staff report of October 2 only states that the criteria is "satisfied." There is no reference or mention of "view corridor" in the staff report despite the clear language of the provision requiring that the building create or maintain important view corridors.

Deference to the staff's interpretation is not unlimited, and the city commission's role is not unquestioning. This is especially true where there is no mention of "view corridor" in the context of this criterion in the staff report or in the transcripts of the DRB hearings.

Furthermore, any deference claimed by staff or Palau is overcome by a showing that there has been a departure from the essential requirements of law. *Bell South Telecommunications v. Johnson*, 708 So.2d 594, 597 (Fla. 1998). Here the DRB failed to apply the correct law by failing to apply each of the elements of criteria 12 -- in particular the requirement to create or

maintain important view corridors. When the agency's construction clearly contradicts the unambiguous language of a rule, the construction is clearly erroneous and cannot stand. *Woodley v. Department of Health and Rehabilitative Services*, 505 So.2d 676,678 (Fla. 1st DCA 1987). See also, *Legal Environmental Assistance Foundation, Inc. v. Board of County Commissioners of Brevard County*, 642 So.2d 1081, 1083-1084 (Fla. 1994).

The DRB Improperly Delegated to Design Review Staff Its Authority to Evaluate and Approve Plans Pursuant to DRB Review Criteria.

The city commission has delegated certain authority to the DRB to approve design review applications subject to specific criteria set forth in section 118-251. This authority, spelled out in sections 118-251 through 265, does not allow the DRB to delegate to design review staff its responsibility and duty to make decisions based on those criteria. [4]

Yet that is what the DRB did when it approved the Palau development. According to the final order of the DRB, it approved the project subject to conditions, including:

---

[4] While section 118-260 authorizes the planning director to approve, approve with conditions or deny an application for eight specific issues all associated with minor public improvements, and rehabilitation, alterations and demolition of structures or portions of structures, it does not authorize the DRB to delegate its authority to approve an application (or any portion of an application) for new development such as the Palau project.

a. The **final design** and details, including materials, finishes, glazing, railings, and **any architectural projections and features, shall be** provided in a manner to be **reviewed and approved by staff**. Emphasis added. Exhibit I, 2, October 2, 2012 Design Review Board Staff Report.
b. The **final design** and details, including landscaping, walkways, fences, and architectural treatment of west elevation facing the former bank building **shall be** provided, in a manner to be **reviewed and approved by staff**. Emphasis added. Exhibit I, 2, October 2, 2012 Design Review Board Staff Report.
c. The **plaza** at the northeast corner of the site **shall be** further studied and **enlarged to improve its visibility and functionality**, and shall be added to the waterfront walkway easement for public access, **subject to the review and approval of staff**. Emphasis added. Exhibit I, 3, October 2, 2012 Design Review Board Staff Report..

While there is authority for the DRB to prescribe conditions of approval, there is no authority for the DRB to delegate its review and approval authority for new development to staff. Section 118-264, Land Development Regulations. Each of these conditions transforms design review decisions into staff-level determinations, without any authority in the land development regulations.

Florida law provides that a legislature may not delegate the power to

make law or the right to "exercise unrestricted discretion in applying the law." *Sims v. State,* 754 So.2d 657, 668 (2000). The DRB, without any legislative authority, gave staff the power to approve plans as a condition of DRB approval. That power is reserved to the DRB and cannot be delegated absent specific legislative authority. There is no such authority in the city code.

Therefore, the DRB order is invalid because the DRB review is incomplete. Any changes to the plans must be approved by the DRB and not staff. While staff may review these plans and make recommendations, it is the DRB that has the sole authority to approve new development for compliance with the design criteria. This final DRB review has not occurred. For this reason, this order must be quashed.

CONCLUSION

The neighbors request the city commission to (a) review the decision of the DRB and (b) reverse or in the alternative, remand this matter to the DRB with instructions that the DRB require additional setbacks along Sunset Drive as set forth herein .

Furthermore, neighbors seek a waiver and refund of the filing fees for the rehearing and appeal, both of which would not have been necessary, had the DRB process been proper to afford them a full and fair hearing.

Respectfully Submitted,

W. TUCKER GIBBS, ESQ.
Attorney for Neighbors

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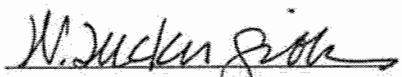

W. TUCKER GIBBS

RESOLUTION NO._____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, [GRANTING OR DENYING] AN APPEAL REQUEST FILED BY W. TUCKER GIBBS, P.A., ON BEHALF OF SUNSET ISLANDS 3 AND 4 PROPERTY OWNERS, INC. AND OLGA LENS, OF THE DESIGN REVIEW BOARD'S ORDER RELATIVE TO DRB FILE NO. 22889 FOR 1201-1237 20TH STREET, PALAU AT SUNSET HARBOR

WHEREAS, a process for review by the Mayor and City Commission of decisions rendered by the Design Review Board when requested by an applicant or any affected person has been established under Section 118-262 of the Miami Beach City Code; and

WHEREAS, Palau Sunset Harbor, LLC was the applicant for a proposed 5-story, mixed-use development project, which was approved by the Design Review Board on October 2, 2012 and the Order for such approval was rendered on October 8, 2012 (DRB File No. 22889, 1201-1237 20th Street – Palau at Sunset Harbour); and

WHEREAS, a request for a re-hearing of the DRB decision pertaining to File No. 22889, which was requested by MAC SH, LLC, and Sunset Islands 3 and 4 Property Owners, Inc, was denied by the Design Review Board on December 4, 2012 and the Order for such denial was rendered on December 10, 2012; and

WHEREAS, W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens, has requested a review of the Design Review Board order rendered on October 8, 2012, pertaining to the proposed 5-story, mixed-use development project, (DRB File No. 22889, 1201-1237 20th Street – Palau at Sunset Harbour).

WHEREAS, pursuant to Section 118-262, the review by the City Commission is not a "de novo" hearing; it must be based upon the record of the hearing before the Design Review Board. Furthermore, Section 118-262 (b) provides: In order to reverse, or remand for amendment, modification or rehearing any decision of the Design Review Board, the City Commission shall find that the Design Review Board did not do one of the following: 1)provide procedural due process; 2)observe essential requirements of law, or 3)base its decision upon substantial, competent evidence; and

WHEREAS, Section 118-262(a) requires the appellants to file with the City Clerk a written transcript of the hearing before the Design Review Board two weeks before the scheduled public hearing on the appeal; the transcript and associated material were transmitted to the Mayor and City Commission via LTC; and

WHEREAS, on January 16, 2013, the City Commission set the hearing for this appeal to be held on March 13, 2013, and the City Clerk was directed and did notice such hearing; and

WHEREAS, on March 13, 2013 the City Commission heard the parties, and pursuant to the argument given, the written materials submitted, and having been duly advised in the premises determined that the October 2, 2012 decision of the Design Review Board [did or did not] result in, respectively, 1) a denial of due process, 2) a departure from the essential requirements of law, nor 3) a decision that was not based upon substantial, competent evidence; and

WHEREAS, on March 13, 2013 a motion was made by the City Commission to [grant or deny] the appeal by W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens of the October 2, 2012 decision of the Design Review Board pertaining to DRB File No. 22889; and

WHEREAS, the motion to [affirm or reverse] the decision of the Design Review Board was made and seconded, and approved by a vote of _____.

NOW THEREFORE BE IT RESOLVED THAT the Mayor and City Commission hereby [grant or deny] the appeal filed by W. Tucker Gibbs, P.A., on behalf of Sunset Islands 3 and 4 Property Owners, Inc. and Olga Lens and [reverse or affirm] the October 2, 2012 decision of the Design Review Board pertaining to DRB File No. 22889.

PASSED and **ADOPTED** this _____ day of March, 2013.

ATTEST:

_____
MATTI HERRERA BOWER
MAYOR

_____
RAFAEL GRANADO, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____ 2/25/13
City Attorney Date

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MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY given that a public hearing will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, **on Wednesday, March 13, 2013, at 5:01 p.m.** Pursuant To Section 118-262 Of The City Code, For An Appeal Filed By W. Tucker Gibbs, P.A., On Behalf Of Sunset Islands 3 And 4 Property Owners, Inc. And Olga Lens, Of The Design Review Board's Order Relative To DRB File No. 22889 For 1201-1237 20th Street, Palau At Sunset Harbor

Inquiries may be directed to the Planning Department at (305) 673-7550.

Parties to the appeal are invited to appear at this hearing, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. The review shall be based on the record of the hearing before the Design Review Board, shall not be a de novo hearing, and no new, additional testimony shall be taken. This hearing may be opened and continued and under such circumstances additional legal notice would not be provided.

Rafael E. Granado, City Clerk
City of Miami Beach

Pursuant to Section 286.0105, Fla. Stat., the City hereby advises the public that: if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

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 us five days in advance at (305) 673-7411(voice) or TTY users may also call the Florida Relay Service at 711.

Ad # 763

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING THE SECOND AMENDMENT TO THE CAPITAL BUDGET FOR FISCAL YEAR 2012/13.

WHEREAS, the Miami Beach Capital Budget for FY 2012/13 was approved and appropriated via Resolution No. 2012-28017 on September 27, 2012; and

WHEREAS, the first amendment to the Miami Beach Capital Budget for FY 2012/13 was approved and appropriated via Resolution No. 2013-28116 on January 16, 2013; and

WHEREAS, it is recommended the FY 2012/13 Capital Budget be amended to add appropriations totaling $3,401,008 to three projects highlighted in "Attachment C – Projects"; and

WHEREAS, the proposed amendment to the FY 2012/13 Capital Budget are included in "Attachment A – Source of Funds" and "Attachment B – Program".

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, that the Mayor and City Commission hereby adopt the Second Amendment to the Capital Budget for Fiscal Year 2012/13 as shown in Attachment A (Source of Funds), Attachment B (Programs) and Attachment C (Projects).

PASSED AND ADOPTED this 13th day of March 2013.

_____
Matti Herrera Bower, Mayor

Attest:

_____
Rafael Granado, City Clerk

APPROVED AS TO FORM AND
LANGUAGE AND FOR EXECUTION

Raul Quiñones
for
City Attorney

3-7-13
Date

Agenda Item R7I
Date 3-13-13

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Condensed Title:

A Resolution Of The Mayor And The City Commission Of The City Of Miami Beach, Florida, Accepting The Recommendation Of The Neighborhoods And Community Affairs Committee Regarding The Relocation Of The Property Management Facility From The Sunset Harbour Neighborhood To The Public Works Operations Yard, Located At 451 Dade Boulevard.

Key Intended Outcomes Supported:

N/A

Item Summary/Recommendation:

At the Neighborhoods and Community Affairs Committee (NCAC) meeting on February 19, 2013, the administration presented an item requested by the Committee to re-evaluate the option of relocating Property Management to the Public Works Operations yard. During the discussion, a point was raise about the present underutilization of the 42nd Street Garage. It was suggested that if all personnel parked their private vehicles there and were transported between the sites, sufficient space would become available to enable such a building to be constructed without the expense of another garage.

There is a scheduling issue and a logistical issue associated with this potential relocation. The schedules for the Property Management Facility in Sunset Harbour, the Public Works Operations Yard Renovation, and the Flamingo Park Master Plan Improvements could all be delayed. Logistically, it remains to be determined how the yard could be reconfigured to operate with Property Management co-located there with Public Works Operations.

It is important to note that currently, the yard accommodates approximately 125 trucks and pieces of equipment. Furthermore, the 118 employees working in the PW yard do not have designated parking spaces but instead park informally throughout the facility.

Should it be determined to move the Property Management Facility to the Public Works Operations yard, there are temporary and permanent issues to be resolved. The construction phase of this type of project may take up to two years. The equipment stored in the yard, as well as the parking for employees, would need to be relocated during the construction.

In discussions with the project architect for the Public Works Operations yard, it is his opinion that a parking garage could be constructed to accommodate the required parking. It would likely need to accommodate Public Works Operations, Property Management, and the employees of Fire Station #2. In order to avoid building a parking structure in the yard, the Neighborhood/Community Affairs Committee recommended that evaluate the utilization of the 42nd St Parking Garage permanently, wherein 193 spaces would need to be reserved for employee parking. A shuttle bus would then be needed to transport the employees between the garage and the yard. During the NCAC discussions, the Legal Department was directed to investigate when the employees would be considered "on the clock" if they were shuttled to work.

It is not clear that the Property Management facility and accompanying equipment will fit on the site without a parking structure. A preliminary estimate of $20,000 has been provided for a complete space analysis.

SHOULD THE COMMISSION ACCEPT THE RECOMMENDATION OF THE NCAC TO RECONSIDER CONSTRUCTING A NEW PROPERTY MANAGEMENT FACILITY AT 1833 BAY ROAD, THE ADMINISTRATION WOULD RECOMMEND FURTHER SPACE EVALUATION IN THE ESTIMATED AMOUNT OF $20,000 WHICH WOULD BE FUNDED FROM THE PUBLIC WORKS YARD RENOVATION PROJECT FUNDING FOR DESIGN AND ENGINEERING

Advisory Board Recommendation: N/A

Financial Information:

Source of funds	#	Amount	Account
		$20,000	384-2313-061357

Financial Impact Summary: N/A

City Clerk's Office Legislative Tracking:

Saltrick x6565

Sign-Offs:

Department Director	Assistant City Manager	City Manager
JJF	JGG	KGB

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MIAMIBEACH

AGENDA ITEM R7K

DATE 3-13-13

MIAMIBEACH

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: Kathie Brooks, Interim City Manager

DATE: March 13, 2013

SUBJECT: **A RESOLUTION OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE NEIGHBORHOODS AND COMMUNITY AFFAIRS COMMITTEE REGARDING THE RELOCATION OF THE PROPERTY MANAGEMENT FACILITY FROM THE SUNSET HARBOUR NEIGHBORHOOD TO THE PUBLIC WORKS OPERATIONS YARD, LOCATED AT 451 DADE BOULEVARD.**

ADMINISTRATION RECOMMENDATION

Should the Commission wish to reconsider constructing a new Property Management facility at 1833 Bay Road, the Administration would recommend proceeding with further evaluation prior to completion of design and permitting of the facility at the Sunset Harbour site.

BACKGROUND

The relocation of the Property Management Facility to a site outside of Flamingo Park has been a longstanding goal of both the Flamingo neighborhood residents and the City.

In January 1997, as part of the master plan for Fire Station #2, there was a study done by STA Architectural Group that looked at putting both Property Management along with Public Works Operations on-site. This included the shared site access drive with the high school and the construction of a multi-leveled employee parking structure. The conclusion was that the most appropriate use for this site did not include the relocation of an additional department. In April 2007, STA eliminated consideration to move Fleet Management and Sanitation to the site after concluding that the site would not support the programmatic requirements of those departments.

On December 10, 2008, Resolution No. 2008-26969 was adopted whereby the City entered into an agreement to purchase air rights and certain portions of land for the development of a parking garage, with ground level retail space for approximately $13 million. The Resolution also directed the Administration to begin the relocation of the Property Management facility from Flamingo Park to 1833 Bay Road. This action was supported by letter from the Townhomes at Sunset Harbour Condominium Association.

On September 9, 2009, the Commission authorized a request for approval to issue a Request For Qualifications (RFQ) for the design, bid, award, and construction administration services for the Property Management Facility (to be located at 1833 Bay Road).

The program requirements for the Property Management yard and facility are as follows:

Building Requirements (16,102 square feet on the 1st floor and 7,423 square feet on the 2nd):

- Administrative offices
- Workshops (A/C – Refrigeration, Electrical, Plumbing, Carpentry, Painting)
- Parts inventory warehouse
- Record storage
- Material storage
- Locker rooms / restrooms

Yard Requirements:

- Outside storage area for playground equipment and other large items
- Lay-down area for small construction activities
- Loading area
- Oversized vehicle parking

The parking needs of the Division are proposed to be addressed in the Sunset Harbour Garage, located across the street at 1840 Bay Road. The garage will provide approximately 104 parking spaces for Property Management Division vehicles with a clearance height below 7'-2"; approximately half of this is for employee parking with the remaining half for equipment. Oversized vehicles are to be parked at the proposed Property Management Facility.

To date, $193,000 has been spent on architectural and engineering services with an additional $46,000 spent on pre-construction services. The current project construction budget is $3.8 million and an additional $600,000 is being requested as part of the second amendment to the FY2012/13 capital budget. The documents are 90 percent complete and are ready to be submitted to the Building Department for review and permitting. Presently, value-engineering discussions are in progress with the Construction Manager at Risk. Once the Guaranteed Maximum Price (GMP) has been negotiated, the GMP will be taken to Commission for approval. This is scheduled for June 2013. Thereafter, once the Notice to Proceed is given, the construction is anticipated to take approximately one year.

The City has hired LIVS Associates to perform architectural and engineering services associated with the conversion and renovation of the abandoned pump station located in the Public Works Operations yard, drainage improvements, and a site utilization study. (Public Works Yard aerial is attached.) To date, $59,000 has been spent on design services and the plans are permitted. The schedule was to advertise in April 2013 for a contractor to construct the improvements. The advertisement and procurement process takes approximately four months, and the construction is scheduled for six months. Therefore, it was anticipated that this work would be completed approximately one year from now.

ANALYSIS

On February 19, 2013 the Neighborhoods and Community Affairs Committee (NCAC) meeting heard a discussion regarding the notification of of Property Management Facility for its proposed location at 1833 Bay Road and recommend that the administration evaluate the option of relocating the facility to the Public Works Operations Yard, located at 451 Dade Boulevard, and to consider parking for employees at 42nd Street Garage. It was suggested that if all personnel parked their private vehicles there and were transported between the sites, sufficient space would become available to enable such a building to be constructed without the expense of another garage.

There is a scheduling issue and a logistical issue associated with this potential relocation. The schedules for the Property Management Facility in Sunset Harbour, the Public Works Operations Yard Renovation, and the Flamingo Park Master Plan Improvements could all be delayed. Logistically, it remains to be determined how the yard could operate with Property Management co-located there with Public Works Operations.

Scheduling Issues

If the decision on relocating the Property Management Facility to the yard is not be completed by June 2013, the schedule for the construction of the Property Management Facility in Sunset Harbour would be delayed as this is the anticipated date for taking the GMP to the Commission. Furthermore, should the decision be to move the facility to the Public Works yard and if it is determined that a garage is needed to do so, the delay would most likely be for several years. Recent garages built by the City have taken approximately 6 years from land acquisition to completion. Likewise, as the Public Works yard is ready for bid, the schedule would be affected beginning in April.

The anticipated date for the Flamingo Park Master Plan improvements to be completed is 2015, and a facility will not be ready for the Property Management Division in the yard by that time. Should the determination be made to move the Property Management Division of Public Works from its proposed location in Sunset Harbour, it will need to remain at its present location, or an alternative location would need to be identified until such time as the proposed facility is ready for occupancy.

Logistical Issues

Should it be determined to move the Property Management Facility to the Public Works Operations yard, there are temporary and permanent issues to be resolved. The construction phase of this type of project may take up to two years. During this time, the majority of the yard will need to be fenced off to segregate the construction area. It is important to note that currently, the yard accommodates approximately 125 trucks and pieces of equipment. Furthermore, the 118 employees working in the PW yard do not have designated parking spaces but instead park informally throughout the facility including double parking, switching out equipment for personal vehicles, etc. As part of the design for the Public Works Yard renovation project, the consultant has preliminary developed a parking layout design maximizing efficiency that could accommodate a maximum of approximately 140 vehicles including large trucks and service vehicles.

The trucks and pieces of equipment stored in the yard, as well as the parking for employees, would need to be relocated during the construction. The warehouse and operations offices, including the control room would need to stay accessible and operational.

In discussions with the project architect for the Public Works Operations yard, it is his opinion that a parking garage could be constructed in the open area of the 4.2 acre site to accommodate the required parking. It would likely need to accommodate Public Works Operations, Property Management, and the employees of Fire Station #2.

	No. of Spaces Required
Public Works Operations Trucks and Equipment	125
Public Works Operations employees	118
Property Management Vehicles	51
Property Management employees	53
Fire Department employees (approximate)	22
TOTAL	369

However, a height waiver would need to be granted by the City Commission as it is envisioned that the proposed building could require a height of approximately 60 feet which would include an elevated first floor to accommodate the oversized vehicles, three floors with conventional vehicular parking, and an upper floor to accommodate office space. Waivers may also be needed for not meeting the minimum requirements for property line set-backs and for open space.

In order to avoid building a parking structure in the yard, the NCAC suggested that it might be possible to utilize the 42nd St Parking Garage permanently, wherein 193 spaces would need to be reserved for employee parking. However, of this amount, the 118 Public Works employee vehicles would not free up a corresponding amount of space at the yard as explained above. A shuttle bus would then be needed to transport the employees between the garage and the yard. During the NCAC discussions, the Legal Department was directed to investigate when the employees would be considered "on the clock" if they were shuttled to work from the parking facility at 42nd Street to the yard or the fire station. This could become an issue with the Labor Unions and a possible subject of contract negotiations.

There are several other obstacles that must be taken into account to permit such construction. The 30 inch force main that traverses the site will need to be relocated. The foot print of the building would require removing the fence between Public Works Operations and the Fire Department and sharing the northern driveway to provide for a second means of ingress and or egress. Further, the yard encroaches into the Par 3 Golf Course, and this area is mandated to be returned, which reduces the available area.

All considerations being incorporated into the present analysis, it is not clear that the Property Management facility and accompanying equipment will fit on the site without a parking structure. A preliminary estimate of $20,000 has been provided by LIVS for a complete space analysis. This analysis would take approximately five weeks to complete once a purchase order is executed.

CONCLUSION

Should the commission accept the recommendation of the NCAC to reconsider constructing a new property management facility at 1833 bay road, the administration would recommend further space evaluation in the estimated amount of $20,000 which would be funded from the public works yard renovation project funding for design and engineering

Attachment
Aerial of the Public Works Yard

KGB/JGG/FV/JJF/RWS

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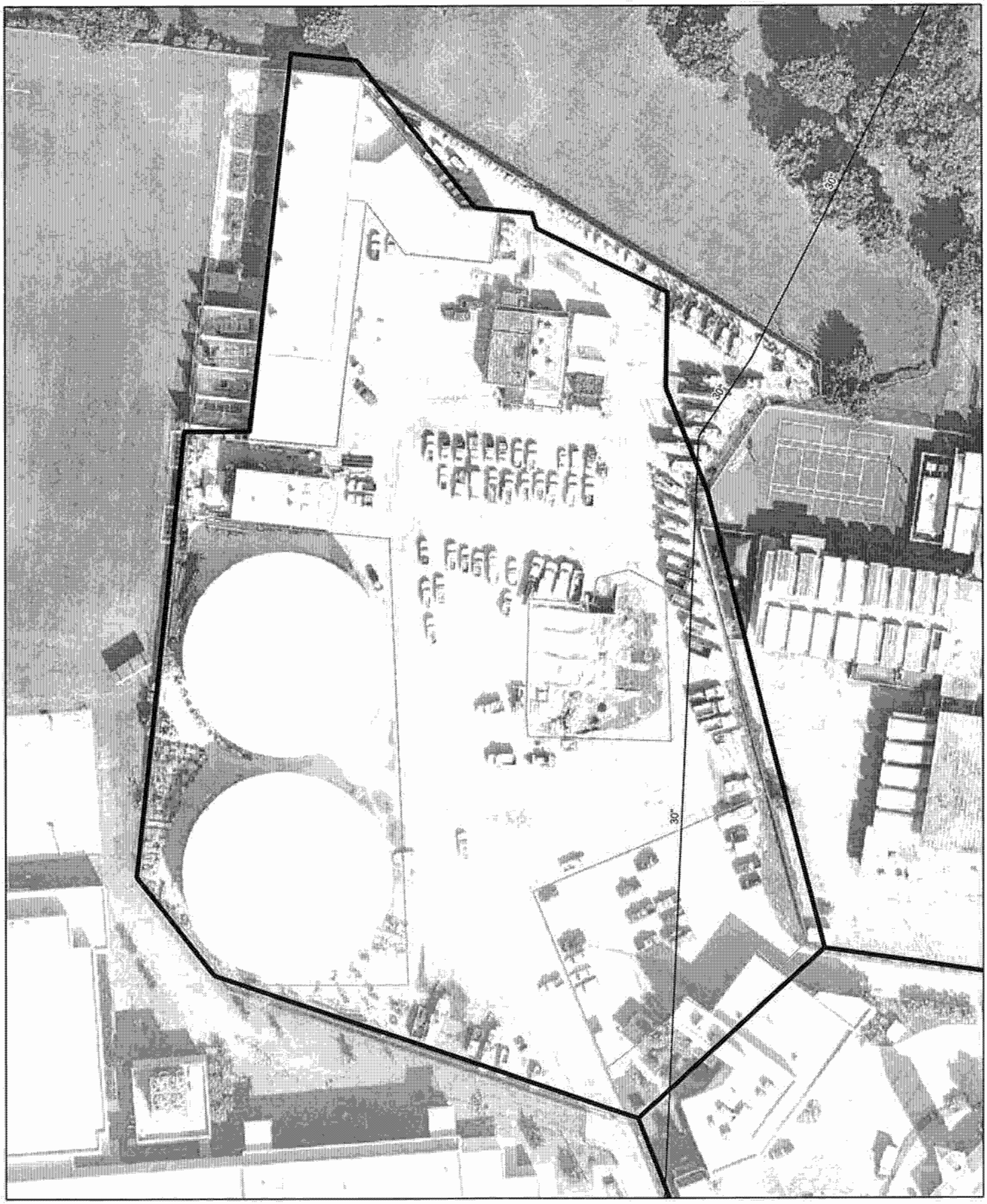
City of Miami Beach: Public Works Yard 2012



RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE NEIGHBORHOODS AND COMMUNITY AFFAIRS COMMITTEE, REGARDING THE RELOCATION OF THE PROPERTY MANAGEMENT FACILITY FROM THE SUNSET HARBOUR NEIGHBORHOOD TO THE PUBLIC WORKS OPERATIONS YARD, LOCATED AT 451 DADE BOULEVARD, AND THE RELOCATION OF PROPERTY MANAGEMENT VEHICLES AND EMPLOYEE VEHICLES FROM THE SUNSET HARBOUR GARAGE TO THE 42ND STREET GARAGE.

WHEREAS, on December 10, 2008, Resolution No. 2008-26969 was adopted whereby the City entered into an agreement to purchase air rights and certain portions of land for the development of a public parking garage, with ground level retail space, in the Sunset Harbour Neighborhood (the Sunset Harbour Garage); and

WHEREAS, the Sunset Harbour Garage, located at 1840 Bay Road, was proposed to provide approximately 104 parking spaces for the City's Property Management Division vehicles and employee vehicles; and

WHEREAS, Resolution No. 2008-26969 also included direction for the Administration to initiate the relocation of the Property Management Facility from Flamingo Park to the City owned property located at 1833 Bay Road (across the street from the Sunset Harbour Garage); and

WHEREAS, on September 9, 2009, the Commission authorized the issuance of a Request for Qualifications (RFQ) for Design, Bid, Award, and Construction Administration Services for the Property Management Facility; and

WHEREAS, on February 19, 2013, the Neighborhoods and Community Affairs Committee (NCAC) held a discussion regarding the relocation of the Property Management Facility from its proposed location at 1833 Bay Road, and also including the relocation of Property Management vehicles and employee vehicles from the Sunset Harbour Garage; and

WHEREAS, the NCAC recommend that the Administration evaluate the option of relocating the facility to the Public Works Operations Yard, located at 451 Dade Boulevard, and to consider the relocation of vehicles to the 42nd Street Garage.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the Neighborhoods and Community Affairs Committee, regarding the relocation of the Property Management facility from the Sunset Harbour neighborhood to the Public Works Operations Yard, located at 451 Dade Boulevard, and the relocation of Property Management vehicles and employee vehicles from the Sunset Harbour Garage to the 42nd Street Garage.

PASSED AND ADOPTED this 13th day of March, 2013.

ATTEST:

Matti Herrera Bower, Mayor

Rafael Granado, City Clerk

City Attorney Date

T:\AGENDA\2013\March 13\Property Management Facility Reso.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney Date 3/8/13

RESOLUTION NO._____

A RESOLUTION OF MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE FINANCE AND CITYWIDE PROJECTS COMMITTEE PERTAINING TO THAT CERTAIN RETAIL LEASE AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH, THE MIAMI BEACH REDEVELOPMENT AGENCY AND PENN 17, LLC (LESSEE), DATED SEPTEMBER 16, 2011, INVOLVING THE LEASE OF APPROXIMATELY 7,655 SQUARE FEET OF GROUND FLOOR RETAIL SPACE AT THE PENNSYLVANIA AVENUE GARAGE, 1661 PENNSYLVANIA AVENUE, MIAMI BEACH, FLORIDA; GRANTING THE LESSEE THE FOLLOWING AMENDED SCHEDULE OF RENT: 1) APPLYING ONE THIRD (1/3) OF THE LESSEE'S EXISTING SECURITY DEPOSIT, REPRESENTING $47,844, TOWARD BASE RENT OWED FOR THE MONTH OF NOVEMBER 2012; 2) DEFERRING $8,474 FOR COMMON AREA MAINTENANCE (CAM) FOR NOVEMBER 2012, AND BASE RENT, PLUS CAM, FOR DECEMBER 2012, IN THE TOTAL AMOUNT OF $64,792 (HEREINAFTER REFERRED TO AS THE BACK-DUE RENT); 3) APPROVING AN ABATEMENT OF FIFTY PERCENT (50%) OF THE BASE RENT AND CAM DUE FOR THE SIX (6) MONTH PERIOD COMMENCING JANUARY 13, 2013 THROUGH JULY 12, 2013; 4) DEFERRING FIFTY PERCENT (50%) OF THE BASE RENT AND CAM FOR THE SIX (6) MONTH PERIOD COMMENCING JULY 13, 2013 THROUGH JANUARY 12, 2014; AND, 5) PROVIDING FOR RE-PAYMENT BY LESSEE OF THE ONE THIRD SECURITY DEPOSIT AND RE-PAYMENT OF THE BACK-DUE RENT FOR NOVEMBER AND DECEMBER, 2012; ALL IN ACCORDANCE WITH THE PAYMENT SCHEDULE ATTACHED AS EXHIBIT "A" HERETO; FURTHER SETTING OF A PUBLIC HEARING BY THE CITY FOR APRIL 17, 2013, REGARDING LESSEE'S PROPOSAL TO ADD AN ENTERTAINMENT COMPONENT AS A NEW PROPOSED USE ON THE LEASE PREMISES (AND AS PART OF LESSEE'S PROPOSAL TO "RE-BRAND" AND RE-OPEN THE PREMISES), AND AS REQUIRED BY SECTION 142-362 OF THE CITY CODE.

WHEREAS, on April 13, 2011, the Mayor and City Commission adopted Resolution No. 2011-27647, approving a Lease Agreement (the "Lease"), between the City, the RDA (collectively, Lessor) and Penn 17 LLC. (Lessee), having a term of nine (9) years and 364 days, for use of approximately 7,807 square feet of ground level retail space at the Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida, for a restaurant (primary use), with ancillary uses for a bakery, a bar/café, and a book and gift shop (the "Premises"); and

WHEREAS, on February 8, 2012, the Mayor and City Commission adopted Resolution No. 2012- 0000, approving a First Amendment to the Lease, correcting the gross rentable retail space from 7,807 square feet to 7,655 square feet, as well as providing for a corresponding reduction in annual Base Rent from $585,525 to $574,125, and the cost of Common Area Maintenance (CAM), from $100,370 per year to $98,850 per year; and

WHEREAS, on June 6, 2012, the Mayor and City Commission adopted Resolution No. 2012-27925, approving a Second Amendment to the Lease; 1) granting the Lessee a one (1) month abatement of Base Rent and deferring an additional two (2) months' of Base Rent to be paid by the Lessee in lump sum or in thirty six (36) equal monthly installments together with regular payments of rent, taxes and Common Area Maintenance (CAM), commencing in the third year of the Lease Term and ending on the last day of the fifth year of the Lease Term; 2) increasing the size of the Lessee's Additional Area (Storage Space), as defined in section 3.11 of the Lease, to include an additional 284 square feet, currently designated for storage of the building's flood panels; 3) increasing the charge for Common Area Maintenance (CAM) from $98,850 per year to $101,690 to reflect the increase in size of the Additional Area; and 4) constructing, at the Lessee's sole cost and expense.

Agenda Item R7L
Date 3-13-13

a new replacement enclosure for the storage of flood panels, subject and pursuant to the satisfaction and approval of the Lessor; and

WHEREAS, the Leased Premises, which housed the Cooper Avenue Restaurant, have been closed since December 17, 2012; and

WHEREAS, the Lessee is now requesting rent relief in connection with certain operational complications resulting from the failure of its air conditioning system; and

WHEREAS, on December 20, 2012, and January 24, 2013, the City's Finance & Citywide Projects Committee (FCWPC) expressed support for providing some level of relief to the Lessee, subject to the inclusion of specific release language absolving the City of any liability regarding Lessee's cost overruns and claims related to loss of business; and

WHEREAS, the FCWPC recommended in favor of the following terms: 1) applying one-third (1/3) of the Lessee's existing Security Deposit, representing $47,844, towards Base Rent owed for the month of November, 2012; 2) deferring $8,474 for Common Area Maintenance (CAM) for November, 2012, and Base Rent, plus CAM, for December 2012, in the total amount of $64,792 (Back-Due Rent); 3) approving an abatement of 50% of the Base Rent and Common Area Maintenance (CAM) due for the six (6) month period commencing January 13, 2013 through July 12, 2013; 4) deferring fifty percent (50%) of the Base Rent and CAM for the six (6) month period, commencing July 13, 2013 through January 14, 2014 ("Deferral Period"), to be repaid by the Lessee in twenty four (24) equal monthly installments, commencing in the sixth year of the Lease Term and ending on the last day of the seventh year of the Lease Term; and 5) providing for re-payment by Lessee of the one-third security deposit in the amount of $47,844 and re-payment of the Back-Due Rent for November and December, 2012, in the amount of $64,791, to be repaid in twelve (12) equal monthly installments commencing in the fifth year of the Lease Term and ending on the last day of the fifth year of the Lease Term; all as further set forth in Exhibit "A" to this Resolution; and

WHEREAS, at the request of the FCWPC, the Lessee has provided the Administration with a preliminary business plan which proposes "re-branding" and re-opening of the Leased Premises by July 13, 2012; and

WHEREAS, Lessee proposes that the Premises, when re-opened, will house three (3) individual concepts: an anchor restaurant facing 17th Street, involving the Lessee's relocation of its Bond Street Restaurant (currently located at the Townhouse Hotel); a celebrity chef late-night fast casual eatery in the center section of the space; and (subject to City approval), a lounge/bar in the existing bar area; and

WHEREAS, since the lounge/bar component proposes an entertainment use, which is not a permitted use in the Civic and Convention Center (CCC) zoning district, a public hearing is required, under Section 142-362 of the City Code to approve such use.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the City's Finance and Citywide Projects Committee pertaining to a proposed Amendment No. 3 to that certain Retail Lease Agreement by and between the City of Miami Beach, the Miami Beach Redevelopment Agency (collectively, Lessor), and Penn 17, LLC. (Lessee), dated September 16, 2011, involving the lease of approximately 7,655 square feet of ground floor retail space at the Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida; recommending that, as part of said Amendment, the Mayor and City Commission approve the following amended schedule of rent: 1) applying one third (1/3) of the Lessee's security deposit in the amount of $47,844 towards back-due rent amounts owed for the months of November, 2012; 2) deferring $8,474 for Common Area Maintenance (CAM) for November, 2012, and Base Rent, plus CAM, for December, 2012, in the amount of $64,792 (Back-Due Rent); 3) approving an abatement of fifty percent (50%) of the Base Rent and Common Area Maintenance (CAM) for the six-month period commencing January 13 through July 12, 2013; 4) deferring of fifty

percent (50%) of the Base Rent and CAM for the six-month period commencing July 13 through January 12, 2014; and 5) providing for re-payment by Lessee of the one third security deposit and re-payment of the Back-Due Rent for November and December, 2012; all in accordance with the payment schedule attached as Exhibit "A" hereto; further setting of a public hearing by the City for April 17, 2013, regarding Lessee's proposal to add an entertainment component as a new proposed use on the Lease Premises (and as part of Lessee's proposal to "re-brand" and re-open the Premises), and as required by section 142-362 of the City Code.

PASSED AND ADOPTED THIS 13TH DAY OF MARCH, 2013.

_____
MAYOR

ATTEST:

_____
CITY CLERK

KGB:MS:AP:KOB

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney — Date 3-6-13

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

To: Kathie G. Brooks, Interim City Manager

From: Matti Herrera Bower, Mayor

Date: March 6, 2013

Re: **Commission Agenda Item**

Please place on the March 13th, 2013 Commission Agenda an item to select the city manager. This item should be provided a time immediately following the conclusion of the Consent Agenda.

Should you have any questions, please contact Gabrielle Redfern at Extension 6157.

Thank you.

MHB/fgr

Agenda Item R9I

Date 3-13-13

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RESOLUTION NO._____

A RESOLUTION OF THE CHAIRPERSON AND MEMBERS OF THE MIAMI BEACH REDEVELOPMENT AGENCY (RDA), ACCEPTING THE RECOMMENDATION OF THE CITY'S FINANCE AND CITYWIDE PROJECTS COMMITTEE PERTAINING TO A PROPOSED AMENDMENT NO. 3 TO THAT CERTAIN RETAIL LEASE AGREEMENT BY AND BETWEEN THE CITY OF MIAMI BEACH, THE MIAMI BEACH REDEVELOPMENT AGENCY, (COLLECTIVELY, LESSOR) AND PENN 17, LLC (LESSEE), DATED SEPTEMBER 16, 2011, INVOLVING THE LEASE OF APPROXIMATELY 7,655 SQUARE FEET OF GROUND FLOOR RETAIL SPACE AT THE PENNSYLVANIA AVENUE GARAGE, 1661 PENNSYLVANIA AVENUE, MIAMI BEACH, FLORIDA; RECOMMENDING THAT, AS PART OF SAID AMENDMENT, THE CHAIRPERSON AND MEMBERS OF THE RDA APPROVE THE FOLLOWING AMENDED SCHEDULE OF RENT: 1) APPLYING ONE THIRD (1/3) OF THE LESSEE'S EXISTING SECURITY DEPOSIT, REPRESENTING $47,844, TOWARD BASE RENT OWED FOR THE MONTH OF NOVEMBER 2012; 2) DEFERRING $8,474 FOR COMMON AREA MAINTENANCE (CAM) FOR NOVEMBER 2012, AND BASE RENT, PLUS CAM, FOR DECEMBER 2012, IN THE TOTAL AMOUNT OF $64,792 (HEREINAFTER REFERRED TO AS THE BACK-DUE RENT); 3) APPROVING AN ABATEMENT OF FIFTY PERCENT (50%) OF THE BASE RENT AND CAM DUE FOR THE SIX (6) MONTH PERIOD COMMENCING JANUARY 13, 2013 THROUGH JULY 12, 2013; 4) DEFERRING FIFTY PERCENT (50%) OF THE BASE RENT AND CAM FOR THE SIX (6) MONTH PERIOD COMMENCING JULY 13, 2013 THROUGH JANUARY 12, 2014; AND, 5) PROVIDING FOR RE-PAYMENT BY LESSEE OF THE ONE THIRD SECURITY DEPOSIT AND RE-PAYMENT OF THE BACK-DUE RENT FOR NOVEMBER AND DECEMBER, 2012; ALL IN ACCORDANCE WITH THE PAYMENT SCHEDULE ATTACHED AS EXHIBIT "A" HERETO; FURTHER, RATIFYING THE SETTING OF A PUBLIC HEARING BY THE CITY FOR APRIL 17, 2013, REGARDING LESSEE'S PROPOSAL TO ADD AN ENTERTAINMENT COMPONENT AS A NEW PROPOSED USE ON THE LEASE PREMISES (AND AS PART OF LESSEE'S PROPOSAL TO "RE-BRAND" AND RE-OPEN THE PREMISES), AND AS REQUIRED BY SECTION 142-362 OF THE CITY CODE.

WHEREAS, on April 13, 2011, the Mayor and City Commission adopted Resolution No. 2011-27647, approving a Lease Agreement (the "Lease"), between the City, the RDA (collectively, Lessor) and Penn 17 LLC. (Lessee), having a term of nine (9) years and 364 days, for use of approximately 7,807 square feet of ground level retail space at the Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida, for a restaurant (primary use), with ancillary uses for a bakery, a bar/café, and a book and gift shop (the "Premises"); and

WHEREAS, on February 8, 2012, the Mayor and City Commission adopted Resolution No. 2012- 0000, approving a First Amendment to the Lease, correcting the gross rentable retail space from 7,807 square feet to 7,655 square feet, as well as providing for a corresponding reduction in annual Base Rent from $585,525 to $574,125, and the cost of Common Area Maintenance (CAM), from $100,370 per year to $98,850 per year; and

WHEREAS, on June 6, 2012, the Mayor and City Commission adopted Resolution No. 2012-27925, approving a Second Amendment to the Lease; 1) granting the Lessee a one (1) month abatement of Base Rent and deferring an additional two (2) months' of Base Rent to be paid by the Lessee in lump sum or in thirty six (36) equal monthly installments together with regular payments of rent, taxes and Common Area Maintenance (CAM), commencing in the third year of the Lease Term and ending on the last day of the fifth year of the Lease Term; 2) increasing the size of the Lessee's Additional Area (Storage Space), as defined in section 3.11 of the Lease, to include an additional 284 square feet, currently designated for storage of the building's flood panels; 3) increasing the charge for Common Area Maintenance (CAM) from $98,850 per year to $101,690 to reflect the

Agenda Item 1A
Date 3-13-13

increase in size of the Additional Area; and 4) constructing, at the Lessee's sole cost and expense, a new replacement enclosure for the storage of flood panels, subject and pursuant to the satisfaction and approval of the Lessor; and

WHEREAS, the Leased Premises, which housed the Cooper Avenue Restaurant, have been closed since December 17, 2012; and

WHEREAS, the Lessee is now requesting rent relief in connection with certain operational complications resulting from the failure of its air conditioning system; and

WHEREAS, on December 20, 2012, and January 24, 2013, the City's Finance & Citywide Projects Committee (FCWPC) expressed support for providing some level of relief to the Lessee, subject to the inclusion of specific release language absolving the City of any liability regarding Lessee's cost overruns and claims related to loss of business; and,

WHEREAS, the FCWPC further recommended in favor of the following terms: 1) applying one-third (1/3) of the Lessee's existing Security Deposit, representing $47,844, towards Base Rent owed for the month of November, 2012; 2) deferring $8,474 for Common Area Maintenance (CAM) for November, 2012, and Base Rent, plus CAM, for December 2012, in the total amount of $64,792 (Back-Due Rent); 3) approving an abatement of 50% of the Base Rent and Common Area Maintenance (CAM) due for the six (6) month period commencing January 13, 2013 through July 12, 2013; 4) deferring fifty percent (50%) of the Base Rent and CAM for the six (6) month period, commencing July 13, 2013 through January 14, 2014 ("Deferral Period"), to be repaid by the Lessee in twenty four (24) equal monthly installments, commencing in the sixth year of the Lease Term and ending on the last day of the seventh year of the Lease Term; and 5) providing for re-payment by Lessee of the one-third security deposit in the amount of $47,844 and re-payment of the Back-Due Rent for November and December, 2012, in the amount of $64,791, to be repaid in twelve (12) equal monthly installments commencing in the fifth year of the Lease Term and ending on the last day of the fifth year of the Lease Term; all as further set forth in Exhibit "A" to this Resolution; and

WHEREAS, at the request of the FCWPC, the Lessee has provided the Administration with a preliminary business plan which proposes "re-branding" and re-opening of the Leased Premises, by July 13, 2012; and

WHEREAS, Lessee proposes that the Premises, when re-opened, will house three (3) individual concepts: an anchor restaurant facing 17th Street, involving the Lessee's relocation of its Bond Street Restaurant (currently located at the Townhouse Hotel); a celebrity chef late-night fast casual eatery in the center section of the space; and (subject to City approval), a lounge/bar in the existing bar area; and

WHEREAS, since the lounge/bar component proposes an entertainment use, which is not a permitted use in the Civic and Convention Center (CCC) zoning district, a public hearing is required, under Section 142-362 of the City Code to approve such use.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE CHAIRPERSON AND MEMBERS OF THE MIAMI BEACH REDEVELOPMENT AGENCY (RDA), that the Chairperson and Members of the RDA hereby accept the recommendation of the City's Finance and Citywide Projects Committee pertaining to a proposed Amendment No. 3 to that certain Retail Lease Agreement by and between the City of Miami Beach, the Miami Beach Redevelopment Agency (collectively, Lessor), and Penn 17, LLC. (Lessee), dated September 16, 2011, involving the lease of approximately 7,655 square feet of ground floor retail space at the Pennsylvania Avenue Garage, 1661 Pennsylvania Avenue, Miami Beach, Florida; recommending that, as part of said Amendment, the Chairperson and Members approve the following amended schedule of rent: 1) applying one third (1/3) of the Lessee's security deposit in the amount of $47,844 towards back-due rent amounts owed for the months of November, 2012; 2) deferring $8,474 for Common Area Maintenance (CAM) for November, 2012, and Base Rent, plus CAM, for December, 2012, in the amount of $64,792 (Back-Due Rent); 3) approving an abatement of fifty percent (50%) of the Base Rent and

Common Area Maintenance (CAM) for the six-month period commencing January 13 through July 12, 2013; 4) deferring of fifty percent (50%) of the Base Rent and CAM for the six-month period commencing July 13 through January 12, 2014; and 5) providing for re-payment by Lessee of the one third security deposit and re-payment of the Back-Due Rent for November and December, 2012; all in accordance with the payment schedule attached as Exhibit "A" hereto; further, ratifying the setting of a public hearing by the City for April 17, 2013, regarding Lessee's proposal to add an entertainment component as a new proposed use on the Lease Premises (and as part of Lessee's proposal to "re-brand" and re-open the Premises), and as required by section 142-362 of the City Code.

PASSED AND ADOPTED THIS 13TH DAY OF MARCH, 2013.

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CHAIRPERSON

ATTEST:

_____
SECRETARY

KGB:MS:AP:KOB

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APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

3-6-13

Redevelopment Agency General Counsel — Date

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