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July 22, 2013

Jose Smith, Esq.  
City Attorney  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

**Re: Letter dated July 10, 2013 from Jonah M. Wolfson**

Dear Mr. Smith:

As you are aware, our firm represents South Beach ACE in connection with the City's Request for Qualifications for the redevelopment of the Miami Beach Convention Center (the "RFQ") and UIA Management, LLC ("UIA"). In a letter dated July 10, 2013, Mr. Jonah M. Wolfson alleged that Robert S. Wennett, UIA President, "is a Lobbyist . . . for UIA" and that Mr. Wennett engaged in lobbying on three separate occasions without first registering with the City Clerk.

Assuming for the purposes of this letter only that Mr. Wennett did actually participate in the three public meetings that Mr. Wolfson references, then, simply put, the City Code expressly exempted Mr. Wennett from registering as a lobbyist in connection with all three occasions Mr. Wolfson lists. Furthermore, even though Mr. Wennett was exempt from the lobbyist registration requirement, Mr. Wennett did, in fact, register as a lobbyist with the City Clerk and was so registered during the time frames Mr. Wolfson mentions.

**THE CITY CODE EXPRESSLY EXEMPTS ROBERT S. WENNETT FROM REGISTERING AS A LOBBYIST.**

Section 2-483(a) of the Miami Beach Code provides:

- (a) Any public officer, employee or appointee or any person or entity in contractual privity with the city who only appears in his official capacity shall not be required as a lobbyist.

Mr. Wolfson alleges that on February 24, 2011 and February 8, 2012, Mr. Wennett lobbied members of the Finance and Citywide Projects Committee (the "FCWPC"), and the Mayor and City Commission concerning the "Lincoln Road Maintenance Agreement." These first two of the three occasions in Mr. Wolfson's allegations ignore the following facts:

1. The City of Miami Beach entered into a Development Agreement with UIA dated as of April 11, 2007 for the Pedestrian Mall on the 1100 Block of Lincoln Road (the "Development Agreement"). (See Exhibit "A")
2. The Development Agreement was approved by the City Commission on March 14, 2007 as evidenced in Resolution No. 2007-26494, and the Development Agreement was recorded in ORB 25537 at Page 1882 of the Public Records of Miami-Dade County, Florida.
3. On June 3, 2009, the City and UIA entered into a First Amendment to Development Agreement recorded in ORB 26911 at Page 3252 of the Public Records of Miami-Dade County, Florida. (See Exhibit "B")
4. In accordance with Section 52.6 of the Development Agreement, the City and UIA entered into the Management Agreement of the 1100 Block of Lincoln Road, dated as of January 11, 2010 (the "Lincoln Road Maintenance Agreement"). (See Exhibit "C")
5. Section 23 of the Lincoln Road Maintenance Agreement provided in relevant part that "[t]he City and Manager, by mutual written agreement, can expand the scope of this [Lincoln Road Maintenance] Agreement to cover management of the maintenance of other sections of Lincoln Road and/or the future Lincoln Park."

Based on these facts and Mr. Wolfson's allegations, Section 2-483(a) of the City Code, exempted Mr. Wennett from registering as a lobbyist. UIA has been in contractual privity with the City since 2007. The first two occasions listed in Mr. Wolfson's allegations came after 2007 and involved the very contract that UIA had and continues to have with the City since 2007.

Furthermore, even if the City Code did not have this clear and unambiguous exception to the lobbyist registration requirement, the Miami-Dade County Commission on Ethics and Public (the "Ethics Commission") has opined that no registration is required for activities, including seeking amendments and extensions, contemplated by a government contract. See, e.g., Advisory Opinion RQO 05-114. Again, the Development Agreement, which was executed in 2007, contemplated that the parties could enter into a Lincoln Road Maintenance Agreement, and the Lincoln Road Maintenance Agreement expressly contemplated that the service could be expanded to include additional property on Lincoln Road and/or Lincoln Park. The "lobbying activity" that Mr. Wolfson alleges to have occurred in the first two instances listed in his letter involved amendments contemplated in the Lincoln Road Maintenance Agreement.

**ALTHOUGH MR. WENNETT WAS NOT REQUIRED TO REGISTER AS A LOBBYIST, HE DID SO ANYWAY.**

Mr. Wolfson alleges that on February 24, 2011 and February 8, 2012, Mr. Wennett lobbied the FCWPC, the Mayor, and the Commission regarding the Lincoln Road Maintenance Agreement and, further, he alleges that Mr. Wennett did not register with the City Clerk to lobby. Although Mr. Wennett was exempt from registering with the City Clerk, Mr. Wennett did, in fact, register with the City Clerk.

In 2007, Mr. Wennett registered with the City Clerk and paid the required fees as evidenced by the signed Lobbyist Registration and the City of Miami Beach receipt attached as Exhibit "D". Through annual renewals and fee payments to the City Clerk, Mr. Wennett maintained his status as a registered lobbyist dating back to the 2007 registration, including during the time period relevant to Mr. Wolfson's allegations. (See Exhibit "E"). From time to time, Mr. Wolfson expanded the scope of his existing lobbyist registration. (See Exhibit "F").

Consequently, Mr. Wolfson's allegations that Mr. Wennett failed to register as a lobbyist with the City Clerk during the time frames listed is not true.

**MR. WENNETT WAS AN APPOINTEE TO THE CONVENTION CENTER EXPANSION AND ENHANCEMENT STEERING COMMITTEE AND EXEMPT FROM REGISTERING AS A LOBBYIST.**

Mr. Wolfson's third of three allegations involves Mr. Wennett's discussions with members of the FCWPC on February 24, 2011 regarding the Miami Beach Convention Center. Mr. Wolfson alleges that Mr. Wennett failed to register as a lobbyist with the City Clerk before the February 24, 2011 FCWPC meeting. As noted above, Mr. Wennett was registered with the City Clerk. However, this allegation, like the first two, is baseless in that the City Code expressly exempts Mr. Wennett as he was an appointee of the Miami Beach Convention Center Expansion and Enhancement Steering Committee.

Section 2-483(a) of the Miami Beach Code provides:

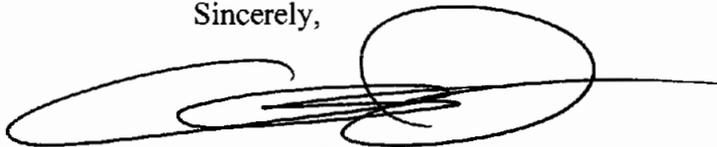
- (a) Any public officer, employee or appointee or any person or entity in contractual privity with the city who only appears in his official capacity shall not be required as a lobbyist.

On December 29, 2009, Miami Beach City Manager Jorge Gonzalez issued LTC #366-2009 noticing the creation of the Convention Center Expansion and Enhancement Steering Committee. (See Exhibit "G"). At the February 24, 2011 FCWPC meeting Mr. Wolfson references, a presentation was made to the FCWPC committee, a copy of which is attached as Exhibit "H." On page 31 of this presentation, Mr. Wennett's status as an appointee of the Miami Beach Convention Center Expansion and Enhancement Steering Committee is clearly listed. An

appointed member of the Miami Beach Convention Center Expansion and Enhancement Steering Committee, Mr. Wennett was exempt from registering as a lobbyist. It is also worth emphasizing that Mr. Wennett did not speak either as a member of or on behalf of any proposer to the RFQ, which was not even advertised until February 2012, one year after the meeting in question in Mr. Wolfson's letter.

Therefore, assuming for purposes of this letter that Mr. Wolfson's allegations are true as to Mr. Wennett's involvement in connection with the three public meetings that Mr. Wolfson references, Mr. Wennett was in full compliance with the Miami Beach City Code's lobbyist registration requirements for the reasons set forth above. Consequently, on behalf of Mr. Wennett, we respectfully request that you opine that there are no grounds to commence a debarment proceeding based on Mr. Wolfson's July 10, 2013 letter.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Albert E. Dotson, Jr.

AED

cc: Rafael Granado, Miami Beach City Clerk  
Jimmy Morales, Miami Beach City Manager  
Robert Wennett, President, UIA Management

MIAMI 3769994.3 76134/40305





CFN 2007R0379718  
 DR Bk 25537 Pgs 1882 - 1979; (98pgs)  
 RECORDED 04/16/2007 11:49:18  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by and  
 after recording return to:  
 Adam D. Lustig, Esq.  
 Bilzin Sumberg Baena Price & Axelrod LLP  
 200 South Biscayne Blvd., Suite 2500  
 Miami, Florida 33131-5340

(For Recorder's Use Only)

DEVELOPMENT AGREEMENT

Between

CITY OF MIAMI BEACH, FLORIDA

and

UIA MANAGEMENT, LLC

for

PEDESTRIAN MALL ON 1100 BLOCK OF LINCOLN ROAD

MIAMI 1287157.1 7713726901

98  
 834

## DEVELOPMENT AGREEMENT

11<sup>th</sup> THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the day of April, 2007, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida (the "City") and UIA MANAGEMENT, LLC, a Delaware limited liability company ("Developer").

### RECITALS:

A. The City is the owner of certain land located on Lincoln Road between Lenox Avenue and Alton Road, in Miami Beach, Florida, more particularly described in the attached Exhibit "A" (the "Project Site").

B. MBeach1, LLLP, a Delaware limited liability limited partnership, authorized to transact business in Florida as MBeach1, LLLP, Ltd. ("MBeach1") is an affiliate of Developer and is the owner of certain land adjacent to the Project Site, located at 1111 Lincoln Road, Miami Beach, Florida, and more particularly in the attached Exhibit "B-1" (the "MBeach1 Property").

C. MBeach3, LLC, a Delaware limited liability company ("MBeach3") is an affiliate of Developer and is the owner of certain land adjacent to the Project Site, located at 1665 Alton Road, Miami Beach, Florida, and more particularly described in the attached Exhibit "B-2" (the "MBeach3 Property", and together with the MBeach1 Property, the "1111 Lincoln Road Property").

D. The Design Review Board of the City approved the renovation of the existing office building located on the MBeach1 Property and the construction of a new two story mixed-use building on the MBeach3 Property and a new seven story mixed-use parking structure on the MBeach1 Property (collectively, the "1111 Lincoln Project"), pursuant to an Order dated February 7, 2006, under DRB File No. 19018 (the "DRB Order").

E. The Board of Adjustment of the City approved the 1111 Lincoln Project pursuant to an Order dated March 3, 2006, under File No. 3178 (the "BOA Order").

F. As a condition under each of the DRB Order and the BOA Order, the owner of the 1111 Lincoln Road Property was required to enter into discussions with the City to explore the possibility of closing the block of Lincoln Road between Lenox Avenue and Alton Road to vehicular traffic and extending the Lincoln Road pedestrian mall west to Alton Road.

G. The Historic Preservation Board of the City issued a certificate of appropriateness granting approval of the closing of the block of Lincoln Road between Lenox Avenue and Alton Road to vehicular traffic and the extension the Lincoln Road pedestrian mall west to Alton Road, pursuant to an Order dated November 14, 2006, under File No. 4161.

H. On November 26, 2006, the Finance and Citywide Projects Committee of the City approved Developer's conceptual plan for the closure of Lincoln Road from Lenox Avenue to Alton Road and the construction of a new pedestrian mall (the "Conceptual Plan").

I. On December 6, 2006, the City Commission approved the Conceptual Plan pursuant to the schematic and design development drawings in the form attached as Exhibit "C".

J. The City administration staff and Developer met several times to develop design concepts, construction schedules, costs estimates and terms and conditions for a negotiated development agreement between the City and Developer.

K. The Mayor of the City and the City Commission in Resolution No. 2007-26493, adopted after two duly noticed public hearings held pursuant to the Development Agreement Act, determined that it is in the best interest of the City to enter into this Agreement with Developer for the closure of Lincoln Road from Lenox Avenue to Alton Road and the construction of a new pedestrian mall.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the City and Developer agree as follows:

## ARTICLE 1

### DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

The above recitals are true and accurate and incorporated into this Agreement by reference.

Whenever the following terms or pronouns in place of them appear in this Agreement the intent and meaning shall be interpreted as follows:

1.1 Agreement: Agreement shall mean this Agreement and all addenda, exhibits, and amendments thereto between the City and the Developer for the Project, all as defined herein.

1.2 AIPP: AIPP means the City's Art in Public Places

1.3 BOA Order: BOA Order shall have the meaning set forth in the Recitals.

1.4 Board of Adjustment or BOA: the Board of Adjustment of the City created and established pursuant to the Land Development Regulations or any board or body which may succeed to its functions.

1.5 Change Order: A written document ordering a change in the Contract Sum or Contract Time or a material change in the Improvements.

1.6 City: The City shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139, which is a party hereto and/or for which this Agreement is to be performed. In all respects hereunder, City's performance is pursuant to City's position as the owner of the Property. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Agreement.

1.7 City Commission: City Commission shall mean the governing and legislative body of the City.

1.8 City Manager: City Manager shall mean the Chief Administrative Officer of the City.

1.9 Conceptual Plan: Conceptual Plan shall have the meaning set forth in the Recitals.

1.10 Construction Drawings: Construction Drawings shall have the meaning set forth in Section 3.3.

1.11 Construction Phase: The phase of services which constitutes Developer's administration of the construction of the Project and all activities necessary for the completion of the Project.

1.12 Construction Schedule: The schedule for the Project attached as Exhibit "E", as such schedule may be modified from time to time as a result of a Change Order.

1.13 Consultant: The registered architect, professional engineer, professional land surveyor, civil engineer, and/or registered landscape architect who has contracted with Developer to provide professional services for the design and construction of the Project, and who is further licensed by the State of Florida to provide said services. The primary consultant for this Project shall be the firm of Zyscovich, Inc., a professional services firm duly certified, licensed and registered as an architectural firm, located at 100 N. Biscayne Boulevard, 27th Floor, Miami, Florida 33132. When the term "Consultant" is used in this Agreement it shall be deemed to include Zyscovich, Inc. or Kimley-Horn and Associates, Inc. as the primary consultant, or such other consultant selected by Developer and approved by the City in its reasonable discretion.

Developer and City herein agree and acknowledge that Developer shall utilize Consultant's Plans and Specifications for the Project for Developer's construction of the Project. Developer further acknowledges and agrees that Consultant shall render as a Cost of the Work certain professional services pursuant to this Agreement, including but not limited to, additional A/E services, as required; Project construction site supervision and/or observations relative to the

Improvements; and the rendering of approvals, opinions, and decisions, all as more specifically set forth in the Contract Documents. Developer herein further agrees and shall require any Consultant services, including but not limited to those referenced in the preceding sentence, which will be required pursuant to the Contract Documents, to also be binding upon Developer's Contractor; to the extent as same are binding upon Developer as a party pursuant to this Agreement. It shall further be Developer's sole and absolute responsibility to assure such compliance by its Contractor.

Developer and the City agree and acknowledge that the City is an intended third party beneficiary in any contract entered into between Developer and Consultant. Developer shall therefore submit its final agreement with Consultant to the City, for its review and reasonable approval, prior to such agreement being executed by and between Developer and Consultant. Additionally, Developer herein represents to the City that its agreement with Consultant shall incorporate the terms and conditions of this Agreement and the Contract Documents, and Developer shall assume sole and absolute responsibility for binding Consultant to same as if Consultant were a party to this Agreement. The City has approved Developer's selection of Consultant to design the Improvements and the form of the architect's agreement attached as Exhibit "D".

1.14 Contract Administrator: The Director of the Public Works Department of the City, or his designee, shall be designated as the Contract Administrator for matters concerning this Agreement. The City agrees that a single person shall serve as Contract Administrator under this Agreement and the City shall notify Developer of the person who shall serve as Contract Administrator.

Developer herein agrees and shall require that any Contract Administrator services which will be required pursuant to the Contract Documents shall also be binding upon Contractor, to the same extent as same are binding upon Developer as a party pursuant to this Agreement.

1.15 Contract Documents: This Agreement, as approved by the Mayor and City Commission and executed by the Mayor and City Clerk; the AIA A111 Standard Form of Agreement Between Owner and Contractor, the Addendum to A111, the A201, General Conditions to the Contract of Construction, any approved Change Orders; the performance and payment bonds; the Plans and Specifications and any and all other construction documents; other construction documents such as CPM, Construction Schedule, and schedule of values; and any other documents the submission of which is required by this Agreement. When reference is made in the Contract Documents to publications, standards or codes issued by associations or societies, the intent shall be to specify the current or adopted edition of such publication or standard including revision and effect on the date of the contract execution notwithstanding any reference to a particular date.

1.16 Contractor (or General Contractor): Suffolk Construction Company, Inc., a Massachusetts corporation, its successors and assigns, or such other contractor selected by Developer, and approved by the City in its reasonable discretion, to perform the Improvements for the Project.

Developer and City agree and acknowledge that City is an intended third party beneficiary in any contract entered into between Developer and Contractor. The Developer shall therefore submit its final agreement with Contractor to the City, for its review and approval, prior to such agreement being executed by and between Developer and Contractor. Additionally, Developer herein represents to City that its agreement with Contractor shall incorporate the terms and conditions of this Agreement and the Contract Documents, and Developer shall assume sole and absolute responsibility for binding Contractor to same as if Contractor were a party to this Agreement. The City has approved Developer's selection of Contractor to construct the Improvements.

- 1.17 Contractor's Fee: Contractor's Fee shall have the meaning set forth in Section 8.6.
- 1.18 Contract Sum: The Contract Sum is the Cost of the Work plus the Developer's Fee.
- 1.19 Contract Time: Contract Time shall have the meaning set forth in Section 6.3.
- 1.20 Cost of the Work: Cost of the Work shall have the meaning set forth in Section 8.10.
- 1.21 CPM Schedule: CPM Schedule shall mean critical path method schedule.
- 1.22 Defective Work: Defective Work means Work that is not performed in accordance with the Contract Documents, in violation of code, installed in violation of the manufacturer's written instructions where the installation has caused new materials to be detrimentally affected where the life expectancy of the material installed is reduced, or otherwise installed in a non-workmanlike manner.
- 1.23 Department: Department shall have the meaning set forth in Section 52.4.
- 1.24 Design Architects: Raymond Jungles and Herzog and de Meuron.
- 1.25 Design Review Board or DRB: the Design Review Board of the City created and established pursuant to the Land Development Regulations, or any board or body which may succeed to its function.
- 1.26 Developer: UIA Management, LLC, a Delaware limited liability company, its successors and assigns, is the Developer selected to perform the Improvements pursuant to this Agreement, and is the person, firm or corporation liable for the acceptable performance of the Project.
- 1.27 Developer's Fee: Developer's Fee shall have the meaning set forth in Section 8.6.
- 1.28 Development Agreement Act: Development Agreement Act means the Florida Local Government Development Agreement Act, Section 163.3220, et. seq., Florida Statutes.
- 1.29 Development Approval: Development Approval means any zoning, rezoning, conditional use special exception, variance or subdivision approval, concurrency approval under

Section 163.3180, Florida Statutes, or any other official action of local government having the effect of approving development of land.

1.30 Documents: Documents shall have the meaning set forth in Section 35.1.

1.31 DRB Order: DRB Order shall have the meaning set forth in the Recitals.

1.32 Field Order: A written order issued by the Contract Administrator which orders minor changes in the Project but which does not involve a change in the total cost or time for performance.

1.33 Final Completion: The date certified by Consultant that all conditions of the permits and regulatory agencies have been met, all construction, including corrective and punch list Work, has been performed, pursuant to the Contract Documents, all administrative requirements of the Contract Documents have been completed, and City has received from Developer a release of all liens, consent of surety, release of claims by Developer, corrected as-built drawings, executed final adjusted Change Order(s), copies of pertinent test results, correspondence and other necessary documentation, including all warranties, guarantees, and operational manuals, if any.

1.34 Guaranteed Maximum Price: Guaranteed Maximum Price shall have the meaning set forth in Section 8.1.

1.35 Hazardous Materials: As used in this Agreement "Hazardous Materials" means any chemical, compound, material, substance or other matter that:

1.35.1 is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials;

1.35.2 is controlled, referred to, designated in or governed by any Hazardous Materials Laws;

1.35.3 gives rise to any reporting, notice or publication requirements under any Hazardous Materials Laws, or

1.35.4 is any other material or substance giving rise to any liability, responsibility or duty upon the City with respect to any third person under any Hazardous Materials Law.

1.36 Hazardous Materials Laws: As used in this Agreement, the term "Hazardous Materials' Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so called "common law"), including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801 et seq.), and the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§6901 et seq.), relating to hazardous substances, hazardous materials,

hazardous waste, toxic substances, environmental conditions on, under or about the Premises, soil and ground water conditions or other similar substances or conditions.

1.37 Historic Preservation Board or HPB: the Historic Preservation Board of the City created and established pursuant to the Land Development Regulations or any board or body which may succeed to its functions.

1.38 Improvements: The improvements to be constructed on the Project Site substantially in accordance with the schematic and design development drawings attached as Exhibit "C".

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

1.40 MBeach1: MBeach1 shall have the meaning set forth in the recitals.

1.41 MBeach3: MBeach3 shall have the meaning set forth in the recitals.

1.42 Notice(s) to Proceed: A written document(s) issued by the Contract Administrator informing the Developer to officially begin the Project.

1.43 Plans and/or Specifications: The official graphic and descriptive representations of this Project, which are a part of the Contract Documents.

1.44 Project: The Project means the Work described in the Contract Documents and generally consists of the closure of a portion of Lincoln Road between Lenox Avenue and Alton Road to vehicular traffic, and the construction of a new design for the extension of the Lincoln Road pedestrian mall west to Alton Road. The vehicular access that exists between Alton Road and Lenox Avenue will be removed and replaced with a new pedestrian plaza, extending the pedestrian portion of Lincoln Road further to the west. The new plaza design will be organic in nature, characterized by, among other things, grouping mature cypress trees.

1.45 Project Site: Project Site shall have the meaning set forth in the Recitals.

1.46 Shop Drawings: Drawings, diagrams and schedules (excluding, however, the CPM Schedule), and other data specially prepared by Contractor or its subcontractors, sub-subcontractors, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.47 Substantial Completion: Subject to the requirements of Article 42, the dates certified by the Consultant that all conditions of the permits and regulatory agencies have been met for the City's intended use of each portion of the Project, and all construction has been performed therein in accordance with this Agreement and the Contract Documents so City can fully, as opposed to partially, occupy or utilize each portion of the Project for its intended purpose. At a minimum, a Certificate of Substantial Completion is one of the requirements for Substantial Completion.

1.48 Surety: The surety company or individual which is bound by the performance bond and payment bonds with and for Developer and Contractor who is primarily liable and which surety company or individual is responsible for Contractor's acceptable performance of the Work under the Contract Documents and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

1.49 Utilities: The public or private systems on the Project site for rendering electrical power, light, heat, gas, water, communication, sewage systems, and the like.

1.50 Work: The construction required by the Contract Documents, as permitted, including all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

## ARTICLE 2

### INTENTION OF AGREEMENT

It is the intent of the Contract Documents to describe a functionally complete Project to be constructed by Developer in accordance with said Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the standard specification, manual, code, laws or regulations in effect at the time of the completion of design. Applicable laws or codes that may be changed after a permit is issued may result in an increase in the Contract Time or Contract Sum should additional Work be required on behalf of the Developer.

## ARTICLE 3

### CONSTRUCTION

3.1 Consistency with City's Comprehensive Plan and Zoning Regulations. The City has adopted and implemented the Comprehensive Plan. The City hereby finds and declares that the provisions of this Agreement dealing with the Project and the Project Site are consistent with the City's adopted Comprehensive Plan and Land Development Regulations, subject to all applicable requirements, permits and approvals.

3.2 Historic Preservation Board Approval.

3.2.1 The City has heretofore submitted an application to the Historic Preservation Board for its review of the Project, and the Historic Preservation Board has approved the Project.

3.2.2 If at any time in the future it shall be necessary in connection with the construction, reconstruction or renovation of the Project to apply to the Historic Preservation

Board for its review or approval of any changes or modifications to the Premises, the City shall be solely responsible for making such application.

3.3 Design of the Project. Developer shall be solely responsible for overseeing and directing Consultant and Design Architects in the design of the Project, and such design shall be substantially in accordance with the Conceptual Plan. City's prior approval of the Plans and Specifications for the Improvements, in its proprietary and not regulatory capacity, shall not be unreasonably withheld, conditioned or delayed, and shall be required for the following: (a) schematics, (b) design development drawings, (c) 50% construction drawings, and (d) 100% construction drawings. The schematics for the Improvements are complete and have been approved by City. The design development drawings have been conceptually approved by City and are attached as **Exhibit "C"**. City shall have fifteen (15) business days after receipt of 50% construction drawings and fifteen (15) business days after receipt of 100% construction drawings (collectively, the "Construction Drawings") to review and provide Developer with written notice of its approval or disapproval of the Construction Drawings. If the City fails to provide written notice to Developer of its approval or disapproval of the Construction Drawings within such time periods, the City shall be deemed to have approved them. If the City provides Developer with timely disapproval of the Construction Drawings, Developer shall cause Consultant to revise the Construction Drawings in accordance with the City's reasonable objections and submit revised Construction Drawings to the City to address the City's reasonable objections. City shall have the same time period to review and approve or disapprove the revised Construction Drawings as set forth above with respect to the original Construction Drawings. In the event the City disapproves the Construction Drawings, the design phase and the construction phase set forth in the Construction Schedule and the Contract Time shall be extended by one day for each day from Developer's receipt of the City's disapproval notice to the date of the City's approval of the revised Construction Drawings.

3.4 Public Facilities and Concurrency. As the Project involves the creation of a public pedestrian open space on the existing right of way of Lincoln Road between Lenox Avenue and Alton Road and there is no enclosed space being constructed, there are no concurrency impacts on the Project. City and Developer anticipate that the Project will be served by those roadway transportation facilities currently in existence as provided by State, County and local roadways. It is also anticipated that the Project will be served by public transportation facilities currently in existence, including those provided by Miami-Dade County, the City, and other governmental entities as may presently operate public transportation services within the City. Sanitary sewer, solid waste, drainage, and potable water services for the proposed Project are expected to be those services currently in existence and owned or operated by Miami-Dade County, the Miami-Dade County Water and Sewer Department, and the City. The Project will also be serviced by any and all public facilities, as such are defined in Section 163.3221(12), Florida Statutes (1997), as such are described in the City's Comprehensive Plan, specifically including, but not limited to, those facilities described in the Infrastructure Element and Capital Improvements Element therein, a copy of which is available for public inspection in the offices of the Planning, Design and Historic Preservation Department of the City.

3.5 Intentionally Deleted.

3.6 Required Development Permits.

3.6.1 Developer shall, on behalf of the City, obtain the Development Approvals listed in the attached Exhibit "F", if applicable. Where necessary or desirable the City shall act as the applicant for the Development Approvals. Developer shall be responsible for processing all applications for the Development Approvals. Contract Administrator shall reasonably assist Developer in facilitating the prompt issuance of the Development Approvals. In the event Developer has provided the City with all documentation necessary to obtain the Development Approvals and the City fails to issue all of the Development Approvals (other than the Certificate of Completion) prior to the end of the permit phase set forth in the Construction Schedule, the permit phase and the Contract Time shall be extended one day for each day from the end of the permit phase to the issuance of all of the Development Approvals (other than the Certificate of Completion). All fees due in connection with the Development Approvals shall either be (a) paid by the City in addition to the Cost of the Work and not as part of the Contract Sum, or (b) waived.

3.6.2 There are no reservations and/or dedications of land for public purposes that are proposed under the terms of this Agreement, except as expressly set forth in Section 52.3.

3.6.3 The failure of this Agreement to address a particular permit, condition, term or restriction shall not relieve Developer of the necessity of complying with the law governing said permitting requirements, conditions, term or restriction.

3.7 Proposed Permitted Development. The proposed permitted development on the Project Site is shown on the attached Exhibit "C".

#### ARTICLE 4

##### CONTRACT DOCUMENTS

4.1 The Contract Documents shall be followed as to Work, material, and dimensions except when the Contract Administrator may authorize, in his reasonable discretion, in writing, an exception. Developer shall be entitled to a Change Order for exceptions that result in a time delay or extra cost.

4.2 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be decided upon by the Consultant with notice to Contract Administrator. Developer shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Consultant with notice to Contract Administrator.

4.3 Developer shall maintain four (4) copies of the Contract Documents; two (2) of which shall be preserved and always kept accessible at the site to the Contract Administrator or his/her authorized representatives.

4.4 This Agreement incorporates by reference the Contract Documents defined in Section 1.15. In the event of a conflict in the Contract Documents, the documents for the Project shall have the following order of precedence, beginning with the most important:

1. Change Orders
2. This Agreement and all addenda, exhibits and amendments thereto
3. The Addendum to A111 between Developer and Contractor
4. The AIA A111 Standard Form of Agreement between Owner and Contractor
5. The Plans and Specifications (Approved and Permitted)
6. Other Contract Documents

## ARTICLE 5

### SCOPE OF WORK

5.1 The scope of the Work for the Project is the Work described in the Contract Documents and generally consists of the closure of a portion of Lincoln Road between Lenox Avenue and Alton Road to vehicular traffic, and the construction of a new design for the extension of the Lincoln Road pedestrian mall west to Alton Road. The vehicular access that exists between Alton Road and Lenox Avenue will be removed and replaced with a new pedestrian plaza, extending the pedestrian portion of Lincoln Road further to the west. The new plaza design will be organic in nature, characterized by, among other things, grouping mature cypress trees.

5.2 Contract Administrator will provide, at a minimum, the following services:

5.2.1 Contract Administrator shall inspect the Work.

5.2.2 Contract Administrator shall have the authority to reject Work that does not in his reasonable opinion conform to the Contract Documents.

5.2.3 Contract Administrator shall monitor the overall control and expediting of the construction of the Work to facilitate completion of the Work within the approved time frame and within the Contract Sum.

5.2.4 Contract Administrator shall develop a punch list or lists of items requiring corrective action.

5.2.5 Contract Administrator shall attend weekly progress meetings with the Developer, Consultant and Contractor to review Work progress and resolve issues relating to the prosecution of the Work.

5.2.6 Contract Administrator shall instruct Developer to commence the Work by written instructions in the form of a Notice to Proceed issued by Contract Administrator.

5.2.7 Contract Administrator shall initiate or approve Change Orders in accordance with the terms of this Agreement.

5.2.8 Contract Administrator shall review and approve applications for payment and submit same to the City for payment.

5.2.9 Contract Administrator shall approve or issue Field Orders.

5.2.10 Contract Administrator shall review Shop Drawings.

5.3 Consultant will provide, at a minimum, the following services:

5.3.1 Consultant shall perform all of the architectural and engineering services necessary to describe, detail and design the Project in accordance with the Contract Documents.

5.3.2 Consultant shall design the Project so as to comply with applicable codes and regulations.

5.3.3 Consultant shall prepare the Plans and Specifications, as well as review and approve (or take other appropriate action upon) submittals such as Shop Drawings, product data and samples.

5.3.4 Consultant shall prepare construction change directives, if necessary, and authorize minor changes in the construction Work as provided in the Contract Documents.

5.3.5 Consultant shall receive and review for compliance with the Contract Documents all written warranties and related documents required hereby to be assembled upon Substantial Completion and issue certificates for payment for Work performed in compliance with the requirements of the Contract Documents.

5.3.6 Consultant shall review Shop Drawing submittals prepared by the Contractor and its subcontractors and return to Contract Administrator for routing.

5.3.7 Consultant shall review and/or respond to Contractor and/or City inquiries regarding the intent of the Contract Documents with respect to written requests for information, requests for Change Orders, and other communications between the Developer and the City requiring Consultant review.

5.3.8 Consultant shall prepare Contract Documents clarifications to address clarifications regarding the intent of the Contract Documents.

5.3.9 Consultant shall perform specialty site visits by various design disciplines upon request in the prosecution of the Work.

5.3.10 Consultant shall assist Contract Administrator with the development of a punch list or list of items requiring corrective action.

5.3.11 Consultant shall attend weekly progress meetings with the Developer, Contract Administrator, and Contractor to review Work progress and resolve issues relating to the prosecution of the Work.

5.3.12 Consultant shall have the authority to order or approve deviations from the Contract Documents, pursuant to approved Change Orders, so long as such deviations do not

cause the Cost of the Work to exceed the Guaranteed Maximum Price. In the event any such deviations are sought, prior written approval from the Contract Administrator must be obtained.

## ARTICLE 6

### CONTRACT TIME

6.1 Time is of the essence for Developer's and Contractor's performance of the Work pursuant to the Contract Documents. Developer agrees to complete the Work in accordance with the Construction Schedule and to achieve Substantial Completion of the Work, in accordance with the Contract Documents, and within the Contract Time, provided the City responds timely to requests for information, Shop Drawings, and/or decisions and approvals required under this Agreement.

6.2 Developer shall be instructed to commence the Work by written instructions in the form of a Notice to Proceed issued by the Contract Administrator.

6.3 The Work shall be Substantially Completed within thirty (30) months after the issuance of the Notice to Proceed, as may be extended as a result of force majeure events, mutual agreement of the City and Developer, or by City caused delays. The Work shall be ready for final payment in accordance with Article 10, within forty-five (45) days from the date certified by Consultant as the date of Substantial Completion (the "Contract Time").

## ARTICLE 7

### DEVELOPER'S RESPONSIBILITY

7.1 The parties acknowledge and agree that the Developer and Contractor will be responsible for the construction of the Project in accordance with the terms of this Agreement.

7.2 It is Developer's responsibility to cause Contractor to have and maintain appropriate certificate(s) of competency, valid for the Work to be performed and for all persons working on the Project for whom a certificate of competency is required.

7.3 Until Final Completion, Developer shall be fully responsible for the performance of its agents and employees, Contractor and Consultant under the terms of this Agreement. Upon Final Completion, (i) City shall hold only Contractor, Consultant and the other subcontractors and subconsultants (but not Developer) responsible for the performance of this Agreement and any warranties arising therefrom, (ii) City shall unconditionally and irrevocably release, satisfy and forever discharge Developer and all of its officers, shareholders, partners, directors, members, managers, employees or agents of Developer, including, without limitation, Robert S. Wennett, Urban Investments Advisors, LLC, a Delaware limited liability company, and Wellspring Investments Management I, LLC, a Delaware limited liability company, of and from any and all actions, causes of action, claims, demands, losses, costs and expenses, whether direct, contingent or consequential, liquidated or unliquidated, at law or in equity, relating to the design and construction of the Project, and (iii) provided full payment has been received by Developer, Developer shall unconditionally and irrevocably release, satisfy and forever discharge the City and any employees or agents of the City of and from any and all actions, causes of action,

claims, demands, losses, costs and expenses, whether direct, contingent or consequential, liquidated or unliquidated, at law or in equity, relating to the Project, including, but not limited to the design and construction of the Project.

7.4 Developer agrees to bind specifically Contractor and Consultant, and require that Contractor and Consultant bind any and all of their respective subcontractors and subconsultants, to the applicable terms and conditions of this Agreement and the Contract Documents for the benefit of City.

7.5 Developer shall at all times enforce strict discipline and good order among its Contractor, employees and consultants, and require Contractor to enforce strict discipline and good order among its subcontractors at the Project Site and shall not employ on the Project any unfit person or anyone not skilled in the Work assigned to him or her.

7.6 Developer shall keep itself fully informed of, and shall take into account and comply with, all applicable state and national laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the Project, or the materials used or employed in the Project, or in any way affecting the conduct of the Project, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same and of all provisions required by law to be made a part of this Agreement, all of which provisions are hereby incorporated by reference and made a part hereof. If any specification or contract for this Project is knowingly in violation of any such law, ordinance, regulation, order or decree, Developer shall forthwith report the same to the Contract Administrator in writing. Developer shall cause all of its agents and employees and Contractor and Consultant to observe and comply with all applicable laws, ordinances, regulations, orders and decrees.

7.7 In the event of a change after the date of this Agreement in any national, State, local or municipal laws, codes, ordinances and regulations which in any manner affects the Project which becomes known to the Developer or the City, Developer or the City (as applicable) shall advise the Consultant and Contract Administrator, in writing, and the Consultant and/or Contract Administrator, may initiate a Change Order, the purpose of which shall be to bring the Project into compliance with all laws, ordinances, codes and regulations as amended or enacted.

7.8 Developer shall pay as a Cost of the Work all applicable sales, consumer, use and other taxes required by law in effect at the execution of the Agreement. Developer is responsible for reviewing the pertinent State statutes involving State taxes and complying with all requirements. Notwithstanding the foregoing, the City shall provide a City issued debit card to Contractor in order for Contractor to purchase materials for the Project on behalf of the City without the payment of sales tax.

7.9 Developer shall contract the services of a licensed general contractor (Contractor) to execute the Work.

7.10 Developer shall submit a certified, monthly application for payment prepared by Contractor for review/approval by the Consultant and Contract Administrator.

7.11 Developer shall provide a location for, attend and participate in weekly construction progress meetings with the Contract Administrator, Consultant and Contractor.

7.12 Developer hereby agrees to complete the Project described by the Contract Documents, in accordance with the requirements and provisions of the Contract Documents.

7.13 Developer agrees to meet with Contract Administrator or his designee at reasonable times and with reasonable notice.

7.14 Prior to the final completion of construction services under this Agreement, there shall be established a record set of plans and specifications, on bond paper and on CD Rom, noncompressed, formatted in the latest version of AutoCAD, which shall bear the approval of Developer and Contract Administrator. Such approval shall be indicated by the written signature of both parties. In addition, prior to the commencement of construction services under this Agreement, Developer shall submit to the Contract Administrator a CPM Schedule for the planning and execution of the Construction Phase of the Project.

7.15 Developer will provide overall technical and management services to assist the City in maintaining schedules, establishing budgets, controlling costs, achieving quality and minimizing operational disruptions.

7.16 If at any time the Developer observes or becomes aware of any fault or defect in the Project or of any nonconformance with the Contract Documents, Developer will notify the Consultant and Contract Administrator, and will direct that all reasonable steps be taken to correct such fault, defect or nonconformance.

7.17 During the course of the Work, Developer shall also be responsible for causing Contractor to provide quality assurance of the construction Work in accordance with the Contract Documents.

7.18 Developer shall coordinate all phases of the Work to facilitate completion of the Project in accordance with the established time period and estimate of construction cost.

## ARTICLE 8

### THE CONTRACT SUM

8.1 The Contract Sum in the amount of \$5,876,710 is the maximum amount, subject to additions or deletions by approved Change Orders in accordance with this Agreement, agreed to by the City and Developer under this Agreement to complete the Work in accordance with the Contract Documents (the "Guaranteed Maximum Price"). Developer will comply with all requirements of funding sources provided by City for construction of the Improvements. The City confirms that the City Commission has approved the funding of the Contract Sum and that City Commission approval is not required for any approved Change Orders under this Agreement, so long as the Cost of the Work does not exceed the Guaranteed Maximum Price.

8.2 Developer shall enter into a Cost Plus with a Guaranteed Maximum Price contract with Contractor. At 50% Construction Drawings, Developer shall submit the costs of the Improvements for bids. If the bids for the proposed design of the Project exceed the Contract Sum, less the Developer's Fee, then Developer shall cause Consultant and Contractor to value engineer the Project (at their sole cost and at no cost to the City) to bring it back into budget, so

that the expected cost of the Improvements will not exceed the Contract Sum, less the Developer's Fee. Thereafter, Developer shall submit the value engineered Project to the City for its reasonable approval. The City shall not be deemed to have unreasonably withheld its approval if the value engineered Project reflects material changes to the Improvements from those described in the Conceptual Plan; provided however that the parties agree that the elimination of one of the water features and/or the substitution of an interactive water fountain for one of the water features shown in the Conceptual Plan and/or the reduction in size and/or scope of the water features shall not be deemed a reasonable basis for the City to withhold approval. If the City rejects the value engineered Project, and the City and Developer are unable to agree on a modified design of the Project or an increase in the Contract Sum and/or Contract Time to the extent necessary to complete the Work for such modified design within thirty (30) business days after the City's rejection of the value engineered Project, then either the City or Developer shall have the right to terminate this Agreement by delivering written notice to the other party within ten (10) business days after the end of such thirty (30) business day period. In the event of a termination of this Agreement in accordance with this Section, the City shall be responsible for the payment of the Cost of the Work incurred up to the date of termination of this Agreement.

8.3 The City shall pay the Cost of the Work, as adjusted by approved Change Orders. The construction contract shall limit the grounds for approved Change Orders to City requested Change Orders, Developer requested Change Orders approved by the City, force majeure events, City Building Department field inspector requirements, acts or omissions of the City, errors and omissions in architectural drawings and specifications, material and substantial changes in the Work not caused by Developer, concealed or unknown conditions, and costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

8.4 Developer shall fund approximately \$162,749 over and above the Contract Sum for the replacement of sidewalks, curbs and gutters on the Project Site, in accordance with the estimated budget attached as Exhibit "G". Additionally, Developer shall match the City's 1½% of the Contract Sum for AIPP in accordance with the terms of Section 52.1 in this Agreement. City acknowledges that Developer has already contributed approximately \$290,000 in cash or in kind benefits related to the design of the Project, legal fees and costs and out of pocket expenses incurred by Developer, which costs shall not be applied against the Contract Sum.

8.5 The City shall pay Developer the Contract Sum plus all approved Change Orders in current funds for Developer's performance of this Agreement through the date of the latest approved requisition. The initial Contract Sum is the schedule of values which represents the sum of the Cost of the Work as defined herein plus the Developer's Fee. The Contract Sum may be adjusted only by signed and approved Change Orders issued in accordance with the terms of the Contract Documents.

8.6 Developer's and Contractor's Fee. Developer is entitled to receive the following fees, as set forth in the schedule of values: (a) a developer's fee in the amount of eight percent (8%) of the Cost of the Work as described herein; and (b) an additional fee in the amount of three percent (3%) of the Cost of the Work, to finance the cash flow required for Developer to cause the Work to be completed based on monthly billings to the City (collectively, the

"Developer's Fee"). Contractor's Fee shall be set forth in the schedule of values and shall not exceed seven percent (7%) of the Cost of the Work as described herein (the "Contractor's Fee").

8.7 Intentionally Deleted.

8.8 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined only in accordance with the terms of this Agreement.

8.9 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions shall mean the Cost of the Work as defined below and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Developer's Fee as defined above.

8.10 Cost of the Work. The term "Cost of the Work" shall mean costs necessarily incurred by the Developer, Contractor, Consultant or the City in the proper performance of the Work. Such costs shall be at rates not higher than the reasonable and customary price paid for similar work on Miami Beach, Florida except with prior written consent of the City. The Cost of the Work shall include only the items set forth in this Article 8, as follows:

8.10.1 Wages of construction workers directly employed by the Developer or Contractor to perform the construction of the Work at the site or, with the City's written approval, at off-site workshops, provided such costs are not incurred as the proximate result of defects or deficiencies of the Work.

8.10.2 Wages or salaries of the Developer's and Contractor's supervisory and administrative personnel when stationed at the site as included in the schedule of values shall be included in the Cost of the Work.

8.10.3 Wages and salaries of the Developer's and Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only upon the written consent of the City.

8.10.4 Costs paid or incurred by the Developer or Contractor for training, taxes, insurance, contributions, assessments, profit sharing, pensions and all other benefits required by law or collective bargaining agreements or by corporate policy and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work. This amount is stipulated to be fifty-six percent (56%) of the direct payroll.

8.10.5 Payments made by the Developer or Contractor to Consultant or other design professionals in accordance with the requirements of this Agreement, provided such costs are not incurred as the proximate result of defects or deficiencies in the Work.

8.10.6 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

8.10.7 Costs of materials described in the preceding Section 8.6.6 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the City's property at the completion of the Work or, at the City's option, shall be sold by the Developer. Any amounts realized from such sales shall be credited to the City as a deduction from the Cost of the Work.

8.10.8 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Developer or Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Developer or Contractor. Cost for items previously used by the Developer or Contractor shall mean fair market value.

8.10.9 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Developer or Contractor at the site, whether rented from the Developer or Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the City's prior approval. Rental charges for equipment owned by the Developer or Contractor shall be consistent with the lesser of those shown in the current Associated Equipment Dealers Manual or prevailing commercial rates. Rental charges from third-parties shall be at cost. Rental rates shall be inclusive of all charges. Lost equipment shall not be a Cost of the Work.

8.10.10 Costs of removal of debris from the site including loading and dump charges.

8.10.11 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site.

8.10.12 That portion of the reasonable expenses of the Developer's and/or Contractor's personnel incurred while traveling in discharge of duties connected with the Work. Without prior written consent of the City, travel and living charges including per diems for Developer's or Contractor's personnel such as the project manager and project superintendent that do not reside in South Florida shall not be a Cost of the Work.

8.10.13 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the City.

8.10.14 That portion of insurance and bond premiums that can be directly attributed to this Agreement.

8.10.15 Sales, use or similar taxes imposed by a governmental authority that are related to the Work at the rates that are in force as of the date of the Agreement.

8.10.16 Fees and assessments for the building permit and for other permits, licenses and inspections for which the City, Developer or Contractor are required by the Agreement to pay.

8.10.17 Fees of laboratories for tests required by the Contract Documents.

8.10.18 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Developer or Contractor resulting from such suits or claims and payments of settlements made with the City's consent.

8.10.19 Deposits lost for causes other than the Developer's or Contractor's negligence or failure to fulfill a specific responsibility to the City as set forth in the Contract Documents.

8.10.20 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the City.

8.10.21 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

8.10.22 The Contractor's Fee.

8.11 Costs Not to be Reimbursed. The Cost of the Work shall not include:

8.11.1 Salaries and other compensation of the Developer's or Contractor's personnel stationed at the Developer's or Contractor's principal office or offices other than the site office.

8.11.2 Expenses of the Developer's principal office and offices other than the site office.

8.11.3 Overhead and general expenses not associated with the Project.

8.11.4 Developer's or Contractor's capital expenses, including interest on the Developer's or Contractor's capital employed for the Work or bonding (except as set forth in Section 8.6 above).

## ARTICLE 9

### PROGRESS PAYMENTS

9.1 Progress Payments.

9.1.1 Developer may make application for payment for Work completed during the Project at intervals of not more than once a month. The period covered by each application for payment shall be one calendar month ending on the last day of the month.

9.1.2 City agrees to pay the application for payment submitted by Developer covering all out of pocket costs incurred by Developer with respect to the Project within fourteen

(14) days after the execution of this Agreement. Such application for payment shall be in the amount of \$74,746.92, which shall not exceed five percent (5%) of the Contract Sum.

9.1.3 Based upon applications for payment prepared by Contractor and submitted by Developer to Consultant and Contract Administrator and certificates for payment issued by the Consultant, (a) Contract Administrator shall have ten (10) days after it is presented with an application for payment to review and approve same or state in writing its reasons for non-approval; and (b) for approved applications for payment, the City shall make progress payments on account of the Contract Sum to Developer, as provided below and elsewhere in this Agreement, within thirty (30) days after the submittal of each such application for payment to Contract Administrator.

9.1.4 With each application for payment, Developer shall submit payrolls, receipted invoices or invoices with check vouchers attached, and any other evidence required by the City, Contract Administrator or Consultant to demonstrate that cash disbursements already made by the Developer or Contractor on account of the Cost of the Work.

9.1.5 Each application for payment shall be based on the most recent schedule of values submitted by Developer in accordance with this Agreement. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Developer's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Consultant may reasonably require. This schedule, unless objected to by the Consultant or Contract Administrator, shall be used as a basis for reviewing the applications for payment submitted by Developer.

9.1.6 Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by Developer on account of that portion of the Work for which Developer has made or intends to make actual payment prior to the next application for payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Substantiating backup including that for general conditions, vendors, rentals and sub-developers shall be provided to properly support each progress payment.

9.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

(a) take the total of the Cost of the Work and allocate it to each line item in the approved schedule of values subject to the amount not exceeding the then percent completion of the Work for that individual line item;

(b) add the Developer's Fee. The Developer's Fee shall be computed upon the Cost of the Work at the rate stated above; and

(c) subtract the aggregate of previous payments made by the City.

9.1.8 Unless otherwise provided in this Agreement, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the City, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by Developer and Contractor with procedures satisfactory to the City to establish the City's title to such materials and equipment or otherwise protect the City's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.1.9 The City may withhold payment of an application for payment to such extent as may be reasonably necessary to protect itself from loss on account of Defective Work. The City shall only withhold payment of the portion of an application for payment for which it claims Defective Work. The City shall provide Developer with written notice of its rejection of an application for payment (or a portion thereof) as a result of Defective Work within ten (10) days after its receipt of such application for payment, failing which, the City shall be deemed to have waived its right to withhold payment of such application for payment on account of Defective Work. Such written notice shall include the City's basis for claiming Defective Work. If Developer disputes the City's claim of Defective Work, such dispute shall be resolved pursuant to the terms of Article 11 in this Agreement.

## ARTICLE 10

### ACCEPTANCE AND FINAL PAYMENT

10.1 Upon receipt of written notice from Developer that the Work is ready for final inspection and acceptance, Consultant and Contract Administrator shall, within ten (10) days, make an inspection thereof. If Consultant and Contract Administrator find the Work acceptable; that the requisite documents have been submitted and the requirements of the Contract Documents have been fully performed; and all conditions of the permits and regulatory agencies have been met, a final certificate of payment shall be issued by Consultant and approved by Contract Administrator, stating that the requirements of the Contract Documents have been performed and the Work is ready for acceptance.

10.2 On or before issuance of the final certificate of payment, Developer shall deliver to Consultant:

10.2.1 A final waiver and release, duly executed by the Developer.

10.2.2 An affidavit listing the name, address and telephone number of the Contractor and of all subcontractors who have performed Work on the Project, with such subcontractors identified as to the trade involved for the Work, along with amounts paid to said Contractor and subcontractors in connection with the Project;

10.2.3 Final waiver and release, duly executed by the Contractor;

10.2.4 One (1) original set and one (1) copy set of the As-Built Drawings;

10.2.5 Assignment of all manufacturer's warranties, guarantees, City's manuals to the City, bound in a form acceptable to the City; and

10.2.6 Unconditional consent of Contractor's and Developer's surety to final payment.

10.3 If, after the Work has been Substantially Completed, full completion thereof is materially delayed through no fault of Developer, and Consultant and Contract Administrator so certify, City shall, and without terminating this Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

10.4 Developer's acceptance of final payment by the City shall constitute a waiver of all claims by Developer against the City under this Agreement, except those previously made in strict accordance with the provisions of the Contract Documents and identified by Developer as unsettled at the time of acceptance of final payment.

10.5 Developer's final application for payment and the Consultant's final certificate for payment shall constitute a representation to the City by the Developer and the Consultant, respectively, that all conditions precedent to Developer's entitlement to final payment have been excused, waived or satisfied.

10.6 The making of final payment shall not constitute a waiver of claims by the City as against Contractor and Consultant but not Developer for: (a) faulty or defective Work appearing after Consultant's final certificate for payment; (b) failure of the Work to be in strict accordance with the requirements of the Contract Documents discovered after completion of the Work; and (c) terms of all warranties required by the Contract Documents.

## ARTICLE 11

### RESOLUTION OF DISPUTES

11.1 To attempt to prevent all disputes and litigation, it is agreed by the parties hereto that Consultant shall first decide all questions, claims, difficulties and disputes of whatever nature which may arise relative to the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any Work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents, and Consultant's estimates and decisions upon all claims, questions, difficulties and disputes shall be conclusive subject to Developer or the City's objection to the extent provided in Section 11.2. Any claim, question, difficulty or dispute which cannot be resolved by mutual agreement of City and Developer shall be submitted to Consultant in writing within ten (10) days of the discovery of the occurrence. Unless a different period of time is set forth herein, Consultant shall notify Developer and the City in writing of the decision within ten (10) days from the date of the submission of the claim, question, difficulty or dispute, unless Consultant requires additional time to gather information or allow the parties to provide additional information. Any request for additional time shall extend the time of substantial completion as between City and Developer

for an equal period of time. All nontechnical administrative disputes shall be reasonably determined by the Contract Administrator pursuant to the time periods provided herein. During the pendency of any dispute and after a determination thereof, Developer and City shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction.

11.2 In the event the determination of a dispute under this Article is unacceptable to either party hereto, the party objecting to the determination must notify the other party in writing within twenty-one (21) days of receipt of the written determination. The notice must state the basis of the objection and must be accompanied by a statement that any Contract Documents price adjustment claimed is the entire adjustment to which the objecting party has reason to believe it is entitled to as a result of the determination, if such amount is reasonably calculable at such time. Within sixty (60) days after receipt of written determination as provided in this section, the parties may participate in mediation to address all objections to any determinations hereunder and to attempt to avoid litigation. The mediator shall be mutually agreed upon by the parties. The mediation shall be non-binding.

11.3 Pending final resolution of a claim, including mediation, unless otherwise agreed in writing, Developer and Contractor shall proceed diligently with performance of the Contract Documents and the City shall continue to make payments in accordance with the Contract Documents, subject to the terms of Article 9 in this Agreement. In no event shall Developer be required to make any payments for the Work other than the payments provided under Sections 8.4 and 52.1 in the Agreement and any other payments set forth in this Agreement that are expressly provided to be part of the Cost of the Work.

11.4 Any mediator used shall be certified in accordance with Florida law. Mediation will be conducted in Miami-Dade County.

11.5 The City and Developer shall not be required to submit to arbitration any claim or dispute arising out of, or in connection with, this Agreement unless the City and Developer hereafter agree in writing to arbitrate that particular dispute. During the pendency of any dispute, by mediation, litigation or arbitration (if mutually agreed), provided the City has paid all monies due on non-disputed items, under the pay applications, Developer and Contractor shall carry on the Work and maintain the Construction Schedule, without prejudice to any of their rights, notwithstanding the pendency of any such dispute resolution proceeding, unless otherwise agreed by the City and Contractor in writing.

11.6 In connection with any dispute or litigation arising out of this Agreement, the prevailing party shall be entitled to recover all of its reasonable attorneys' fees and costs incurred, including all reasonable attorneys' fees and costs for litigation in any bankruptcy proceedings and at all trial and appellate levels.

11.7 The Agreement shall be governed and construed in accordance with the laws of the State of Florida. The Developer and City submit to the jurisdiction and venue of the State and Federal Courts in and for Miami-Dade County, Florida and such courts shall have the authority upon proper proof to award compensatory and/or consequential damages, as may be appropriate.

**ARTICLE 12**

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**ARTICLE 13**

**[THIS ARTICLE LEFT INTENTIONALLY BLANK]**

**ARTICLE 14**

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**ARTICLE 15**

**SECURITY**

Developer shall cause Contractor to protect the Work, stored products and construction equipment from theft and vandalism, and to protect the Project Site from entry by unauthorized persons.

**ARTICLE 16**

**INSPECTION OF PROJECT**

16.1 The Contract Administrator or designee shall at all times have access to the Project, and Developer shall provide proper facilities for such access, and such access shall be in accordance with the visitor's rules.

16.1.1 Should the Contract Documents, instructions, any laws, ordinances, or any public authority require any Work for the Project to be specially tested or approved, Developer shall give to the Contract Administrator timely notice of readiness of the Work for inspection. If the testing or approval is to be made by an authority other than City, timely notice shall be given of the date fixed for such testing. Inspections shall be made promptly, and, where practicable, at the source of supply. Within a reasonable time from execution of this Agreement, City shall provide a letter listing the areas of Work the City will inspect. If defined Work for the Project should be covered up without required inspection/approval, it must, if required by the Contract Administrator, be uncovered for examination and properly restored at Developer's expense.

16.1.2 Reexamination and retesting of any Work for the Project may be reasonably ordered by the Contract Administrator; and if so ordered, Developer shall cause such Work to be uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents, the City shall pay the cost of reexamination, retesting and replacement. If

such Work is not in accordance with the Contract Documents, Developer shall cause Contractor to pay such cost.

16.2 The payment of any compensation, regardless of its character or form, or the giving of any gratuity or the granting of any valuable favor by Developer to any inspector other than its consultant, is forbidden, and any such act on the part of Developer will constitute a breach of this Agreement.

## ARTICLE 17

### SUPERINTENDENCE AND SUPERVISION

17.1 The orders of the City are to be given through the Contract Administrator, whose instructions are to be strictly and promptly followed in every case, provided that they are in accordance with this Agreement. Developer shall cause Contractor to keep on the Project during its progress a competent supervisor, and any necessary assistants.

17.2 Developer shall prepare, or cause its Contractor or other designated Contract Administrator or Contract Administrator representative to prepare, on a daily basis, and keep on the Project site, a bound log setting forth at a minimum, for each day: the weather conditions and how any weather conditions affected progress of the Work, Work performed, equipment utilized for the Work, any idle equipment and reasons for idleness, visitors to the Project site, labor utilized for the Work, and any materials delivered to the Project Site. The daily bound log shall be available for inspection by the Contract Administrator or designee at all times during the Project.

17.3 If Contractor or Consultant, in the course of the Project, finds any discrepancy between the Contract Documents and the physical conditions of the site, or any errors or omissions in the Contract Documents including the Plans and Specifications and notifies Developer of such discrepancy, it shall be a Developer duty to immediately inform the Contract Administrator, in writing; and Contract Administrator will promptly verify the same.

17.4 Developer shall coordinate, supervise and direct the Project competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Project in accordance with the Contract Documents. Developer shall cause Contractor to be responsible for the means, methods, techniques, safety, sequences and procedures of construction. Developer shall cause Contractor to give efficient supervision to the Work, using Developer's and Contractor's best skill, attention, and judgment.

## ARTICLE 18

### CITY'S RIGHT TO TERMINATE AGREEMENT

18.1 If Developer (a) fails to cause Contractor to begin the construction of the Project within the time specified, or (b) fails to cause Contractor to perform the Project with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Project, in accordance with the Contract Documents and schedules, within the Contract Time, or (c) fails to cause Contractor to perform the Work suitably and without defects, or (d)

discontinues the prosecution of the Project, except for excused delays in accordance with this Agreement, or (e) becomes insolvent or be declared bankrupt, or commits any act of bankruptcy or insolvency, or (f) makes an assignment for the benefit of creditors, or (g) shall not carry on the Project in accordance with the Contract Documents, the City shall give notice in writing to Developer and the surety of such delay, neglect or default, specifying the same. If Developer, within a period of ten (10) days after such notice, shall not proceed to commence to rectify such complaint in accordance therewith and thereafter diligently pursue the resolution of such complaint, then the City may, upon written certificate from the Contract Administrator of the fact of such delay, neglect or default and Developer's failure to comply with such notice: (i) terminate the services of Developer under this Agreement, exclude Developer and Contractor from site and take the prosecution of the Project out of the hands of Developer and Contractor, as appropriate. In such case, Developer shall not be entitled to receive any further payment until the Project is finished. In addition, the City may (ii) enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents or use such other methods as in its opinion shall be required for the completion of the Project in an acceptable manner. Developer hereby collaterally assigns its rights under the Contract Documents to the City so that upon termination of this Agreement by the City in accordance with the terms of this paragraph, the assignment of the Contract Documents shall automatically become effective. Notwithstanding the assignment of the Contract Documents automatically becoming effective, Developer agrees, upon request of the City, to execute such documentation as may be reasonably necessary in order to effectuate such assignment; and/or (iii) sue Developer for the damages, costs and charges incurred by the City which shall be deducted from any monies due or which may become due to said Developer Actions will be instituted to recover on the posted bonds.

18.2 Upon receipt of a notice of termination pursuant to Sections 18.1 above, Developer shall promptly discontinue all affected Work unless the notice of termination directs otherwise and deliver to the City within seven (7) days of termination all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process. Compensation shall be withheld until all documents are provided to the City pursuant to this Article.

## **ARTICLE 19**

### **DEVELOPER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT**

Should Contract Administrator fail to review and approve or state in writing reasons for non-approval of any application for payment within ten (10) days after it is presented, or if the City fails either to pay Developer within thirty (30) days after presentation of such application for payment to Contract Administrator, or to notify Developer in writing of any objection to the application for payment, then Developer may, give written notice to the City, through Contract Administrator, of such delay, neglect or default, specifying the same. If City or Contract Administrator (where applicable), within a period of seven (7) days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then Developer may stop Work or terminate this Agreement and recover from the City payment for all Work executed and reasonable expenses sustained therein plus reasonable termination expenses.

## ARTICLE 20

### "OR EQUAL" CLAUSE

20.1 Whenever a material, article or piece of equipment is identified in the Contract Documents including drawings (plans) and specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, or otherwise, it is intended merely to establish a standard, and, unless it is followed by words indicating that "no substitution is permitted," any material, article, or equipment of other manufacturers and vendors which will perform or serve the requirements of the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Consultant and Contract Administrator:

20.1.1 At least equal in quality, durability, appearance, strength and design;

20.1.2 Performs at least equally the function imposed in the general design for the Project;

20.1.3 Conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the Contract Documents; and

20.1.4 Carries the same guaranty or warranty of the specified equipment.

All substitution requests will be made via written request which shall be attached to a Shop Drawing and/or Change Order which shall be attached to a detailed description of the specified item and a detailed description of the proposed substitution. A comparison letter itemizing all deviations from specified items must be included for the Consultant and Contract Administrator to properly evaluate substitution. Failure to provide the deviation comparison sheet shall automatically deny the request.

Any changes, inclusive of design changes, made necessary to accommodate substituted equipment under this paragraph shall be at the expense of Developer, Contractor or subcontractor responsible for the Work item.

20.2 Contract Administrator's written consent will be required as to acceptability, and no substitute will be ordered, installed or utilized without Consultant and Contract Administrator's prior written acceptance which will be evidenced by either a Change Order or an accepted Shop Drawing. City may require Developer to cause Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

## ARTICLE 21

### PLANS AND SPECIFICATIONS

All plans, general and detail, are to be deemed a part of this Agreement, and the Plans and Specifications are to be considered together, and are intended to be mutually complementary, so that any Work shown on the Plans, though not specified in the Specifications,

and any Work specified in the Specifications though not shown on the Plans, is to be executed by Developer as part of this Agreement. Figured dimensions are to prevail over scale. All things which in the opinion of the Contract Administrator may reasonably be inferred from this Agreement and Plans as developed by Consultant and mutually agreed upon and approved by Developer and City for the Project, are to be executed by Developer under the terms of the Agreement; and the Consultant shall determine whether the detailed Plans conform to the Contract Documents, except as may be otherwise determined by the Contract Administrator. In the event the Work requested under this Section expands the scope of the Project, Developer may seek a Change Order pursuant to Article 38.

## **ARTICLE 22**

### **CONTRACTOR TO CHECK DRAWINGS AND DATA**

Developer shall cause Contractor to take measurements and verify all dimensions, conditions, quantities and details shown on the drawings, schedules, or other data. Failure to discover or correct errors, conflicts or discrepancies shall not relieve Contractor of full responsibility for unsatisfactory Work, faulty construction, or improper operation resulting therefrom nor from rectifying such condition at Contractor's own expense. Contractor will not be allowed to take advantage of any error or omissions.

## **ARTICLE 23**

### **DIFFERING SITE CONDITIONS**

In the event that during the course of the Work Contractor encounters subsurface or concealed conditions at the Project Site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in Work of the character called for in the Contract Documents, or unknown physical conditions of the Project Site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in Work of the character called for in the Contract Documents and Contractor notifies Developer of such conditions, Developer shall notify or cause Contractor, without disturbing the conditions and before performing any Work affected by such conditions, to, within twenty-four (24) hours of their discovery, notify Contract Administrator and Consultant in writing of the existence of the aforesaid conditions. Consultant and Contract Administrator shall, within two (2) business days after receipt of Contractor's and/or Developer's written notice, investigate the site conditions so identified. If, in the opinion of Consultant and Contract Administrator, the conditions do materially so differ and cause an increase or decrease in Developer's cost of, or the time required for, the performance of any part of the Work, whether or not charged as a result of the conditions, Consultant and Contract Administrator shall recommend an equitable adjustment to the Contract Sum, or the Contract Time, or both. If City and Developer cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred for determination in accordance with the provisions of Article 11. Should Consultant and Contract Administrator determine that the conditions of the Project Site are not so materially different to justify a change in the terms of the

Contract Documents, Consultant shall so notify City and Developer in writing, stating the reasons, and such determination shall be final and binding upon the parties hereto.

No request by Developer for an equitable adjustment to the Contract Sum and/or Contract Time under this provision shall be allowed unless Developer has given written notice. No request for an equitable adjustment or change to the Contract Sum or Contract Time for differing site conditions shall be allowed if made after the date certified by Consultant as the date of Substantial Completion.

#### ARTICLE 24

#### WARRANTY

Developer shall require that Contractor warrant to the City in the Contract Documents that all materials and equipment furnished for the Project will be new unless otherwise specified and that all Work for the Project will be of good quality, free from faults and defects and in conformance with the Contract Documents. The standard of quality shall be at least that employed by similarly qualified Contractor's that are duly qualified and licensed to perform similar projects. If materials or equipment is improperly stored and becomes altered as a result of such improper storage, Developer shall cause Contractor to replace said materials with new materials at no additional cost. Developer shall cause Contractor to be responsible for proper storage and safeguarding of all materials. If required by the Contract Administrator, Developer shall cause Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty requirements set forth in the Contract Documents as herein defined shall govern warranty terms and conditions for all warranty items expressed or implied. The Contractor's warranty period under this Article shall be one (1) year from the date of Substantial Completion of each portion of the Project. However, this Section shall not abridge the times or impede the rights and remedies afforded the City against other entities or persons under this Agreement, or by law.

#### ARTICLE 25

#### SUPPLEMENTARY DRAWINGS

25.1 When, in the opinion of Consultant, it becomes necessary to explain more fully the Work to be done, or to illustrate the Project further to show any changes which may be required, supplementary drawings, with specifications pertaining thereto, will be prepared by the Consultant.

25.2 The supplementary drawings shall be binding upon Developer with the same force as the Contract Documents. Where such supplementary drawings require either less or more than the estimated quantities of Work, appropriate adjustments shall be made pursuant to Change Order.

**ARTICLE 26**

**[THIS ARTICLE LEFT INTENTIONALLY BLANK]**

**ARTICLE 27**

**GENERAL WORKMANSHIP**

27.1 Articles, materials, and equipment specified or shown on drawings shall be new and shall be applied, installed, connected, erected, used, cleaned, and conditioned for proper forming, as per the manufacturer's directions. Contractor shall, if required, furnish satisfactory evidence as to kind and quality of the materials. Should materials arrive to the jobsite new and be improperly stored and deteriorate from new condition, the materials shall be replaced at no additional cost to City.

27.2 Developer shall cause Contractor to apply, install, connect, and erect manufactured items or materials according to recommendations of manufacturer when such recommendations are not in conflict with the Contract Documents. If there is conflict between manufacturer recommendations and the Contract Documents, Consultant and Contract Administrator shall be notified and participate in the corrective actions.

**ARTICLE 28**

**DEFECTIVE WORK**

28.1 Consultant and/or Contract Administrator shall have the authority to reject or disapprove Work for the Project which Consultant and/or Contract Administrator reasonably finds to be defective. If required by Consultant and/or Contract Administrator, Developer shall cause Contractor to promptly either, as directed, correct all Defective Work or remove it from the Project site and replace it with non-Defective Work. In the event it is determined that City was correct in its order, Developer and/or Contractor shall bear all costs of such removal or correction.

28.2 If, within one (1) year after Substantial Completion, any Work is found to be defective or not in accordance with the Contract Documents, Contractor shall correct it promptly in accordance with the its warranties and without cost to City after receipt of written notice from City to do so unless City has given Contractor a written acceptance of such conditions. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the applicable State law.

28.3 Prior to Substantial Completion, should Developer fail to cause Contractor to remove or correct any Defective Work performed for the Project or to make any necessary repairs in an acceptable manner and in accordance with the requirements of this Agreement within a reasonable time, indicated in writing, City shall have the authority to cause the unacceptable or Defective Work to be removed or corrected, or make such repairs as may be reasonably necessary to be made at Developer's or Contractor's expense. Continued failure or

refusal on the part of Developer to cause Contractor to make any or all necessary repairs promptly, fully, and in acceptable manner shall be sufficient cause for City to declare this Agreement forfeited, in which case City, at its option, may purchase materials, tools, and equipment and employ labor or may contract with any other individual, firm or corporation, or may proceed with its own forces to perform the Work. All costs and expenses reasonably incurred thereby shall be charged against Developer or Contractor.

28.4 Failure to reject any Defective Work or material shall not in any way prevent later rejection when such defect is discovered or obligate City to final acceptance.

28.5 Upon Final Completion, City agrees to look solely to the Contractor, Consultant or both, but not the Developer, to perform any and all to repair or correct any and all Work considered or determined by the City to be non-conforming or defective or otherwise in breach of any warranty.

28.6 Upon Final Completion, the City shall become solely responsible and liable for the operation, security, maintenance, heat, utilities, damage to the Work, and insurance. The failure to include any items of corrective Work on such list does not alter the responsibility of Contractor to complete all of the Work in accordance with the Contract Documents. Warranties from Contractor required by the Contract Documents shall commence on the date of Final Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Completion.

## ARTICLE 29

### SUBCONTRACTS

29.1 Until Final Completion, Developer shall be fully responsible for the performance of its agents and employees, and Contractor and Consultant under the terms of this Agreement. Until Final Completion, nothing in the Contract Documents shall create any contractual relationship between any subcontractor and City or any obligation on the part of City to pay or to see the payment of any monies due any subcontractor. City or Developer may furnish to any Contractor, subcontractor, subconsultant evidence of amounts paid to Developer on account of specific Work performed.

29.2 Developer agrees to bind specifically Contractor and require that Contractor bind every subcontractor and subconsultant to the applicable terms and conditions of the Contract Documents for the benefit of City.

29.3 Upon the occurrence of Final Completion and thereafter, as a third-party beneficiary of the Contract Documents and all warranties thereunder, City shall be deemed to be in a direct contractual relationship with the Contractor such that the Contractor shall be liable to the City to the same extent that Contractor is liable and responsible to the Developer for the acts and omissions of itself and all of its subcontractors, sub-subcontractors, materialman and laborers employed by the Contractor.

## ARTICLE 30

### ENVIRONMENTAL MATTERS

The City is responsible as a Cost of the Work pursuant to an approved Change Order for any required environmental remediation within the Project Site. Developer shall be responsible as a Cost of the Work pursuant to an approved Change Order for conducting environmental due diligence prior to construction to assess the environmental site conditions and subsequent remediation needs, if applicable.

## ARTICLE 31

### USE OF COMPLETED PORTIONS

31.1 City shall have the right at its sole option to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with the Contract Documents. If such possession and use increases the cost of or delays the Work, Developer shall be entitled to reasonable extra compensation, or reasonable extension of time or both, as recommended by Consultant and approved by City.

31.2 In the event City takes possession of any completed or partially completed portions of the Project, the following shall occur:

31.2.1 City shall give notice to Developer in writing at least thirty (30) days prior to City's intended occupancy of a designated area.

31.2.2 Developer shall complete to the point of Substantial Completion the designated area and request inspection and issuance of a Certificate of Substantial Completion from Consultant.

31.2.3 Upon Consultant's issuance of a Certificate of Substantial Completion, City will assume full responsibility for maintenance, utilities, subsequent damages of City and public, adjustment of insurance coverage's and start of warranty for the occupied area.

31.2.4 Developer shall complete all items noted on the Certificate of Substantial Completion within the time specified by Consultant on the Certificate of Substantial Completion, as soon as possible and request final inspection and final acceptance of the portion of the Work occupied. Upon completion of final inspection and receipt of an application for final payment, Consultant shall issue a final certificate of payment relative to the occupied area.

31.2.5 If City finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by City and Developer and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. Insurance on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. Consent of Developer and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

**ARTICLE 32**

**CONSTRUCTION AREA**

32.1 Developer and Contractor shall use areas approved by the Contract Administrator for deliveries and personnel.

32.2 To provide for maximum safety and security, Contractor shall erect and maintain all necessary barricades, and any other temporary walls and structures as required, and boarding or fencing to protect life and property during the period of construction.

32.3 Construction staging for the Project will be confined to the Project Site, thereby not impacting adjacent commercial areas. Developer shall develop a plan for construction staging in order for access to the adjacent commercial areas to be continually maintained with only minimal disruptions. Such plan shall be subject to City's prior approval which shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE 33**

**LANDS FOR WORK**

City shall provide as indicated in the Contract Documents, the lands upon which the Project is to be performed, rights-of-way and easements for access thereto and such other lands as are designated for the use of Developer. No claim for damages or other claim other than for an increase in the Contract Sum or Contract Time shall be made or asserted against City by reason of any delay arising as a result of any failure of City to provide such lands on the date needed by Developer. The provisions of Article 41 shall apply herein.

**ARTICLE 34**

**LEGAL RESTRICTIONS**

Developer shall conform to all applicable laws, regulations, or ordinances with regard to labor employed, hours of Work and Developer's general operations.

**ARTICLE 35**

**DAMAGE TO EXISTING FACILITIES, EQUIPMENT OR UTILITIES**

35.1 The City shall provide Developer with the documents, including, without limitation, a sonar study of all existing underground facilities, equipment and utilities within the Project Site, identified on the attached Exhibit "H" (collectively, the "Documents") within ten (10) days after the date of this Agreement.

35.2 The City shall, prior to commencement of the Work, identify to Developer any and all existing utilities and other underground facilities, equipment, or utilities at City's sole cost and expense. Developer and Contractor shall be responsible to preserve all existing utilities identified in the Documents. If a utility conflict is encountered which was not identified in the

Documents, Consultant or Developer shall be responsible for giving sufficient notice to the owners of the utilities so that the City may make the necessary adjustments. Any time delay or cost incurred will be the responsibility of the City and shall increase the Contract Time and Contract Sum through an approved Change Order. City, as a Cost of the Work through a Change Order, shall relocate any underground utilities existing as of the date of this Agreement on the Project Site, if necessary, that were not identified by City to Developer in the Documents.

35.3 Developer shall cause Contractor to exercise care and take all precautions during excavation and construction operations to prevent damage to any existing facilities, equipment, or utilities. Any damage caused by Contractor shall be reported immediately to the Contract Administrator and such Work shall be repaired and/or replaced by Contractor in a manner approved by City. In the event Contractor damages underground facilities, equipment, or utilities that were identified by City in the Documents, then all costs to repair and/or replace any damage to existing facilities, equipment, or utilities, shall be the sole responsibility of Contractor, and such repair or replacement shall be performed expeditiously without cost to City. In the event Contractor damages underground facilities, equipment, or utilities that were not identified by City in the Documents, then all costs to repair and/or replace any damage to existing facilities, equipment, or utilities, shall be the sole responsibility of City, and such repair or replacement shall be performed expeditiously at the expense of the City as a Cost of the Work through a Change Order.

35.4 Developer shall cause Contractor to provide that type of required protection for finished Work at all times and protect adjacent Work during cleaning operations, and make good any damage resulting from neglect of this precaution.

35.5 Protection of Work shall include protecting of Work that is factory finished, during transportation, storage, during and after installation. Where applicable and as required, Developer shall cause Contractor to close off spaces of areas where certain Work has been completed to protect it from any damages caused by others during their operations.

35.6 To all applicable sections where preparatory Work is part of Work thereon, Developer shall cause Contractor to carefully examine surfaces over which finished Work is to be installed, laid or applied, before commencing with the Work. Developer shall not allow Contractor to proceed with said Work until defective surfaces on which Work is to be applied are corrected satisfactorily to the Contract Administrator. Commencement of Work shall be considered acceptance of surfaces and conditions.

## ARTICLE 36

### CONTINUING THE WORK

Provided City is current in its payments under this Agreement, Developer and Contractor shall carry on the Work and adhere to the Construction Schedule during all disputes or disagreements with City, including disputes or disagreements concerning a request for a Change Order, a request for a change in the Contract Sum or Contract Time. Provided City is current in

its payments under this Agreement, the Work shall not be delayed or postponed pending resolution of any disputes or disagreements.

#### **ARTICLE 37**

##### **FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS**

37.1 The Contract Administrator shall have the right to approve and issue Field Orders (subject to Developer's approval) setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in Contract Documents execution, providing the Field Order involves no change in the Contract Sum or the Contract Time.

37.2 The Contract Administrator shall have the right to approve and issue to Developer reasonable supplemental instructions to Developer setting forth written orders, instructions, or interpretations concerning the Agreement or its performance, provided they make no material changes in Contract Documents execution and involve no change in the Contract Sum or the Contract Time.

#### **ARTICLE 38**

##### **CHANGE ORDERS (CHANGES IN QUANTITIES OF WORK)**

38.1 Changes in the quantity or character of Work within the scope of this Project which are not properly the subject of Field Orders or supplemental instructions, to include all changes resulting in changes in the Contract Sum or the Contract Time, shall be authorized only by Change Orders approved by the Contract Administrator and Developer.

38.2 Developer shall not start Work on any alteration requiring an increase in price or extension of time for completion until a Change Order setting forth the adjustments is approved in writing by the Contract Administrator and Developer, except for the provisions of Section 38.3, which governs disputed Change Order items.

38.3 In the event satisfactory adjustment cannot be reached for any item requiring a Change Order, the City reserves the right, at its own option, to either terminate the Agreement as it applies solely to the items in question and make such arrangements as may be deemed necessary to complete the item in question. Provided, however, if the arrangements made by the City to complete the item in question would delay Final Completion of the Work or result in additional expense to Developer, then the City shall either (1) issue a Change Order for such additional cost or time extension or (2) postpone the City's proposed work until after Final Completion of the Work or (3) submit the matter in dispute for resolution as set forth in Article 11 herein. During the pendency of the dispute resolution, Developer shall proceed with the Work set forth within the Change Order on a time and materials basis, which Developer shall adequately document pending final resolution of such dispute(s).

38.4 On approval of any Change Order increasing the price, Developer shall direct Contractor to ensure that the applicable Performance and Payment Bonds, to the extent

applicable under the provisions of Article 51 hereof, are each increased so that it reflects the total amount of the Project as increased.

38.5 Proposed Change Orders shall be prepared by the Contractor and submitted by Developer to Contract Administrator for approval.

#### **ARTICLE 39**

##### **VALUE OF CHANGE ORDER WORK**

In the event the City initiates a Change Order for Work to be performed or eliminated from the Contract Documents by Developer, Developer shall use its best efforts to negotiate with the Contractor for the most cost effective pricing with respect to a determination of the change in the Contract Sum, if any, or the amount of the time extension or reduction, if any, necessitated by the Change Order. The cost quoted by the Contractor for Change Orders shall be within standard industry rates and shall be submitted with a breakdown of labor, material, overhead and profit subtotal amounts. Combined overhead and profit for Developer directed Change Orders shall be ten percent (10%); Contractor and subcontractors shall be entitled to markup of ten percent (10%) overhead and five percent (5%) profit;

#### **ARTICLE 40**

##### **CHANGE OF CONTRACT TIME OR CONTRACT SUM**

40.1 The Contract Time set forth in Article 6 or the Contract Sum may only be changed by a Change Order. Any claim for an extension of the Contract Time or for an increase in the Contract Sum shall be based on written notice delivered by the party making the claim to the Contract Administrator promptly (but in no event later than forty-five (45) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within such forty-five (45) day period (unless Contract Administrator allows, in writing, an additional period of time to ascertain more accurate data in support of the claim). All claims for adjustment in the Contract Time or for an increase in the Contract Sum shall be decided by the Contract Administrator pursuant to the terms of Article 11 in this Agreement. No claim for an adjustment in the Contract Time or for an increase in the Contract Sum will be valid if not submitted in strict accordance with the requirements of this Article.

40.2 The Contract Time will be extended in an amount equal to time lost due to days beyond the control of and through no fault or negligence of Developer if a claim is made therefore as provided herein. Such delays shall include, but not be limited to, acts or neglect by City, or by any employee of City, or any separate Contractor or consultant employed by City, fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

## ARTICLE 41

### NO DAMAGES FOR DELAY

NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF CONTRACT TIME OR AN INCREASE IN THE CONTRACT SUM SHALL BE MADE OR ASSERTED AGAINST THE CITY BY REASON OF ANY DELAYS. DEVELOPER SHALL NOT BE ENTITLED TO PAYMENT OF COMPENSATION OF ANY KIND FROM THE CITY FOR DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER COSTS, EXPENSES OR DAMAGES, INCLUDING, BUT NOT LIMITED TO, COSTS OF ACCELERATION OR INEFFICIENCY, RESULTING FROM ANY DELAYS, EXCEPT IN THE EVENT THAT SUCH DELAYS ARE DUE TO FRAUD, BAD FAITH, ACTIVE INTERFERENCE OR THE FAILURE TO TIMELY ACT BY THE CITY. OTHERWISE, DEVELOPER SHALL BE ENTITLED ONLY TO EXTENSIONS OF THE CONTRACT TIME OR AN INCREASE IN THE CONTRACT SUM AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DELAYS. DEVELOPER SHALL SPECIFICALLY INCLUDE THIS PROVISION IN ITS AGREEMENT WITH CONTRACTOR.

## ARTICLE 42

### SUBSTANTIAL COMPLETION

When Developer considers that the Work, or a portion thereof designated by the City, pursuant to Article 31 hereof, has reached Substantial Completion, Developer shall so notify Contract Administrator and Consultant in writing. Contract Administrator and Consultant shall then promptly inspect the Work. When Contract Administrator and Consultant, on the basis of such an inspection, determine that the Work or designated portion thereof is Substantially Complete, Consultant will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion and shall list all Work yet to be completed to satisfy the requirements of the Contract Documents for Final Completion. The Certificate of Substantial Completion shall be subject to Contract Administrator's reasonable approval and shall be submitted to City through the Contract Administrator and Developer for their written acceptance of the responsibilities assigned to them in such Certificate.

## ARTICLE 43

### SHOP DRAWINGS AND SCHEDULE OF VALUES

43.1 Developer shall submit Shop Drawings from Contractor for all equipment, apparatus, machinery, fixtures, piping, wiring, fabricated structures and manufactured articles. The purpose of a Shop Drawing is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item and evidence of its compliance or noncompliance with the Contract Documents.

43.2 Developer shall promptly request of Contractor Shop Drawings from the various manufacturers, fabricators, and suppliers.

43.3 To the extent Shop Drawings are required by the Consultant or industry custom and standards would contemplate the preparation of Shop Drawings for certain items of the Work, subcontractors and/or materialmen shall be required by contract to submit Shop Drawings. Consultant shall thoroughly review and check the Shop Drawings and each and every copy shall show Consultant's approval thereon.

43.4 If the Shop Drawings show or indicate departures from the Contract Documents requirements, Developer shall cause Contractor to make specific mention thereof in its Shop Drawing submittal and a separate letter. Failure to point out such departures shall not relieve Contractor from its responsibility to comply with the Contract Documents. Contract Administrator shall determine acceptability of change and in considering said change, may require data, technical comparisons, cost comparisons, quality comparisons and/or calculations to determine the equality of deviations. Contract Administrator is not obligated to accept deviations.

43.5 No Work called for by Shop Drawings shall be done until the said Drawings have been furnished to and accepted by the Contract Administrator or his designee. Contract Administrator shall respond to Shop Drawings pre-approved by Consultant with objections or acceptance within ten (10) days of receipt. Acceptance is for design intent only and shall not relieve Contractor and Consultant from responsibility for fit, form, function, quantity or for errors or omissions of any sort on the Shop Drawings.

43.6 No acceptance will be given to partial submittal of Shop Drawings for items which interconnect and/or are interdependent. It is Developer's responsibility to assemble the Shop Drawings prepared by Contractor for all such interconnecting and/or independent items, check them and then make one submittal to the Contract Administrator along with Consultant's comments as to compliance, noncompliance, or features requiring special attention.

43.7 If catalog sheets or prints of manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink. Catalog sheet with multiple options shall be highlighted to depict specific pertinent data including options.

43.8 Developer shall submit to Contract Administrator six (6) copies. Resubmissions of Shop Drawings shall be made in the same quantity until final acceptance is obtained.

43.9 Contract Administrator's acceptance of the Shop Drawings as approved by Consultant will be for general compliance with the plans and specifications design intent and shall not relieve Contractor of responsibility for the accuracy of such Drawings, nor for the proper fittings and construction of the Work, nor for the furnishing of the materials or Work required by the Contract Documents and not indicated on the Drawings.

43.10 Developer shall keep one set of Shop Drawings marked with the Contract Administrator's acceptance at the Project site at all times.

43.11 At least thirty (30) days prior to the commencement of construction, the Developer shall submit a schedule of values to the Contract Administrator. Developer shall submit to the Contract Administrator a separate schedule of values for demolition, abatement,

and site Work thirty (30) days prior to commencing such portion of the Work. The schedule will be typed on 8-1/2" x 11" white paper listing: Title of project, location, project number, architect, Contractor, Contract Documents designation, and date of submission. The schedule shall list the installed value of the component parts of the Work in sufficient detail to serve as a basis for computing values for progress payments during the construction. The table of contents of the specifications shall establish the format for listing the component items. Each line item will be identified by the number and title of the respective major section of the specifications. For each line item, Developer shall list the sub-values of major products or operations under the item. Each item shall include the proportion of Developer's overhead and profit. For any items for which progress payments will be requested for stored materials, the value will be broken down with:

43.11.1 The cost of materials delivered, unloaded, properly stored and safeguarded, with taxes paid; and

43.11.2 The total installed value.

#### ARTICLE 44

##### FIELD ENGINEERING

44.1 The Developer shall provide as a Cost of the Work, the engagement of Consultants for field engineering services required for the Project. This field engineering services shall include the following elements:

44.1.1 Survey Work required in execution of the Project.

44.1.2 Civil, structural or other professional engineering services specified, or required to execute the Contractor's construction methods.

44.2 The survey completed by the survey Consultant will identify the qualified engineer or registered land surveyor, acceptable to the City, and it shall be retained by the Developer at the outset of this Project.

44.3 The survey will locate and protect control points prior to starting site Work, and will preserve all permanent reference points during construction.

44.3.1 No changes or relocations will be made without prior written notice to the Contract Administrator.

44.3.2 A report shall be made to the Contract Administrator when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.

44.3.3 The surveyor shall be required to replace Project control points which may be lost or destroyed. The surveyor shall be duly registered as a surveyor or mapper, as required by state law.

44.3.4 Replacements shall be established based upon original survey control.

#### ARTICLE 45

##### FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS

45.1 The entire responsibility for establishing and maintaining a line and grade in the field lies with Contractor. Contractor shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, underground utility access portals, handholds, fittings and the like and shall deliver these records in good order to the Contract Administrator as the Work is completed. These records shall serve as a basis for "record" drawings. The cost of all such field layout and recording Work is included in the prices bid for the appropriate items.

45.2 Contractor shall maintain in a safe place at the site one record copy of all Drawings (Plans), Specifications, Addenda, written amendments, Change Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to Contract Administrator for reference. Upon completion of the Project, these record documents, samples and Shop Drawings shall be delivered to Contract Administrator.

45.3 At the completion of the Project, the Contractor shall turn over to the City a set of reproducible drawings (Mylars) and a complete set of all drawings in the latest version of the AutoCAD format on floppy disk not compressed which accurately reflect the "as built" conditions of the new facility. All changes made to the construction documents, either as clarifications or as changes, will be reflected in the plans. The changes shall be submitted on Mylar at least monthly to the Contract Administrator. These "as built" drawings on Mylar and the latest version of the AutoCAD format media must be delivered and found to be acceptable prior to final payments.

#### ARTICLE 46

##### SAFETY AND PROTECTION

46.1 Developer shall require Contractor to be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. Developer shall require Contractor to take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

46.1.1 All employees on the Project and other persons who may be affected thereby;

46.1.2 All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site; and

46.1.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

46.2 Developer shall use reasonable efforts to cause Contractor to (a) comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and (b) erect and maintain all necessary safeguards for such safety and protection. Developer shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. All damage, injury or loss to any property referred to in Sections 46.1.2 and 46.1.3 above, caused directly or indirectly, in whole or in part, by Developer or Contractor, any subcontractor or consultant or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the responsible party; however, Developer and/or Contractor shall not be liable for injury or damage caused by City, its employees, consultants or its separate Contractors. Developer's and Contractor's duties and responsibilities for the safety and protection of the Project shall continue until such time as all the Project is completed and the Contract Administrator has issued a notice to Developer that the Project is acceptable except as otherwise provided in Article 28.

46.3 Contractor shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be Contractor's project representative unless otherwise designated in writing by Developer to City.

#### **ARTICLE 47**

#### **PAYMENT OF TESTS BY DEVELOPER**

Except when otherwise specified in the Contract Documents or this Agreement, the expense of all tests and test reports shall be borne by Developer but will be passed onto City as a Cost of the Work.

#### **ARTICLE 48**

**[THIS ARTICLE LEFT INTENTIONALLY BLANK]**

#### **ARTICLE 49**

#### **CLEANING UP AND REMOVAL OF EQUIPMENT**

49.1 Developer shall cause Contractor at all times keep the Project site free from accumulation of waste materials or rubbish caused by Contractor's operations. At the completion of the Project, Developer shall cause Contractor to remove all of its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials. If Developer fails to cause Contractor to clean up at the completion of the Project, City may do so; and the reasonable cost thereof shall be charged to Developer or Contractor.

49.2 In case of termination of this Agreement before completion for any cause whatever, Developer, if notified to do so by City, shall cause Contractor to promptly remove any part or all of Contractor's equipment and supplies from the property of City, failing which City shall have the right to remove such equipment and supplies at the expense of Developer or Contractor.

#### ARTICLE 50

[THIS ARTICLE LEFT INTENTIONALLY BLANK]

#### ARTICLE 51

##### BONDS AND INSURANCE

51.1 Developer shall cause Contractor to furnish upon the execution of the construction contract with Contractor, a performance bond and payment bond of the form and containing all the provisions set forth in this Section. Payment and performance bonds shall be in the form of dual obligee bonds from the Contractor in the amount of the Guaranteed Maximum Price, naming the City and Developer as dual obligees.

51.2 The bonds shall be in the amount of one hundred percent (100%) of the Contract Sum guaranteeing to City the completion and performance of the Project covered in this Agreement as well as full payment of all suppliers, material persons, laborers, or subcontractors employed pursuant to this Project. Such bonds shall be with a surety company which is qualified pursuant to Section 51.4.

51.3 Such bonds shall continue in effect for one year after completion and acceptance of the Project with liability equal to one hundred percent (100%) of the Contract Sum, or an additional bond shall be conditioned that Developer will, upon notification by City, correct any defective or faulty Work or materials which appear within one year after completion of the Work.

51.4 The surety company shall have at least the following minimum ratings in the latest revision of Best's Insurance Report:

<u>Amount of Bond</u>	<u>Ratings</u>	<u>Category</u>
500,001 to 1,020,000	B+	Class I
1,020,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10, 000, 000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

##### 51.5 Indemnification Of City

51.5.1 The construction contract between Developer and Contractor and the architect's agreement between Developer and Consultant shall provide that Contractor or Consultant (as applicable) shall indemnify and save harmless City, its officers, agents and employees, from or on account of any injuries or damages, received or sustained by any person or persons during or on account of any construction activities of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees connected with the Project; or by or in consequence of any negligence of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees (excluding negligence of City), in connection with the construction activities of Contractor or Consultant (as applicable), or any of its subcontractors, subconsultants, agents, servants, or employees connected with the Project; or by use of any improper materials or by or on account of any act, error or omission of Contractor or Consultant (as applicable) or any subcontractor, subconsultants, agents, servants or employees, except to the extent caused by City. The construction contract between Developer and Contractor and the architect's agreement between Developer and Consultant shall further provide that Contractor or Consultant (as applicable) shall indemnify and save harmless City (a) against any claims or liability arising from or based upon the violation of any federal, State, County or City laws, bylaws, ordinances or regulations by Contractor, its subcontractors, agents, servants or employees (excluding negligence of City); and (b) from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against City on account of any claims, fees, royalties, or costs for any invention or patent, and from any and all suits and actions that may be brought against City for the infringement of any and all patents or patent rights claimed by any person, firm, or corporation.

51.5.2 Developer shall indemnify, save harmless and defend City, its agents, servants and employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any negligent conduct or negligent misconduct of Developer and for which City, its agents, servants or employees, are alleged to be liable.

51.5.3 The indemnification provided above shall obligate Contractor, Consultant or Developer (as applicable) to defend at its own expense to and through appellate, supplemental or bankruptcy proceeding, or to provide for such defense, at City's option, any and all claims of liability and all suits and actions of every name and description that may be brought against City which may result from the operations and activities under this Agreement whether the construction operations be performed by Developer, Contractor, Consultant, its subcontractors, its subconsultants, or by anyone directly or indirectly employed by any of the above.

51.6 Insurance. Developer shall as a Cost of the Work provide, or cause to be provided, and maintain, or cause to be maintained, in force at all times during the Project, such insurance, including Workers' Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance, and Professional Liability Insurance, as will assure to City the protection contained in this Agreement. Such policy or policies shall be issued by companies approved to do business in the state of Florida, and having agents upon whom service of process may be made in the state of Florida. Developer shall specifically protect City by naming City as an additional insured under the Comprehensive General Liability Insurance Policy hereinafter described.

51.6.1 Professional Liability Insurance to be carried by Consultant with limits of liability provided by such policy not less than Three Million Dollars (\$3,000,000.00) each claim to assure City the indemnification specified in Section 51.5. Such policy may carry a deductible; however, any deductible shall not exceed Seven Hundred Fifty Thousand Dollars (\$750,000.00) for each claim. The Certificate of Insurance for Professional Liability Insurance shall reference the applicable deductible and the Project.

51.6.2 Workers' Compensation Insurance to apply for all employees in compliance with the "Workers' Compensation Law" of the state of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employer's Liability with a limit of \$1,000,000.00 each accident.

51.6.3 Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- (i) Premises and/or Operations;
- (ii) Independent Contractors;
- (iii) Products and/or Completed Operations;
- (iv) The Developer shall cause Contractor to maintain in force until at least three (3) years after final completion of the Project coverage for Products and Completed Operations, including Broad Form Property Damage;
- (v) Explosion, Collapse and Underground Coverages;
- (vi) Broad Form Property Damage;
- (vii) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement;
- (viii) Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability; and
- (ix) Notice of Cancellation and/or Restriction—The policy(ies) must be endorsed to provide the City with thirty (30) days notice of cancellation and/or restriction.

51.6.4 Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the

latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- (i) Owned vehicles; and
- (ii) Non-owned and hired vehicles.

51.6.5 Notice of Cancellation, Expiration and/or Restriction: The policy(ies) must be endorsed to provide the City with thirty (30) days notice of cancellation, expiration and/or restriction, to the attention of the Risk Manager, 1700 Convention Center Drive, Miami Beach, Florida 33139.

51.6.6 Developer shall furnish to the Contract Administrator Certificate(s) of Insurance evidencing the insurance coverages required herein within ten (10) days after execution of the construction contract. Such certificate(s) shall reference this Agreement. City reserves the right to require a certified copy of such policies upon request. All certificates shall state that City shall be given thirty (30) days' prior written notice of cancellation and/or expiration.

51.6.7 Developer shall provide to City a Certificate of Insurance or a copy of all insurance policies required under this Article. The City's Risk Manager reserves the right to require certified copies if requested. Endorsements and certifications shall state City is to be given thirty (30) days' written notice prior to expiration or cancellation of the policy.

## ARTICLE 52

### MISCELLANEOUS

52.1 Art in Public Places. The City has advised Developer that the proposed Project constitutes a public joint development, and that the AIPP 1½% will apply to the Contract Sum (per proposed revisions to ordinance). Developer agrees to match the City's 1½% of the Contract Sum for AIPP. The City agrees that Developer's AIPP contribution shall be utilized solely on the 1100 block of Lincoln Road between Lenox Avenue and Alton Road and that the art and artists shall be reviewed and selected pursuant to the City's established AIPP procedures, as set forth in the City of Miami Beach Code, as same may be amended from time to time.

52.2 Public Benefits. The public will benefit in several ways from the proposed Project: (a) the current obsolete design of the 1100 block of Lincoln Road will be replaced with a new design reflecting a modern interpretation of Morris Lapidus's original design prepared by the world class Design Architects created by and coordinated with the design and construction of the 1111 Lincoln Project, which will enhance the public use and experience of this block; (b) the design will incorporate significant areas in the central portion of the block, to be determined in the final design, that will be reserved for open public use and prohibit restaurant seating and food displays; (c) by contracting with an affiliate of the developer of the adjoining 1111 Lincoln Project to develop the Project, the public will realize significant savings in general conditions and other expenses related to the construction of the Project; (d) having a single developer and Contractor building both the new mixed-use building on the 1111 Lincoln Project and the Project will minimize disruption and ensure better coordination of the two projects; and (e) the extension

of the very successful Lincoln Road pedestrian mall will benefit the public and this portion of Lincoln Road and reinforce the pedestrian experience of Lincoln Road from Washington Avenue through Alton Road.

52.3 Easements. City agrees to grant to MBeach1 and MBeach3 a temporary construction right-of-way permit and/or easement and continuing maintenance easements and/or right-of-way permits along Lincoln Road, Alton Road, Lincoln Lane, Alton Court and Lenox Avenue in the form attached as **Exhibit "I"** for the construction and maintenance, including but not limited to the architectural overhangs and features over pedestrian portions of the adjacent dedicated rights-of-way and the underground utilities necessary to serve the buildings to be constructed by MBeach1 on the MBeach1 Property and by MBeach3 on the MBeach3 Property.

52.4 Pedestrian Drop-Off Areas. Pedestrian drop-off areas shall be carefully designed for both Alton Road and Lenox Avenue in a manner to be reviewed and approved by City staff in accordance with the requirements of the Department of Public Works (the "Department"). The Department has already met with the Florida Department of Transportation and is completing studies requested to finalize the drop-off plan.

52.5 Operation of Project upon Substantial Completion. City shall be solely responsible for operating and maintaining the Project upon Substantial Completion.

52.6 Annual Maintenance Program. A comprehensive annual maintenance program and schedule is being prepared by the Design Architects for City for successful future maintenance of the "urban glade" features of the Project, including ponds, water features, indigenous plants and trees and special lighting. Such program and schedule shall be approved by City staff and relevant City agencies. Developer shall provide oversight of such program and schedule as part of a separate agreement to be entered into with City. Water features are subject to City's approval after submittal by Consultant of life cycle cost. The back up information shall be provided before the 50% Construction Drawings are completed.

52.7 Royalties And Patents. All fees, royalties, and claims for any invention, or pretended invention, or patent of any article, material, arrangement, appliance or method that may be used upon or in any manner be connected with the construction of this Project or appurtenances, are hereby included in the prices stipulated in this Agreement for said Project.

52.8 Rights of Various Interests. Whenever Work being done by City's forces or by other Contractors is contiguous to Work covered by this Agreement, the respective rights of the various interests involved shall be established by the Contract Administrator to secure the completion of the various portions of the Work in general harmony.

52.9 Assignment. This Agreement shall not be assigned or subcontracted as a whole or in part without the written consent of the City, nor shall Developer assign any monies due or to become due to it hereunder, without the prior written consent of the Contract Administrator.

52.10 No Interest. Any monies not paid by City when claimed to be due to Developer under this Agreement shall not be subject to interest. However, the provisions of City's prompt payment ordinance, as such relates to timeliness of payment, and the provisions of Section

218.74(4), Florida Statutes, as such relates to the payment of interest, shall apply to valid and proper invoices.

52.11 Ownership of Documents. Drawing, specifications, design, models, photographs, computer AutoCAD disks, reports, surveys, and other data provided in connection with this Agreement and for which City has rendered payment, are and shall, subject to the terms of the Contract Documents, become and remain the property of City whether the Project for which they are made is executed or not. If this Agreement is terminated for any reason prior to completion of the Work, City may, subject to the terms of the Contract Documents, in its discretion, use any design and documents prepared hereunder for the purpose of completing the Project, provided that City has paid for same; and provided further that if such termination occurs prior to completion of documents and/or through no fault of Developer; Developer and Consultant shall have no liability for such use; and provided further that any reuse without the written verification or adaptation of Consultant for the specific purpose intended will be without liability or legal exposure to Consultant or Developer. At the completion of the Project, as part of the Project closeout, copies of all drawings on AutoCAD disks shall be transmitted from Developer to the Contract Administrator within seven (7) days of termination of this Agreement in addition to the record drawing. The provisions of this clause shall survive the completion of this Agreement and shall thereafter remain in full force and effect. Any compensation due to Developer shall be withheld until all documents are received as provided herein. Notwithstanding the foregoing, the City retains ownership of any and all documents provided to the Developer and has full use thereof without any further payment.

52.12 Records. Developer shall keep such records and accounts and require Contractor and Consultant to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement. Such books and records will be available at all reasonable times for examination and audit by City and shall be kept for a period of three (3) years after the completion of the Project pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by City of any fees or expenses based upon such entries.

52.13 Nondiscrimination, Equal Employment Opportunity, And Americans With Disabilities Act. Developer shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act in the course of providing any services funded in whole or in part by City, including Titles I and 11 of the (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.

Developer's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

Developer shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender,

sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, Developer shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

Developer shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

Developer shall not engage in or commit any discriminatory practice in violation of the City's Human Rights Act in performing the Scope of Services or any part of the Scope of Services of this Agreement.

52.14 No Contingent Fee. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee Working solely for Developer to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee Working solely for Developer, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the Contract Sum, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

52.15 All Prior Agreements Superseded: Amendments. The Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

52.16 Notices. Whenever either party desires to give notice unto the other, it must be given by written notice, (a) sent by certified United States mail, with return receipt requested, (b) by personal delivery with a signed receipt, (c) by recognized national overnight courier service or (d) by facsimile, in any case, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. Notices given by an attorney

for the City or Developer shall be deemed effective notices. For the present, the parties designate the following as the respective places for giving of notice, to wit:

FOR CITY:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Manager  
Fax: (305) 673-7782

With a copy to:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Attorney  
Fax: (305) 673-7002

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: Fred Beckmann, Public Works Director  
Fax: (305) 673-7028

FOR DEVELOPER:

UIA Management, LLC  
1111 Lincoln Road, Suite 760  
Miami Beach, Florida 33139  
Attn: Robert S. Wennett  
Fax: (305) 531-4409

With a copy to:

Bilzin Sumberg Baena Price & Axelrod LLP  
200 South Biscayne Blvd., Suite 2500  
Miami, Florida 33131  
Attn: John C. Sumberg, Esq.  
Fax: (305) 351-2201

52.17 Truth-In-Negotiation Certificate. Signature of this Agreement by Developer shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of Contracting. The original Contract Sum and any additions thereto shall be adjusted to exclude any significant sums by which City determines the Contract Sum was increased due to

inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such adjustments shall be made within one (1) year following the end of this Agreement.

52.18 Interpretation. The parties hereto acknowledge and agree that the language used in this Agreement expresses their mutual intent, and no rule of strict construction shall apply to either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph or section where they appear, unless the context requires otherwise. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections and subparagraphs of such Section or Article, unless the reference is expressly made to a particular subsection or subparagraph of such Section or Article.

52.19 Recycled Content. In support of the Florida Waste Management Law, Developer is encouraged to supply any information available regarding recycled material content in the products provided. City is particularly interested in the type of recycled material used (such as paper, plastic, glass, metal, etc.); and the percentage of recycled material contained in the product. City also requests information regarding any known or potential material content in the product that may be extracted and recycled after the product has served its intended purpose.

52.20 Public Entity Crimes Act. In accordance with the Public Entity Crimes Act, Section 287.133, Florida Statutes, a person or affiliate who is a Contractor, consultant or other provider, who has been placed on the convicted vendor list following a conviction for a Public Entity Crime, may not submit a bid on a contract to provide any goods or services to the City, may not submit a bid on a contract with the City for the construction or repair of a public building or public Work, may not submit bids on leases of real property to the City, may not be awarded or perform Work as a Contractor supplier, subcontractor or consultant under a contract with the City and may not transact any business with the City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in cancellation of the City purchase and may result in debarment.

52.21 Waiver of Trial by Jury. BY ENTERING INTO THIS AGREEMENT, DEVELOPER AND CITY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE PROJECT. DEVELOPER SHALL SPECIFICALLY BIND CONTRACTOR AND CONSULTANT AND REQUIRE THAT CONTRACTOR AND CONSULTANT BIND ANY AND ALL OTHER SUBCONTRACTORS AND/OR SUBCONSULTANTS TO THIS PROVISION OF THIS AGREEMENT.

52.22 Approvals. Whenever any matter set forth herein is made subject to the approval of the City or the Contract Administrator, the approval shall be expressed in writing and the City or the Contract Administrator (as applicable) shall not be unreasonably withhold, delay or condition any such approval, and the failure to grant or withhold any such approval within five

(5) business days after receipt of written notice requesting the same (or such other time period as may be expressly provided in this Agreement), shall be deemed approval of such matter if so stated in said notice.

52.23 Time. Time shall be of the essence for the performance of all obligations of Developer, the City and Contract Administrator under this Agreement. Whenever this Agreement provides for or contemplates a period of time for performance of any obligation, such time period shall be calculated using calendar days, except when such time period is expressly stated to be calculated in business days. Any date in this Agreement which falls upon a Saturday, Sunday or legal holiday (defined as any weekday upon which banks in Miami, Florida are not open for business) shall be deemed to be extended to the next business day. The term "business day" as used in this Agreement means any day that is not a Saturday, Sunday, or legal holiday.

52.24 Recording of Development Agreement. Within fourteen (14) days after the City executes this Agreement, the City shall record this Agreement with the Clerk of the Circuit Court of Miami-Dade County. Developer shall submit a copy of the recorded Development Agreement to the State of Florida's Land Planning Agency within fourteen (14) days after this Agreement is recorded. This Agreement shall become effective only after (a) it has been recorded in the Public Records of Miami-Dade County, and (b) thirty (30) days have elapsed after the State of Florida Land Planning Agency's receipt of a copy of the recorded Agreement. The City agrees that it shall be responsible for all recording fees and other related fees and costs related to the recording and delivery of this Agreement as described in this Section. The provisions hereof shall remain in full force and affect during the term hereto, and subject to the conditions of this Agreement shall be binding upon the undersigned, and all successors in interest to the parties to this Agreement. Whenever an extension of any deadline is permitted or provided for under the terms of this Agreement, at the request of either party, the other party shall join in a short-form recordable Memorandum of Agreement confirming such extension to be recorded in the Public Records of Miami-Dade County.

52.25 Duration of this Development Agreement. The duration of this Agreement shall not exceed ten (10) years from the date first written above; provided, however, that the duration of this Agreement may be extended by mutual agreement of the City and Developer. During the term of this Agreement, the City's laws and policies governing the development of land in effect as of the date hereof shall govern development of the Project. The City may apply subsequently adopted laws and policies to the Project only if the City has held a public hearing pursuant to Section 163.3225, Florida Statutes, and determined:

52.25.1 they are not in conflict with the laws and policies governing this Agreement and do not prevent development of the land uses, intensities, or densities in this Agreement; or

52.25.2 they are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a development agreement; or

52.25.3 they are specifically anticipated and provided for in this Agreement; or

52.25.4 the City demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement; or

52.25.5 this Agreement is based on substantially inaccurate information supplied by Developer.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

WITNESSES:

CITY:

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

Fernando Silva  
Sign

By: [Signature]  
Name: David Dermer  
Title: Mayor

FERNANDA SILVA  
Print Name

Lillian R. Hatfield  
Sign

Lillian R. Hatfield  
Print Name

ATTEST:

By: [Signature]  
Name: Robert Parcher  
Title: City Clerk

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

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of April, 2007, by David Dermer, as Mayor, and Robert Parcher, as City Clerk, of the City OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

Lillian Beauchamp  
Notary Public, State of Florida

My commission expires:



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

MIAMI 1287157.1 7713726901

[Signature] 3/30/07  
City Attorney Date



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROJECT SITE**

[attached]

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP

LAND DESCRIPTION AND SKETCH

LAND DESCRIPTION :

A PORTION OF LINCOLN ROAD LYING BETWEEN ALTON ROAD AND LENOX AVENUE, AS SHOWN ON "COMMERCIAL SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 5 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE WESTERN MOST SOUTHWEST CORNER OF LOT 1, BLOCK 39 OF SAID "COMMERCIAL SUBDIVISION";

THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 15.00 FEET; A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 23.57 FEET;

THENCE TANGENT TO THE LAST DESCRIBED CURVE NORTH 89°08'55" EAST ALONG THE SOUTH LINE OF SAID BLOCK 39, A DISTANCE OF 290 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 23.55 FEET;

THENCE SOUTH 00°48'26" EAST, A DISTANCE OF 130.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHWEST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET; A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 23.57 FEET;

THENCE SOUTH 89°08'55" WEST ALONG THE NORTH LINE OF BLOCK 46 OF SAID "COMMERCIAL SUBDIVISION", A DISTANCE OF 290.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHEAST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 23.55 FEET;

THENCE NORTH 00°48'26" WEST, A DISTANCE OF 130.00 FEET TO THE POINT OF BEGINNING.

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI/DADE COUNTY, FLORIDA; CONTAINING 32,193 SQUARE FEET, MORE OR LESS.

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/06/07	----	AV	REC

LAND DESCRIPTION  
& SKETCH  
FOR LINCOLN ROAD  
BETWEEN ALTON ROAD  
& LENOX AVE

PROPERTY ADDRESS :  
1111 LINCOLN ROAD

SCALE: N/A

SHEET 1 OF 3

**COUSINS SURVEYORS & ASSOCIATES, INC.**

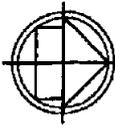


3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT :  
 MBEACH1, LLLP

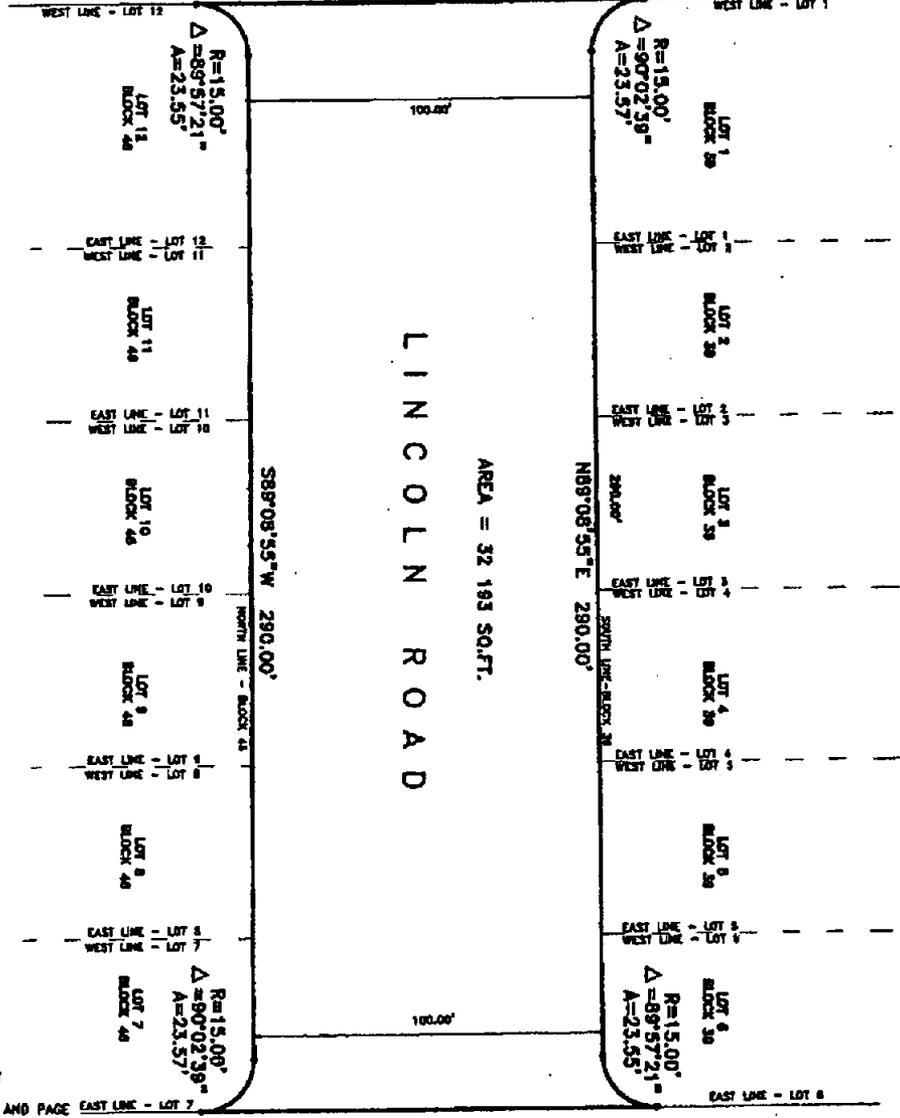
**LAND DESCRIPTION AND SKETCH**



**ALTON ROAD**

N00°48'26"W 130.00'

POB  
 WESTERN MOST SOUTHWEST CORNER  
 LOT 1, BLOCK 38  
 (P.L. 9, PG. 6, M/D.A.R.)



AREA = 32 193 SQ.FT.

**LINCOLN ROAD**

**LENOX AVENUE**

- LEGEND:
- CKD CHECKED BY
  - DWN DRAWN BY
  - FB/PG FIELD BOOK AND PAGE
  - POB POINT OF BEGINNING
  - POC POINT OF COMMENCEMENT
  - P.B. PLAT BOOK
  - M/D.C.R. MIAMI/DADE COUNTY RECORDS
  - A ARC DISTANCE
  - R RADIUS
  - Δ CENTRAL ANGLE

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	05/08/07	---	AV	REC

LAND DESCRIPTION  
 & SKETCH  
 FOR LINCOLN ROAD  
 BETWEEN ALTON ROAD  
 & LENOX AVE

PROPERTY ADDRESS :  
 1111 LINCOLN ROAD

SCALE: 1" = 40'

SHEET 2 OF 3

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP

LAND DESCRIPTION AND SKETCH

**NOTES:**

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE ASSUMED. THE SOUTH LINE OF LOT 20, BLOCK 39 "COMMERCIAL SUBDIVISION, FIRST ADDITION", P.B. 6, PG. 30, M/D.C.R. SAID LINE BEARS S88°06'55"W.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN MARCH, 2007. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 81G17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES. SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: Richard E. Cousins  
 RICHARD E. COUSINS  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA REGISTRATION NO. 4188

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/06/07	-----	AV	REC

LAND DESCRIPTION & SKETCH FOR LINCOLN ROAD BETWEEN ALTON ROAD & LENOX AVE

PROPERTY ADDRESS : 1111 LINCOLN ROAD  
 SCALE: N/A  
 SHEET 3 OF 3

**EXHIBIT "B-1"**

**LEGAL DESCRIPTION OF MBEACH1 PROPERTY**

Lots 1, 2, 3, 4, 5 and 6, Block 39, COMMERCIAL SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, Page 5 of the Public Records of Miami-Dade County, Florida, and

Lots 7 and 8, Block 39, PALM VIEW SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, Page 29 of the Public Records of Dade County, Florida, and

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**EXHIBIT "B-2"**

**LEGAL DESCRIPTION OF MBEACH3 PROPERTY**

Lots 19 and 20, Block 39, COMMERCIAL SUBDIVISION, FIRST ADDITION, according to the Plat thereof, as recorded in Plat Book 6, Page 30 of the Public Records of Dade County, Florida.

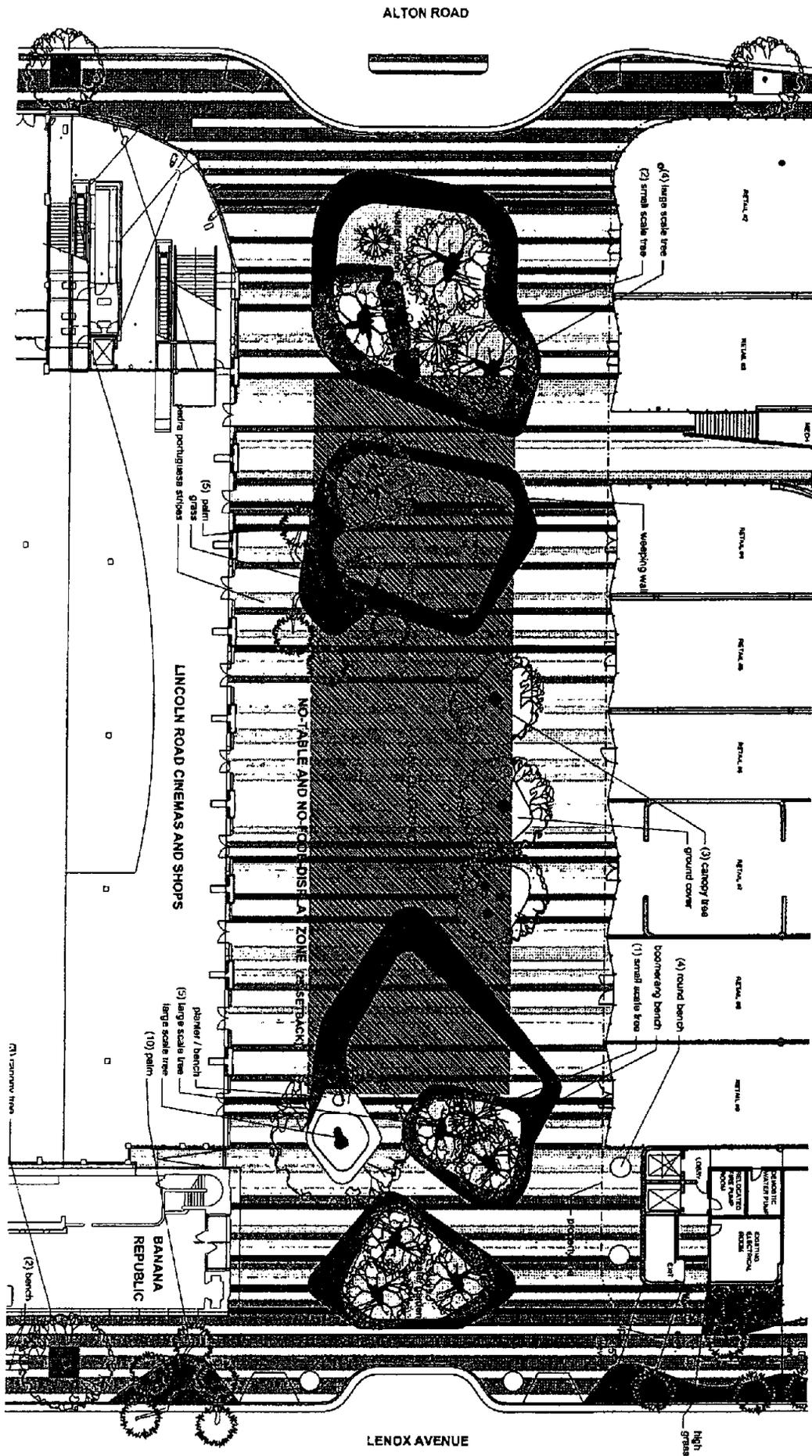
MIAMI 1287157.1 7713726901

**EXHIBIT "C"**

**SCHEMATIC AND DESIGN DEVELOPMENT DRAWINGS**

**[attached]**

MIAMI 1287157.1 7713726901



**EXHIBIT "D"**

**FORM OF ARCHITECT'S AGREEMENT**

**[intentionally omitted for purposes of recording]**

MIAMI 1287157.1 7713726901

**EXHIBIT "E"**  
**CONSTRUCTION SCHEDULE**

[attached]

MIAMI 1287157.1 7713726901

### Conversion of Lincoln Road from Vehicular to Pedestrian

ID	Task Name	Duration	Start	Finish	Predecessors	'07							
						S	S	M	T	W	T	J	
1	DESIGN PHASE	88 days	Thu 03/01/07	Mon 07/02/07									
2	PERMIT PHASE	88 days	Tue 07/03/07	Thu 11/01/07	1								
3	DEMOLITION	38 days	Fri 11/02/07	Tue 12/25/07									
4	Safe and secure site	5 days	Fri 11/02/07	Thu 11/08/07	2								
5	Provide South sidewalk access	5 days	Fri 11/09/07	Thu 11/15/07	4								
6	Royal Palms	10 days	Fri 11/16/07	Thu 11/29/07	5								
7	Asphalt, curb & gutter	5 days	Fri 11/30/07	Thu 12/06/07	6								
8	Median	5 days	Fri 12/07/07	Thu 12/13/07	7								
9	Drainage structures and piping	5 days	Fri 12/14/07	Thu 12/20/07	8								
10	12" DIP Water Main	3 days	Fri 12/21/07	Tue 12/25/07	9								
11	CIVIL	76 days	Wed 12/26/07	Tue 04/08/08									
12	Rough grade site	10 days	Wed 12/26/07	Tue 01/08/08	10								
13	Drainage Injection Well	22 days	Wed 12/26/07	Thu 01/24/08	10								
14	12 DIP Water Main	15 days	Wed 01/08/08	Tue 01/29/08	12								
15	Trench Drains	15 days	Wed 01/30/08	Tue 02/19/08	14								
16	18 HDPE Storm Pipe	15 days	Wed 01/30/08	Tue 02/19/08	14								
17	Traffic Signal Modification (Lenox & Alton Intersections)	60 days	Wed 12/26/07	Tue 03/18/08	3								
18	Light pole foundations	10 days	Wed 02/20/08	Tue 03/04/08	16								
19	3 Limerock base	15 days	Wed 03/19/08	Tue 04/08/08	17								
20	Curb & gutter	15 days	Wed 03/05/08	Tue 03/25/08	18								
21	FOUNTAIN/WATER FEATURES	176 days	Wed 01/09/08	Wed 09/10/08									
22	Structures & roughs	88 days	Wed 01/09/08	Fri 05/09/08	12								
23	Finishes	66 days	Mon 05/12/08	Mon 08/11/08	22								
24	Water feature plantings	22 days	Tue 08/12/08	Wed 09/10/08	23								
25	HARD ELEMENTS	141 days	Wed 03/28/08	Wed 10/08/08									
26	Finish grade site	22 days	Wed 04/09/08	Thu 05/08/08	19								
27	Pedra Portugesa stripes	88 days	Fri 05/23/08	Tue 09/23/08	26SS+10 days,48								
28	Trash receptacles	5 days	Mon 08/25/08	Fri 08/29/08	27SS+66 days								
29	Large light poles (50', blue)	5 days	Wed 03/26/08	Tue 04/01/08	20								
30	Light poles (white)	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days								

Project: LINCOLN ROAD SCHEDULE  
Date: Thu 12/14/08

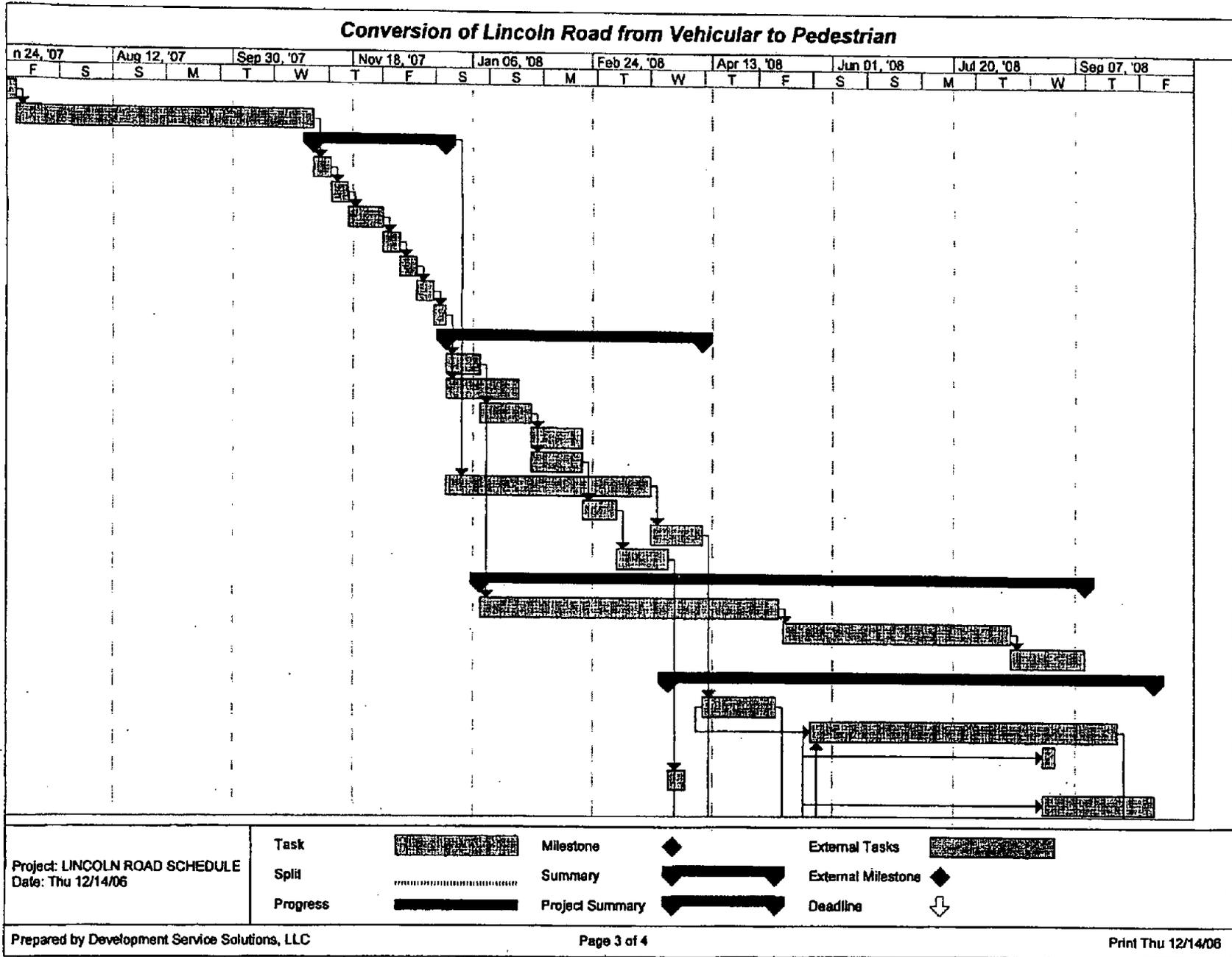
Task		Milestone		External Tasks	
Split		Summary		External Milestone	
Progress		Project Summary		Deadline	

### Conversion of Lincoln Road from Vehicular to Pedestrian

ID	Task Name	Duration	Start	Finish	Predecessors	'07						
						Mar 18, '07	May 06, '07					
31	Landscape Uplights	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days	S	S	M	T	W	T	
32	Street Lights (40')	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days							
33	Pay and display kiosks	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days							
34	Parking signs (handicap, no parking, etc.)	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days							
35	Pay phone	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days							
36	Street signs (directional)	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days							
37	Smoker stations	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days							
38	Parking coin meters	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days							
39	Free standing crosswalk signal	33 days	Wed 03/26/08	Fri 05/09/08	20							
40	Bus Shelter	33 days	Mon 08/25/08	Wed 10/08/08	27SS+66 days							
41	<b>SITE FURNISHINGS</b>	10 days	Wed 09/24/08	Tue 10/07/08								
42	Custom Seat Cubes	10 days	Wed 09/24/08	Tue 10/07/08	27							
43	Bicycle Racks	10 days	Wed 09/24/08	Tue 10/07/08	27							
44	Trash Receptacles	10 days	Wed 09/24/08	Tue 10/07/08	27							
45	<b>IRRIGATION</b>	113 days	Wed 04/09/08	Fri 09/12/08								
46	Conduits	15 days	Wed 04/09/08	Tue 04/29/08	19							
47	Controller and wirings	10 days	Wed 04/30/08	Tue 05/13/08	46							
48	Trees Not in water features	10 days	Fri 05/09/08	Thu 05/22/08	26							
49	Trim Irrigation	5 days	Fri 05/23/08	Thu 06/20/08	48							
50	Planting bed & turf	15 days	Mon 08/25/08	Fri 09/12/08	27SS+66 days							
51	<b>FINAL CLEANING AND ADJUSTMENT</b>	15 days	Thu 10/02/08	Wed 10/22/08								

Project: LINCOLN ROAD SCHEDULE  
Date: Thu 12/14/06

Task		Milestone		External Tasks	
Split		Summary		External Milestone	
Progress		Project Summary		Deadline	





**EXHIBIT "F"**

**DEVELOPMENT APPROVALS**

Certificate of Completion

Demolition Permit

Department of Environmental Protection Permit ( if required)

Department of Environmental Resource Management Permit

FDOT Permit

Building permits for:

Electrical

Plumbing

Miami-Dade County Public Works Department Permit (if required)

Public Works Permit, Paving and Drainage

Public Works Permit, Water and Sewer

Such other permits as may be required by Federal, State and local law

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**EXHIBIT "G"**

**BUDGET FOR REPLACEMENT OF SIDEWALKS, CURBS AND GUTTERS**

[attached]

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**LINCOLN ROAD PEDESTRIAN CONVERSION  
ALTON ROAD TO LENOX AVENUE**

<b>DEMOLITION COSTS</b>				
DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	COST
Demo Concrete Sidewalk (including Curb & Gutter)	8,618	SF	\$ 6.00	\$ 51,708
<b>Subtotal</b>				<b>\$ 51,708</b>
<b>NEW CONSTRUCTION COSTS</b>				
Sidewalk Concrete dyed in Miami Beach Red	8,618	SF	\$ 12.00	\$ 103,416
Curb & gutter	305	LF	\$ 25.00	\$ 7,625
<b>Subtotal</b>				<b>\$ 111,041</b>
<b>TOTAL SCHEMATIC ESTIMATED VALUE</b>				<b>\$ 162,749</b>

The aforementioned Opinion of Probable Cost (OPC) is based on schematic plans. The costs shown are based on engineering assumptions which will be adjusted upon final determination of the design. This OPC is non-binding and subject to change.

**EXHIBIT "H"**

**DOCUMENTS PROVIDED BY THE CITY TO DEVELOPER**

1. Water, sewer and stormwater utility drawings for Lincoln Road, N. Lincoln Lane and Alton Court.
2. Memoranda to Finance and Citywide Projects Committee meetings and Commission meetings.
3. Sonar study of all existing underground facilities, equipment and utilities within the Project Site.

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**EXHIBIT "I"**  
**FORM OF EASEMENT AGREEMENT**

**[attached]**

MIAMI 1287157.1 7713726901

Prepared by and after recording return to:  
Adam D. Lustig, Esq.  
Bilzin Sumberg Baena Price & Axelrod LLP  
200 South Biscayne Boulevard, Suite 2500  
Miami, Florida 33131-5340

### EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made as of the \_\_\_ day of April, 2007, by and among CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida (the "City"), UIA MANAGEMENT, LLC, a Delaware limited liability company ("UIA"), MBEACH1, LLLP, a Delaware limited liability limited partnership, authorized to transact business in Florida as MBeach1, LLLP, Ltd. ("MBeach1") and MBEACH3, LLC, a Delaware limited liability company ("MBeach3"). UIA, MBeach1 and MBeach3 are each, a "Developer Party" and collectively, the "Developer Parties". The City and Developer Parties are each, a "Party", and collectively, the "Parties".

#### RECITALS:

A. MBeach1 is the owner of certain land located at 1111 Lincoln Road, Miami Beach, Florida, and more particularly in the attached **Exhibit "A-1"** (the "MBeach1 Property").

B. MBeach3 is the owner of certain land adjacent to the MBeach1 Property, located at 1665 Alton Road, Miami Beach, Florida, and more particularly described in the attached **Exhibit "A-2"** (the "MBeach3 Property", and together with the MBeach1 Property, the "1111 Lincoln Road Property").

C. The Design Review Board of the City approved the renovation of the existing office building located on the MBeach1 Property and the construction of a new two story mixed-use building on the MBeach3 Property and a new seven story mixed-use parking structure on the MBeach1 Property (collectively, the "1111 Lincoln Project"), pursuant to an Order dated February 7, 2006, under DRB File No. 19018 (the "DRB Order").

D. The Board of Adjustment of the City approved the 1111 Lincoln Project pursuant to an Order dated March 3, 2006, under File No. 3178 (the "BOA Order").

E. As a condition under each of the DRB Order and the BOA Order, the owner of the 1111 Lincoln Road Property was required to enter into discussions with the City to explore the possibility of closing the block of Lincoln Road between Lenox Avenue and Alton Road to vehicular traffic and extending the Lincoln Road pedestrian mall west to Alton Road.

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F. The City and UIA, an affiliate of MBeach1 and MBeach3, have entered into a Development Agreement simultaneously herewith providing for UIA to design and construct a new pedestrian mall and the closure of Lincoln Road from Lenox Avenue to Alton Road along with sidewalk and other improvements along Alton Road, Lenox Ave and Lincoln Lane (the "Lincoln Road Project").

G. In order to facilitate the construction, pursuant to the Development Agreement, the City agreed to grant to MBeach1 and MBeach3 certain easements and/or right-of-way permits for the construction and future maintenance of both the Lincoln Road Project and 1111 Lincoln Project.

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Parties hereto agree as follows:

1. Recitals. The above and foregoing recitals are true and correct and incorporated herein by reference thereto.

2. Grant of Easements. The City hereby grants to Developer Parties (a) a temporary construction right-of-way permit and/or easement and continuing maintenance easements and/or right-of-way permits along Lincoln Road, Alton Road, Lincoln Lane, Alton Court, and Lenox Avenue, the dedicated rights-of-way adjacent to the 1111 Lincoln Road Property (each, a "Right-of-Way" and collectively, the "Rights-of-Way"), for the construction and maintenance of, without limitation, the architectural overhangs and features over pedestrian portions of the Rights-of-Way adjacent to the MBeach1 Property, as depicted in the attached **Exhibit "B-1"** and the MBeach3 Property, as depicted in the attached **Exhibit "B-2"**, including below grade pile cap encroachments, as depicted in the attached **Exhibit "C"** (collectively, the 1111 Lincoln Project Easement Improvements"), and (b) a subsurface utility easement for the installation, operation, and continuing maintenance of underground utilities to be located in the Rights-of-Way that are necessary to serve the buildings to be constructed by MBeach1 on the MBeach1 Property and by MBeach3 on the MBeach3 Property (collectively, the "Utilities").

Developer Parties, at the request of the City's Public Works Director, shall provide the City with a survey and/or sketch delineating and marking on the surface of the Rights-of-Way, the exact location of each underground utility facility, which survey/sketch shall be periodically updated by Developer Parties in the event of relocation of an existing underground utility facility and/or placement of a new facility within the subsurface of the Rights-of-Way.

The City specifically reserves the right to allow other utility facilities to be installed under, across, and within the Rights-of-Way (and to grant additional non-exclusive easements permitting the installation, operation, and maintenance of same), provided such facilities do not materially interfere with the Utilities.

3. Maintenance.

(a) (i) In its construction and continuing maintenance of the 1111 Lincoln Project Easement Improvements, and (ii) in its installation, operation, and continuing maintenance of the Utilities, Developer Parties shall use best efforts to avoid causing any

damage to, or any material interference with, the Rights-of-Way (including, without limitation, other improvements within the Rights-of-Way and other utility facilities installed under, across, or within the Rights-of-Way).

(b) In making use of the easements for the 1111 Lincoln Project Easement Improvements and the Utilities, Developer Parties shall:

(i) To the extent feasible, use best efforts to coordinate their construction, repair and maintenance activities within the Rights-of-Way with the City's construction, maintenance and operation of public improvements upon the Rights-of-Way and/or adjacent property owned by the City;

(ii) Use best efforts to minimize interference with the City, and the public's, use and enjoyment of the Rights-of-Way and/or adjacent property owned by the City, together with any improvements constructed thereon;

(iii) After the performance of any work in connection with the (A) construction and continuing maintenance of the 1111 Lincoln Project Easement Improvements, and (B) installation, operation, and continuing maintenance of the Utilities, replace and restore, at Developer Parties' sole cost and expense, the Rights-of-Way and/or improvements disturbed by such work, to substantially the same condition of such area and/or improvements before the performance of such work;

(iv) In no event other than an emergency, repair, replace, remove, or otherwise take any action at any time within the Rights-of-Way without first providing the City, through its Public Works Director, with thirty (30) calendar days prior written notice, and without obtaining the prior written consent of the City, which consent may be withheld by the City, in the City's reasonable discretion; and

(v) At all times, keep the Rights-of-Way free from obstruction of any kind or nature whatsoever, except as may be required from time to time to effect the construction, installation, maintenance and/or repair of either the 1111 Lincoln Project Easement Improvements and/or the Utilities; provided that at all times after the completion of construction of the 1111 Lincoln Project Easement Improvements, there shall be reasonable access over the Rights-of-Way to permit the City, and the public, to utilize and/or enjoy the Rights-of-Way, and adjacent property thereto owned by the City, and sufficient to permit normal pedestrian traffic flow.

4. Dedication and Vacation of Land. MBeach1 hereby agrees, subject to the Vacation, to dedicate to the City for right-of-way purposes a portion of the 1111 Lincoln Road Property owned by it, more particularly described in the attached **Exhibit "D"**. In return for such agreement by MBeach1, the City hereby agrees, subject to and contingent upon Developer Parties' compliance with the City's Requirements for Vacation of Alleys, Easements and City Rights-of-Way, as same may be amended from time to time (including, without limitation, City Commission approval following a duly noticed public hearing), to vacate a minor portion of Lincoln Lane, more particularly described in the attached **Exhibit "E"** (the "Vacation").

5. Nature of Easement. The burdens and benefits of the easements created herein shall run with the land and shall inure to the benefit of, and be binding upon the Parties and their respective successors and/or assigns, and all persons claiming under them. Any transferee of a Developer Party and/or Developer Parties, or its/their successors or assigns, as the case may be, shall be bound by all terms and conditions of this Agreement. For purposes of a transfer and/or assignment of this Agreement, a Developer Party and/or Developer Parties shall only be permitted to assign a Developer Party's and/or Developer Parties' rights hereunder to (and a Developer Party and/or Developer Parties' successors shall only include) successor owner(s) or mortgage lenders of the 1111 Lincoln Road Property and/or association(s) designated with the responsibility of maintenance of the common areas in connection with the development or operation of the 1111 Lincoln Road Property. A Developer Party's and/or Developer Parties' successors and/or assigns shall not include individual unit owners or individual renters unless such unit owners or renters are successor owner(s) and/or associations as described above.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in State court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND DEVELOPER PARTIES EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

7. Counterparts. This Agreement may be signed in counterparts with the same force and effect as if all required signatures were contained in a single, original instrument.

8. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Clerk of Court of Miami-Dade County and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of the Parties.

Notwithstanding the preceding paragraph, the City may terminate this Agreement, as to the portion of same pertaining to the Utilities, by giving written notice to Developer Parties stating that the Utilities have been abandoned, if Developer Parties' use of the Utilities ceases, and the cessation of that use is for a continuous period of one (1) year, in which case Developer Parties shall deliver to City, within thirty (30) calendar days after receipt of written request, an executed and acknowledged Release, in form and substance reasonably satisfactory to the City, terminating that portion of this Agreement pertaining to the Utilities. If Developer Parties fail to timely deliver an appropriate Release to City, City may place of record in the Official Records of Miami-Dade County, Florida, an affidavit that abandonment has taken place and such notice has been properly given. Unless Developer Parties place of record in the Official Records of Miami-Dade County, Florida, within twenty (20) calendar days thereafter, an affidavit that the Utilities were used within the prior one (1) year period in question, this Agreement shall be conclusively deemed abandoned as to the Utilities.

9. Relocation of Utilities. Developer Parties shall have the right to relocate the Utilities, subject to City's prior written consent, which consent may be withheld by City, in City's reasonable discretion, and, if approved, shall be further subject to the following terms and conditions:

(a) Such relocation is of such a nature to permit the use and operation of Developer Parties' facilities at substantially the same level of service as existed before the date of the relocation;

(b) City and Developer Parties shall have executed and recorded in the Official Records of Miami-Dade County, Florida, an amendment to this Agreement modifying the location of the easement granted from the City to Developer for the relocated Utilities; and

(c) Developer Parties agree to pay the costs for the relocation of the Utilities.

(d) Notwithstanding the foregoing, Developer Parties hereby agree to relocate the Utilities to other locations in the Rights-of-Way at their own expense, if reasonably required to do so by the Public Works Department of the City as a result of the Utilities materially interfering with any other utility facilities installed or to be installed by the City under, across or within the Rights-of-Way. Failure of Developer Parties to timely comply with the Public Works Department's notice to relocate will result in the City having the right to cause the items to be relocated and charge Developer Parties for all costs incurred in the removal and relocation of the Utilities and to record a lien against the 1111 Lincoln Road Property, if such costs are not paid by Developer Parties prior to the expiration of all applicable notice and cure periods under this Agreement.

10. Indemnity. Developer Parties hereby indemnify and hold harmless and agree to defend the City from any and all actions, causes of action, claims, liabilities, demands, losses and expenses of any kind whatsoever, including, without limitation, reasonable attorneys' fees and court costs at trial and all appellate levels, which may be filed or made against the City, its officers, directors, partners, agents, employees, successors and/or assigns, by reason of any construction, installation, utilization operation, maintenance or repair pursuant to this Agreement, by Developer Parties, and/or their agents, contractors and/or employees, of either the 1111 Lincoln Project Easement Improvement(s) and/or the Utilities.

11. Remedies and Enforcement; Self-Help. In the event of a breach by either Party of any of the terms, covenants, restrictions or conditions hereof, the other Party shall provide written notice of such breach to the defaulting Party. If the defaulting Party fails to cure such breach within thirty (30) calendar days following written notice thereof by the non-defaulting Party (unless such breach creates an emergency requiring immediate action, in which case either Party may take action to correct the problem after such reasonable notice to the other Party as may be possible under the circumstances, or with respect to any such breach the nature of which cannot reasonably be cured within such thirty (30)-day calendar period, the defaulting Party commences such cure within such thirty (30)-day calendar period and thereafter diligently and continuously prosecutes such cure to completion), the non-defaulting Party shall have the right to pursue any one or more of the following remedies: (a) perform such obligation contained in this

Agreement on behalf of such defaulting Party and be reimbursed by such defaulting Party upon demand for the reasonable costs thereof; (b) full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due; (c) specific performance; and/or (d) record a lien against the 1111 Lincoln Road Property. Notwithstanding anything contained herein to the contrary, no breach hereunder shall entitle any Party to cancel, rescind, or otherwise terminate this Agreement.

12. No Waiver. No waiver of any default of any obligation by any Party hereto shall be implied from any omission by the other Party to take any action with respect to such default.

13. No Agency. Nothing in this Agreement shall be deemed or construed by either Party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

14. Severability. Each provision of this Agreement is hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

15. Force Majeure Events. Except in the event of any emergency requiring immediate action, whenever a period of time is herein prescribed for the taking of any action by either Party, neither Party shall be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other cause whatsoever beyond the control of such Party.

16. No Dedication. Neither this Agreement nor Developer Parties' limited rights to use of the Rights-of-Way, as set forth herein, shall be deemed a dedication, either express or implied, of all or any portion of the Rights-of-Way to Developer Parties and/or their successors and assigns.

17. Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

18. Amendment. The Parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of the City and Developer Parties, or their respective successors and/or assigns, evidenced by a document that has been fully executed and acknowledged by the City and Developer Parties, and or their respective successors and/or assigns and recorded in the Official Records of Miami-Dade County, Florida. The Parties agree that they shall not unreasonably withhold completion or delay their written consent and approval of any amendment to this Agreement which is for the purpose of complying with any applicable law or necessary for the development of the Lincoln Road Project or 1111 Lincoln Project but only to the extent that such amendment to this

Agreement does not adversely affect, limit or modify the covenants and restrictions contained in this Agreement.

19. Attorneys' Fees. In the event any Party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing Party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding, at trial and at all appellate levels.

20. Notices. Whenever either party desires to give notice unto the other, it must be given by written notice, (a) sent by certified United States mail, with return receipt requested, (b) by personal delivery with a signed receipt, (c) by recognized national overnight courier service or (d) by facsimile, in any case, addressed to the party for whom it is intended, at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. Notices given by an attorney for the City or Developer shall be deemed effective notices. For the present, the parties designate the following as the respective places for giving of notice, to wit:

FOR CITY:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Manager  
Fax: (305) 673-7782

With a copy to:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Attorney  
Fax: (305) 673-7002

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: Fred Beckmann, Public Works Director  
Fax: (305) 673-7028

FOR DEVELOPER PARTIES:

c/o UIA Management, LLC  
1111 Lincoln Road, Suite 760  
Miami Beach, Florida 33139  
Attn: Robert S. Wennett  
Fax: (305) 531-4409

With a copy to:

Bilzin Sumberg Baena Price & Axelrod LLP  
200 South Biscayne Blvd., Suite 2500  
Miami, Florida 33131  
Attn: John C. Sumberg, Esq.  
Fax: (305) 351-2201

21. Estoppel Certificates. Either Party hereto, within ten (10) business days of its receipt of a written request from the other Party shall from time to time provide the requesting Owner with a written estoppel certificate duly executed stating:

(a) to the best of such Party's knowledge, whether the other Party is in default or violation of this Agreement and setting forth with specificity the default or violation; and

(b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

22. Further Assurances. From time to time, at the request of either Party and without further consideration, either Party shall execute and deliver any further instruments and take such other actions as the other Party may reasonably require to accomplish the purposes of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

WITNESSES:

CITY:

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

\_\_\_\_\_  
Sign

By: \_\_\_\_\_  
Name: David Dermer  
Title: Mayor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Sign

\_\_\_\_\_  
Print Name

ATTEST:

By: \_\_\_\_\_  
Name: Robert Parcher  
Title: City Clerk

STATE OF FLORIDA )

)ss:

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by David Dermer, as Mayor, and Robert Parcher, as City Clerk, of the City OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

\_\_\_\_\_  
Notary Public, State of Florida

My commission expires:

MIAMI 1275569.5 7713726901

WITNESSES:

**DEVELOPER PARTIES:**

UIA MANAGEMENT, LLC, a Delaware limited liability company

By: Urban Investments Advisors, LLC, a Delaware limited liability company, its Managing Member

By: Wellspring Investments Management I, LLC, a Delaware limited liability company, its Managing Member

\_\_\_\_\_  
Sign

By: \_\_\_\_\_

Name: Robert S. Wennett

Title: Managing Member

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Sign

\_\_\_\_\_  
Print Name

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Robert S. Wennett, the Managing Member of Wellspring Investments Management I, LLC, a Delaware limited liability company, the Managing Member of UIA Management, LLC, a Delaware limited liability company, on behalf of such limited liability companies. He is personally known to me or produced valid Florida driver's licenses as identification.

\_\_\_\_\_  
Notary Public, State of Florida

My commission expires:

MIAMI 1275569.5 7713726901

WITNESSES:

MBEACH1, LLLP, a Delaware limited liability limited partnership, authorized to transact business in Florida as MBEACH1, LLLP, LTD.

By: MBEACH1 GP, LLC, a Delaware limited liability company, its General Partner

By: Urban Investments Advisors, LLC, a Delaware limited liability company, its Sole Member

Sign: \_\_\_\_\_

Print Name: \_\_\_\_\_

Sign: \_\_\_\_\_

Print Name: \_\_\_\_\_

By: Wellspring Investments Management I, LLC, a Delaware limited liability company, its Managing Member

By: \_\_\_\_\_  
Name: Robert S. Wennett  
Title: Managing Member

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Robert S. Wennett, the Managing Member of Wellspring Investments Management I, LLC, a Delaware limited liability company, the Managing Member of Urban Investments Advisors, LLC, a Delaware limited liability company, the Sole Member of MBeach1 GP, LLC, a Delaware limited liability company, the General Partner of MBeach1, LLLP, a Delaware limited liability limited partnership, authorized to transact business in Florida as MBeach, LLLP, Ltd., on behalf of such limited liability companies and limited partnership. He is personally known to me or produced valid Florida driver's licenses as identification.

\_\_\_\_\_  
Notary Public, State of Florida

My commission expires:

MIAMI 1275569.5 7713726901

WITNESSES:

MBEACH3, LLC, a Delaware limited liability company

Sign: \_\_\_\_\_

By: 1665 ALTON ROAD CORP., a Delaware corporation, its Sole Member

Print Name: \_\_\_\_\_

Sign: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name: Robert S. Wennett  
Title: Managing Member

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Robert S. Wennett, the Managing Member of 1665 Alton Road Corp., a Delaware corporation, the Sole Member of MBeach3, LLC, a Delaware limited liability company, on behalf of such corporation and limited liability company. He is personally known to me or produced valid Florida driver's licenses as identification.

\_\_\_\_\_  
Notary Public, State of Florida

My commission expires:

MIAMI 1275569.5 7713726901

**EXHIBIT "A-1"**

**LEGAL DESCRIPTION OF MBEACH1 PROPERTY**

Lots 1, 2, 3, 4, 5 and 6, Block 39, COMMERCIAL SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, Page 5 of the Public Records of Miami-Dade County, Florida, and

Lots 7 and 8, Block 39, PALM VIEW SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, Page 29 of the Public Records of Dade County, Florida, and

**EXHIBIT "A-2"**

**LEGAL DESCRIPTION OF MBEACH3 PROPERTY**

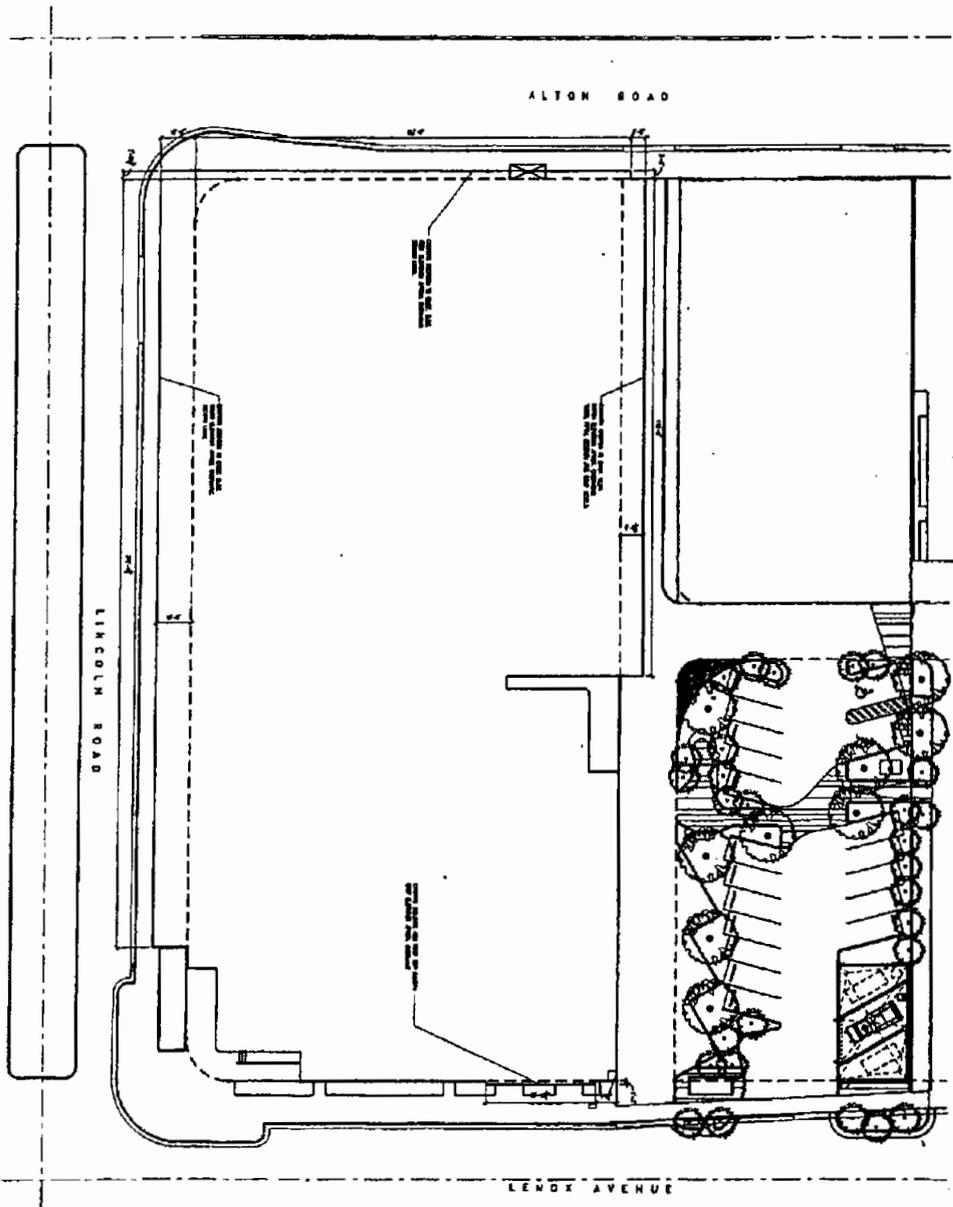
Lots 19 and 20, Block 39, COMMERCIAL SUBDIVISION, FIRST ADDITION, according to the Plat thereof, as recorded in Plat Book 6, Page 30 of the Public Records of Dade County, Florida.

MIAMI 1275569.5 7713726901

**EXHIBIT "B"**

**SKETCH OF ARCHITECTURAL OVERHANGS  
AND FEATURES OVER RIGHTS-OF-WAY**

MIAMI 1275569.5 7713726901



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PERMIT

<p><b>GN-401</b></p> <p><b>OVERLAND BRANHAM</b></p> <p>DATE: 11/11/11</p> <p>SCALE: 1/8" = 1'-0"</p> <p>PROJECT: 1111 LINCOLN ROAD, MIAMI BEACH, FL</p>	<p>DATE: 11/11/11</p> <p>SCALE: 1/8" = 1'-0"</p> <p>PROJECT: 1111 LINCOLN ROAD, MIAMI BEACH, FL</p>
---	---

**Zyscovich**

400 South Orange Blvd. 17th Floor Miami, FL 33136  
 Phone: 305.358.0000 Fax: 305.358.0001  
 www.zyscovich.com

**1111**

**LINCOLN ROAD**

**CARPARK AND EXISTING OFFICE BUILDING**

1111 LINCOLN ROAD, MIAMI BEACH, FL

**GENERAL NOTES:**

1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FLORIDA BUILDING CODE AND ALL APPLICABLE LOCAL ORDINANCES.

2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.

4. ALL UTILITIES SHALL BE PROTECTED AND DEEPENED AS NECESSARY TO ACCOMMODATE THE PROPOSED CONSTRUCTION.

5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND REPAIR OF ALL EXISTING UTILITIES AND STRUCTURES.

6. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE APPROPRIATE AGENCIES.

7. THE CONTRACTOR SHALL MAINTAIN ADEQUATE RECORDS OF ALL CONSTRUCTION ACTIVITIES.

8. ALL CONSTRUCTION SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.

9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REMOVAL AND DISPOSAL OF ALL DEBRIS AND WASTE MATERIALS.

10. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE ENVIRONMENTAL REGULATIONS AND REQUIREMENTS.

**EXHIBIT "C"**

**SKETCH OF PILE CAP ENCROACHMENTS**

MIAMI 1275569.5 7713726901



**EXHIBIT "D"**

**LEGAL DESCRIPTION AND SKETCH OF PROPERTY DEDICATED TO CITY**

MIAMI 1275569.5 7713726901

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT :  
 MBEACH1, LLLP

LAND DESCRIPTION AND SKETCH

LAND DESCRIPTION :

A PORTION OF LOT 7, BLOCK 39, "PALM VIEW SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 29 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE NORTHWEST CORNER OF SAID LOT 7;

THENCE SOUTH 00°48'26" EAST ALONG THE WEST LINE OF SAID LOT 7, A DISTANCE OF 22.02 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHEAST;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 8.00 FEET, A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 12.57 FEET;

THENCE NORTH 89°08'55" EAST ALONG THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 22.02 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHEAST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 30.00 FEET, A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 47.15 FEET TO THE POINT OF BEGINNING.

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI/DADE COUNTY, FLORIDA; CONTAINING 180 SQUARE FEET, MORE OR LESS.

NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE ASSUMED. THE SOUTH LINE OF LOT 7, BLOCK 39 "PALM VIEW SUBDIVISION", P.B. 6, PG. 29, M/D.C.R. SAID LINE BEARS N89°08'55"E.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN MARCH, 2007. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 61G17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES. SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: -----

RICHARD E. COUSINS  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA REGISTRATION NO. 4188

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/06/07	----	AV	REC

LAND DESCRIPTION  
 & SKETCH  
 FOR PARCEL TO  
 CITY OF  
 MIAMI BEACH

PROPERTY ADDRESS :  
 1111 LINCOLN ROAD

SCALE: N/A

SHEET 1 OF 2

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT :

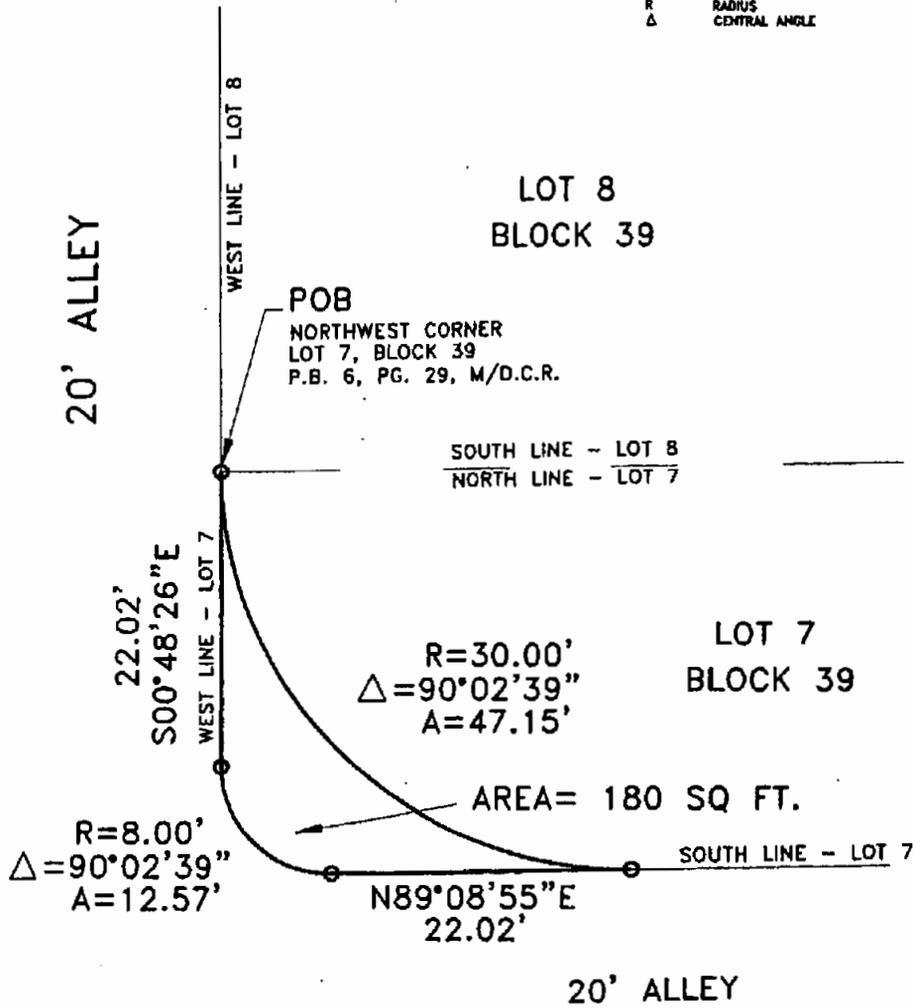
MBEACH1, LLLP

**LAND DESCRIPTION AND SKETCH**



LEGEND:

CKD CHECKED BY  
 DWN DRAWN BY  
 FB/PG FIELD BOOK AND PAGE  
 POB POINT OF BEGINNING  
 POC POINT OF COMMENCEMENT  
 P.S. PLAT BOOK  
 M/D.C.R. MIAMI/DADE COUNTY RECORDS  
 A ARC DISTANCE  
 R RADIUS  
 Δ CENTRAL ANGLE



REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/06/07	----	AV	REC

LAND DESCRIPTION  
 & SKETCH  
 FOR PARCEL TO  
 CITY OF  
 MIAMI BEACH

PROPERTY ADDRESS :  
 1111 LINCOLN ROAD

SCALE: 1" = 10'

SHEET 2 OF 2

**EXHIBIT "E"**

**LEGAL DESCRIPTION AND SKETCH OF PROPERTY TO BE VACATED BY CITY**

MIAMI 1275569.5 7713726901

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP

LAND DESCRIPTION AND SKETCH

LAND DESCRIPTION :

A PORTION OF THE ALLEY LYING ADJACENT TO LOT 20, BLOCK 39, "COMMERCIAL SUBDIVISION, FIRST ADDITION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 30 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCE AT THE NORTHEAST CORNER OF SAID LOT 20;

THENCE SOUTH 00°48'26" EAST ALONG THE EAST LINE OF SAID LOT 20, A DISTANCE OF 22.01 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 00°48'26" EAST ON THE SOUTHERLY EXTENSION OF SAID LOT 20, A DISTANCE OF 7.99 FEET;

THENCE SOUTH 89°08'55" WEST ALONG THE EASTERLY EXTENSION OF SAID LOT 20, A DISTANCE OF 7.99 FEET TO A POINT ON A TANGENT CURVE; CONCAVE TO THE NORTHWEST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 8.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 12.56 FEET TO THE POINT OF BEGINNING.

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI/DADE COUNTY, FLORIDA; CONTAINING 14 SQUARE FEET, MORE OR LESS.

NOTES:

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE ASSUMED. THE SOUTH LINE OF LOT 20, BLOCK 39 "COMMERCIAL SUBDIVISION, FIRST ADDITION", P.B. 6, PG. 30, M/D.C.R. SAID LINE BEARS S89°08'55"W.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN MARCH, 2007. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 61G17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: -----

RICHARD E. COUSINS  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA REGISTRATION NO. 4188

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/06/07	----	AV	REC

LAND DESCRIPTION & SKETCH FOR PARCEL FROM CITY OF MIAMI BEACH

PROPERTY ADDRESS : 1111 LINCOLN ROAD  
 SCALE: N/A  
 SHEET 1 OF 2

OR BK 25537 PG 1979  
LAST PAGE

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
DAVIE, FLORIDA 33314  
CERTIFICATE OF AUTHORIZATION : LB # 6448  
PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT :

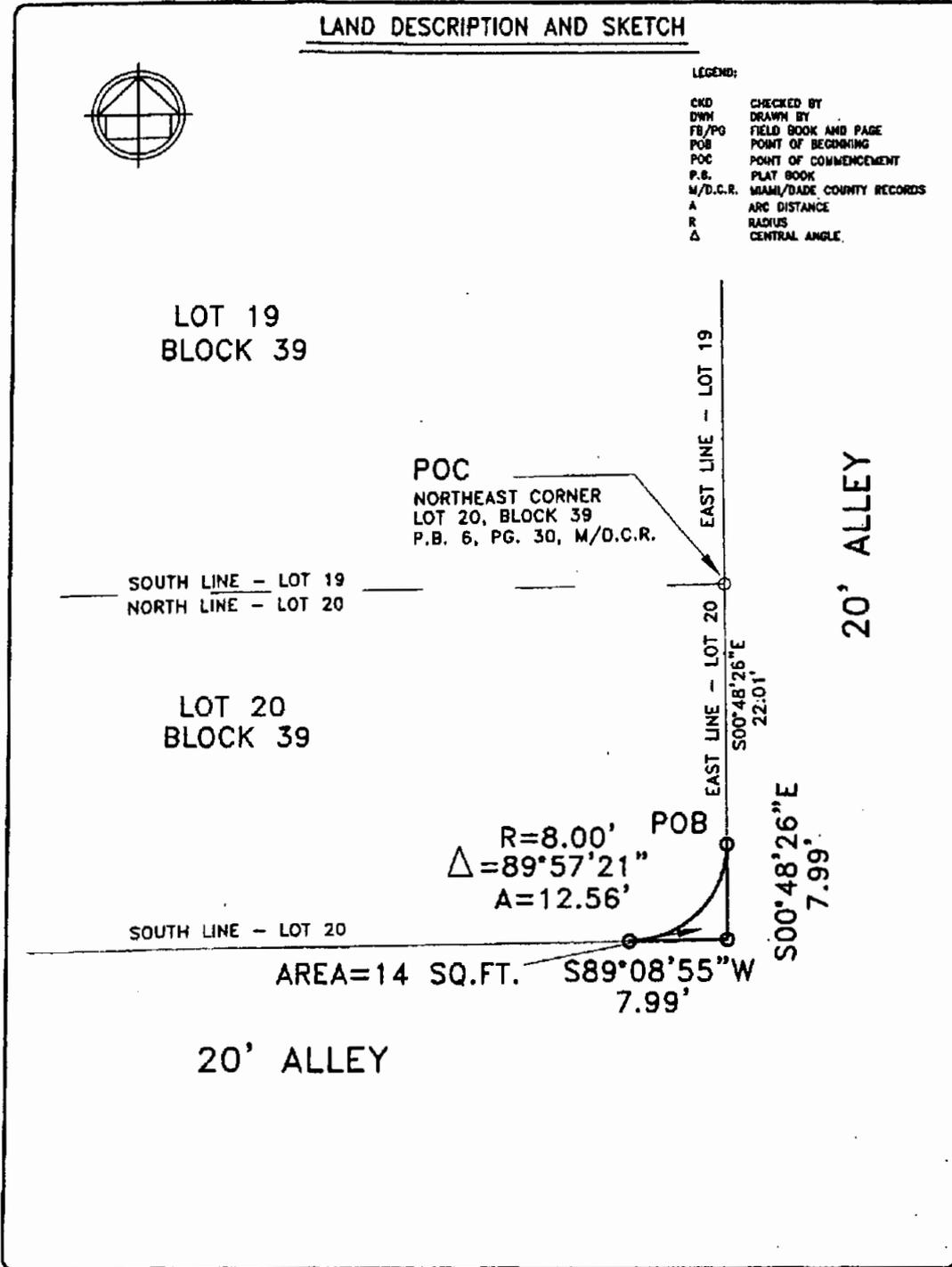
MBEACH1, LLLP

**LAND DESCRIPTION AND SKETCH**



LEGEND:

CKD CHECKED BY  
DWN DRAWN BY  
FB/PG FIELD BOOK AND PAGE  
POB POINT OF BEGINNING  
POC POINT OF COMMENCEMENT  
P.B. PLAT BOOK  
M/D.C.R. MIAMI/DADE COUNTY RECORDS  
A ARC DISTANCE  
R RADIUS  
Δ CENTRAL ANGLE



REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	05/06/07	----	AV	REC

LAND DESCRIPTION  
& SKETCH  
FOR PARCEL FROM  
CITY OF  
MIAMI BEACH

PROPERTY ADDRESS :  
1111 LINCOLN ROAD

SCALE: 1" = 10'

SHEET 2 OF 2





CFN 20090449391  
 OR Bk 26911 Pgs 3252 - 3275f (24pgs)  
 RECORDED 06/22/2009 15:37:51  
 HARVEY RUVIN, CLERK OF COURT  
 MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by and  
 after recording return to:  
 Adam D. Lustig, Esq.  
 Bilzin Sumberg Baena Price & Axelrod LLP  
 200 South Biscayne Blvd., Suite 2500  
 Miami, Florida 33131-5340

(For Recorder's Use Only)

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "Amendment") is entered into as of the 3<sup>RD</sup> day of JUNE, 2009, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida (the "City") and UIA MANAGEMENT, LLC, a Delaware limited liability company ("Developer").

**RECITALS:**

A. The City of Miami Beach, Florida, a municipal corporation of the State of Florida (the "City"), is the owner of certain land located on Lincoln Road between Lenox Avenue and Alton Road, in Miami Beach, Florida, more particularly described in the attached Exhibit "A" (the "Project Site").

B. In December 6, 2006, the City Commission adopted Resolution No. 2006-26422, approving a conceptual plan for the closure of Lincoln Road to vehicles between Lenox Avenue and Alton Road and construction of a pedestrian mall.

C. In March 14, 2007, the City Commission adopted Resolution No. 2007-26494, approving a Development Agreement between the City and Developer, for the design, development, and construction of certain improvements to the 1100 Block of Lincoln Road, in conjunction with the project being developed by MBeach1, LLLP, an affiliate of Developer, at 1111 Lincoln Road, Miami Beach, Florida (the "MBeach1 Property").

D. The City and Developer entered into a Development Agreement dated April 11, 2007 and recorded in Official Records Book 25537, Page 1882 of the Public Records of Miami-Dade County, Florida (the "Development Agreement").

E. Under Section 52.1 of the Development Agreement, the Developer agreed to match the City's Art in Public Places ("AiPP") contribution and the City agreed that Developer's AiPP contribution would be utilized solely on the 1100 block of Lincoln Road between Lenox Avenue and Alton Road and that the art and artists shall be reviewed and selected pursuant to the

City's established AiPP procedures, as set forth in the City of Miami Beach Code, as same may be amended from time to time.

F. At its regular meeting on April 12, 2007, and in conjunction with its established criteria, the AiPP Committee passed a motion establishing a Professional Advisory Committee ("PAC") for the selection of the public artwork to be sited on Lincoln Road, between Lenox Avenue and Alton Road.

G. At the November 27, 2007, PAC meeting, the members of the AiPP Committee spoke with Dan Graham (the "Artist"), who discussed his concept for the public artwork to be sited on Lincoln Road, between Lenox Avenue and Alton Road; the PAC unanimously agreed to proceed with a direct selection, and recommended the Artist for the AiPP project (hereinafter, Artist's proposal for the public artwork to be sited on Lincoln Road between Lenox Avenue and Alton Road, may also be referred to as the "AiPP Project").

H. At its meeting on June 17, 2008, the AiPP Committee unanimously selected the preliminary proposal for the AiPP Project.

I. On July 30, 2008, the Neighborhoods/Community Affairs Committee reviewed and recommended approval of the AiPP Project.

J. On August 20, 2008, a presentation was made to the Lincoln Road Merchants' Association Board of Directors and the Lincoln Road Merchants' Association voted unanimously in support of the AiPP Project.

K. On September 2, 2008, a presentation was made to the City's Design Review Board and the Design Review Board unanimously approved the AiPP Project.

L. On October 7, 2008, the Mayor of the City and City Commission approved the AiPP Project pursuant to Resolution No. 2008-26924 (the "Resolution").

M. The Resolution authorizes the City Manager to negotiate an agreement with Developer for the design, fabrication, installation and certain ongoing maintenance of the AiPP Project.

N. The City and Developer desire to amend the Development Agreement, as more particularly set forth in this Amendment, to set forth the terms and conditions of the design, fabrication, installation and maintenance of the AiPP Project.

**NOW THEREFORE**, in consideration of the foregoing, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated herein and made a part hereof by this reference. Capitalized terms not otherwise defined herein have the meanings given to such terms in the Development Agreement.

2. **Correction.** Recital K in the Development Agreement is modified by deleting the reference to "Resolution No. 2007-26493" and replacing it with "Resolution No. 2007-26494".

3. **AiPP Project.**

(a) Design, Fabrication and Installation. Developer shall contract with the Artist for the design, fabrication and installation of the proposed artwork to be created by the Artist (the "Artwork") for the AiPP Project on the Project Site, in accordance with the Approved Artwork Design Drawings (as defined below). The current working title of the Artwork is "Pavilion". The City has approved the conceptual plan for the Artwork. Developer shall work with the Artist to complete the design development of the Artwork. The City shall not be responsible for any feasibility costs in connection with the design development of the Artwork. Upon completion of the design development phase, Developer shall submit the following to the Contract Administrator for its approval in accordance with the terms of the Agreement: (i) final design drawings for fabrication, (ii) Artist proofs, (iii) material samples, (iv) Artwork and Artwork support specifications for inclusion in site construction documents, (v) verified cost estimate, (vi) subcontractor list, (vii) building permits, and (viii) a fabrication and installation schedule (collectively, the "Artwork Design Development Deliveries"). The final design drawings, upon approval from the Contract Administrator, shall be referred to as the "Approved Artwork Design Drawings". Based on the requirements of the approved Artwork conceptual design, the Contract Administrator has the right, in his/her discretion, to waive the submittal of any unnecessary Artwork Design Development Deliveries or postpone the submittal of any such items to the fabrication and installation phase of the Artwork for the AiPP Project on the Project Site. If the total cost of the design, fabrication and installation of the Artwork, as reflected in the verified cost estimate, exceeds \$150,000, Developer shall have the right to either pay the excess or terminate its agreement with the Artist for the design, fabrication and installation of the Artwork, in which case the terms of this Section 3 shall automatically be null and void and Developer shall automatically be released from all obligations under this Section 3. However, Developer shall continue to have the obligation to match the City's 1½% of the Contract Sum for AiPP in accordance with the terms of Section 52.1 of the Development Agreement. Developer shall obtain all necessary permits required by the City for the fabrication and installation of the Artwork and shall provide such permits to the Contract Administrator for review and approval prior to fabrication. The City shall be responsible for payment of any permit fees. Upon its approval of the permits and Artwork Design Development Deliveries and completion of an architectural coordination review, Contract Administrator shall instruct Developer to cause the Artist to commence the fabrication of the Artwork by written instructions in the form of a Notice to Proceed issued by Contract Administrator. Developer shall use reasonable efforts to cause the Artist to complete the installation of the Artwork on the Project Site on or before Final Completion of the Work under the Development Agreement.

(b) Payment. Upon completion of the design and fabrication of the Artwork and presentation of an invoice by the Developer to the City, the City shall contribute ½ of the total costs of the design and fabrication of the Artwork, but not to exceed \$75,000 (the "City's AiPP Contribution"). Notwithstanding the preceding sentence in this subsection 3(b), or any other term of this Amendment, Developer shall be responsible for the supervision and

administration of the Artwork from inception to installation on the Project Site and final acceptance by the City.

(c) Final Acceptance. Upon completion of installation of the Artwork on the Project Site, Developer shall obtain final acceptance of the Artwork by the Contract Administrator. Upon final acceptance of the Artwork by the Contract Administrator (as provided herein), (i) the Artwork shall be owned by the City and be a part of the City's permanent AiPP collection and, accordingly, Developer shall convey title in the Artwork to the City through a Bill of Sale or such other instrument as is acceptable to the City Attorney; and (ii) Developer shall submit copies to the City of all photographic documentation and completed cataloguing forms received from the Artist and the Artist's architect that are in Developer's possession. If Developer utilizes computer technology in the fabrication of the Artwork, Developer shall submit electronic copies of any computer files that will support on-going operations or future repairs and conservation of the Artwork.

Upon final acceptance of the Artwork by the City and receipt of the Bill of Sale (or such other instrument acceptable to the City Attorney), the City shall thereafter be responsible for insuring the Artwork. The Artwork shall be insured: by (A) including the Artwork in the City's Fine Arts insurance policy (if available and provided the insurer accepts coverage) which, as of the date hereof, currently covers the works of art in the Bass Museum and the public art in the City's Art in Public Places (AiPP); or, (B) if the City's insurer either does not accept coverage of the Artwork or the amount for such coverage (if obtained) becomes commercially unreasonable at any time after the initial procurement of same, then the City may satisfy the insurance requirement by self insuring the Artwork. The determination that the cost of the coverage to insure the Artwork in the City's Fine Arts policy is commercially unreasonable (and, accordingly, the decision to self insure the Artwork), shall be made by and at all times remain within the sole discretion and determination of the City Manager. If (at any time) the City elects to cover the Artwork under option (A) (and provided the insurer accepts coverage), such coverage shall cover the replacement cost of the Artwork (as determined by the last appraised value of the Work for insurance purposes). If (at any time) the City elects the option to self insure the Artwork under option (B), the amount that the City shall be responsible for shall be at least equal to the sum of \$150,000 (which amount represents the estimated total cost for the design, fabrication, and installation of the Artwork as contemplated by the parties under the Development Agreement); provided however, that the City's obligation under option (B) shall be further subject to and contingent upon the availability of such City funds.

In the event that the Artwork is damaged, destroyed, and/or otherwise lost during any time when it is self insured by the City, and the City (after having made reasonable good faith efforts) does not have adequate funds to cover the minimum amount set forth in option (B), then the City Manager shall present his/her recommendation and findings, justifying non-availability of funds, to the City's AiPP Committee (or its successor City board or committee) and, thereafter, to the City Commission which, in its sole discretion and determination, may either accept the City Manager's recommendation (that funding is not available), or take such other action as it deems advisable. Notwithstanding anything contained herein to the contrary, upon any such action by the City Commission (i.e. on whether to accept the City Manager's recommendation or other action), the City shall have complied with the

requirements under option (B) hereof, and shall be discharged from any further liability under the insurance requirements of this subsection 3(c).

(d) Cleaning and Maintenance. Developer shall be responsible for ensuring that the glass component of the Artwork is designed to meet the requirements of the Florida Building Code. Developer shall be responsible for cleaning and maintenance of the Artwork as follows: (i) cleaning the Artwork as frequently as MBeach1, LLLP ("MBeach1") cleans the storefront glass on the MBeach1 Property; (ii) using reasonable efforts to remove any graffiti from the Artwork, but to the extent such graffiti cannot be removed and any glass needs to be replaced, Developer shall not be responsible for the replacement of such glass, except in accordance with the Maintenance Agreement described below; and (iii) developing an annual maintenance program for the Artwork, with the City being responsible for carrying out the maintenance of the Artwork (other than cleaning and graffiti removal, as set forth in subparagraphs (i) and (ii) above) (collectively, the "Maintenance Obligations"). The Maintenance Obligations in subsection (c)(i) – (iii) shall be further memorialized in the covenant running with the MBeach1 Property and executed by MBeach1, and attached and incorporated as Exhibit "B" hereto (the "Covenant").

Notwithstanding the foregoing, the City has requested that Developer maintain, and Developer has agreed to maintain, the Artwork in accordance with the annual maintenance program for a period of ten (10) years following final acceptance of the Artwork by the City (the "Maintenance Agreement"). The City shall reimburse Developer for the maintenance costs as and when incurred by Developer in accordance with the annual maintenance program (other than cleaning and graffiti removal, as set forth in subparagraphs (i) and (ii) above), plus a fee of fifteen percent (15%) of the maintenance costs for management, supervision and overhead. For so long as the Maintenance Agreement is in effect, Developer shall provide the City with three (3) extra sections of glass (one section of each type of glass in the Artwork), at no additional cost to the City, and shall cause such glass to be stored at the MBeach1 Property. Developer shall coordinate the installation of such extra glass, when needed, and the City shall reimburse Developer for any labor costs incurred by Developer in connection therewith. If the extra sections of glass are used and the City needs additional glass, the City shall promptly reimburse Developer for the costs of purchasing such additional glass and for the labor costs in connection with the installation, plus a fee of fifteen percent (15%) for management, supervision and overhead. In the event the Artwork is removed from the Project Site, the Maintenance Agreement and the Maintenance Obligations shall automatically terminate. In the event MBeach1 sells the MBeach1 Property, the Maintenance Obligations shall continue in full force and effect against subsequent owners of the MBeach1 Property pursuant to the Covenant (unless said Covenant is released and or otherwise terminated pursuant to the terms therein). Developer shall have the right to either (A) assign Developer's Maintenance Obligations and the Maintenance Agreement to the purchaser of the MBeach1 Property or to an affiliate of such purchaser or (B) terminate Developer's Maintenance Obligations and the Maintenance Agreement, and, in either case, Developer shall thereafter be released from its obligations for cleaning, graffiti removal and maintenance of the Artwork in accordance with this subparagraph (c).

4. **Miscellaneous.**

(a) Entire Agreement. The Development Agreement, as modified by this Amendment, contains the entire understanding between the City and Developer with respect to the subject matter thereof and hereof, and there are no other agreements or understandings relative to the transaction evidenced by such instruments not contained in this Amendment and the Development Agreement.

(b) Modification. No purported modification of this Amendment or the Development Agreement as amended hereby shall be valid unless the same is in writing and signed by the City and Developer. All terms, covenants and conditions of the Development Agreement not expressly modified herein are hereby confirmed and ratified and remain in full force and effect, and, as further amended hereby, constitute valid and binding obligations of the City and Developer, enforceable according to the terms thereof.

(c) Severability. If any provision of this Amendment or the application of a provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Amendment and the application of the invalid or unenforceable provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected, and the remainder of this Amendment shall otherwise remain in full force and effect. Moreover, the invalid or unenforceable provision shall be reformed, if possible, so as to accomplish most closely the intent of the parties consistent with applicable law.

(d) Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same amendment.

(e) Facsimile. A facsimile or electronically transmitted copy of this Amendment shall be deemed for all purposes to be an original.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and date first written above.

WITNESSES:

CITY:

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

[Signature]  
Sign

Elizabeth Damien  
Print Name

[Signature]  
Sign

Kerry Hernandez  
Print Name

By: [Signature]  
Name: Matti Herrera Bower  
Title: Mayor

ATTEST:

By: [Signature]  
Name: Robert Parcher  
Title: City Clerk

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

The foregoing instrument was acknowledged before me this 9th day of June, 2009, by Matti Herrera Bower, as Mayor, and Robert Parcher, as City Clerk, of the City OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida, on behalf of such municipal corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires \_\_\_\_\_  
[Signature]  
Notary Public, State of Florida



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

[Signature] 6/5/09  
City Attorney Date



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROJECT SITE**

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 880-9885 FAX (954) 880-9886

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP

**LAND DESCRIPTION AND SKETCH**

**LAND DESCRIPTION :**

A PORTION OF LINCOLN ROAD LYING BETWEEN ALTON ROAD AND LENOX AVENUE, AS SHOWN ON "COMMERCIAL SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, AT PAGE 5 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE WESTERN MOST SOUTHWEST CORNER OF LOT 1, BLOCK 38 OF SAID "COMMERCIAL SUBDIVISION";

THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 15.00 FEET; A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 23.57 FEET;

THENCE TANGENT TO THE LAST DESCRIBED CURVE NORTH 89°08'55" EAST ALONG THE SOUTH LINE OF SAID BLOCK 38, A DISTANCE OF 290 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 23.55 FEET;

THENCE SOUTH 00°48'28" EAST, A DISTANCE OF 130.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHWEST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET; A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 23.57 FEET;

THENCE SOUTH 89°08'55" WEST ALONG THE NORTH LINE OF BLOCK 48 OF SAID "COMMERCIAL SUBDIVISION", A DISTANCE OF 290.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHEAST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 23.55 FEET;

THENCE NORTH 00°48'28" WEST, A DISTANCE OF 130.00 FEET TO THE POINT OF BEGINNING.

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI/DADE COUNTY, FLORIDA; CONTAINING 32,193 SQUARE FEET, MORE OR LESS.

REVISIONS	DATE	FB/PB	DWN	CKD
LAND DESCRIPTION & SKETCH	05/06/07	---	AV	REC

LAND DESCRIPTION & SKETCH FOR LINCOLN ROAD BETWEEN ALTON ROAD & LENOX AVE

PROPERTY ADDRESS : 1111 LINCOLN ROAD

SCALE: N/A

SHEET 1 OF 3



**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 8448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP

LAND DESCRIPTION AND SKETCH

**NOTES:**

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE ASSUMED. THE SOUTH LINE OF LOT 20, BLOCK 38 "COMMERCIAL SUBDIVISION, FIRST ADDITION", P.B. 6, PG. 30, M/D.C.R. SAID LINE BEARS S89°08'55"W.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN MARCH, 2007. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 61017 OF THE FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, FLORIDA STATUTES, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: Richard E. Cousins

RICHARD E. COUSINS  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA REGISTRATION NO. 4188

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/06/07	---	AY	REC

LAND DESCRIPTION & SKETCH  
 FOR LINCOLN ROAD  
 BETWEEN ALTON ROAD  
 & LENOX AVE

PROPERTY ADDRESS :  
 1111 LINCOLN ROAD

SCALE: N/A

SHEET 3 OF 3

**EXHIBIT "B"**

**COVENANT**

This instrument prepared by  
and after recording return to:  
Adam D. Lustig, Esq.  
Bilzin Sumberg Baena Price & Axelrod LLP  
200 South Biscayne Boulevard, Suite 2500  
Miami, Florida 33131

---

### COVENANT RUNNING WITH THE LAND

KNOW ALL BY THESE PRESENTS THAT MBEACH1, LLLP, a Delaware limited liability limited partnership ("MBeach1") hereby makes, declares and imposes on the land herein described, covenants running with the title to the land, which shall be binding on MBeach1, its heirs, successors in interest and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them;

WHEREAS, MBeach1 is the fee simple owner of the property located at 1111 Lincoln Road and 1666 Lenox Avenue in Miami Beach, Florida, as more particularly described on the attached Exhibit "A" (the "MBeach1 Property");

WHEREAS, the City of Miami Beach, Florida, a municipal corporation of the State of Florida (the "City"), is the owner of that certain land located on Lincoln Road between Lenox Avenue and Alton Road, in Miami Beach, Florida, as more particularly described in the attached Exhibit "B" (the "Project Site");

WHEREAS, in December 6, 2006, the City Commission adopted Resolution No. 2006-26422, approving a conceptual plan for the closure of Lincoln Road to vehicles between Lenox Avenue and Alton Road and construction of a pedestrian mall;

WHEREAS, in March 14, 2007, the City Commission adopted Resolution No. 2007-26494, approving a Development Agreement between the City and UIA Management, LLC ("UIA"), for the design, development, and construction of certain improvements to the 1100 block of Lincoln Road, in conjunction with the project being developed by MBeach1, an affiliate of UIA, at 1111 Lincoln Road, Miami Beach, Florida;

WHEREAS, the City and UIA entered into a Development Agreement dated April 11, 2007 and recorded in Official Records Book 25537, Page 1882 of the Public Records of Miami-Dade County, Florida, as amended by a First Amendment to Development Agreement dated of even date herewith (collectively, the "Development Agreement");

WHEREAS, as part of its obligation under the Development Agreement, UIA agreed to match the City's Art in Public Places ("AiPP") contribution for a public artwork project on the 1100 block of Lincoln Road between Lenox Avenue and Alton Road;

MIAMI 1776067.5 7713726901

WHEREAS, at its regular meeting on April 12, 2007, and in conjunction with its established criteria, the AiPP Committee passed a motion establishing a Professional Advisory Committee ("PAC") for the selection of the public artwork to be sited on Lincoln Road, between Lenox Avenue and Alton Road;

WHEREAS, at the November 27, 2007, PAC meeting, the members of the AiPP Committee spoke with Dan Graham (the "Artist"), who discussed his concept for the public artwork to be sited on Lincoln Road, between Lenox Avenue and Alton Road; the PAC unanimously agreed to proceed with a direct selection, and recommended the Artist for the project (hereinafter, Artist's proposal for the public artwork to be sited on Lincoln Road between Lenox Avenue and Alton Road, may also be referred to as the "AiPP Project");

WHEREAS, at its meeting on June 17, 2008, the AiPP Committee unanimously selected the preliminary proposal for the AiPP-Project;

WHEREAS, on July 30, 2008, the Neighborhoods/Community Affairs Committee reviewed and recommended approval of the AiPP Project; and

WHEREAS, on August 20, 2008, a presentation was made to the Lincoln Road Merchants' Association Board of Directors and the Lincoln Road Merchants' Association voted unanimously in support of the AiPP Project;

WHEREAS, on September 2, 2008, a presentation was made to the City's Design Review Board and the Design Review Board unanimously approved the AiPP Project;

WHEREAS, on October 7, 2008, the Mayor of the City and City Commission approved the AiPP Project, pursuant to Resolution No. 2008-26924 (the "Resolution");

WHEREAS, the Resolution provides that certain maintenance obligations relating to the AiPP Project be added as a covenant running with the land on the MBeach1 Property; and

WHEREAS, MBeach1 will derive a benefit from the AiPP Project being located on the 1100 block of Lincoln Road adjacent to the MBeach1 Property.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, MBeach1 agrees as follows:

1. The foregoing WHEREAS clauses are true and correct and incorporated herein by reference.

2. As a material inducement for the City to locate the AiPP Project on the 1100 block of Lincoln Road adjacent to the MBeach1 Property, MBeach1 agrees to the following with respect to the cleaning and maintenance of the proposed artwork to be created by the Artist (the "Artwork") for the AiPP Project: (a) MBeach1 shall be responsible for cleaning, or causing to be cleaned, the Artwork as frequently as MBeach1 cleans the storefront glass on the MBeach1 Property; (b) MBeach1 shall be responsible for using reasonable efforts to remove, or cause to be removed, any graffiti from the Artwork, but to the extent such graffiti cannot be removed and

MIAMI 1776067.5 7713726901

any glass needs to be replaced, MBeach1 shall not be responsible for the replacement of such glass; and (c) MBeach1 shall develop, or cause to be developed, an annual maintenance program for the Artwork, with the City being responsible for carrying out the maintenance of the Artwork (other than cleaning and graffiti removal as provided in subparagraphs (a) and (b) above).

3. The provisions of this Covenant Running with the Land (this "Covenant") shall become effective upon their recordation in the public records of Miami-Dade County, Florida, and shall continue in effect and be binding upon MBeach 1, its successors in interest and assigns, for a period of thirty (30) years after the date of such recordation, after which time they shall be extended automatically for successive periods of ten (10) years each, unless released in writing by the then owners of the MBeach1 Property and the City Manager, acting for and on behalf of the City of Miami Beach, Florida, upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the Artwork and/or AiPP Project for the purposes herein intended.

4. The provisions of this Covenant may only be amended, modified or released by a written instrument executed by the then owner or owners of the MBeach1 Property, with joinders by all mortgagees, if any. Should this Covenant be so modified, amended or released, and the City Manager, approves, then the City Manager shall forthwith execute a written instrument effectuating and acknowledging such amendment, modification or release.

5. No modification, amendment, or release shall be effective without the City Manager's, prior written approval.

6. An action to enforce the terms and conditions of this Covenant may be brought by the City and may be by an action at law or in equity against any parties or persons violating or attempting to violate any provisions of this Covenant. The prevailing party to any action or suit pertaining to or arising out of this Covenant shall be entitled to recover, in addition to costs and disbursements, allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

7. Invalidation of any of these covenants by judgment of a Court of competent jurisdiction shall not affect any of the other provisions, which shall remain in full force and effect.

8. This Covenant shall be recorded in the public records of Miami-Dade County at MBeach1's expense.

9. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

10. Upon written request from MBeach1, the City shall provide MBeach1 with an estoppel certificate regarding MBeach1's compliance with the terms of this Covenant.

MIAMI 1776067.5 7713726901

11. Notwithstanding anything contained herein to the contrary, in the event (a) the total cost of the design, fabrication and installation of the Artwork, as reflected in the verified cost estimate provided by UIA to the City, exceeds \$150,000, and UIA elects to terminate its agreement with the City to contract for the design, fabrication and installation of the Artwork, in accordance with the terms of the Development Agreement, or (b) the Artwork is fabricated and installed but later removed from the Project Site, in either case, this Covenant shall automatically terminate upon the occurrence of such event and MBeach1 shall be permitted to record a notice of termination of this Covenant in the Public Records of Miami-Dade County, Florida.

12. Notices. Any and all notices required or desired to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand (including recognized overnight courier services, such as Federal Express) or three (3) business days after deposit in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed to the recipient at the address for MBeach 1 at 1111 Lincoln Road, Suite 760, Miami Beach, Florida 33139, or to the City at 1700 Convention Center Drive, Miami Beach, Florida 33139 (Attn: City Manager) (or to such other address as any party shall hereafter specify to the other in writing).

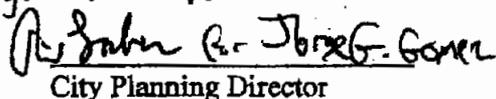
13. Venue/Governing Law. This Covenant shall be construed in accordance with, and governed by, the laws of the State of Florida. Venue for all actions under this Covenant shall be in Miami-Dade County, Florida.

Signed, witnessed, executed and acknowledged on this 12th day of June, 2009.

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
for City Attorney

6-5-09  
Date

  
City Planning Director

6-5-09  
Date

[SIGNATURES CONTINUE ON NEXT PAGE]

MIAMI 1776067.5 7713726901

Witnesses:

MBEACH1, LLLP, a Delaware limited liability limited partnership

By: MBEACH1 GP, LLC, a Delaware limited liability company, its General Partner

By: Urban Investments Advisors, LLC, a Delaware limited liability company, its Sole Member

By: Wellspring Investments Management I, LLC, a Delaware limited liability company, its Managing Member

Sign: Mary Woodrum  
Print Name: MARY S Woodrum

By: Robert S. Wennett  
Name: Robert S. Wennett  
Title: Managing Member

Sign: Rebecca Martin  
Print Name: Rebecca Martin

STATE OF FLORIDA            )  
  )  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me by Robert S. Wennett, the Managing Member of Wellspring Investments Management I, LLC, a Delaware limited liability company, the Managing Member of Urban Investments Advisors, LLC, a Delaware limited liability company, the Sole Member of MBEACH1 GP, LLC, a Delaware limited liability company, the General Partner of MBEACH1, LLLP, a Delaware limited liability limited partnership. He is personally known to me or has produced a driver's license as identification.

Witness my signature and official seal this 4 day of June, 2009, in the County and State aforesaid.



Heather A. Leigh  
Commission #DD491857  
Expires: NOV 17, 2009  
www.AARONNOTARY.com

Heather Leigh  
Notary Public - State of Florida

Heather Leigh  
Print Name

My Commission Expires: 11/17/09

MIAMI 1776067.5 7713726901

**JOINDER BY MORTGAGEE  
CORPORATION**

Mellon United National Bank, a national banking association, being the holder of that certain Renewal Mortgage, Notice of Future Advance, Assignment of Leases and Rents, Security Agreement and Fixture Filing executed by MBEACH1, LLLP, a Delaware limited liability limited partnership, to Mellon United National Bank, a national banking association, dated June 26, 2008, filed June 27, 2008, in Official Records Book 26455, at Page 344, Public Records of Miami-Dade County, Florida (the "Mortgage"), hereby consents to the filing of, and agrees that the Mortgage shall be subject and subordinate to the terms of, the foregoing Covenant Running with the Land.

Signed, Sealed and Delivered  
in the presence of:

Sign *Evelyn Rivera*  
Print Name Evelyn Rivera

Sign *Nancy Cic*  
Print Name Nancy Cic

Mellon United National Bank, a national  
banking association

By: *[Signature]*  
Name: William T. Gallagher  
Title: SV - V.P.

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

The foregoing instrument was acknowledged before me this 12 day of June, 2009, by William T. Gallagher Vice President of Mellon United National Bank, a national bank association, on behalf of said bank. He She is personally known to me or has produced a Florida driver's license as identification.

*[Signature]*  
Notary Public, State of Florida

My Commission Expires:  
7/1/10



MIAMI 1776067.5 7713726901

EXHIBIT "A"

LEGAL DESCRIPTION OF MBEACH1 PROPERTY

Lots 1, 2, 3, 4, 5 and 6, Block 39, COMMERCIAL SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, at Page 5, of the Public Records of Miami-Dade County, Florida,

Together with:

Lots 7 and 8, Block 39, PALM VIEW SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, at Page 29, of the Public Records of Miami-Dade County, Florida,

Less and except:

A portion of Lot 7, Block 39, PALM VIEW SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 6, at Page 29, of the Public Records of Miami-Dade County, Florida, being more particularly described as follows:

Begin at the Northwest corner of said Lot 7;

Thence South  $00^{\circ}48'26''$  East along the West line of said Lot 7, a distance of 22.02 feet to a point on a tangent curve concave to the Northeast;

Thence Southeasterly along the arc of said curve, having a radius of 8.00 feet, a central angle of  $90^{\circ}02'39''$  and an arc distance of 12.57 feet;

Thence North  $89^{\circ}08'55''$  East along the South line of said Lot 7, a distance of 22.02 feet to a point on a tangent curve concave to the Northeast;

Thence Northwesterly along the arc of said curve, having a radius of 30.00 feet, a central angle of  $90^{\circ}02'39''$  and an arc distance of 47.15 feet to the Point of Beginning.

Said land situate, lying and being in the City of Miami Beach, Miami-Dade County, Florida; containing 180 square feet, more or less.

MIAMI 1776067.5 7713726901

EXHIBIT "B"

LEGAL DESCRIPTION OF PROJECT SITE

[attached]

MIAMI 1776067.5 7713726901

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 8448  
 PHONE (954) 880-9885 FAX (954) 880-0213

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP

**LAND DESCRIPTION AND SKETCH**

**LAND DESCRIPTION :**

A PORTION OF LINCOLN ROAD LYING BETWEEN ALTON ROAD AND LENOX AVENUE, AS SHOWN ON "COMMERCIAL SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 5 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE WESTERN MOST SOUTHWEST CORNER OF LOT 1, BLOCK 39 OF SAID "COMMERCIAL SUBDIVISION";

THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 15.00 FEET; A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 23.57 FEET;

THENCE TANGENT TO THE LAST DESCRIBED CURVE NORTH 89°08'59" EAST ALONG THE SOUTH LINE OF SAID BLOCK 39, A DISTANCE OF 290 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 23.55 FEET;

THENCE SOUTH 00°48'28" EAST, A DISTANCE OF 138.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHWEST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET; A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 23.57 FEET;

THENCE SOUTH 89°08'59" WEST ALONG THE NORTH LINE OF BLOCK 48 OF SAID "COMMERCIAL SUBDIVISION", A DISTANCE OF 290.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHEAST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 23.55 FEET;

THENCE NORTH 00°48'28" WEST, A DISTANCE OF 130.00 FEET TO THE POINT OF BEGINNING.

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI/DADE COUNTY, FLORIDA; CONTAINING 32,193 SQUARE FEET, MORE OR LESS.

REVISIONS	DATE	FB/PG	DWM	CHKD
LAND DESCRIPTION & SKETCH	03/06/07	---	AY	RCC

LAND DESCRIPTION & SKETCH FOR LINCOLN ROAD BETWEEN ALTON ROAD & LENOX AVE

PROPERTY ADDRESS : 1111 LINCOLN ROAD  
 SCALE: N/A  
 SHEET 1 OF 3

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT :  
 MBEACH1, LLLP

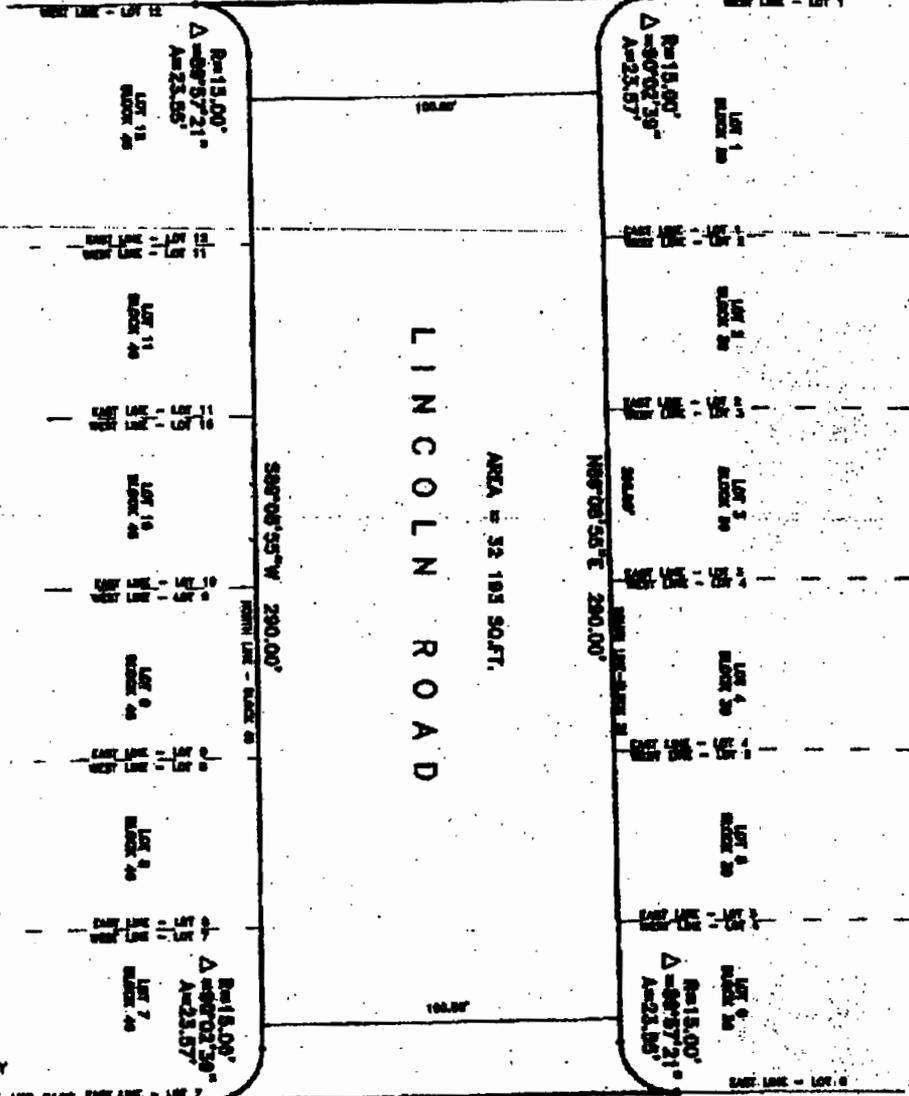
**LAND DESCRIPTION AND SKETCH**



**ALTON ROAD**

N00°48'26"W 130.00'

POB  
 SECTION CORNER  
 LOT 1, BLOCK 20  
 P.L. 8, P.C. 4, 4/19/04



**LINCOLN ROAD**

AREA = 52,185 SQ.FT.

**LENOX AVENUE**

**LEGEND:**

- CSB CHECKED BY
- DWN DRAWN BY
- FB/PG FIELD BOOK AND PAGE
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- P.L. PLAT BOOK
- M/D.C.A. NAME/DRAW COUNTY RECORDS
- A ARC DISTANCE
- B TABLE
- Δ CENTRAL ANGLE

REVISIONS	DATE	FB/PG	DWN	CHKD
LAND DESCRIPTION & SKETCH	01/08/07	---	AV	REC

**LAND DESCRIPTION & SKETCH**  
 FOR LINCOLN ROAD  
 BETWEEN ALTON ROAD  
 & LENOX AVE

PROPERTY ADDRESS :  
 1111 LINCOLN ROAD

SCALE: 1" = 40'

SHEET 2 OF 3

DR BK 26911 PG 3275  
 LAST PAGE

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP

LAND DESCRIPTION AND SKETCH

**NOTES:**

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE ASSUMED THE SOUTH LINE OF LOT 20, BLOCK 38 "COMMERCIAL SUBDIVISION, FIRST ADDITION", P.B. 6, PG. 30, M/D.C.R. SAID LINE BEARS S89°08'30"W.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN MARCH, 2007. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 81G17 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: *Richard E. Cousins*

RICHARD E. COUSINS  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA REGISTRATION NO. 4186

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	02/06/07	---	AV	REC

LAND DESCRIPTION  
 & SKETCH  
 FOR LINCOLN ROAD  
 BETWEEN ALTON ROAD  
 & LENOX AVE

PROPERTY ADDRESS :  
 1111 LINCOLN ROAD

SCALE: N/A

SHEET 3 OF 3



MANAGEMENT AGREEMENT FOR MAINTENANCE  
OF 1100 BLOCK OF LINCOLN ROAD

THIS MANAGEMENT AGREEMENT FOR MAINTENANCE OF 1100 BLOCK OF LINCOLN ROAD (this "Agreement") is made and entered into as of the 11 day of January, 2010, by and between the CITY OF MIAMI BEACH, FLORIDA, a municipal corporation of the State of Florida (the "City"), and UIA MANAGEMENT, LLC, a Delaware limited liability company ("Manager").

**RECITALS:**

A. The City is the owner of certain land located on Lincoln Road between Lenox Avenue and Alton Road, in Miami Beach, Florida, more particularly described in the attached Exhibit "A" (the "City Property").

B. On December 6, 2006, the City Commission adopted Resolution No. 2006-26422, approving a conceptual plan for the closure of Lincoln Road to vehicles between Lenox Avenue and Alton Road and construction of a pedestrian mall.

C. On March 14, 2007, the City Commission adopted Resolution No. 2007-26494, approving a Development Agreement between the City and Manager, for the design, development, and construction of certain improvements to the 1100 Block of Lincoln Road, in conjunction with the project being developed by MBeach1, LLLP ("MBeach1"), an affiliate of Manager, at 1111 Lincoln Road, Miami Beach, Florida (the "MBeach1 Property").

D. On April 11, 2007, the City and Manager entered into a Development Agreement, recorded in Official Records Book 25537, Page 1882 of the Public Records of Miami-Dade County, Florida (the "Original Development Agreement").

E. On June 3, 2009, the City and Manager entered into a First Amendment to Development Agreement, recorded in Official Records Book 26911, Page 3252 of the Public Records of Miami-Dade County, Florida (the "First Amendment", and together with the Original Development Agreement, the "Development Agreement").

F. Section 52.6 of the Development Agreement provides that: (i) a comprehensive annual maintenance program and schedule is being prepared by the Design Architects for City for successful future maintenance of the "urban glade" features of the Project (as defined in the Development Agreement), including ponds, water features, indigenous plants and trees and special lighting; (ii) such program and schedule shall be approved by City staff and relevant City agencies; and (iii) Manager shall provide oversight of such program and schedule as part of a separate agreement to be entered into with City.

G. In accordance with Section 52.6 of the Development Agreement, the City and Manager desire to enter into this Agreement to set forth the terms and conditions of Manager's management and oversight of the program and schedule for the Maintenance (as defined below) of the City Property.

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

1. Recitals. The above recitals are true and correct and incorporated herein by reference.

2. Retention. The City hereby retains Manager, and Manager hereby agrees to provide management and oversight of the program and schedule for the Maintenance of the City Property for the City, on the terms and conditions provided in this Agreement. Manager shall use its reasonable efforts, skill, judgment and abilities in the discharge of its duties under this Agreement.

3. Services to be Performed by Manager. Manager agrees to perform the following functions and services with respect to the program and schedule for the Maintenance of the City Property (collectively, the "Services"):

(a) Each year during the Term (as defined below) of this Agreement, Manager will prepare a comprehensive annual maintenance program and schedule for the Maintenance of the City Property (the "Maintenance Program") and annual budget (the "Budget") for the Maintenance of the City Property for the City's fiscal year from October 1<sup>st</sup> through September 30<sup>th</sup> ("Fiscal Year"). "Maintenance" shall mean the maintenance, repair and replacement of the ponds, water features, plants and trees, lighting and electrical equipment, mechanical systems and natural stone payment on the City Property (collectively, the "Improvements"), trash removal, sweeping and cleaning. The Budget shall include all out-of-pocket expenses Manager expects to incur in connection with the performance of the Services under this Agreement, including, without limitation, liability insurance and legal fees and costs ("Manager's Expenses"). On or before February 1<sup>st</sup> of each Fiscal Year during the Term of this Agreement, Manager shall submit the proposed Maintenance Program and the Budget to the City's Contract Administrator (as defined below) for review and approval. The Director of the Public Works Department of the City, or his designee, shall be designated as the "Contract Administrator" for matters concerning this Agreement. The City agrees that a single person shall serve as Contract Administrator under this Agreement and the City shall notify Manager of the person who shall serve as Contract Administrator and of any changes in who serves as Contract Administrator. The Contract Administrator shall review and approve or provide comments to the Maintenance Program and the Budget on or before March 1<sup>st</sup> of each Fiscal Year. Manager and the Contract Administrator shall use good faith and due diligence to have an approved Maintenance Program and an approved Budget (the "Approved Budget") by no later than September 30<sup>th</sup> of each Fiscal Year. In the event that the Maintenance Program and the Budget have not been approved by the Contract Administrator on or before September 30<sup>th</sup> for a particular Fiscal Year, the Maintenance Program and the Budget for the immediately preceding Fiscal Year shall be used until such time as the Maintenance Program and the Budget has been approved. The Approved Budget for the balance of the 2010 Fiscal Year is attached as **Exhibit "B"**.

(b) Manager shall conduct a competitive bidding process respecting the selection and retention of all consultants and contractors involved in the Maintenance of the City Property (each, a "Contractor" and collectively, "Contractors") for the Maintenance of the City

Property. Manager shall obtain at least three qualified bids for each component of the Maintenance of the City Property work from licensed consultants and contractors. Manager shall have the right to select a Contractor, so long as its bid is not more than five percent (5%) above the lowest qualified bid for such work.

(c) Upon selection of each Contractor, Manager will prepare and negotiate the terms and conditions of the contracts. Each contract shall be prepared based on a form contract that has been preapproved by the Contract Administrator. Manager shall submit each contract to the Contract Administrator for review and approval. The Contract Administrator shall review and approve or provide comments to each contract within fifteen (15) days after its receipt of each such contract. Manager, in its capacity as manager of the City Property, shall enter into the contracts with the Contractors.

(d) Manager shall make recommendations regarding the establishment of, and shall assist in the implementation of, a financial control and accounting system with respect to the Maintenance Program.

(e) Manager will monitor, oversee and supervise the Contractors performing the Maintenance of the City Property to make sure the work is in compliance with the Maintenance Program and with each Contractor's obligations under its respective contract.

(f) Manager will be responsible for the Maintenance Program meeting the Cleanliness Index standards established by the City of Miami Beach, which are set forth in the attached **Exhibit "C"**.

(g) Manager will be responsible for the Maintenance Program meeting the City of Miami Beach Grounds Maintenance Service standards, which are set forth in the attached **Exhibit "D"**.

4. Manager's Responsibilities. The liability and responsibility of Manager for a default by it under the terms of this Agreement will be limited to the actual damages incurred by the City, its officers, directors, agents, and employees resulting from Manager's material breach under this Agreement (after expiration of any applicable notice and cure period) or Manager's willful misconduct or gross negligence. Notwithstanding anything to the contrary herein, Manager shall not be responsible or liable for the performance or lack of performance of any other person or entity whatsoever, including without limitation, the Contractors, and Manager shall not be responsible or liable for payment of any Maintenance costs in excess of the budgeted amounts, the completion of the Maintenance of the City Property on time or in budget or any other matters whatsoever that involve the performance of third parties. In no event will Manager be liable or responsible for consequential, incidental or punitive damages. It is understood that the responsibility for compliance with laws in connection with the Maintenance of the City Property shall be the responsibility of the Contractors, and not Manager. Except as expressly set forth in this Agreement, Manager has made no representation whatsoever to the City with respect to the Maintenance Program. Since Manager is responsible for the Maintenance of the City Property, the City agrees that, during the Term of this Agreement, the City shall not allow the use of the City Property, other than by members of the general public (for public purposes consistent with the public's use of the rest of Lincoln Road Mall), without prior written notice to

and coordination with Manager. In addition to use by the general public for public purposes, the aforesaid restriction on the use of the City Property (or any portion thereof) shall also not apply to public or third party uses in conjunction with the following: (a) any City issued and/or approved sidewalk cafe permit, film and print permit or artist vendor and/or street performer permit; (b) any City and/or City sponsored special event; or (c) any exercise of constitutionally protected First Amendment rights of free speech and/or assembly. The City or third parties who use the City Property for such public or third party uses shall be responsible for paying for all costs and expenses in connection with such use of the City Property.

5. Payment of Expenses. Manager shall submit applications for payment for the Maintenance work and Manager's Expenses at intervals of not more than once a month. Each application for payment shall be submitted by Manager to the Contract Administrator on or before the tenth (10th) day of each month during the Term. The Contract Administrator shall have ten (10) days after it is presented with an application for payment to review and approve same or state in writing its reasons for non-approval. The City shall pay approved applications for payment within thirty (30) days after the submittal of each application for payment to the Contract Administrator. With each application for payment, Manager shall submit invoices from all Contractors included within such application for payment. When Manager receives payment from the City on approved applications for payment, Manager shall remit payment to the applicable Contractor(s) within ten (10) days thereafter. Notwithstanding anything contained in this Agreement, once a payment on an application for payment has been made by the City to Manager, City shall have no liability and/or other obligation to Contractors (or any other third parties) with regard to such payment.

6. Fees. The City shall pay Manager for its Services in managing and overseeing the Maintenance Program, a monthly fee in the amount of fifteen percent (15%) of the total costs reflected in each approved application for payment (the "Fees"). Each application for payment shall show the total costs for the Maintenance of the City Property incurred during the time period covered by such application for payment and the Fees due to Manager. The City shall pay the Fees due Manager, together with the payment of each approved application for payment, within the time provided in Section 5 above.

7. Indemnification. All contracts entered into by the City with Contractors performing Maintenance of the City Property shall provide that such Contractors indemnify and hold harmless and agree to defend Manager and the City from any and all actions, causes of action, claims, liabilities, demands, losses and expenses of any kind whatsoever for damage to property or injury to or death of persons, including, without limitation, reasonable attorneys' fees and court costs at trial and all appellate levels, which may be filed or made against Manager and/or the City, and their respective officers, directors, partners, agents, affiliates, employees, successors and/or assigns, as a result of the actions or inactions of such Contractors in connection with the Maintenance of the City Property performed or required to be performed by such Contractors, except to the extent such claims result from Manager's and/or the City's gross negligence or willful misconduct.

8. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the City or Manager which arise out of the matters

relating to this Agreement, Manager or the City shall provide the other party all pertinent information and reasonable assistance, in the defense or other disposition thereof.

9. Term. This Agreement shall commence on Final Completion of the Work and continue until the date that is ten (10) years following the date thereof (the "Term"), unless terminated sooner in accordance with the terms of this Agreement.

10. Default.

(a) If Manager breaches its obligations as specified herein (and same are not waived in writing by the City), then the City shall give Manager written notice specifying the nature of the default and Manager shall have thirty (30) days after receipt of such notice within which to cure the specified default; provided, however, if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, Manager shall not be deemed to be in default if Manager shall, within such period, commence such cure and thereafter diligently prosecute the same to completion; provided further, however, that the maximum cure period for any default hereunder shall not exceed ninety (90) days from the date of the initial written notice of default from the City to Manager. If the default is not cured within the applicable cure period, or if Manager becomes the subject of any bankruptcy or insolvency proceeding, then the City may, on written notice to Manager, terminate this Agreement.

(b) If the City breaches its obligations as specified herein (and same are not waived in writing by Manager), then Manager shall give the City written notice specifying the nature of the default and the City shall have ten (10) days after receipt of such notice, in the case of a monetary default, or thirty (30) days after receipt of such notice, in the case of a non-monetary default, within which to cure the specified default; provided, however, if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, the City shall not be deemed to be in default if the City shall, within such period, commence such cure and thereafter diligently prosecute the same to completion; provided further, however, that the maximum cure period for any default hereunder shall not exceed ninety (90) days from the date of the initial written notice of default from Manager to the City. If the default is not cured within the applicable cure period, then Manager may, on written notice to the City, terminate this Agreement.

11. Termination. Manager shall have the right to terminate this Agreement for convenience at any time upon sixty (60) days' prior written notice to the City. The City shall have the right to terminate this Agreement for convenience at any time upon ninety (90) days' prior written notice to Manager. Manager shall have the right to bill the City for any documented termination expenses that may be incurred as a result of the City's termination action. In the event MBeach1 sells the MBeach1 Property, either Manager or the City shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to the non-terminating party. Upon termination of this Agreement, Manager shall cooperate with any successor management company and/or the City in order to accomplish an orderly turnover of the Maintenance Program to such successor management company and/or the City.

12. Representations and Warranties by the City. The City represents and warrants to Manager that (a) the City has all necessary power to execute and deliver this Agreement and

perform all its obligations hereunder, (b) this Agreement has been duly authorized by all requisite action on the part of the City and is a valid and legally binding obligation of the City enforceable in accordance with its terms, and (c) neither the execution and delivery of this Agreement by the City nor the performance of its obligations hereunder will result in the violation of any law, rules or regulations or any other agreement to which the City is a party or is otherwise bound.

13. Representations and Warranties by Manager. Manager represents and warrants to the City that (a) Manager is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to transact business under the laws of the State of Florida and has all necessary power to execute and deliver this Agreement and perform all its obligations hereunder, (b) this Agreement has been duly authorized by all requisite action on the part of Manager and is a valid and legally binding obligation of Manager enforceable in accordance with the terms, and (c) neither the execution and delivery of this Agreement by Manager nor the performance of its obligations hereunder will result in the violation of any provision of its articles of incorporation or any other organizational or governing document as amended to date, or will conflict with (i) any law or any order or decree of any court or governmental instrumentality having jurisdiction or (ii) any other agreement to which Manager is a party or is otherwise bound.

14. Assignment. This Agreement and all rights hereunder, shall not be assignable by either Manager or the City without prior written consent of the other, except that Manager shall be permitted to assign this Agreement to an entity controlling, controlled by or under common control with Manager.

15. Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns.

16. Notice. All notices, demands, requests, consents and approvals which may, or are required to, be given by any party to any other party thereunder shall be in writing and either (a) personally delivered, (b) transmitted by fax, (c) sent by United States mail, registered or certified, postage prepaid, return receipt requested, or (d) sent by a nationally recognized overnight delivery service, freight prepaid, return receipt requested, and addressed as follows, and shall be deemed given upon receipt if delivered personally, upon the sending machine printing a confirmation of transmission, if transmitted by fax, or upon the date of delivery (or refusal to accept delivery) on a business day (or the next succeeding business day, if not delivered on a business day), as evidenced by the return receipt if sent pursuant to subsection (c) or (d) above, at the address specified below, or to such other addresses as either party may from time to time designate in writing and delivery in a like manner. Notice given by an attorney for either party shall be deemed as effective notice given by such party.

The City: City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Manager  
Fax: (305) 673-7782

With a copy to:

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: City Attorney  
Fax: (305) 673-7002

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139  
Attn: Fred Beckmann, Public Works Director  
Fax: (305) 673-7028

Manager: UIA Management, LLC  
1111 Lincoln Road, Suite 760  
Miami Beach, Florida 33139  
Attn: Robert S. Wennett  
Fax: 305-531-4409

17. Insurance.

(a) City Election to Self-Insure. The City has elected to self-insure the City Property against physical damage and against liability for loss, damage or injury to property or persons that might occur on the City Property or to the Improvements located on the City Property. The City shall be responsible for paying for the cost of repairing any damage to the Improvements located on the City Property; provided, however, that in the event that the City Manager, in his sole and reasonable discretion, determines that there are insufficient (or no) funds to repair the City Property and/or the Improvements to their existing condition immediately prior to the occurrence or event which caused the damage, then the City shall only be obligated to initiate such repairs to the extent that funding is available and identified and, even then, the City's priority in making such repairs (before any aesthetic consideration) shall first be to assure that neither the damaged portion(s) of the City Property nor the Improvements pose a serious threat to the public health, safety, or welfare. The City shall notify Manager within a reasonable time following the occurrence or event of damage, the repairs to be made and the proposed timeline for same; notwithstanding, the City shall have sole and absolute control over the means, methods, and materials, as it deems necessary, to prosecute any repairs, and shall have no liability to Manager as result of same (nor shall any City determination or decision in prosecuting any repairs be deemed a City default under this Agreement). Manager shall not be responsible or liable for making or paying for any such repairs, but any such repairs authorized but the City shall be deemed part of the Maintenance covered under this Agreement for which Manager shall provide the Services and be entitled to receive the Fees set forth in Sections 3 and 6, respectively, in this Agreement.

(b) Contractor's Insurance. Manager shall require that all Contractors performing work on the Project maintain insurance coverage at the Contractor's expense, in the

following minimum amount unless otherwise set forth in the construction contract between the City and the Contractor:

- (i) Workmen's Compensation - Statutory Amount;
- (ii) Employer's Liability (\$100,000 minimum);
- (iii) Broad Form Commercial General Liability (naming the City and Manager as additional insured): \$1,000,000 per occurrence, combined single limit; \$2,000,000 in the aggregate;
- (iv) Auto Liability (\$1,000,000 minimum); and
- (v) Property Insurance: coverage for tools and equipment brought onto or used on the City Property by the Contractors in an amount equal to replacement costs of all tools and equipment.

All insurance policies required to be maintained by Contractors pursuant to this section shall have the City and Manager listed in such policies as additional insureds. Each policy shall be primary and non-contributory and shall contain an endorsement requiring thirty (30) days written notice from the insurance company to the City and Manager before cancellation or any change in the coverage, scope or amount of any policy. Renewal certificates or copies of renewal policies shall be delivered by the Contractors to the City and Manager at least thirty (30) days prior to the expiration date of any policy. The Contractors shall procure an appropriate clause in, or endorsement on, each of its insurance policies required hereunder whereby the insurer waives subrogation.

18. Partial Invalidity. In the event that any one or more of the phrases, sentences, clauses, or paragraphs contained in this Agreement shall be declared invalid by final and unappealable order, decree, or judgment of any court, this Agreement shall be construed as if such phrases, sentences, clauses, or paragraphs had not been inserted in this Agreement, it being intended by the parties that the remaining provisions of this Agreement shall remain in full force and effect notwithstanding such invalidation.

19. No Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, limited liability company or other arrangement between the City and Manager other than that of owner and independent contractor. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person not a party hereto, and no such other person shall have any right or cause of action thereunder.

20. Governing Law. This Agreement and the rights of the parties hereto shall be governed and construed in accordance with the laws of the State of Florida and all claims related to this Agreement shall be brought and prosecuted in Miami-Dade County, Florida, which shall be the exclusive venue for all such matters. Before resorting to litigation, the parties agree to use commercially reasonable, good faith efforts to resolve disputes without litigation as hereinafter provided. In the event of a dispute which the parties cannot resolve directly between themselves within ten (10) days, the parties agree to submit to non-binding mediation for up to a period of

thirty (30) days after either party sends written notice to the other party demanding mediation (but no longer unless the parties mutually agree) to resolve the dispute using an independent, trained mediator agreed to by both parties. If the dispute remains unresolved after such thirty (30) day period or if the parties cannot agree upon a mediator within fifteen (15) days after the demand for mediation, either party may proceed to commence litigation. The parties shall equally split the cost of the mediator.

21. Enforcement. In the event of any dispute under this Agreement concerning the meaning or interpretation of any provision of this Agreement, the party not prevailing in such dispute shall pay any and all costs and expenses reasonably incurred by the other party in enforcing or establishing its rights thereunder, including, without limitation, court costs and reasonable attorney's fees before and at trial and through all appellate levels.

22. Entire Agreement. This Agreement constitutes the entire agreement between the City and Manager with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous discussions, negotiations, letters, memoranda or other communications, oral or written, with respect to the subject matter hereof. This Agreement may only be subsequently modified or amended in a writing signed by both the City and Manager.

23. Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the parties hereto unless such change, amendment, or modification shall be in writing and duly executed by all parties hereto. The City and Manager, by mutual written agreement, can expand the scope of this Agreement to cover management of the maintenance of other sections of Lincoln Road and/or the future Lincoln Park.

24. No Waiver. Any waiver by any party of a breach of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any other breach of such provision or of any breach of any other provision of this Agreement. The failure of a party to insist upon strict adherence to any term of this Agreement on one or more occasions shall neither be considered a waiver nor deprive that party of any right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing and signed by the party to be charged therewith.

25. Waiver of Jury Trial. The parties to this Agreement hereby agree not to elect a trial by jury of any issue triable of right by jury, and waive any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement or any action or proceeding in which more than one of such parties may be involved. This waiver of right to trial by jury is given knowingly and voluntarily by the parties hereto, and is intended to encompass individually each instance and each issue as to which the right to trial by jury would otherwise accrue. The parties hereto are each hereby authorized to file a copy of this paragraph in any proceeding as conclusive evidence of this waiver.

26. Exculpation of Manager. Notwithstanding anything contained in this Agreement to the contrary, upon the occurrence of any claim under this Agreement or termination caused by Manager's default, the recourse of the City against Manager shall be limited to the actual damages incurred by the City resulting from Manager's material breach under this Agreement (after expiration of any applicable notice and cure period) or Manager's willful misconduct or

gross negligence for the recovery of any judgment from Manager, it being agreed that Robert S. Wennett, Wellspring Investments Management I, LLC, Urban Investments Advisors, LLC, any officers, shareholders, partners, members, managers, directors, employees or agents of Manager, any members in the entity comprising Manager and any subsidiaries or affiliates of Manager shall never be personally liable for any such judgment and are hereby unconditionally and irrevocably released, satisfied and forever discharged of and from any and all actions, causes of action, claims, demands, losses, costs and expenses, whether direct, contingent or consequential, liquidated or unliquidated, at law or in equity, that the City has or may or shall have.

27. Exculpation of the City. Notwithstanding anything contained in this Agreement to the contrary, upon the occurrence of any claim under this Agreement or termination caused by the City's default, the recourse of Manager against the City shall be limited to the actual damages incurred by Manager resulting from the City's material breach under this Agreement (after expiration of any applicable notice and cure period) or the City's willful misconduct or gross negligence, it being agreed that any employees or agents of the City shall never be personally liable for any such judgment and are hereby unconditionally and irrevocably released, satisfied and forever discharged of and from any and all actions, causes of action, claims, demands, losses, costs and expenses, whether direct, contingent or consequential, liquidated or unliquidated, at law or in equity, that Manager has or may or shall have.

28. Counterparts; Facsimile. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed for all purposes to be an original.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, by and through their duly authorized representatives, as of the date first written above.

WITNESSES:

Lilia Cardillo  
Sign

Lilia Cardillo  
Print Name

Maria E. Martinez  
Sign

MARIA E. MARTINEZ  
Print Name

CITY:

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

By: Matti A. Bower  
Name: Matti Herrera Bower  
Title: Mayor

ATTEST:

By: Robert Parcher  
Name: Robert Parcher  
Title: City Clerk

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

[Signature] 4/11/10  
City Attorney Date

WITNESSES:

  
\_\_\_\_\_  
Sign

Jeff Weinstein  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Sign

ROBERT RIBOSO  
\_\_\_\_\_  
Print Name

MANAGER:

UIA MANAGEMENT, LLC, a Delaware limited liability company

By: Urban Investments Advisors, LLC, a Delaware limited liability company, its Managing Member

By: Wellspring Investments Management I, LLC, a Delaware limited liability company, its Managing Member

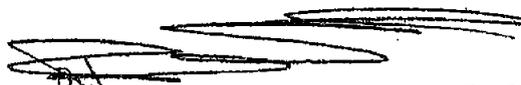
  
\_\_\_\_\_  
Robert S. Wennett  
Managing Member

EXHIBIT "A"  
CITY PROPERTY

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 880-0213

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP

LAND DESCRIPTION AND SKETCH

LAND DESCRIPTION :

A PORTION OF LINCOLN ROAD LYING BETWEEN ALTON ROAD AND LENOX AVENUE, AS SHOWN ON "COMMERCIAL SUBDIVISION", ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 6, AT PAGE 6 OF THE PUBLIC RECORDS OF MIAMI/DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGIN AT THE WESTERN MOST SOUTHWEST CORNER OF LOT 1, BLOCK 39 OF SAID "COMMERCIAL SUBDIVISION";

THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 15.00 FEET; A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 23.57 FEET;

THENCE TANGENT TO THE LAST DESCRIBED CURVE NORTH 89°08'55" EAST ALONG THE SOUTH LINE OF SAID BLOCK 39, A DISTANCE OF 290 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE NORTHWEST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 23.55 FEET;

THENCE SOUTH 00°48'26" EAST, A DISTANCE OF 130.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHWEST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET; A CENTRAL ANGLE OF 90°02'39" AND AN ARC DISTANCE OF 23.57 FEET;

THENCE SOUTH 89°08'55" WEST ALONG THE NORTH LINE OF BLOCK 48 OF SAID "COMMERCIAL SUBDIVISION", A DISTANCE OF 290.00 FEET TO A POINT ON A TANGENT CURVE CONCAVE TO THE SOUTHEAST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, HAVING A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 89°57'21" AND AN ARC DISTANCE OF 23.55 FEET;

THENCE NORTH 00°48'26" WEST, A DISTANCE OF 130.00 FEET TO THE POINT OF BEGINNING.

SAID LAND SITUATE, LYING AND BEING IN THE CITY OF MIAMI BEACH, MIAMI/DADE COUNTY, FLORIDA; CONTAINING 32,193 SQUARE FEET, MORE OR LESS.

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/06/07	----	AY	REO

LAND DESCRIPTION & SKETCH FOR LINCOLN ROAD BETWEEN ALTON ROAD & LENOX AVE

PROPERTY ADDRESS : 1111 LINCOLN ROAD  
 SCALE: N/A  
 SHEET 1 OF 3

**COUSINS SURVEYORS & ASSOCIATES, INC.**

3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

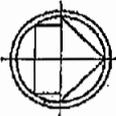


PROJECT NUMBER : 5085-04

CLIENT : MBEACHI, LLLP

**LAND DESCRIPTION AND SKETCH**

**ALTON ROAD**



N00°48'26"W 130.00'

POB  
 VERTICAN MOST SOUTHWEST CORNER  
 LOT 1, BLOCK 39  
 (P.T. 6, Pg. 6, M/D.C.R.)

WEST LINE - LOT 12

R=15.00'  
 $\Delta=89^{\circ}57'21''$   
 A=23.55'

LOT 12  
 BLOCK 46

108.00'

R=15.00'  
 $\Delta=90^{\circ}02'39''$   
 A=23.57'

LOT 1  
 BLOCK 39

WEST LINE - LOT 1

EAST LINE - LOT 11  
 WEST LINE - LOT 11

LOT 11  
 BLOCK 46

EAST LINE - LOT 1  
 WEST LINE - LOT 1

LOT 2  
 BLOCK 39

EAST LINE - LOT 10  
 WEST LINE - LOT 10

LOT 10  
 BLOCK 46

EAST LINE - LOT 2  
 WEST LINE - LOT 2

LOT 3  
 BLOCK 39

S89°08'55"W 290.00'

**LINCOLN ROAD**

AREA = 32 193 SQ.FT.

N89°08'55"E 290.00'

EAST LINE - LOT 9  
 WEST LINE - LOT 9

LOT 9  
 BLOCK 46

EAST LINE - LOT 3  
 WEST LINE - LOT 3

LOT 4  
 BLOCK 39

EAST LINE - LOT 8  
 WEST LINE - LOT 8

LOT 8  
 BLOCK 46

EAST LINE - LOT 4  
 WEST LINE - LOT 4

LOT 5  
 BLOCK 39

EAST LINE - LOT 7  
 WEST LINE - LOT 7

LOT 7  
 BLOCK 46

EAST LINE - LOT 5  
 WEST LINE - LOT 5

R=15.00'  
 $\Delta=89^{\circ}57'21''$   
 A=23.55'

LOT 6  
 BLOCK 39

EAST LINE - LOT 6

S00°48'26"E 130.00'

**LENOX AVENUE**

**LEGEND:**

- CKD CHECKED BY
- LWH DRAWN BY
- FB/PG FIELD BOOK AND PAGE
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- P.B. PLAT BOOK
- M/D.C.R. MIAMI/DADE COUNTY RECORDS
- A ARC DISTANCE
- R RADIUS
- $\Delta$  CENTRAL ANGLE

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/06/07	---	AV	REC

LAND DESCRIPTION & SKETCH  
 FOR LINCOLN ROAD  
 BETWEEN ALTON ROAD  
 & LENOX AVE

PROPERTY ADDRESS :  
 1111 LINCOLN ROAD

SCALE: 1" = 40'

SHEET 2 OF 3

**COUSINS SURVEYORS & ASSOCIATES, INC.**



3921 SW 47TH AVENUE, SUITE 1011  
 DAVIE, FLORIDA 33314  
 CERTIFICATE OF AUTHORIZATION : LB # 6448  
 PHONE (954) 680-9885 FAX (954) 680-0213

PROJECT NUMBER : 5085-04

CLIENT : MBEACH1, LLLP.

LAND DESCRIPTION AND SKETCH

**NOTES:**

1. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
2. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS-OF-WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD.
3. DATA SHOWN HEREON DOES NOT CONSTITUTE A FIELD SURVEY AS SUCH.
4. THE LAND DESCRIPTION SHOWN HEREON WAS PREPARED BY THE SURVEYOR.
5. BEARINGS SHOWN HEREON ARE ASSUMED. THE SOUTH LINE OF LOT 20, BLOCK 39 "COMMERCIAL SUBDIVISION, FIRST ADDITION", P.B. 6, PG. 30, M/D.C.R. SAID LINE BEARS S89°08'55"W.

I HEREBY CERTIFY THAT THE ATTACHED "LAND DESCRIPTION AND SKETCH" IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS PREPARED UNDER MY DIRECTION IN MARCH, 2007. I FURTHER CERTIFY THAT THIS "LAND DESCRIPTION AND SKETCH" MEETS THE MINIMUM TECHNICAL STANDARDS FOR SURVEYING IN THE STATE OF FLORIDA ACCORDING TO CHAPTER 61017 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, SUBJECT TO THE QUALIFICATIONS NOTED HEREON.

FOR THE FIRM, BY: \_\_\_\_\_

RICHARD E. COUSINS  
 PROFESSIONAL SURVEYOR AND MAPPER  
 FLORIDA REGISTRATION NO. 4188

REVISIONS	DATE	FB/PG	DWN	CKD
LAND DESCRIPTION & SKETCH	03/05/07	----	AV	REC

LAND DESCRIPTION  
 & SKETCH  
 FOR LINCOLN ROAD  
 BETWEEN ALTON ROAD  
 & LENOX AVE

PROPERTY ADDRESS :  
 1111 LINCOLN ROAD

SCALE: N/A

SHEET 3 OF 3

**EXHIBIT "B"**

**APPROVED BUDGET FOR 2010**

	<b>Annual</b>	<b>9 Months</b>
<b><u>Sanitation Services</u></b>		
Superior Landscaping and Lawn Services	\$58,560	\$43,920
<b><u>Landscaping Services</u></b>		
Superior Landscaping and Lawn Services	\$25,684	\$19,263
<b><u>Water Feature Services</u></b>		
Edgewater Exhibits	\$25,740	\$19,305
<b>TOTAL SERVICES</b>	\$109,984	\$82,488
<b>UIA FEE (15%)</b>	\$16,497.60	\$12,373.20
<b>TOTAL COST</b>	<b>\$126,481.60</b>	<b>\$94,861.20</b>
<b>Contingency (25%)</b>	\$31,620.40	\$23,715.30
<b>TOTAL including Contingency</b>	<b>\$158,102</b>	<b>\$118,576.50</b>
<b>*****Contracted Services do NOT INCLUDE</b>		
1) Sealer (every two to three years re seal stone)		
Note: any contingency used will be marked up with the managers 15% fee		

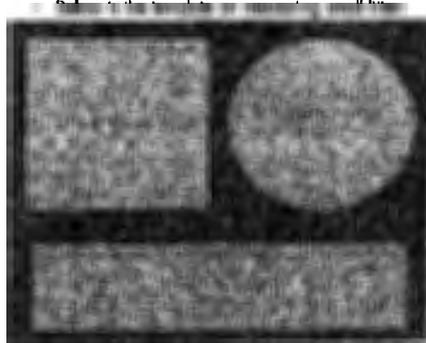
EXHIBIT "C"

CLEANLINESS INDEX STANDARDS

## CLEANLINESS INDEX GUIDELINES

### • Examples of Small Litter:

- Cigarette butts
- Bottle caps
- Straws
- Candy packaging and wrappers
- Polyfoam packing materials
- Plastic expresso coffee cups



### • Examples of Large Litter:

- Beer cans and bottles
- Soft drink glass, cans, plastic
- Sport drink glass plastic
- Wine / Liquor glass, plastic/other
- Milk / Juice Plastic, Glass
- Six pack plastic rings
- Plastic / Paper / Polystyrene (foam) drink cups
- Plastic / Paper bags
- Zipper bags / sandwich bags
- Corrugated boxes
- Paper beverage cases
- Plastic / Glass jars / bottles / lids
- Cans - steel, aluminum
- Aerosol cans
- Paper food wrap
- Utensils
- Napkins
- Clothing
- Printed materials (newspapers, flyers, books, etc.)

 MIAMI BEACH

## ASSESSING STREETS, SIDEWALKS, PUBLIC RIGHT-OF-WAYS, ALLEYS, AND BEACHES

 MIAMI BEACH

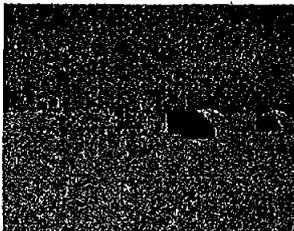
# INDEX FOR STREETS, SIDEWALKS, RIGHT-OF-WAYS, ALLEYS, PARKS, PARKING LOTS, AND BEACHES

The following index will be used to rate and provide a score for the cleanliness of a street, sidewalk, right-of-way, alleys, parking lots, and beaches.

Index	Litter/Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
1 Extremely Clean	<ul style="list-style-type: none"> <li>No litter and/or debris on entire block face.</li> </ul>	<ul style="list-style-type: none"> <li>Can is in good working order and none are no more than 3/4 full.</li> <li>Can is in a clean condition free of items, such as stickers, graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>Isolated instances of small fresh organic material, such as leaves, branches, etc., cover the paved area.</li> <li>No large organic material, such as tree limbs or palm fronds on the ground.</li> </ul>	<ul style="list-style-type: none"> <li>Fecal matter is not visible.</li> </ul>

 MIAMIBEACH

## 1 - EXTREMELY CLEAN



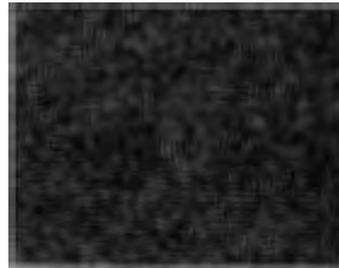
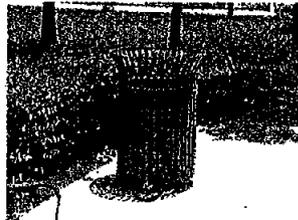
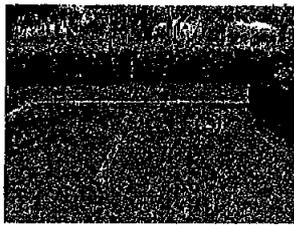
 MIAMIBEACH

# INDEX FOR STREETS, SIDEWALKS, RIGHT-OF-WAYS, ALLEYS, PARKS, PARKING LOTS, AND BEACHES

Index	Litter/Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
2 Clean	<ul style="list-style-type: none"> <li>Isolated pieces of litter on the entire assessed area. The area is not void of litter, but may contain an isolated incidence of litter.</li> </ul>	<ul style="list-style-type: none"> <li>Can is in good working order and none are no more than 3/4 full. There is isolated piece of trash outside of the can.</li> <li>Can is in a clean condition free of items, such as stickers, graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>Less than 10% of a 10 step distance paved area is covered by small organic materials, but occurring no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then add 1 point.</li> <li>No large organic material on the ground.</li> </ul>	<ul style="list-style-type: none"> <li>Partial residue of fecal matter. It seems that an attempt was made to clean the fecal matter, but residue was left behind.</li> </ul>

 MIAMI BEACH

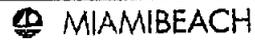
## 2-CLEAN



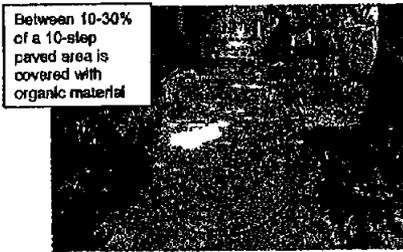
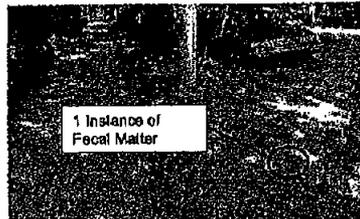
 MIAMI BEACH

# INDEX FOR STREETS, SIDEWALKS, RIGHT OF WAYS, ALLEYS, PARKS, PARKING LOTS, AND BEACHES

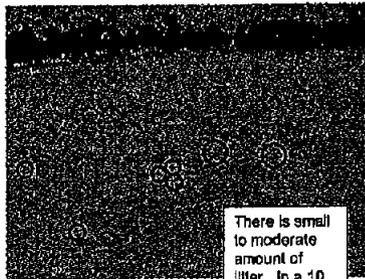
Index	Litter/Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
3 Somewhat Clean	<ul style="list-style-type: none"> <li>Small to moderate amounts of litter. In a 10 step distance the litter accumulation should account to less than 10 small pieces or 2-4 pieces of large litter, but occurring in no more than 10% of the entire assessed area.</li> <li>If the litter density occurs between 10-25% of the entire area, then add 1 point.</li> <li>If the litter density occurs more than 25% of the entire area, then add 2 points.</li> </ul>	<ul style="list-style-type: none"> <li>Can is functioning, but is full with trash, which can be seen from the eye level. There is no litter above the rain guard. There is some residue from past garbage.</li> <li>Can is in a clean condition, but may have one small isolated instance of a sticker or graffiti, which the eye is not drawn to it.</li> </ul>	<ul style="list-style-type: none"> <li>Between 10% - 30% of a 10 step paved area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then add 1 point.</li> <li>Between 1 and 3 pieces of large organic materials is on the ground.</li> <li>Isolated case of organic material accumulation caused by standing water and poor drainage.</li> </ul>	<ul style="list-style-type: none"> <li>One instance of fecal matter is present on the public area.</li> </ul>



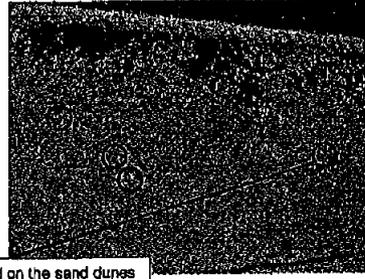
## 3 SOMEWHAT CLEAN



### 3-SOMEWHAT CLEAN



There is small to moderate amount of litter. In a 10 step area, there are less than 10 small pieces or 2-4 pieces of large litter.



Sea oats located on the sand dunes should not be rated against the index for organic material. The organic materials that should be rated is sand on paved areas, leaves, seaweed, etc.

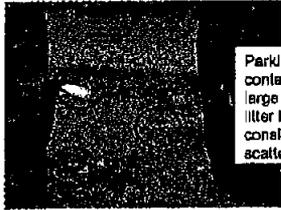
 MIAMIBEACH

### INDEX FOR STREETS, SIDEWALKS, RIGHT OF WAYS, ALLEYS, PARKS, PARKING LOTS, AND BEACHES

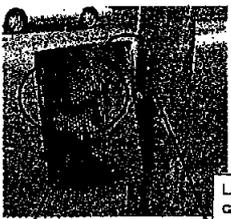
Index	Litter/Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
4 Somewhat Dirty	<ul style="list-style-type: none"> <li>Consistently scattered trash. In a 10 step distance the trash accumulation should account to more than 10 pieces of small litter or over 4 pieces of large litter occurring in no more than 10% of the entire assessed area.</li> <li>If the litter density occurs between 10-25% of the entire area, then add 1 point from the rating scale.</li> <li>If the litter density occurs more than 25% of the entire area, then add 2 points from the rating scale.</li> </ul>	<ul style="list-style-type: none"> <li>Can is full and there is trash above the rain guard. In some cases, there is evidence that there is improper use by the residents.</li> <li>Can is in a working condition, but contains items such as stickers or graffiti on them.</li> </ul>	<ul style="list-style-type: none"> <li>Between 30% - 50% of a 10 step paved area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then add 1 point.</li> <li>Between 4 and 10 pieces of large organic materials is on the ground.</li> <li>2 to 3 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>The organic material is beginning to turn brown.</li> </ul>	<ul style="list-style-type: none"> <li>Two instances of fecal matter are present on the public area.</li> </ul>

 MIAMIBEACH

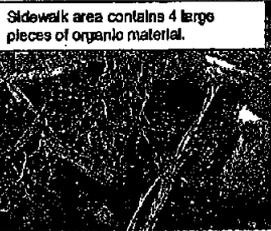
# 4-SOMEWHATDIRTY



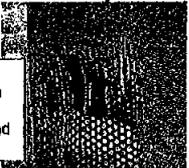
Parking lot contains 4 large pieces of litter is consistently scattered



Litter Can contains graffiti, paint, and is dented



Sidewalk area contains 4 large pieces of organic material.



Litter Can contains some paint that was spilled on it and is dented.



MIAMIBEACH

# 4-SOMEWHATDIRTY

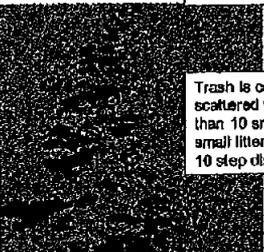


Trash is consistently scattered with more than 10 small pieces in a 10 step distance.

Trash is consistently scattered with more than 10 small pieces of small litter located in a 10 step distance.



Around 30% of a 10 step area is covered by organic material, in this a case seaweed



Trash is consistently scattered with more than 10 small pieces of small litter located in a 10 step distance.

MIAMIBEACH

# INDEX FOR STREETS, SIDEWALKS, RIGHT OF WAYS, ALLEYS, PARKS, PARKING LOTS, AND BEACHES

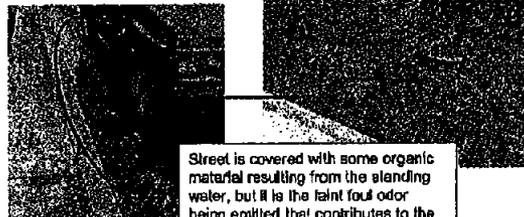
Index	Litter/Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
5 Dirty	<ul style="list-style-type: none"> <li>Constant accumulation of trash. In a 10 step distance there are multiple piles of trash consisting of more than 10 pieces of small litter or over 4 pieces of large litter.</li> <li>If the litter density is occurring between 10 - 25% of the assessed area, then add 1 point from the rating scale.</li> </ul>	<ul style="list-style-type: none"> <li>Can is full and there is trash above the rain guard and beginning to overflow since there is no room to put additional trash. There may be evidence of improper use by the resident.</li> <li>Can has some damage, but is usable.</li> <li>A large area of the can contains items such as stickers or graffiti on them.</li> </ul>	<ul style="list-style-type: none"> <li>Over 50% of a 10 step paved area is covered by organic materials, but occurring in no more than 10% of the entire assessed area. If occurring in more than 10% of the entire assessed area, then add 1 point.</li> <li>Over 10 pieces of large organic materials is on the ground.</li> <li>3-4 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>Faint foul odor is present due to standing water.</li> <li>The organic material has been on the ground for some time and has turned brown.</li> </ul>	<ul style="list-style-type: none"> <li>Three instances of fecal matter are present on the public area.</li> </ul>

 MIAMIBEACH

## 5-DIRTY



Parking lot is 60% covered with organic material, which has been there for some time because it is turning brown.



Street is covered with some organic material resulting from the standing water, but it is the faint foul odor being emitted that contributes to the "Dirty" rating

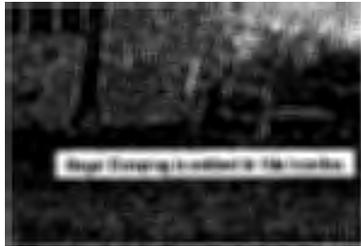
 MIAMIBEACH

# INDEX FOR STREETS, SIDEWALKS, RIGHT OF WAYS, ALLEYS, PARKS, PARKING LOTS, AND BEACHES

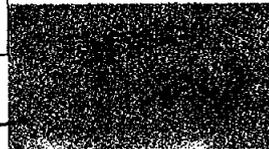
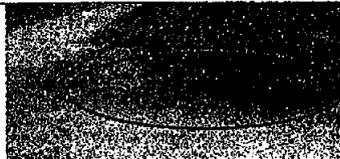
Index	Litter/Trash	Litter / Garbage Cans	Organic Materials	Fecal Matter
6 Extremely Dirty	<ul style="list-style-type: none"> <li>Area is blocked by an accumulation of trash and litter. Illegal dumping may be evident. Hazardous materials on the street.</li> </ul>	<ul style="list-style-type: none"> <li>Can is full and trash has overflowed to the ground. In some cases, there is a rat/rodent/insect infestation.</li> <li>Can is damaged and needs to be replaced.</li> <li>Can is covered of items such as stickers or graffiti.</li> </ul>	<ul style="list-style-type: none"> <li>90-100% of a 10 step paved area is covered with organic material. The organic material has been on the ground for some time and has turned brown.</li> <li>Over 5 instances of organic material accumulation caused by standing water and poor drainage.</li> <li>Strong foul odor is present due to standing water.</li> </ul>	<ul style="list-style-type: none"> <li>Four or more instances of fecal matter are present on the public area.</li> </ul>

 MIAMIBEACH

## 6 EXTREMELY DIRTY



10 step area is 90% covered by standing water that has been there for some time, since algae is forming on the paved area. The water is also emitting a smell.



 MIAMIBEACH

EXHIBIT "D"

GROUNDS MAINTENANCE SERVICE STANDARDS

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10  
THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
1100 Block of Lincoln Road 12/01/09**

**3.0 GENERAL CONDITIONS**

**3.1 SCOPE OF WORK**

3.1.1 The work specified in this section consists of furnishing all labor, machinery, tools, means of transportation, supplies, equipment, materials, services and incidentals necessary to provide complete landscape maintenance services as specified herein. **NOTE: THE WATER FEATURE/GARDEN MAINTENANCE PROGRAM IS LIMITED TO REMOVAL OF FLOATING DEBRIS AND ORGANIC MATERIALS AT EACH SERVICE VISIT. COMPLETE SERVICE SPECIFICATION FOR THESE AREAS TO BE PROVIDED BY THE CITY AS DEVELOPED IN CONJUNCTION WITH THE DESIGNER.**

3.1.2 The work shall include but not be limited to, litter retrieval and waste disposal, landscape maintenance, herbicide /insecticide/fertilizer application, irrigation system operation maintenance / repair and replacement of plants as required. ("Full Service Visits") Bid prices shall include all labor, equipment and materials needed to perform those duties set forth in this section.

3.1.3 All work shall be completed in a continuous manner, that is the, trimming, litter retrieval, etc., shall be completed before leaving the job site.

3.1.4 The Contractor will adhere to a work schedule provided by the City (see Section 4.7.2.). Any variations to that schedule, requested by either party, must be approved either verbally or in writing by an authorized representative of the other party.

3.1.5 The work shall include Traffic Control as described herein.

3.1.6 The location of the work referenced is located throughout within the City of Miami Beach, include the following area:

- **1100 block of Lincoln Road:** From the eastern back of curb of Alton Road east to the western back of curb of Lenox Avenue to the edge of the project limits to the immediate North and South along the City right a way of Alton Road and Lenox Avenue. including: all public pedestrian walking surfaces, planters and tree wells. **Approximately 42,000 square feet, Fifty Two (52) full service visits annually.**

**3.2 QUALIFICATIONS (BIDDER SHALL SUBMIT SATISFACTORY EVIDENCE WITH THEIR BID OR WITHIN 5 CALENDAR DAYS UPON WRITTEN REQUEST, THAT THEY MEET THE FOLLOWING MINIMUM REQUIREMENTS)**

Parties deemed to be qualified to service this contract shall be judged on their past performance and present ability to provide all labor, materials, and equipment to successfully fulfill the provisions of this contract.

**3.2.1 Company Qualification**

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10**

- 3.2.1.1 Company shall have been in continuous service and incorporated in the State of Florida for a minimum of four (4) years.
- 3.2.1.2 Company must be fully licensed with all required State and/or Local government licenses, and permits (irrigation, pest control, horticultural services, etc.).
- 3.2.1.3 Company must have a person on staff with an advanced degree in horticulture, agronomy, or a related field on staff or be recognized as a Florida Certified Landscape Contractor through the Florida Nurseryman and Growers Association.
- 3.2.1.4 Company must have a I. S. A. Certified Arborist on staff.
- 3.2.1.5 Company must have a State Certified Pest Control Operator on staff.
- 3.2.1.6 Company must be a drug and alcohol free workplace.

3.2.2 Personnel Requirements, Management

- 3.2.2.1 Provide a minimum of one (1) full time graduate horticulturist or Florida Certified Landscape Contractor to manage all facets of the landscape and turf management for the contractor.
- 3.2.2.2 Managers must have excellent communication skills and be capable of directing all regular maintenance and additional landscape services and coordinating these with the designated City of Miami Beach staff.
- 3.2.2.3 Managers shall constantly use their experience and training to prevent, detect and control adverse conditions by physically inspecting the landscape and properly guiding the maintenance program.

3.2.3 Technical Services

- 3.2.3.1. To provide an adequate number of personnel specifically trained, experienced and licensed in the following areas: turf maintenance, irrigation maintenance, tree maintenance, and horticultural pest control.
- 3.2.3.2 Provide a Certified Pesticide Operator through the State of Florida, Department of Health and Rehabilitative Services.
- 3.2.3.3 Provide an I.S.A. Certified Arborist, with a minimum of five (5) years experience with South Florida trees.

**3.3 CONTRACTOR'S RESPONSIBILITIES**

3.3.1 Manager

The Contractor shall maintain a Manager on staff, employed in a full time position, with a degree in horticulture, agronomy, or a related field, or recognized as a Florida Certified Landscape Contractor with a minimum of two years landscape management experience.

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Managers must have excellent communication skills and be able to be communicated with by pager, two way radio or cellular telephone. Managers shall be capable of directing all regular maintenance and additional landscape services and coordinating these with the designated City of Miami Beach staff. Managers shall constantly use their experience and training to prevent, detect and control adverse conditions by physically inspecting the landscape and properly guiding the maintenance program. The Manager shall inspect all sites a minimum of one time per month and submit an inspection report documenting conditions to the Project Manager. These inspections shall occur no later than the end of the first full week of each month.

**3.3.2 Supervisor**

The Contractor shall maintain a Supervisor at the facilities at all times during the hours of operations, and such supervisor shall be able to be communicated with by pager, two way radio or cellular telephone.

The Supervisor shall have a minimum of two years field supervisory experience and be able to supervise all day to day field operations for the Contractor. The Supervisor must have excellent communication skills and be capable of directing all regular maintenance personnel to ensure that operations are conducted in a safe and efficient manner consistent with contract specifications. The Supervisor shall constantly use their experience and training to prevent, detect and control adverse conditions by physically inspecting the landscape and properly guiding maintenance personnel. The Supervisor shall inspect all work completed before leaving the job site, at the completion of each regular service to ensure the site is left in a clean, attractive and safe condition.

**3.4 CONTRACTOR'S PERSONNEL**

Contractor shall employ personnel competent to perform the work specified herein. Contractor's employees shall be United States citizens or in possession of appropriate documentation permitting the employees to work in Dade County.

The City reserves the right to request the removal of the Contractor's employee's from performing maintenance on the City's grounds where the employee's performance or actions are obviously detrimental to the program. Standard for Contractor's employee's include the following:

**3.5 DISASTER RESPONSE**

The Contractor shall maintain, on a twenty-four (24) hour on-call basis, by pager, two way radio, or cellular telephone, a staff sufficient to address emergency contingencies (ie, hurricanes, tornados, floods, etc.) which may arise from time to time. The Contractor will respond with immediate action to emergencies that adversely affect the City of Miami Beach, so that the situation is corrected at the earliest possible moment. The Contractor shall be compensated for use of personnel equipment based upon the indicated classifications in the bid tabulation.

**3.6 UNIFORMS**

The Contractor will provide, at Contractor's expense, color coordinated uniforms for all

**THREE YEAR CONTRACT TO PROVIDE  
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personnel. Such uniforms shall meet Owners' public image requirements and be maintained by Contractor so that all personnel are neat, clean and professional in appearance at all times. Non-uniform clothing will not be permitted, including for new employees.

**3.7 CONDUCT**

Conduct standards for Contractor's employees should meet or exceed those required for City employees. The following are some guidelines:

- Drugs and alcohol, or their use, is not permitted on City property nor are personnel allowed on property while under the influence of such substances.
- Firearms or other weapons are strictly forbidden.
- Fighting or loud, disruptive behavior is not permitted.

All personnel will be subject to applicable City safety and security rules and procedures pertaining to conduct, vehicle use, property access, etc.

**3.8 SAFETY**

- 3.8.1 Contractor agrees to perform all work outlined in the Contract in such a manner as to meet all accepted standards for safe practices during the maintenance operation, to safely maintain equipment, machines, and materials, and to remedy hazards consequential or related to the work. The Contractor further agrees to accept the sole responsibility for compliance with all local, County, State or other legal requirements including but not limited to: (1) full compliance with the terms of applicable O.S.H.A. Safety Orders, (2) requirements of the Florida Department of Transportation Manual of Traffic Controls and Safe Practices For Street and Highway Construction, Maintenance and Utility Operations, at all times so as to protect all persons including Contractor's employees, agents of the City, vendors, and members of the public or other firms from injury or damage to their property.
- 3.8.2 The City, through its Project Manager, reserves the right to issue immediate restraint or cease and desist order to Contractors when unsafe or harmful acts are observed or reported relative to the performance of the work under the Contract.
- 3.8.3 During normal working hours, Contractor shall obtain emergency medical care for any member of the public who is in need thereof, because of illness or injury occurring on the site, including a prompt report thereof to the Project Manager.
- 3.8.4 In performing the scope of work, all safety on or off the job site shall be the sole responsibility of the Contractor. The City shall not be responsible for safety on or off the job site. The City's on-site observations or inspections shall be only for the purpose of verifying that the maintenance Specifications are being implemented properly. The City's on-site observations or inspections are not for safety on or off the job site.
- 3.8.5 Traffic Safety Control - The Contractor shall at his cost, observe all safety regulation; including placing and display of safety devices, provisions of police to control traffic, etc. as may be necessary in order to conduct the public through the project area in

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accordance with F.D.O.T.'s "Manual on Traffic Controls and Safe Practices for Street Highway Construction, Maintenance and Utility Operations."

**3.9 CONTRACTOR'S VEHICLES**

Contractor's vehicles shall be in good repair, free from leaking fluids, properly registered, of uniform color and shall bear the company name on each side in not less than 1-1/2" letters.

**3.10 CONTRACTOR'S EQUIPMENT**

All equipment shall be maintained in an efficient and safe operating condition while performing work under the contract. Equipment shall have proper safety devices maintained at all times while in use. If equipment does not contain proper safety devices and/or is being operated in an unsafe manner, the City may direct the Contractor to remove such equipment and/or the operator until the deficiency is corrected to the satisfaction of the City. The Contractor shall be responsible and liable for injury to persons caused by the operation of the equipment.

**3.11 CONTRACTOR'S DAMAGES**

Any damages to the road, facilities, sewers, utilities, irrigation system, plant material or vegetation caused by the Contractor shall be repaired at the expense of the Contractor to the satisfaction of the City. Failure to restore said damages within three (3) working days following notification shall result in a deduction from the next invoice of the City's expenses incurred by the City for labor, material or equipment to restore the property to its original condition.

**3.12 INDEPENDENT CONTRACTOR**

Contractor shall act under the Contract as an independent Contractor vis-a-vis City of Miami Beach and will not be an agent or employee of the City. Contractor shall not represent or otherwise hold out itself or any of its subcontractors, directors, officers, partners, employees, or agents to be an agent or employee of the City.

**3.13 PERMITS, LICENSES, CERTIFICATES**

Contractors shall obtain, at their expense, valid permits, licenses and certificates (City, County, State, Federal) as required for work under the Contract.

3.13.1 Contractors shall give all notices and pay fees and taxes required by law in performance of the Contract.

3.13.2 Compliance with Miami Beach Parks and Recreation Department and the State of Florida Department of Transportation Rules and Regulations: Contractors shall comply and abide by all rules and regulations of the above-referenced departments as they may be applicable to performance of the Contract.

3.13.3 Advertising and Signs: Contractors shall not advertise or place signs on the site, facilities or equipment of the City of Miami Beach.

**3.14 SUB CONTRACTORS**

Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City.

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Contractors shall be as fully responsible to the City for the acts and omission of the subcontractors as for the acts and omissions of person(s) directly employed.

**3.15 PROTECTION OF PROPERTY AND REPAIR OF DAMAGE**

3.15.1 All portions of landscape structures, facilities, services, utilities, roads, and irrigation systems shall be protected against damage or interrupted service at all times by Contractor during the term of the Contract. Any damage to the property as a result of the performance of work by Contractor during the terms of the Contract shall be repaired or replaced in kind and in manner approved by the Project Manager. All work of this kind shall be made immediately after damage or alteration occurs, unless otherwise directed.

3.15.2 Repairs to plant materials and soils shall specifically be made in accordance with specifications in Section 4.3.

3.15.3 Repairs to irrigation systems, which are damaged by any means including acts of God, vandalism, vehicular damage, theft, or undetermined causes, shall be repaired by the Contractor at no cost to the City, except where the specifications provide otherwise.

3.15.4 Contractor shall notify the City Project Manager within twenty-four (24) hours after discovery of any damage caused by accident, vandalism, thefts, acts of God, or undetermined causes.

**3.16 RECORDS**

All documents, books and accounting records shall be open for inspection at any reasonable time during the term of the Contract and for three (3) years audit of the books and business conducted by Contractor and observe the operation of the business so that accuracy of the above records can be confirmed.

All employment and payroll records shall be open for inspection and re-inspection by the City, at any reasonable time during the term of the Contract.

**3.17 TRANSPORTATION**

Contractors are to supply all transportation of employees, supplies and equipment.

**3.18 STORAGE**

Contractors are to provide for all storage at off-site locations delivering to site only sufficient equipment and materials to complete daily tasks. Permission may be given by Project Manager for storage of materials or equipment on-site during special projects or conditions.

**3.19 WASTE DISPOSAL**

Contractors are responsible for removing and disposing from sites all waste handled in

**THREE YEAR CONTRACT TO PROVIDE  
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performance of the Contract. The City is not required to supply area or facilities for storage or removal of waste on-site.

**3.20 NON-INTERFERENCE**

Contractor shall not interfere with the public use of sites and shall conduct his operation so as to offer the least possible obstruction and inconvenience to the public or disruption to the peace and quiet of the area within which the services are performed.

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**4.0 TECHNICAL SPECIFICATIONS**

**4.1 PURPOSE**

These specifications designate the manner in which basic maintenance tasks will be performed in order to achieve the overall Quality Objective, which is to maintain the landscaping on the listed sites in a vigorous, healthy, growing, safe, clean, and attractive condition throughout the year.

**4.2 STANDARDS AND REFERENCES**

The Contractor's Representative shall be well versed in Florida maintenance operations and procedures. All employees shall be competent and skilled in their particular job in order to insure that they properly perform the work assigned.

The following organizations provide standards and publications which may be used as a guide for conducting grounds maintenance and services, under the Contract:

- A. Florida Cooperative Extension Services, 18710 SW 288th Street, Homestead, Florida, 33030.
- B. Florida Turf-Grass Association, Inc., 302 Graham Avenue, Orlando, Florida, 32803-6399.
- C. National Recreation and Park Association, 1601 N. Kent Street, Arlington, Virginia, 22209.
- D. Florida Recreation and Park Association, 1406 Hays Street, Suite 1, Tallahassee, Florida, 32301.
- E. Florida Department of Transportation, "Manual on Traffic Controls and Safe Practices for Street & Highway Construction, Maintenance and Utility Operations."

**4.3 MATERIALS**

All materials supplied and used by Contractors shall be the best kind available and used in accordance with manufacturer's directions. Commercial products such as fertilizers and pesticides shall bear the manufacturer's label and guaranteed analysis. City inspectors may require tests and reject materials not meeting these specifications or manufacturer's guarantee.

**4.3.1 Replacement**

Any plants which are damaged or die as a result of improper maintenance or lack of sufficient maintenance shall be replaced by the Contractor, at no cost to the City, within 10 calendar days upon discovery by the Contractor or notification by the City. The following criteria shall be used to determine if replacement is necessary.

- 4.3.1.1 Plants are not in a healthy growing condition and this renders them below the minimum quality standard (Fla.#1).

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**BID # 00-09/10**

4.3.1.2 There is a question of any plants ability to thrive after the end of the thirty four (34) month maintenance period that would render it below the minimum quality standard (Fla.# 1).

4.3.1.3 The plant material is dead.

4.3.2 The ten (10) calendar days may be extended due to seasonal conditions, availability, preparation time such as root pruning, etc., only if approved by the City, in advance. The extended time shall be negotiated between all parties concerned, but must receive final approval by the City. After the 10 day replacement period, the City may perform the work and withhold monies due to the Contractor for materials and labor costs.

**4.3.3 Size, Quality and Grade of Replacement**

4.3.3.1 Replacement material shall be of the same brand, species, quality and grade as that of the material to be replaced, or it shall conform to the Florida Grades & Standards for nursery plants Florida #1 Quality, whichever is higher. The size of the replacement plants shall not be necessarily the same size as the original specified plant at its initial planting. The replacement shall be of equal size to the plant to be replaced at the time it has been determined that it must be replaced. However, if for some reason, the plant to be replaced is smaller than the size to be replaced, the replacement shall be at least equal to the original size when the maintenance period began.

4.3.3.2 Plants shall be sound, healthy, and vigorous, free from plant disease, insect pests or their eggs, and shall have normal root systems and comply with all State and local regulations governing these matters, and shall be free from any noxious weeds.

4.3.3.3 All trees shall be measured six (6) inches above ground surface.

4.3.3.4 Shape and Form: Plant materials shall be symmetrical, and/or typical for variety and species.

4.3.3.5. All plant materials must be provided from a licensed nursery and shall be subject to acceptance as to quality by the Project Manager.

4.3.3.6 Replacements shall be guaranteed for the length of the Contract, or six (6) months, whichever is greater.

4.3.3.7 The Contractor shall be responsible for hand watering the replacement (if required), for 42 calendar days after planting.

**4.3.4 Water**

Should Contractor supply water, the water shall be fresh (non-salt), and containing no harmful levels of pollutants or chemicals.

**4.3.5 Soil**

4.3.5.1 Any soil supplied by Contractors shall be good, clean, friable top soil (or soil mix as specified in original construction documents), free from any toxic, noxious or objectionable materials, including rocks, lime rock, plant parts or

**THREE YEAR CONTRACT TO PROVIDE  
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seeds.

4.3.5.2 "Planting Soil Mix" shall be equal parts of Sphagnum peat moss, coarse sand, and composted organic matter, sterilized.

4.3.5.3 "Muck-sand-soil" shall be 70 percent muck and 30 percent coarse sand.

**4.3.6 Fertilizer**

All fertilizer shall be the best commercial grade and except free flowing liquids, shall be delivered to site and be dry when processed for application. Fertilizers shall be in appropriate containers and tagged. Special permission from the Project Manager is required to use bulk fertilizers.

The Contractor shall submit copies of the manufacturer's specifications for all fertilizer including data substantiating that the proposed materials comply with specified requirements.

**4.3.7 Pesticides - (insecticides, fungicides, herbicides, etc.):**

Insecticides & Fungicides shall be only those which are approved or recommended for use near open water bodies and those specified. Only the Federal Environmental Protection Agency (EPA) approved products shall be used.

All pesticides are to be registered and approved for use by the Florida Department of Agriculture.

Submit on an as needed basis, a schedule of spraying and dusting materials to be used to control pests and disease infestation, the reason for their use and the method to be used to apply the materials and the method of application before it is delivered and used on the project. The need for pest and disease control, will be determined by the Contractor's Horticulturist and approved by the City. Also, if requested by the City, the Contractor will furnish documentation that the implementation of these control measures for pests and disease infestation is in strict compliance with all Federal, State, and Local Regulations.

**4.3.8 Miscellaneous Materials**

Mulch shall be grade B shredded cypress mulch, free of foreign matter. Other mulch types may be required upon request by the City. Alternative mulch types will be readily available on the wholesale market, be of equal or lesser wholesale cost or increased costs to be paid by City.

**4.4 EQUIPMENT**

Equipment supplied by Contractor shall be designed for or suited to the grounds maintenance task in which it is to be used. Equipment will not be used in areas or to perform tasks where damage will result to the landscapes or sites.

Contractor shall maintain supplied equipment in a good appearance and all equipment shall be maintained in a safe, operational and clean condition.

Upon specific request by the City, the Contractor will supply a current list of supplied equipment

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used by the Contractor, including item, model, manufacturer, year manufactured, and serial numbers. The Project Manager or his designee shall have the right to reject the use of any specific piece of supplied equipment on the site, by notification to Contractor

**4.5 COMPLETION OF WORK**

All work is to be completed in a continuous manner. That is all mowing, edging, weed control, trimming, litter removal, etc. shall be completed before leaving the job site.

**4.6 GROUNDS MAINTENANCE FUNCTIONS AND TASKS:**

**4.6.1 NA-Turf Care**

**4.6.2 Pruning Shrubs and Ground Cover Plants Bed Area Maintenance**

All shrubs and ground cover plants growing in the work areas shall be pruned, as required, to maintain plants in a healthy, growing, flowering condition and to maintain plant growth within reasonable bounds to prevent encroachment of passageways, walks, streets, view of signs or any manner deemed objectionable by the Project Manager.

**4.6.2.1 Bed Area Maintenance**

The Contractor shall keep the bedded areas free of dead plants, leaves, and branches at all times. All beds shall be vertically edged, and kept weed free at all times. Edge grass at plant bed lines to keep grass from growing toward shrubs, keep the width of sod as it was originally placed.

**4.6.2.2 Shrubs**

All shrub material shall be pruned a **minimum of once per month** to insure the best shape, health, and character of the individual plant. Mechanical trimming may only be utilized when the health or appearance of the plant will not be damaged by the mechanical trimmers.

**4.6.2.3 Groundcover**

All groundcover material shall be pruned a **minimum of once per month** to insure the best shape, health, and character of the individual plant. Groundcover plants shall be selectively cut back to encourage lateral growth and kept inbounds and out of other plantings, walkways, lighting, etc. Mechanical trimmings may only be utilized when the health or appearance of the plant will not be damaged by the mechanical trimmers.

**4.6.3 Trees and Palm Pruning**

Trees and palms are to be maintained in a healthy, growing, safe, attractive condition and in their proper shape and size according to variety, species and function in the landscape or as specifically directed by the Project Manager.

**4.6.3.1 Pruning**

Natural Shaping and Thinning

Prune, thin, and trim all trees at least once a year to keep the trees healthy, to maintain the natural character of the variety, to control shape and to prevent

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crowding. Pruning in general shall consist of the removal of dead, broken, fungus infected, superfluous, and intertwining branches, vines, and the removal of dead or decaying stumps and other undesirable growth. Palms shall be pruned as needed to remove fruit, inflorescence, dead fronds and weak stalks. Fruit and/or inflorescence must be removed from palms in locations where the dropping of fruit will cause an unsafe or unsanitary situation. Disinfect tools between palms by soaking in a (5.25%) - 25% dilution Chlorine bleach and water solution for a minimum of 5 minutes. Certain Washingtonian Palms will be an exception to the pruning practices of normal palm maintenance when existing dead fronds are maintained as determined by the City Project Manager.

Pruning will also be required from time to time to remove damaged branches from storms, frost, pruning to prevent encroachment of branches over streets, into private property, obscuring view of signs or traffic, particularly at a road intersection, or interference with lighting, etc.

Tree branches shall be pruned up to seven (7') feet over walkways and in areas so designated by the Project Manager. All tree pruning shall be accomplished with standard practices including:

Cuts should be made with sharp and proper tools. When cutting parts of branches, leave a living bud at the end of the stub. Make cuts sufficiently close to parent stem so that the healing can readily start under normal conditions, but do not cut in to branch collar. On trees known to be diseased, disinfect tools after each cut and between trees. Prune only at the time of season proper for the variety. Prune or trim, at least once or twice each growing season to keep the natural shape of the individual plant.

Pruning shall include the following items:

- Dead, dying or unsightly part of the tree
- Remove sucker growth from base of the trees in which an exposed trunk character is desired
- Branches that grow toward the center of tree
- Crossed branches that may rub together
- "V" crotches, if it does not ruin the appearance of the tree
- Multiple leader if the tree normally has only a single stem
- Nuisance growth that interferes with view, traffic, sign age, walks, or lighting. Nuisance growth includes the removal of all dangerous thorns, spikes or appendages which show potential conflict with people.
- Shape top of small trees as needed

All branches, dead wood, and cuttings shall be removed from the job site at time of pruning and disposed of in an acceptable manner. All lawn and shrub areas damaged by pruning equipment shall be restored.

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4.6.3.2 Staking and Guying - and Tree Set-Up

Maintain existing and adjust tree stakes, guy wires and hoses or blocks, until trees are capable of standing vertical and/or resisting normal winds.

4.6.3.2.1 The Contractor shall be responsible for the complete removal and replacement of those trees lost due to the Contractor's faulty maintenance or negligence, as determined by the Project Manager.

4.6.3.2.2 Replacement shall be made by the Contractor in the kind and size of tree determined by the Project Manager.

Where there is a difference in value between the tree lost and the replacement tree, this difference will be deducted from the Contract payment. In all cases, the value of the tree lost shall be determined by the Project Manager using the latest "Plant Finder" value determination.

4.6.3.2.3 All trees that have died or have been blown or knocked over are to be reported immediately upon discovery to the Project Manager.

4.6.3.2.4 With prior approval from the Project Manager, it is the Contractor's responsibility to remove and properly dispose of all dead or injured trees and/or weed trees such as but not limited to Florida Holly or Melaleucana or Australian Pine. Contractor shall set and support trees that have been knocked or blown over.

4.6.3.2.5 The Contractor shall be responsible for removing all graffiti, signs, posters, boards, supports and any other material(s) attached or fastened to trees, or from elsewhere on the project site, as directed by the Project Manager.

**4.6.4 Weed Control**

4.6.4.1 All landscape areas within the specified area, including lawns, shrub and ground cover beds, planters, and areas covered with concrete, pavers, gravel or shell, shall be kept free of all weeds at all times. All concrete areas on medians, curbing around medians and along swales and all sidewalks are included with each project site. This means complete removal of all weed growth shall be **accomplished at each service visit**. For the purpose of this specification, a weed will be considered as any undesirable or misplaced plant. Weeds shall be controlled either by hand, mechanical, or chemical methods. The Project Manager may restrict the use of chemical or mechanical weed control in certain areas. Mechanical weed control shall not disturb the mulch layer so as to expose the underlying soil.

4.6.4.1.1 Weeds in turf areas N/A.

4.6.4.1.2 Weeds are to be manually removed from shrub, hedge, ground cover or flower beds, unless chemical or mechanical means are specifically authorized by the Project Manager. Persistent weed growth such as the growth of sedges shall be killed with "round up" whenever

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possible.

4.6.4.1.3 Weeds are to be removed from walkways, curbs, expansion joints, and along fence lines and guardrails at **each service** or as otherwise directed by the Project Manager.

4.6.4.2. If infestations cannot be controlled by hand-pulling, or herbicide use will damage or kill the shrubs or ground-covers, the bed may be excavated, after removing all plants. Then, weeds may be destroyed before replanting by any of the following methods:

4.6.4.2.1 Sterilize the soil, or

4.6.4.2.2 Allow weeds to reestablish a vegetative top and treat with a systemic herbicide, at least two (2) applications, about two (2) weeks apart, or until there is a 90% kill.

4.6.4.2.3 After the kill, apply, immediately after replanting, a pre-emergent herbicide, such as Treflan or prior to replanting a ground cover fabric.

4.6.4.3 If it is determined by the City that the Contractor responsible for maintenance allows weed infestations to spread beyond the ability to control them, then the removal, treatment, and replacement of the planting bed shall be done as described above by the Contractor at no cost to the City. Soil which exhibits significant weed growth within one (1) month after planting, (20% ground coverage of the bed by weeds) shall be considered as previously weed-infested.

**4.6.5 Litter Control**

4.6.5.1 Contractor Generated Trash: The Contractor shall promptly remove all debris generated by his pruning, trimming, weeding, edging, and other work required in the specifications. Storm drains shall be kept clear and free of debris and mulch. Debris must be disposed of at an authorized site for commercial use. Neighborhood trash transfer stations or road side piles are not considered authorized sites. The Contractor shall clean driveways and paved areas with suitable equipment immediately after working in them. All cuttings are to be removed on same day as cut.

4.6.5.2 Litter Removal: Litter removal to be removed from all , landscape beds, walk ways and all hard surfaces at each regularly scheduled full service visit (52 annually). Litter removal within the water features/garden to include all floating liter, debris and organic materials at each regularly scheduled full service visit (52 annually).

4.6.5.2 Litter Removal: In addition to the litter removal on regularly scheduled full service visits, the Contractor shall be responsible for litter removal on (TBD)

**4.6.6 Fertilization and Soil Testing**

The fertilizer used shall be a commercial grade product and recommended for use on each plant type. Specific requirements should be determined by soil test results, soil

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type, and time of year. Applications shall proceed continuously once begun until all areas have been completed. In the event fertilizer is thrown on hard surfaces, it shall be removed immediately to prevent staining.

Contractor shall have the soil tested one time per year to determine required additives, and more often if necessary to diagnose problem areas. Apply Lime or Sulfur as required to adjust pH. The Contractor shall provide the City with annual fertilization schedules at the beginning of each contract year and shall inform the Project Manager at least three (3) days in advance before beginning any fertilization. Fertilization shall be done during the first two weeks of April, the first two weeks of July and the last two weeks of October.

4.6.6.1 Turf-N/A

4.6.6.2 Groundcover, & Shrubs

Shrub and groundcover areas that contain palms shall be fertilized three (3) times per year with "Palm Special Fertilizer" with the formulation of 8N-2P<sub>2</sub>O<sub>5</sub>-12K<sub>2</sub>O +4Mg with micronutrients. 100% of the N, K, and Mg must be slow release with micronutrients in a water soluble form, applied according to label rates. Applications to be made during the first two weeks of April, the first two weeks of July and the last two weeks of October.

The fertilizer for all planted shrubs and groundcovers shall a **complete, slow release fertilizer with minor elements**; with an N, P, K ratio of 3:1:2, unless soil conditions or plant species dictate differently, with at least 60% of the nitrogen from a non-water soluble organic source.

All shrubs and groundcovers shall be fertilized by broadcasting by hand over the beds three (3) times per year. Applications to be made during the first two weeks of April, the first two weeks of July and the last two weeks of October.

The Contractor shall establish a program that will fertilize all shrubs and groundcover, describing the type of fertilizer required for each type of plant and the time of year this work will be undertaken. A copy for approval of the fertilization schedules shall be provided to the City no less than one (1) month prior to application. Any plants damaged by over-fertilization or nutrient deficiencies shall be replaced at the Contractor's expense. Changes in fertilization rates, methods and composition must be approved by the City in writing.

4.6.6.3 Fertilization Trees, & Palms

The fertilizer for all the planted trees shall meet proper horticultural standards with a complete fertilizer with a N, P, K ratio of 3:1:2 or 3:1:3 (e.g. 12-4-8 or 15-5-15, unless soil conditions or plant species dictate differently, with at least 60% of the nitrogen from a non-water soluble organic source.

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All Trees 5" caliper or under shall be fertilized three times yearly: February, June and October using a complete, slow release fertilizer with minor elements; applying 1 pound of Nitrogen per 1000 square feet of area of root zone (drip line plus 50%).

All palms shall be fertilized four (4) times per year; every three (3) months; during the first week of January, April, July and October applying "Palm Special Fertilizer" with the formulation of 8N-2P<sub>2</sub>O<sub>5</sub>-12K<sub>2</sub>O +4Mg with micronutrients. 100% of the N, K, and Mg must be slow release with micronutrients in a water soluble form. The fertilizer shall be broadcast evenly under canopy area at a rate of 1.5 lbs of fertilizer (not N) per 100 sq. ft.

The Contractor shall establish a program that will fertilize all trees and palms, describing the type of fertilizer required for each type of plant and the time of year this work will be undertaken. A copy for approval of the fertilization schedules shall be provided to the City no less than one (1) month prior to application. Any trees damaged by over-fertilization or by the use of wrong type of fertilizer shall be replaced at the Contractor's expense. Changes in fertilization rates, methods, and composition must be approved by the City in writing.

**4.6.7 General Use of Chemicals**

The Contractor shall submit a list of all chemical herbicides and pesticides proposed for use under this Contract for approval by the Project Manager, including MSDS sheets for each item. Materials included on this list shall be limited to chemicals approved by the State of Florida, the Department of Agriculture, and the Florida Department of Transportation, and shall include the exact brand name and generic formulation. The use of any chemical on the list shall be based on the recommendations of and be performed under the direction of a Certified Pest Control Operator. No chemical herbicide or pesticide shall be applied until use is approved, in writing, by the Project Manager as appropriate for the purpose and area proposed.

**4.6.8 Disease and Pest Control**

To control or eradicate infestations by chewing or sucking insects, leaf miners, fire ants, and other pests and diseases, spray affected plants with chemical sprays and combinations of sprays suitable for that particular pest when the infestation or infection becomes evident and as often thereafter as necessary. Contractor shall be fully licensed to spray pesticide. Contractor shall use sound cultural practices that aid in preventing the presence or proliferation of insect and diseases. Insects in Zoysia grass shall be controlled by both curative and preventative measures. Timing will be critical on mole cricket applications and frequencies of application will be as needed to successfully control their infestations. Nematode samples will be taken at least one (1) time each year and action shall be taken per the recommendation of the IFAS lab results to control the populations. This lab report shall be submitted to the City for their review as soon as it is received.

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**4.6.9 Application of Herbicides and Insecticides**

Contractor may apply various herbicides by means of spray type devices to aid in the control of unwanted weeds and vegetation. All applications shall be performed by persons holding a valid herbicide application license as issued by the State of Florida and shall be done in accordance with the herbicide manufacturer's recommended rates and all applicable Federal, State, County and Municipal regulations. Herbicides may be used only with prior approval by the City as to type location, and method of application.

4.6.9.1 The Contractor shall exercise extreme care so as not to over spray and effect areas not intended for treatment.

Areas adversely affected by such over spray shall be restored by the Contractor at his expense.

4.6.9.2 The Contractor shall advise the Project Manager within four (4) days after disease or insect infestation is found. He shall identify the disease or insect and recommend control measures to be taken, and, upon approval of the Project Manager, the Contractor shall supply and implement the approved control measures, exercising extreme caution in application of all spray material, dusts or other materials utilized. Approved control measures shall be continued until the disease, or insect is controlled to the satisfaction of the Project Manager.

4.6.9.3 When a chemical is being applied, the person using it shall have in their possession all labeling associated with the chemical. Also, the chemical shall be applied as indicated on the said labeling. A specimen label and the Material Safety Data Sheet for each product shall be supplied to the City.

4.6.9.4 All insecticides shall be applied by an operator licensed pursuant to Chapter 487 of the Florida Statutes. The operator shall have the license/certification in his or her possession when insecticides are being applied. The implementation of control measures for pests and disease infestations shall be in strict compliance with all federal and local regulations. Upon request, the Contractor shall furnish documentation of such compliance.

4.6.9.5 The spraying of insecticides and other such chemicals are to be confined to the individual plant. Spraying techniques which may introduce the material being sprayed beyond the immediate area of the individual plant are strictly prohibited.

4.6.9.6 Spray or dust material on foliage only during calm days. Do not apply when leaves are wet, when rain is expected within 3-4 hours after spraying, or when temperatures exceed 88 degrees Fahrenheit. Spray at times when traffic is lightest (i.e., early mornings or weekends). Use a spreader-sticker to aid in adherence and absorption of the material. Wash material off of pavements and buildings immediately after applying.

4.6.9.7 The Contractor shall utilize all safeguards necessary during disease or insect control operations to ensure safety to the public and the employees of the Contractor.

4.6.9.8 Copies of Current Material Safety Data Sheets (MSDS) for all chemicals used

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for pest control under this Contract shall be provided to the Project Manager before the use of said chemicals.

**4.6.10 Verticutting, Aeration and Topdressing-N/A**

**4.6.11 Turf Renovations-N/A**

**4.6.12 Irrigation System Maintenance and Watering**

Contractor will be responsible for the operation and maintenance of the automatic/manual irrigation systems and for setting and adjusting the timer to insure proper watering of all plant material in the landscape.

Contractor will be responsible under this agreement for the parts, labor and supervision to make irrigation repairs to the lateral line, risers and sprinkler heads up to one inch (1") in diameter as required to keep the system operating. Major repairs to main lines, valves, pumps and in-take piping shall be reimbursed by the City. **Reimbursable repair work shall require authorization by the City prior to commencement.**

Prior to commencement of the maintenance program, the Contractor shall have twenty-five (25) days from start of contract to inspect the irrigation system and report present damage or incorrect operation and coverage to the City. The Contractor will be responsible for the integrity of the system after this initial inspection report and subsequent repairs.

**The timers shall be checked once a week or more frequently as may be required.** The Contractor will also, at least once a month, fully operate all the irrigation zones and replace, repair or clean all irrigation heads, lines, valves, valve boxes, filters and controllers as needed. Any equipment damaged by the Contractor's operation shall be replaced with the same equipment and by the same manufacturer.

**Grass shall be cut back around all irrigation heads and valve boxes at each service to keep them clearly visible and fully operational.**

The irrigation shall be capable of providing 1" of water to all lawns and shrub beds each week or as often as required to provide for a uniform lush green landscape appearance. System shall be adjusted during the various seasons. All irrigation systems must be turned off when ever a severe storm warning (Tropical Storm or Hurricane) is issued.

The Contractor shall be required to make all repairs within a minimum 24 hour time period or sooner as directed by the City's representative. Any form of damage to the irrigation system must be reported to the City's representative immediately upon discovery.

Irrigate as necessary during of little or no rainfall using the automatic irrigation system and any supplemental watering necessary to apply proper amount of water to keep the

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plant material in optimum health. Under normal conditions; irrigate deep and infrequently (2 – 3 times weekly) to promote a good root system. Water early mornings within SFWMD watering restriction guidelines. Avoid watering in the evenings. Fines resulting from the violation of SFWMD and/or local government imposed watering restrictions shall be the sole responsibility of the Contractor

Supplemental watering may be required as needed to compensate for wind drift, temperature extremes, inadequate irrigation coverage, establishment of new landscaping and/or applications of fertilizers and/or pesticides, etc. Supplemental watering may require a large portable water tank, impact sprinklers, and additional hose to be supplied by Contractor.

**The Contractor is required to ensure adherence to all local watering restriction ordinances. It will be the responsibility of the Contractor to pay Fines levied due to lack of compliance.**

A written irrigation schedule will be provided by the Contractor and any operation of irrigation outside the previously approved scheduled time must have the advance approval of the City.

Contractor shall be responsible for controlling the amount of water used for irrigation and any damage or costs that result from over-watering or insufficient watering shall be the responsibility of the Contractor.

**4.6.13 Watering**

During periods when the irrigation system is not operational, either due to breakdown of the system, or an extended electric power failure, it shall be the responsibility of the Contractor to provide adequate water to maintain the landscape.

4.6.14.1 Supply of water suitable for irrigation shall be the Client's responsibility. Distribution of the water to the plants shall be the responsibility of the Contractor. Contractor shall use hand watering, water trucks, portable pumps, etc. as required to distribute the water.

4.6.14.2 Apply water in quantities and at intervals necessary to maintain the plants in a healthy growing condition.

**4.6.14 Irrigation System**

Shall be constantly maintained and adjusted to insure that no water from the system hits the road or other hard surface.

**4.6.15 Mulching Beds**

4.6.15.1 Replenish mulch in shrub beds as required to cover areas of bare soil, especially at the edge of the bed and in places where the shrub canopy has not grown together to shade the soil. Add mulch around tree trunks in sod areas.

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Mulch shall be added as required to maintain a constant three (3) inches thickness. Do not pile against tree trunks and shrub stems.

4.6.15.2 Use Amerigrow Recycling's shredded "round -wood" mulch "Pine Bark Brown" color. Grade "A" Cypress mulch, Melaleuca mulch or other mulches may be used as designated and approved by the City.

**4.6.16 Sand Removal / Policing:**

Cleaning of debris within the confines of the site by blowing, sweeping, or vacuuming or other means must be performed as required to keep paved, bricked or concrete surfaces clean and neat at all times. Debris shall not be directed in to the road way or storm drains.

**4.6.17 Skinned Areas (NOT USED)**

**4.6.18 Frequency of Services**

Frequencies for the sites and services described herein are based upon normal circumstances. Individual, several and/or all services to a site or sites may be added at an agreed upon price, or deleted due to natural disaster, excessive rain, disease, drought, fire, vandalism, accident, insufficient funds and/or any other reason at the sole discretion of the Owner.

52 Full Service Visits Annual Schedule: Schedule 52 service visits annually according to the following: service visits to be performed weekly at minimum to complete the outlined work.

30 Full Service Visits Annual Schedule: - N/A

34 Full Service Visits Annual Schedule: - N/A

12 Full Service Visits Annual Schedule: - N/A

**4.7 PERFORMANCE CONTROL AND INSPECTIONS**

**4.7.1 Maintenance Quality**

The quality objective of all services and materials provided by Contractors in accordance with conditions and specifications herein, is to maintain and service various listed sites, and to keep them in a healthy, growing, clean and attractive condition throughout the year.

**4.7.2 Maintenance Standards, Frequencies, Work Method**

All work shall be performed in accordance with the highest professional maintenance standards and horticultural techniques. Frequencies set for certain repetitive maintenance functions and tasks in specifications are minimum frequencies, which must be increased, if necessary to achieve the Quality Objective.

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All work is to be completed in a continuous manner. That is all litter removal, weed control, trimming etc. shall be completed before leaving the job site

Standard and frequencies may be modified from time to time by the City of Miami Beach Assistant Director of Parks and Recreation or designated representative as necessary to assure proper maintenance to achieve the Quality Objective.

All work shall be done in a thorough and workmanlike manner under competent Contractor supervision to the satisfaction of the City of Miami Beach Assistant Director of Parks and Recreation or designated representative .

The Contractor shall have the exclusive duty, right, and privilege to perform Grounds Maintenance and Services, as specified herein.

**4.7.3 Inspections**

4.7.3.1 The Contractor's Representative shall perform maintenance inspections daily during daylight hours of all sites assigned for the day. Inspections by City of Miami Beach Greenspace Management Personnel shall provide continuing inspection of the sites to insure adequacy of maintenance and that methods of performing the work are in compliance with these specifications. Discrepancies and deficiencies in the work shall be brought to the attention of the Contractor's Representatives in writing, directly by the City of Miami Beach Project Manager, and shall be corrected by the Contractor immediately.

4.7.3.2 The City of Miami Beach Project Manager and the Contractor's Manager shall meet on the sites once a month, or more frequently at the discretion of the Project Manager, for a walk-through inspection. The meeting shall be at the convenience of the City of Miami Beach. All on-going maintenance functions shall be completed prior to this meeting.

**4.7.4 Deficiency/Cure Notices and Corrective/Termination Process:**

If the Project Manager determines that there is/are deficiency(s) by the contractor in the performance of the contract, the Project Manager will notify the Contractor and the Procurement Director of the deficiency(s) in writing. The Procurement Director will send a Cure Notice to the Contractor requesting that they provide in writing within seven (7) calendar days of notification, any/all actions proposed to be taken in order to correct/cure the identified deficiency(s).

If all parties (Project Manager, Contractor and Procurement Director) agree that actual damages/deficiencies would require more than seven (7) calendar days to correct/cure, a reasonable time frame, in writing, will be determined based on a "meeting of the minds" between the Project Manager and the Procurement Director for the identified deficiency(s).

Should the Procurement Director issue two (2) Cure Notices for the same deficiency(s), or a total of three (3) Cure Notices within a twelve (12) month period, the City may exercise its right to proceed with the Termination of this contract.

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**SEE PAGE 16, SECTION 1.57 – TERMINATION FOR DEFAULT**

**4.7.5 City of Miami Beach Right to Correct Deficiencies**

Additionally, and notwithstanding the above provision, the City has the right to move on site with City forces or private Contractors to correct deficiencies seven (7) calendar days after notification in writing, by the City of Miami Beach Parks and Recreation Department Director, or his designee.

If, in the sole discretion or judgment of the Project Manager, the Contractor and/or his employee(s) are not properly performing the services required under the Contract, then the Contractor and/or all employees may be temporarily replaced by City personnel and payment to be made by the City may be suspended while the matter is being investigated. Total costs incurred by completion of the work by the City will be deducted and forfeited from the payments to the Contractor from the City.

This section shall not be construed as a penalty, but as an adjustment of payment to Contractor for only the work actually performed, and accepted by the City, and the recovering of City costs from the failure of the Contractor to complete or comply with the provision of the Contract.

**4.7.6 Quality Control - Performance Reports**

**Completion of Work:** Within 24 hours of completing work the Contractor shall notify the Parks and Recreation Supervisor assigned to monitor the contract by fax or email of said completion

**Inspection and Approval** – Upon receiving notification from the Contractor, the City shall inspect the serviced location within 48 hours. If, upon inspection, the work specified has not been completed, the City shall contact the Contractor to indicate the necessary corrective measures. The Contractor will be given 48 hours from this notification to make appropriate corrections. If the work has been completed successfully then the City will pay for services billed.

The Contractor shall submit to the City Project Manager a report of his performance for the preceding month, under terms of the Contract. These reports shall be postmarked no later than the fifth (5<sup>th</sup>) day of each month following the month in which services were performed. Failure to do so shall result in delay of payment until this requirement is fulfilled.

**4.8 SCHEDULING**

4.8.1 Contractors shall accomplish normal landscape maintenance required under the Contract during daylight hours. The City Project Manager may permit night scheduling on an individual function or task basis.

4.8.2 Contractor shall schedule and conduct the work at times and in a manner which shall not interfere with normal pedestrian traffic on adjacent sidewalks or vehicular traffic on adjacent streets, and shall not cause annoyance to residents near the site or users of the

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site. During periods of peak rush hour traffic, the Contractor will not block or impede arterial or collector streets.

- 4.8.3 All work shall be scheduled and completed in a continuous manner, that is, other than a holiday or non-work day in order to maintain the site in a uniform manner.
- 4.8.4 Contractor shall not work or perform any operations during inclement weather which may destroy or damage landscaped areas.
- 4.8.5 Contractor shall recognize that during the course of the Contract, other activities and operations may be conducted by City work forces and other Contractors. These activities may include but not be limited to landscape refurbishment, irrigation system modification or repair, construction and storm related operations. The Contractor may be required to modify or curtail certain operations without decreased compensation and shall promptly comply with any request by the Project Manager. In the event a Site or part of a Site becomes unavailable for servicing by the Contractor, the Project Manager may temporarily delete the Site or part of the Site and compensation to the Contractor will be decreased.
- 4.8.6 Contractor shall, during the hours and days of operation, respond to all emergencies by taking the appropriate/required action within two (2) hours. **See Section 3.5 – Disaster Response**
- 4.8.7 Contractor shall have completed all Landscape Maintenance functions prior to the scheduled maintenance inspection.

**4.9 ADDITIONAL WORK**

The Project Manager may, at his discretion authorize the Contractor to perform additional work, including, but not limited to, mowing, trimming, weeding, edging, litter pickup, repairs and replacements (“**grounds maintenance service type work under normal circumstances**”) when the need for such work arises. The Project Manager will request quote(s) from the contractor which may be negotiated as required to obtain a fair and reasonable price. Should negotiations be unsuccessful, the Project Manager may request quotes from other contractors for the additional work.

Should additional work be required due to **extraordinary incidents/circumstances** such as vandalism, acts of God, and/or third party negligence, the City will pay the contractor based on the hourly labor rate specified on the Bid Proposal. **See Section 3.5 – Disaster Response.**

Prior to performing any additional work, the contractor shall prepare and submit a written description of the work with a cost estimate/price quote to the Project Manager. No work shall commence without the written authorization from the Project Manager.

Notwithstanding the above authorization, when a condition exists wherein there is imminent danger of injury to the public or damage to property, the Project Manager may verbally authorize the work to be performed upon receiving a verbal estimate from the Contractor. However, within 24 hours after receiving a verbal authorization, the Contractor shall submit a written estimate/quote to the Project Manager for the required approval.

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10**

**4.10 BID SUBMITTAL**

In addition to the documentation and information requested herein, the Bidders shall submit the following information with their bid, or within five (5) calendar days upon request:

**4.10.1 Company Profile**

A profile describing the organization represented by the bidder must be furnished with the bid submittal. This will include:

- \* Company history and present organization;
- \* Name of Principal or Owner(s);
- \* Name of Affiliates, Subsidiaries, etc.;
- \* Years of company experience under present ownership;
- \* The local office address and phone number from which account would be administered;
- \* History of local office, including opening date;
- \* Normal hours of operation of local office;
- \* Name of person in charge of local office;
- \* Number of maintenance personnel in the south Florida area normally available to emergency calls;
- \* List of all services company is capable of providing.

**4.10.2 Personnel**

- \* Provide an organizational chart of entire structure that is proposed to service account;
- \* Provide resumes of key management personnel;
- \* List job descriptions for all positions in the organization described in #1 above;
- \* Include description of proposed uniforms;
- \* Provide your overall employee policy and training program;
- \* Provide outline of safety program.

**4.10.3 Turf Maintenance**

- \* List proposed fertilizer type and rate for each turf type and other specific nutrient additives;
- \* List proposed application schedule (annual basis);
- \* Describe proposed mowing schedule and procedures;
- \* Describe proposed preventative pest management program.

**4.10.4 Tree and Palm Maintenance Program**

- \* Provide type(s) of fertilizer and rates proposed for general use, and other specific nutrient additives;
- \* List proposed application schedule (annual basis);
- \* Describe proposed pruning schedule and procedures;
- \* Describe proposed preventative pest management program.

**4.10.5 Shrub and Ground Cover Maintenance Program**

- \* Provide type(s) of fertilizer and rates proposed for general use, and other specific nutrient additives;
- \* List proposed application schedule (annual basis)

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10**

- \* Describe proposed pruning schedule and procedures;
- \* Describe proposed preventative pest management program.

4.10.6 Irrigation Maintenance Program

- \* Describe preventative maintenance program.

4.10.7 Equipment Specifications

- \* List all tools, equipment (including manufacturer) and quantities of each type that be proposed to perform maintenance.

4.10.8 Bidder's Supplement

- \* Copies of all applicable licenses, permits, etc. required perform the services;
- \* List of clients with specialty turf types the bidder currently has, along with contact information;
- \* Miscellaneous Information - this section of the proposal should include any additional information about the services or bidder that is not addressed elsewhere in the proposal.

4.10.9 Schedule of Values (see page --)

**THREE YEAR CONTRACT TO PROVIDE  
 GROUNDS MAINTENANCE SERVICE  
 BID # 00-09/10**

**Bid Proposal Page 1 of 3**

**COMPANY NAME:** \_\_\_\_\_

We propose to furnish all labor, tools, equipment, transportation, permits, licenses, services and incidentals necessary in order to provide Grounds Maintenance for the City of Miami Beach, in accordance with Bid Specifications, as follows:

Item #	Project Description	Cost per Service	# Services	Cost Per Year
1	1100 block of Lincoln Road	\$ _____	52	\$ _____

**ANNUAL GRAND TOTAL: \$ \_\_\_\_\_**

Not to Exceed (NTE) Hourly Labor Rates ( for Work other than specified herein, at the direction of the City) SEE SECTION 4.9 – ADDITIONAL WORK			
Item #	Job Classification	NTE Hourly Rate	
2	Hourly rate per Contractor Representative	Regular time:	\$ _____
		Overtime:	\$ _____
3	Hourly rate per Laborer/Groundskeeper	Regular time:	\$ _____
		Overtime:	\$ _____
4	Hourly rate per Irrigation Technician	Regular time:	\$ _____
		Overtime:	\$ _____
5	Hourly rate per Large Equipment Operator	Regular time:	\$ _____
		Overtime:	\$ _____
6	Hourly rate per Supervisor/Foreman	Regular time:	\$ _____
		Overtime:	\$ _____
7	Hourly rate per Climber	Regular time:	\$ _____
		Overtime:	\$ _____
8	Hourly rate per Certified Arborist	Regular time:	\$ _____
		Overtime:	\$ _____
9	Hourly rate per Pest Control Technician	Regular time:	\$ _____
		Overtime:	\$ _____

**NOTE: THE CITY RESERVES THE RIGHT TO NEGOTIATE THESE NOT TO EXCEED (NTE) HOURLY LABOR RATES FROM THE SUCCESSFUL BIDDER(S). SHOULD NEGOTIATIONS BE UNSUCCESSFUL, THE CITY RESERVES THE RIGHT TO**

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE**

**BID # 00-09/10**

**REQUEST AND NEGOTIATE HOURLY LABOR RATES FOR ANY/ALL ADDITIONAL WORK FROM OTHER CONTRACTORS.**

**THREE YEAR CONTRACT TO PROVIDE  
 GROUNDS MAINTENANCE SERVICE  
 BID # 00-09/10**

**Bid Proposal Page 2 of 3**

COMPANY NAME: \_\_\_\_\_

Materials ( for Materials not specified herein, to be installed at the direction of the City)		
Item #	Description	Unit Price Installed
10	Cypress Mulch	\$ /cubic yard
11	Seasonal Color	\$ /each
12	Percentage above wholesale to provide and install 1 gal. to 45 gal. plant	\$ %
13	For all other materials not specified, Contractor shall furnish at vendor cost.	VENDOR COST

**NOTE: ASIT RELATES TO ITEM #20 ABOVE, THE CITY RESERVES THE RIGHT TO NEGOTIATE THESE COSTS TO INSTALL PLANT MATERIAL AND TREES UP TO 45 GALLON CONTAINERS FROM THE SUCCESSFUL BIDDER(S). SHOULD NEGOTIATIONS BE UNSUCCESSFUL, THE CITY RESERVES THE RIGHT TO REQUEST AND NEGOTIATE THIS COSTS/FEE FROM OTHER CONTRACTORS.**

SCHEDULE OF VALUES				
Provide unit price/price per service for the services listed below. These prices may be utilized by the City during negotiations, should additional/deleted services be required.				
SERVICE	UNIT PRICE	ANNUAL SERVICES	PRICE PER SERVICE	PRICE PER YEAR
Shrub Pruning	\$	12	\$	\$
Groundcover Pruning	\$	12	\$	\$
Tree and Palm Pruning	\$	2	\$	\$
Weed Control	\$	52	\$	\$
Litter Control	\$	52	\$	\$
Shrub and Groundcover Fertilization	\$	4	\$	\$
Tree and Palm Fertilization	\$	4	\$	\$

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10**

**Bid Proposal Page 3 of 3**

**PAYMENT TERMS: NET 30. If other, specify here \_\_\_\_\_**

**ANY LETTERS, ATTACHMENTS, OR ADDITIONAL INFORMATION TO BE  
CONSIDERED PART OF THE BID MUST BE SUBMITTED IN DUPLICATE.**

**SUBMITTED BY: \_\_\_\_\_**

**COMPANY NAME: \_\_\_\_\_**

**SIGNED: \_\_\_\_\_**

**(I certify that I am authorized to execute this proposal and  
commit the bidding firm)**

**Bidders must acknowledge receipt of addendum (if applicable).**

Amendment No. 1: \_\_\_\_\_  
Insert Date

Amendment No. 2: \_\_\_\_\_  
Insert Date

Amendment No. 3: \_\_\_\_\_  
Insert Date

Amendment No. 4: \_\_\_\_\_  
Insert Date

**NAME/TITLE(Print): \_\_\_\_\_**

**ADDRESS: \_\_\_\_\_**

**CITY/STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_**

**TELEPHONE NO: \_\_\_\_\_**

**FACSIMILE NO: \_\_\_\_\_**

**FEDERAL I.D.#: \_\_\_\_\_**

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10**

**CUSTOMER REFERENCE LISTING**

Bidder's shall furnish the names, addresses, and telephone numbers of a minimum of six (6) firms or government organizations for which the Contractor is currently furnishing or has furnished, similar services. (See "2.18 References", page 24, and "Minimum Requirements, page 2)

1)           Company Name       \_\_\_\_\_

              Address               \_\_\_\_\_

              Contact Person/Contract Amount \_\_\_\_\_

              Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

2)           Company Name       \_\_\_\_\_

              Address               \_\_\_\_\_

              Contact Person/Contract Amount \_\_\_\_\_

              Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

3)           Company Name       \_\_\_\_\_

              Address               \_\_\_\_\_

              Contact Person/Contract Amount \_\_\_\_\_

              Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

4)           Company Name       \_\_\_\_\_

              Address               \_\_\_\_\_

              Contact Person/Contract Amount \_\_\_\_\_

              Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

5)           Company Name       \_\_\_\_\_

              Address               \_\_\_\_\_

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10**

Contact Person/Contract Amount \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

**CONTRACTOR'S QUESTIONNAIRE**

**NOTE:** Information supplied in response to this questionnaire is subject to verification. Inaccurate or incomplete answers may be grounds for disqualification from award of this bid.

Submitted to The Mayor and City Commission of the City of Miami Beach, Florida:

By \_\_\_\_\_

Principal Office \_\_\_\_\_

How many years has your organization been in business under your present business name? \_\_\_\_\_

Does your organization have current occupational licenses entitling it to do the work contemplated in this Contract? \_\_\_\_\_

State of Florida occupational license - state type and number: \_\_\_\_\_

Dade County certificate of competency - state type and number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Include copies of above licenses and certificates with proposal.

Have you ever had a contract terminated due to failure to comply with contractual specifications? \_\_\_\_\_

If so, where and why? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

In what other lines of business are you financially interested or engaged? \_\_\_\_\_

\_\_\_\_\_

**CONTRACTOR'S QUESTIONNAIRE (CONTD.)**

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10**

Give references as to experience, ability, and financial standing \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What equipment do you own that is available for the proposed work and where located?  
\_\_\_\_\_  
\_\_\_\_\_

Please list the names and addresses of subcontractors to be used, if any.  
\_\_\_\_\_  
\_\_\_\_\_

**Vendor Campaign Contribution(s):**

- a. You must provide the names of all individuals or entities (including your sub-consultants) with a controlling financial interest. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of 10% or more of the outstanding capital stock in any corporation or a direct or indirect interest of 10% or more in a firm. The term "firm" shall mean any corporation, partnership, business trust or any legal entity other than a natural person.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- b. Individuals or entities (including our sub-consultants) with a controlling financial interest: \_\_\_\_\_ have \_\_\_\_\_ have not contributed to the campaign either directly or indirectly, of a candidate who has been elected to the office of Mayor or City Commissioner for the City of Miami Beach. Please provide the name(s) and date(s) of said contributions and to whom said contribution was made.

\_\_\_\_\_  
\_\_\_\_\_

**CONTRACTOR'S QUESTIONNAIRE (CONTD.)**

**THREE YEAR CONTRACT TO PROVIDE  
GROUNDS MAINTENANCE SERVICE  
BID # 00-09/10**

I HEREBY CERTIFY that the above answers are true and correct.

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)





# MIAMIBEACH

City of Miami Beach Office of the City Clerk  
1700 Convention Center Drive, Miami Beach, FL 33139

## LOBBYIST REGISTRATION FORM

Lobbyist means all persons employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat or modification of any ordinance, resolution, action or decision of any commissioner; any action, decision, recommendation of the City Manager or any city board or committee; or any action, decision or recommendation of any city personnel during the time period of the entire decision-making process on such action, decision or recommendation that foreseeably will be heard or reviewed by the city commission, or a city board or committee. The term specifically includes the principal as well as any employee engaged in lobbying activities. The term "Lobbyists" has specific exclusions. Please refer to Ordinance 2004-3435.

Wennett Robert S  
NAME OF LOBBYIST: (Last) (First) (M.I.)

WFA MST LLC 111 Lincoln Rd Suite 760  
BUSINESS NAME AND ADDRESS (Number and Street) (City) (State) (Zip Code)

Miami Beach FL 33139 305.538.9320  
TELEPHONE NUMBER: FAX NUMBER: EMAIL:

305.531.4409

rwennett@llll.com  
llll.com

**I. LOBBYIST RETAINED BY:**

Robert Wennett

**NAME OF PRINCIPAL/CLIENT:**

WFA Management LLC 1111 Lincoln Rd Ste 760  
BUSINESS NAME AND ADDRESS (Number and Street) (City) (State) (Zip Code)

Miami Beach FL 33139 305.538.9320  
TELEPHONE NUMBER: FAX NUMBER: (Optional) EMAIL: (Optional)

**Fill out this section if principal is a Corporation, Partnership or Trust [Section 2-482 (c)]**

- NAME OF CHIEF OFFICER, PARTNER, OR BENEFICIARY:
- IDENTIFY ALL PERSONS HOLDING, DIRECTLY OR INDIRECTLY, A 5% OR MORE OWNERSHIP INTEREST IN SUCH CORPORATION, PARTNERSHIP OR TRUST:

**II. SPECIFIC LOBBY ISSUE:**

1111 Lincoln Road, 1665 Alton Road, Closure of  
Issue to be lobbied (Describe in detail): Lincoln Rd Kenex-Alton

**III. CITY AGENCIES/INDIVIDUALS TO BE LOBBIED:**

A) Full Name of Individual/Title	B) Any Financial, Familial or Professional Relationship
<u>City Commission</u>	<u>NA</u>
<u>City Staff</u>	
<u>DRB, BUA, CAC</u>	
<u>All City Agencies</u>	
<u>CAC</u>	

Department Personnel

IV. DISCLOSURE OF TERMS AND AMOUNTS OF LOBBYIST COMPENSATION (DISCLOSE WHETHER HOURLY, FLAT RATE OR OTHER):

A) LOBBYIST DISCLOSURE: (Required) \$0, for ISSUE, Salenical  
B) PRINCIPAL'S DISCLOSURE (OF LOBBYIST COMPENSATION): (Required) \$0 for ISSUE Salen

The following information must be answered:

1) Pursuant to Miami Beach City Code Section 2-488 Entitled "Prohibited Campaign Contributions By Lobbyists On Procurement Issues":

Yes  No: Are you lobbying on a present or pending bid for goods, equipment or services, or on a present or pending award for goods, equipment or service?

2) Pursuant to Miami Beach City Code 2-490 Entitled "Prohibited Campaign Contributions By Lobbyists On Real Estate Development Issues":

Yes  No: Are you lobbying on a pending application for a Development Agreement with the City or application for change of zoning map designation or change to the City's Future Land Use Map?

3) Pursuant to Miami Beach City Code 2-484 (h) Any person (except those exempt from the definition of "lobbyist" as set forth in Section 2-481, above) who only appears as a representative of a not-for-profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, or indirect, to express support of or opposition to any item, shall register with the clerk as required by this section but, shall not be required to pay any registration fees..

Yes  No: Are you representing a not-for-profit corporation or entity without special compensation or reimbursement.

V. SIGNATURE UNDER OATH:

ON OCTOBER 1<sup>ST</sup> OF EACH YEAR, EACH LOBBYIST SHALL SUBMIT TO THE CITY CLERK A SIGNED STATEMENT UNDER OATH, LISTING LOBBYING EXPENDITURES, AS WELL AS COMPENSATION RECEIVED, IN THE CITY OF MIAMI BEACH FOR THE PRECEDING CALENDAR YEAR. A STATEMENT SHALL BE FILED EVEN IF THERE HAVE BEEN NO EXPENDITURES OR COMPENSATION DURING THE REPORTING PERIOD.

*[Handwritten Signature]*  
Signature of Lobbyist

I do solemnly swear that all of the foregoing facts are true and correct and that I have read or am familiar with the provisions contained in Section 2-482 of the Miami Beach City Code and all reporting requirements.

Signature of Lobbyist: *[Handwritten Signature]*  
Signature of Principal/Client: *[Handwritten Signature]*

VI. LOBBYIST IDENTIFICATION:

Produced ID drivers license  
Form of Identification

Personally known (Lobbyist)

PRINCIPAL IDENTIFICATION:

Produced ID drivers license  
Form of Identification

Personally known (Principal)

VII. SIGNATURE AND STAMP OF NOTARY:

State of Florida, County of Miami-Dade  
Sworn to and subscribed before me  
This 25<sup>th</sup> day of Jan 2012  
*[Signature]*  
Signature of Public Notary  
Notarization of Lobbyist's signature

**KERRY HERNANDEZ**  
MY COMMISSION # DD 626373  
EXPIRES: May 3, 2011  
Bonded thru Notary Public Underwriters

State of Florida, County of Miami-Dade  
Sworn and subscribed before me  
This 25<sup>th</sup> day of Jan 2012  
*[Signature]*  
Signature of Public Notary  
Notarization of Principal's signature

**KERRY HERNANDEZ**  
MY COMMISSION # DD 626373  
EXPIRES: May 3, 2011  
Bonded thru Notary Public Underwriters

FOR CLERK'S USE ONLY  
Annual Registration fee:  Yes  No Amount Paid 150.00 MCR # 288733 Date Paid 1/25/07  
Lobbyist Registration Form received and verified by: Jakes  
F:\CLERK\ALL\MARIA-M\LOBBYIST\LOBBYIST FORM 05.doc Revised 12/08/04

**Miscellaneous Cash Receipt**  
**CITY OF MIAMI BEACH**

01/25/2007 001 104  
Miscellaneous 228739 \$150.00

No. 288739

Cash  Credit Card  Check # \_\_\_\_\_ \$ 150.00

January 25 2007

Received of Robert Wennett

Address \_\_\_\_\_

For Robert Wennett lobbyists registration

(THIS INFORMATION MUST BE COMPLETED)

Office of Finance Director

By \_\_\_\_\_

Account Number: 011-8000-369-444

Preparer: Jakes Dept: City Clerk EXT: 741



Miscellaneous Cash Receipt  
CITY OF MIAMI BEACH

2006106

DATE RECEIVED: 10/10/11

AMOUNT

BY

FOR

(THIS INFORMATION MUST BE COMPLETED)

Account Number

Project

Oct Sept  
2010 - 2011



Oct  
2011

Spt.  
- 2012

Miscellaneous Cash Receipt  
CITY OF MIAMI BEACH

ISSUED 4-19-98 (6/22/2012 001 JMS  
ALL CITY CHECKS 43874 \$1,500.00

No. 318934

Cash  Credit Card

Check #

3848 \$ 500

387910600 \$ 1,560.00

387910600

10/22 2012

Received of

MTA MANAGEMENT LLC

Address

Abbey Road, Hoboken, NJ

For

WENDEL ROBERT'S ANNUAL RENEWAL

ISSUES - RFR #14-11/2, RFR #22-11/2

LINCOLN ROAD MAINTENANCE RFP

(THIS INFORMATION MUST BE COMPLETED)

Office of Finance Director

By

Account Number

011-3005-369 144

Preparer

Debra H. Scott

Dept

CO

EXT

7411

~~10/~~ Oct. 2012 - Sept. 2013





# MIAMI BEACH

RFP #14-11/12  
RFP #22-11/12  
Consolidation  
Center RFP 22-11/12

City of Miami Beach Office of the City Clerk  
1700 Convention Center Drive, Miami Beach, FL 33139

## LOBBYIST REGISTRATION FORM

Lobbyist means all persons employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat or modification of any ordinance, resolution, action or decision of any commissioner; any action, decision, recommendation of the City Manager or any city board or committee; or any action, decision or recommendation of any city personnel during the time period of the entire decision-making process on such action, decision or recommendation that foreseeably will be heard or reviewed by the city commission, or a city board or committee. The term specifically includes the principal as well as any employee engaged in lobbying activities. The term "Lobbyists" has specific exclusions. Please refer to Ordinance 2004-3435.

Wennett	Robert	S.
NAME OF LOBBYIST: (Last)	(First)	(M.I)
1111 Lincoln Road, Suite 760, Miami Beach, FL 33139		
BUSINESS NAME AND ADDRESS (Number and Street)	(City)	(State) (Zip Code)
(305) 538-9320	(305) 531-4409	
TELEPHONE NUMBER:	FAX NUMBER:	EMAIL:

Please notify this office if your contact information changes: address, phone, or e-mail address.

### I. LOBBYIST RETAINED BY:

Entities formed by Robert S. Wennett; Team No11i, LLC; Tishman Realty LP and/or Affiliate; and Michael Comras, Jonathan Fryd, and Entities to be Formed

NAME OF PRINCIPAL/CLIENT:			
1111 Lincoln Road, Suite 760, Miami Beach, FL 33139			
BUSINESS NAME AND ADDRESS (Number and Street)	(City)	(State)	(Zip Code)
786-552-5701			
TELEPHONE NUMBER:	FAX NUMBER: (Optional)	EMAIL: (Optional)	

Fill out this section if principal is a Corporation, Partnership or Trust [Section 2-482 (c)]	RECEIVED 2012 OCT 22 PM 4:11 CITY CLERK'S OFFICE
• NAME OF CHIEF OFFICER, PARTNER, OR BENEFICIARY: Robert S. Wennett	
• IDENTIFY ALL PERSONS HOLDING, DIRECTLY OR INDIRECTLY, A 5% OR MORE OWNERSHIP INTEREST IN SUCH CORPORATION, PARTNERSHIP OR TRUST:	

### II. SPECIFIC LOBBY ISSUE

Response to RFP #14-11/12; RFQ #22-11/12, as applicable, Lincoln Road Maintenance RFP, and related issues  
Issue to be lobbied (Describe in detail):

### III. CITY AGENCIES/INDIVIDUALS TO BE LOBBIED:

Pursuant to City Code Section 2-482(a)(4) include the commissioner or personnel sought to be lobbied, and whether the lobbyist has entered into any contractual relationship (paid or unpaid) with said city commissioner or personnel from 12 months preceding such person's commencement of service with the city to the present date, stating the general nature of the subject contractual relationship.

Sec 2-482(a)(4) Full Name of Individual and title of person to be lobbied	Contractual Relationship (Explain)	YES	NO
City of Miami Beach Procurement Division staff; City Manager's Office; Planning and Zoning Staff; City Commission; Honorable Matti Herrera Bower, Mayor			

Pursuant to City Code Section 2-482(g) Every registrant shall be required to state the extent of any business, financial, familial or professional relationship, or other relationship giving rise to an appearance of an impropriety, with any current city commissioner or city personnel who is sought to be lobbied as identified on the lobbyist registration form filed.

Sec 2-482(g) Any Financial, Familial or Professional Relationship
N/A

Emailed  
10/23/12  
51

IV. DISCLOSURE OF TERMS AND AMOUNTS OF LOBBYIST COMPENSATION (DISCLOSE WHETHER HOURLY, FLAT RATE OR OTHER):

A) LOBBYIST DISCLOSURE: (Required)

NO ADDITIONAL Compensation

B) PRINCIPAL'S DISCLOSURE (OF LOBBYIST COMPENSATION):

(Required))

NO ADDITIONAL COMPENSATION

The following information must be answered:

1) Pursuant to Miami Beach City Code Section 2-488 Entitled "Prohibited Campaign Contributions By Lobbyists On Procurement Issues":

Yes  No: Are you lobbying on a present or pending bid for goods, equipment or services, or on a present or pending award for goods, equipment or service?

2) Pursuant to Miami Beach City Code 2-490 Entitled "Prohibited Campaign Contributions By Lobbyists On Real Estate Development Issues":

Yes  No: Are you lobbying on a pending application for a Development Agreement with the City or application for change of zoning map designation or change to the City's Future Land Use Map?

3) Pursuant to Miami Beach City Code 2-484 (h) Any person (except those exempt from the definition of "lobbyist" as set forth in Section 2-481 above) who only appears as a representative of a not-for-profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, or indirect, to express support of or opposition to any item, shall register with the clerk as required by this section but, shall not be required to pay any registration fees.

Yes  No: Are you representing a not-for-profit corporation or entity without special compensation or reimbursement.

V. SIGNATURE UNDER OATH:

ON FEBRUARY 28th OF EACH YEAR, EACH LOBBYIST SHALL SUBMIT TO THE CITY CLERK A SIGNED STATEMENT UNDER OATH, LISTING LOBBYING EXPENDITURES, AS WELL AS COMPENSATION RECEIVED, IN THE CITY OF MIAMI BEACH FOR THE PRECEDING CALENDAR YEAR. A STATEMENT SHALL BE FILED EVEN IF THERE HAVE BEEN NO EXPENDITURES OR COMPENSATION DURING THE REPORTING PERIOD.

[Signature]  
Robert S. Wennett

I do solemnly swear that all of the foregoing facts are true and correct and that I have read or am familiar with the provisions contained in Section 2-482 of the Miami Beach City Code and all reporting requirements.

Signature of Lobbyist: X

Signature of Principal/Client: X

VI. LOBBYIST IDENTIFICATION:

Produced ID \_\_\_\_\_  
Form of Identification

Personally known (Lobbyist)

PRINCIPAL IDENTIFICATION:

Produced ID \_\_\_\_\_  
Form of Identification

Personally known (Principal)

VII. SIGNATURE AND STAMP OF NOTARY:

State of Florida, County of Miami-Dade  
Sworn to and subscribed before me

This 15 day of Oct, 2012

[Signature]  
Signature of Public Notary - State of Florida  
Notarization of Lobbyist's signature

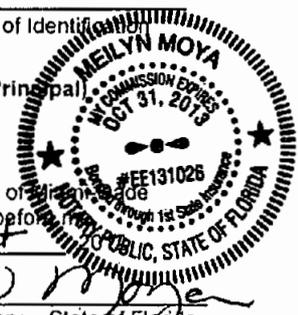


Heather Leigh  
COMMISSION # DD939320  
EXPIRES: NOV. 17, 2013  
WWW.AARONNOTARY.COM

State of Florida, County of Miami-Dade  
Sworn and subscribed before me

This 10 day of Oct, 2012

[Signature]  
Signature of Public Notary - State of Florida  
Notarization of Principal's signature



TO BE COMPLETED BY CITY CLERK'S STAFF ONLY

Annual Registration fee:  Yes  No Amount Paid \$ 1550 - MCR # 318934 Date Paid 10/22/12  
Lobbyist Registration Form received and verified by: [Signature]

Revised 1/11/2011



# MIAMIBEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

CITY CLERK Office  
Rafael E. Granada, City Clerk  
Tel: 305.673.7411, Fax: 305.673.7254

[CityClerk@miamibeachfl.gov](mailto:CityClerk@miamibeachfl.gov)

**Lobbyist Name:** Robert S. Wennett

I understand that no later than **February 28<sup>th</sup> of each year**, I must file the following forms, pursuant to Section 2-485 of the Miami Beach City Code, with the City Clerk's Office for all active lobbying issues.

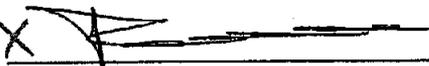
- 1) Lobbyist Expenditure Form
- 2) Disclosure Form

Failure to file these forms on a timely basis will result in my name being transmitted to the Miami-Dade County Commission on Ethics and for code violation evaluation.

In addition, once an issue I have registered to lobby on has been resolved, I am required to immediately notify the City Clerk's Office of lobbyist withdrawal in writing.

Pursuant to Section 2-485 (d), the City Clerk shall notify any lobbyist (or principal) who fails to timely file a Statement and in addition to any other penalties which may be imposed as provided in Section 2-485.1, a fine of \$50.00 a day shall be assessed for all Statement(s) filed after the due date. The City Clerk shall notify the Miami-Dade County Commission on Ethics and Public Trust of the failure of a lobbyist (or principal) to file the Statement or pay the assessed fines after notification.

Any lobbyist, who fails to file the required Statement by April 30<sup>th</sup>, 2012, shall be automatically suspended from lobbying until all fines are paid, unless the fine has been appealed to the Miami-Dade County Commission on Ethics and Public Trust.

X   
\_\_\_\_\_  
Robert S. Wennett

12/22/12  
Date





# MIAMI BEACH

RECEIVED

2009 DEC 31 PM 1:36

OFFICE OF THE CITY MANAGER

LTC # 366-2009

LETTER TO COMMISSION CITY CLERK'S OFFICE

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

From: Jorge M. Gonzalez, City Manager

Date: December 29, 2009

Subject: Convention Center Expansion and Enhancement Steering Committee

This Letter to Commission (LTC) is to advise you that I have created the Convention Center Expansion and Enhancement Steering Committee. As you may know, I convened a "Stakeholder" group over two years ago to provide input relating to the proposed expansion of the Miami Beach Convention Center. This was useful as we tried to coalesce agreement on the priorities for improvements to the facility, especially as the 2004 General Obligation Bonds (GOB) approved countywide are available for this purpose (\$55 million). This Stakeholder group has included the participation of the County (County Manager's Office and County's Capital Improvements Office), the Convention Center Advisory Board, the Miami Beach Visitors and Convention Authority, the Greater Miami Convention and Visitors Bureau, the Greater Miami and the Beaches Hotel Association, the convention center managers (SMG and now Global Spectrum) and representatives from my office and the Office of Tourism and Cultural Development.

Following a series of meetings, the Stakeholders recommended the updating of the facility analysis previously conducted by Convention Sports and Leisure (CSL), to include trend analysis and market research to assist in identifying what improvements would be essential to make our facility competitive in both the short term and the long run. As you may recall, much of the initial discussion centered on whether the improvements funded by the GOB funds should consist only of the creation of a large multi-purpose/ballroom. The updated CSL study recommended a much more expansive list of suggested enhancements that take into consideration our competitive peer group, as well as the unique characteristics of our destination (weather, amenities, proximity to a convention center hotel, etc.). It was also recommended that an architectural firm be selected to develop a master plan that incorporates the results of the updated CSL analysis and Stakeholder input. Following the issuance of RFQ 31-07/08, the City Commission adopted Resolution No. 2008-26883, which authorized the City Administration to enter into a contract with Arquitectonica to develop a campus master plan for the Miami Beach Convention Center and surrounding area. Following the execution of the Interlocal Agreement with Miami-Dade County for the General Obligation Bond (GOB) Funds in late fall, which funds the master plan and expansion or enhancement of the facility, the City executed the agreement with Arquitectonica; they have begun preliminary due diligence, and are ready to meet with the City and stakeholders for input.

The master plan is intended to consider possibilities to make the Miami Beach Convention Center facility competitive in today's convention and meeting business climate. This would involve looking at existing and potential site amenities, physical renovations to the interior and exterior, expansion of exhibit space (to include necessary multi-purpose/ballroom space), technology upgrades, parking, and other aspects. This also includes the development of the anticipated costs of these improvements, as they are expected to exceed the \$55 million available in GOB funds. When completed, the master plan will have been through the Community Design Workshop process, and we will be provided with a Basis of Design Report with drawings at up to 30%. In discussions with the Stakeholders and the County, it is understood that the City and County, supported by the Stakeholders, will discuss additional costs and funding sources once the master plan is completed.

I created the Convention Center Expansion and Enhancement Steering Committee to provide the City and Arquitectonica with recommendations for any enhancements and expansion of the convention center, as well as to guide the master planning process. I have appointed the following individuals to the Steering Committee:

- Scott Berman, Principal and U.S. Industry Leader, Hospitality & Leisure, for PricewaterhouseCoopers
- Stuart Blumberg, Convention Center Advisory Board Chair and Co-Chair of the Task Force
- Michael Breslow, President, Jewelry International Showcase
- Marco Giberti, President, Reed Exhibitions, Latin America (Gaston Isoldi, Director of Business Development - Alternate)
- Jorge M. Gonzalez, City Manager and Co-Chair of the Task Force
- Saul Gross, Resident/business owner
- Elsie Howard, Miami Beach Visitor and Convention Authority
- Wendy Kallergis, Greater Miami and the Beaches Hotel Association
- Alex Munoz, Assistant County Manager (Matthew Pinzer, Special Assistant - Alternate)
- Tom Mobley, Global Spectrum
- Cathy Rick-Joule, Southern Regional Manager, National Marine Manufacturers Association
- William Talbert, Greater Miami Convention and Visitors Bureau
- Robert Wennett, Resident and Member of the Lincoln Road Merchants Association

The following staff will provide support to the Steering Committee:

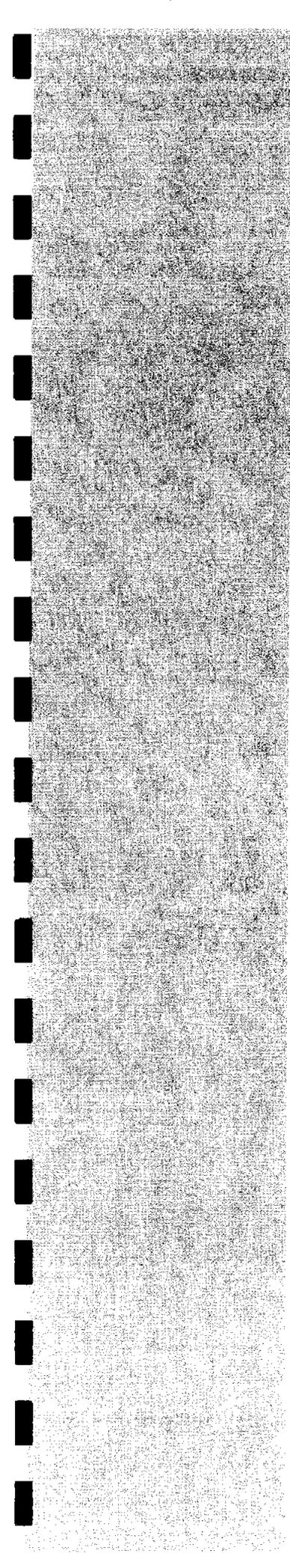
- Hilda M. Fernandez, Assistant City Manager
- Jorge Gomez, Assistant City Manager
- Max Sklar, Tourism and Cultural Development Director
- Bob Balsam, General Manager, Miami Beach Convention Center
- Charlie Carreno, Capital Improvement Projects Director

I look forward to working with this group in developing recommendations to enhance the competitiveness of our facility both short and long term. Please let me know if you have any questions or require additional information.

JMG/HMF/MAS

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# MIAMI BEACH CONVENTION CENTER & CONFERENCE FACILITY EXPANSION



MIAMI BEACH



# CONVENTION CENTER

## **BACKGROUND:**

- Opened in 1957
- Last Expansion: 1989
  - facility underwent a \$92 million renovation; doubled in size
- Now: 1,000,000 square feet of flexible space:
  - over 500,000 sq. ft. of exhibit space,
  - over 100,000 sq. ft. of versatile pre-function space
  - 70 meeting rooms comprised of 127,000 sq. ft.

# EXISTING SPACE

	<b>CURRENT</b>
Exhibit Halls	502,098 sf 4 Halls
Meeting Rooms	125,899 sf
Ballrooms (dedicated)	0
Pre-function/ Lobby	163,327 sf
Parking (2 lots)	1,040 spaces

Current Space = 1.16 million sf



# CONVENTION CENTER

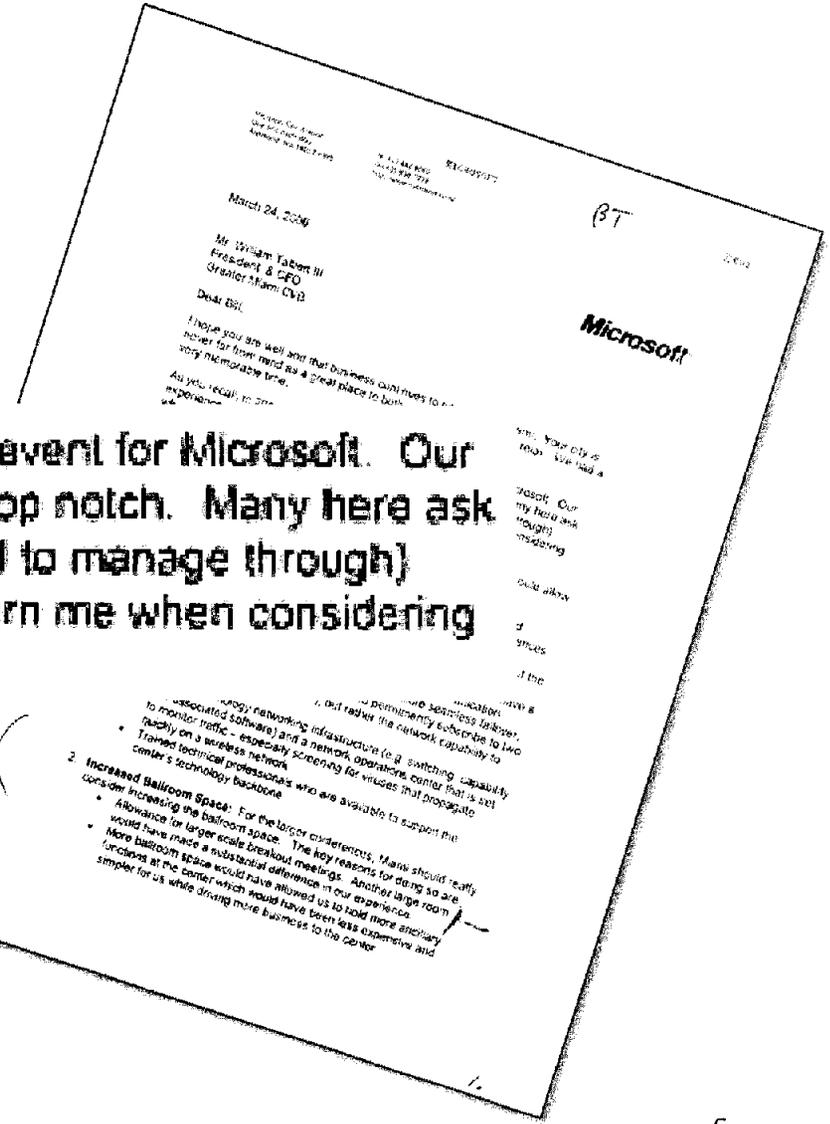
## **CURRENT BUSINESS (FY 09 & 10 Avg):**

*(Only reflects NON-LOCAL attendee events)*

• Trade Shows	22	56%
• Conventions	5	13%
• Consumer Shows	8	20%
• Meetings	2	5%
• Special Events	3	7%

**Total Events**                      **39**

# CORPORATE INTEREST



As you recall, in 2001 Miami hosted a hugely successful event for Microsoft. Our experience with the city and the people were absolutely top notch. Many here ask when we will return. The challenge is that I saw (and had to manage through) various shortcomings at the convention center that concern me when considering future bookings.

Best Regards,

Jeff Singaas  
General Manager, Events & MS Studios  
Microsoft Corporation

# CORPORATE INTEREST

American Academy of Dermatology

SAP



**American Academy of Dermatology Association**  
Physicians Dedicated to Excellence in Dermatology®

11 Dupont Circle, N.W.  
Washington, D.C. 20036

Phone: 202-462-5600  
Fax: 202-462-5604

Executive Director  
Dr. Robert A. Fitzpatrick

President  
Dr. Robert A. Fitzpatrick

President  
Dr. Robert A. Fitzpatrick

President  
Dr. Robert A. Fitzpatrick

Secretary  
Dr. Robert A. Fitzpatrick

President  
Dr. Robert A. Fitzpatrick

President  
Dr. Robert A. Fitzpatrick

President  
Dr. Robert A. Fitzpatrick

March 21, 2006

Ms. Patricia A. Olson  
Director, Convention Sales  
Greater Miami Convention & Visitors Bureau  
701 Brickell Avenue, Suite 2700  
Miami, FL 33131

Via Email: [pat\\_olson@MiamiCvb.com](mailto:pat_olson@MiamiCvb.com)

Dear Tricia:

On behalf of the American Academy of Dermatology (Academy), and as a future user of the Miami Beach Convention Center, I strongly encourage the City of Miami Beach to continue efforts in upgrading and expanding the existing facility, which in my understanding, would be adding a 50,000 sq ft "multipurpose" room, and increasing overall space/expansion within the Center utilizing the \$50 million bond funds available.

2010 marks the first year that the Academy will convene in Miami Beach, which we estimate to be a very popular destination among attendees, and thus a good draw for our Annual Meeting. Please also know that the Academy is considering Miami Beach once again in the year(s) of 2012, 2014, or 2015, and also beyond. The Academy's Annual Meeting just recently set a record in San Francisco of approximately 15,000 attendees, comprised of medical personnel, pharmaceutical companies, guests, and press. Our Annual Meeting continues to grow each year. With our need for over 6,000 sleeping rooms on peak, we would obviously look forward to utilizing many of your outstanding hotels. With this in mind, we estimate the overall economic impact of the Academy's Annual Meeting to be in excess of \$18 million in the cities where we convene.

Miami Beach possesses a reputation and perception of a city that embraces the new, first-class hotels, great restaurants, numerous attractions, etc., and the Convention Center should follow this lead. Miami Beach continues to draw more and more medical conventions, thus attracting the more affluent of meeting attendees, who not only seek the rich culture and abundance of social activities/venues, but also the appeal of a new state-of-the-art convention facility.

I am very excited to hear of this much anticipated expansion. Thank you for having the vision to think into the future, and anticipate the many associations' changing demands and needs. Your Convention Center needs to match the product and high-value destination!

Sincerely,  
*Timothy A. Moses*  
Timothy A. Moses  
Director, Meetings & Conventions



March 9, 2006

Mr. William D. Taborat  
President & CEO  
Greater Miami Convention & Visitors Bureau  
701 Brickell Ave  
Suite 2700  
Miami, FL 33131

Dear Mr. Taborat:

I represent four major meetings produced by SAP Global Marketing, Inc. - January, May, July and September/October. They collectively represent over 35,000 room nights, 24,000 attendees and an economic impact of over 22 million dollars annually.

We held our January 2005 FKOM meeting at the Miami Beach Convention Center and, as you may recall, had major challenges with the food and beverage service for our meals and breaks. This was not just a service challenge, but a major facility issue within the Convention Center. The status of the kitchen facilities within the center have prompted us to re-evaluate how we site and select facilities.

FKOM has often combined with another SAP group and has grown from 2500 people in 2005 to 5000 people in 2006. We are in need of additional meeting space and hotel availability for Miami to host our program. Overall Miami is a huge draw, and we would readily book again, but the Center needs to upgrade its overall condition and service if they want to host us in the future.

Our May program, SAPPHIRE is our largest annual customer event. For Miami to host this event we would require the Miami Beach Convention Center to add additional meeting space as well.

I have learned that there is funding available through the Miami-Dade County which will offer the opportunity to add a new multipurpose ballroom and upgrade the entire facility. We are a technology group and obviously have many wonderful ideas and choices to consider. The final decision will always give a modern convention facility with upgraded technology services the lead in consideration for hosting our groups.

Thank you for your consideration and look forward to hearing the exciting news about the Miami Beach Convention Center.

Most Sincerely,  
Keegan Rodriguez, CMP

SAP Global Marketing, Inc.  
25 Hudson Street  
New York, NY 10014  
T 212 633 9050  
F 212 633 9842

3

4

7

# MAJOR POTENTIAL CONVENTIONS

Corporation	Attendees	Economic Impact
American Academy of Dermatology	20,000	\$20,000,000
Microsoft Corporation*	60,000	\$80,000,000
Direct Marketing Association	10,000	\$12,000,000
World Federation of Hemophilia	4,500	\$6,000,000
American Assn. of Orthodontists	15,000	\$20,000,000
Risk & Insurance Management Association	12,000	\$18,000,000
U.S. Green Building Councils	3,500	\$4,000,000
True Value	20,000	\$15,000,000
Total	145,000	\$175,000,000

\* Includes 6 major programs

Potential of 256 Programs bringing 1.5 million attendees  
with \$1.5 billion in economic impact.

# OTHER INTEREST

## KEY INDUSTRY EVENTS



# CONVENTION CENTER

## **EXPANSION/ENHANCEMENT HISTORY:**

- April, 2008: City Mayor/Manager and County Mayor/Manager meet and agree to the development of “master plan” and cost estimates

# CONVENTION CENTER

## **EXPANSION/ENHANCEMENT HISTORY:**

- Master plan intended to
  - Look “outside of the box”
  - Make the facility competitive in today’s convention and meeting business climate – and well into the future
    - Provide amenities needed by meeting and convention planners

# CONVENTION CENTER

## **EXPANSION/ENHANCEMENT HISTORY:**

- Master plan intended to
  - Look at
    - existing and potential site amenities
    - physical renovations to the interior and exterior
    - expansion of exhibit space (to include necessary multi-purpose/ballroom space)
    - technology upgrades, parking, etc.
  - Improve connection with local assets

# CONVENTION CENTER

## **EXPANSION/ENHANCEMENT HISTORY:**

- Master plan intended to
  - Be research/data-driven
    - Current industry trends
    - Competitive/comparable facility analysis
    - Existing and projected utilization
    - Market demand analysis

# CONVENTION CENTER

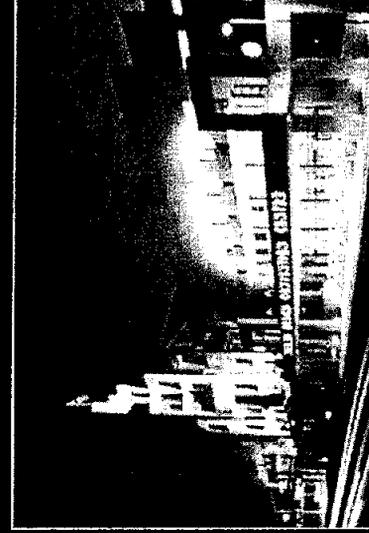
## CONVENTION, SPORTS & LEISURE (CSL)

- Founded in 1988
- Leading advisory and planning firm
- Specializes in providing consulting services to the convention, sport, entertainment and visitor industries; provides focused research and expertise in these industries.
- Services include
  - new/expanded event facility feasibility studies
  - organizational reviews/performance enhancement studies
  - destination master planning
  - industry benchmarking
  - negotiation assistance
  - related services

### CLIENTS (select sample):

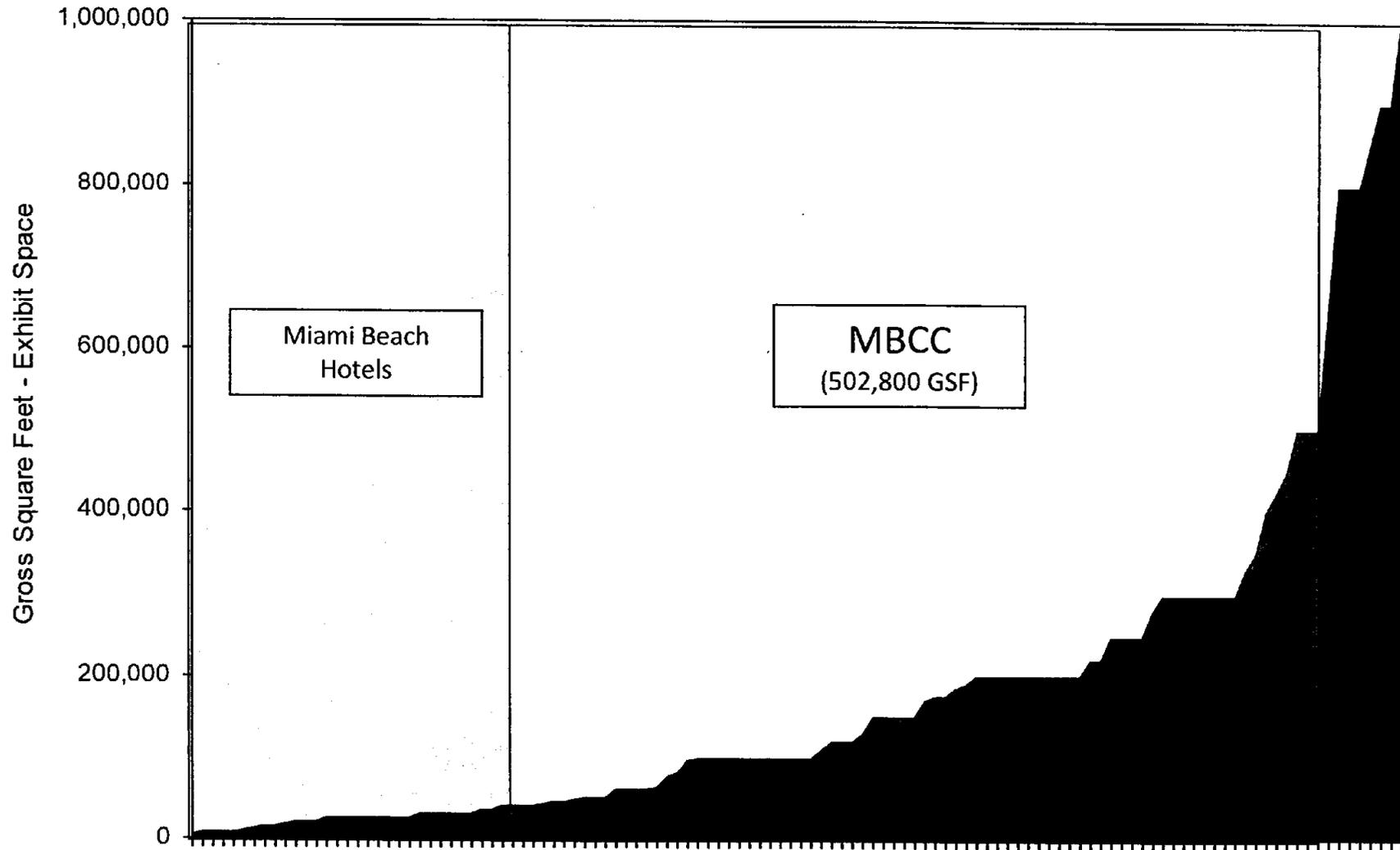
- *New Branson Convention Center, MO*
- *Las Vegas Convention Center, NV*
- *H. Gonzalez Convention Center, San Antonio*
- *Jacob Javits Convention Center, NYC*
- *Washington D.C. Convention Center*
- *Broward County Convention Center, FL*
- *Hawaii Convention Center*

# Long-Range Strategic Facility Needs and Master Plan Analysis for the Miami Beach Convention Center



April 30, 2009

# SUMMARY OF EXHIBIT SPACE DEMAND CSL SURVEYS OF NATIONAL ORGANIZATIONS

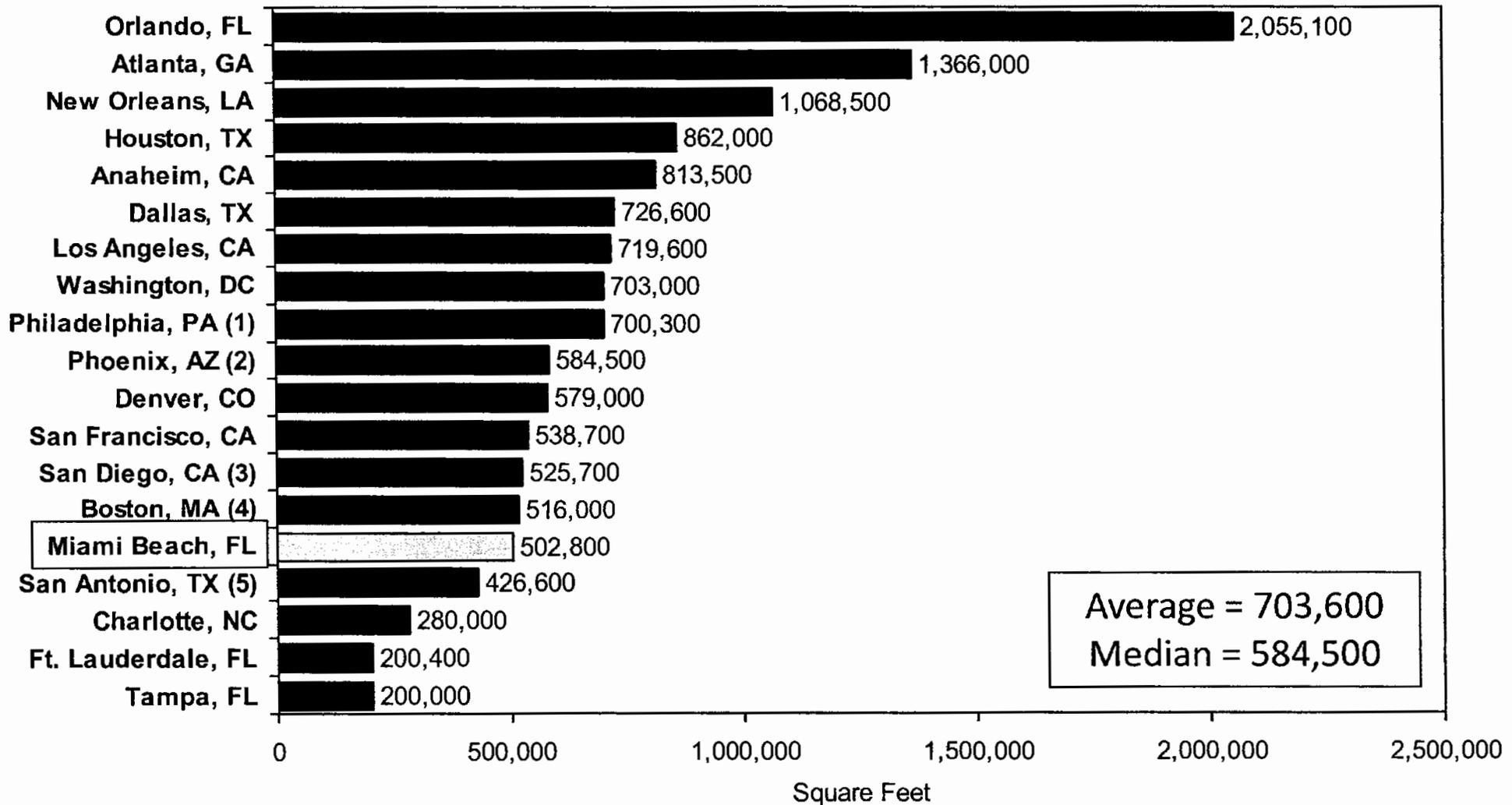


Notes: Data represented includes all organizations surveyed requiring at least 5,000 GSF exhibit space.

Based on approximately 179 records.

Source: CSL International, 2008

# COMPARISON OF PRIME EXHIBIT SPACE COMPETITIVE AND COMPARABLE FACILITIES



(1) Data for the Pennsylvania Convention Center includes space that is either planned or currently under development.

(2) Data for the Phoenix Convention Center includes space that is either planned or currently under development.

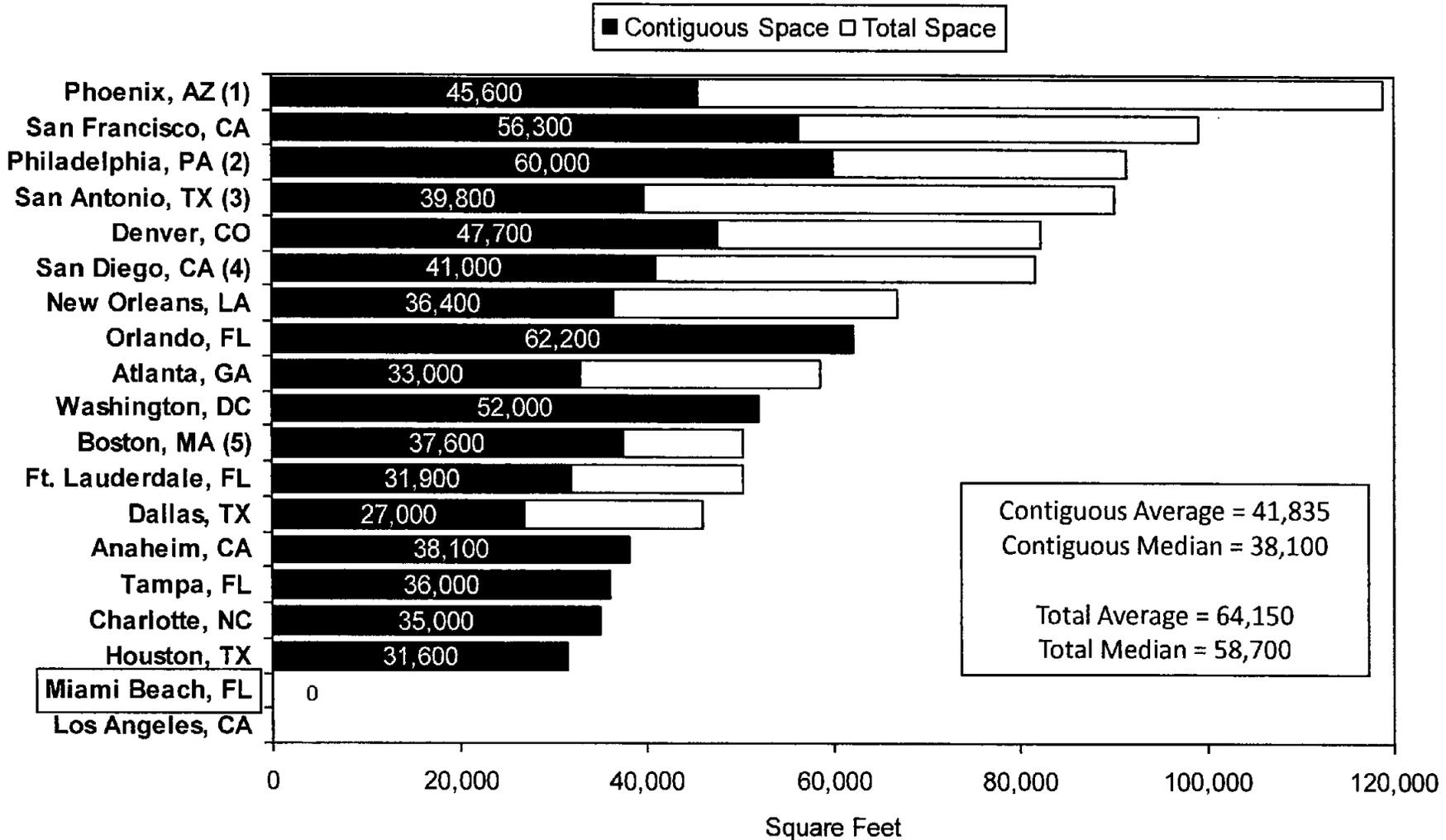
(3) The San Diego Convention Center is currently considering a potential future expansion.

(4) The Boston Convention & Exhibition Center is currently considering a potential future expansion.

(5) The Henry B. Gonzalez Convention Center is currently considering a potential future expansion.

Source: facility floorplans, management, and industry publications, 2008

# COMPARISON OF BALLROOM SPACE COMPETITIVE AND COMPARABLE FACILITIES



Note: The average and median calculations include only facilities offering ballroom space.

(1) Data for the Phoenix Convention Center includes space that is either planned or currently under development.

(2) Data for the Pennsylvania Convention Center includes space that is either planned or currently under development.

(3) The Henry B. Gonzalez Convention Center is currently considering a potential future expansion.

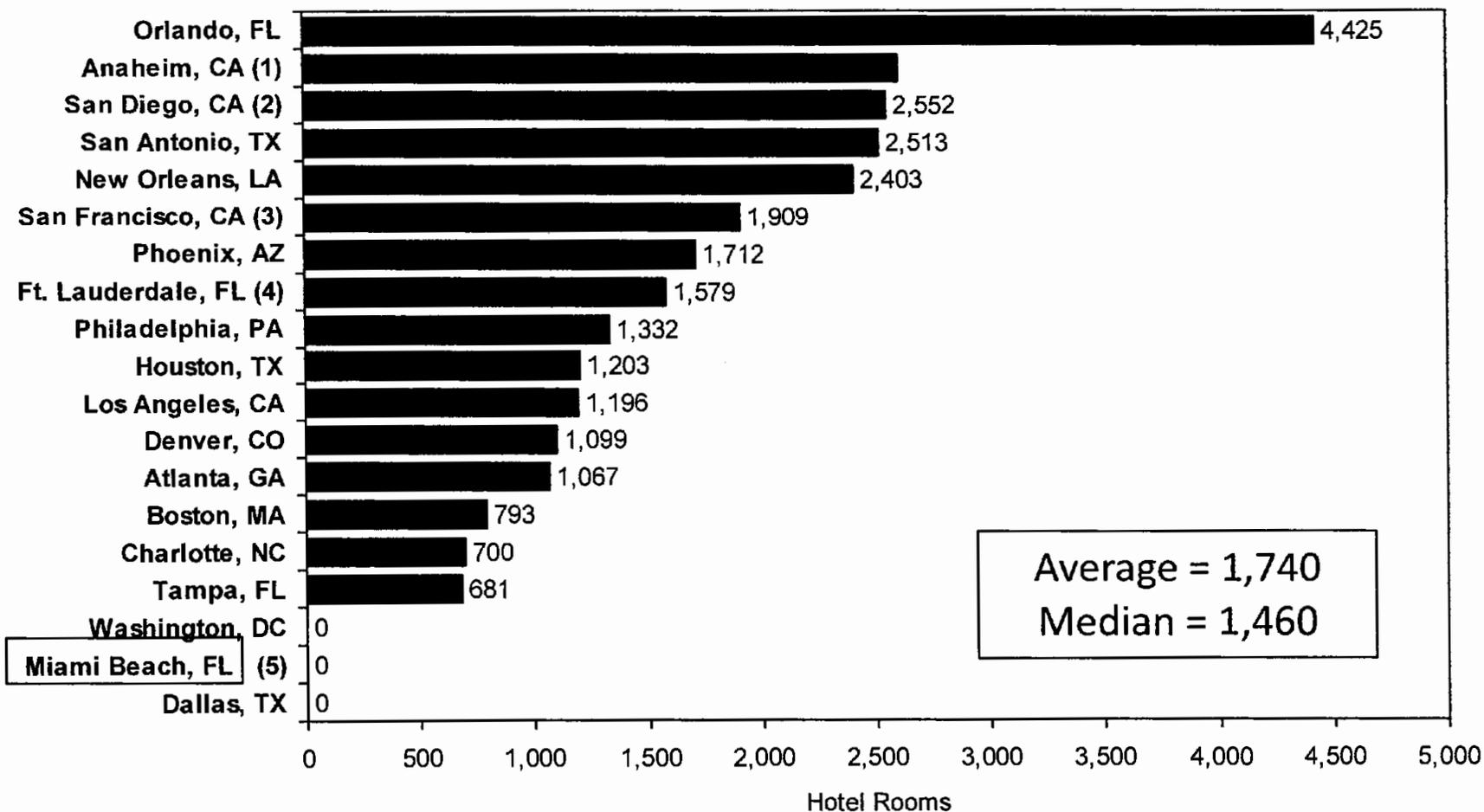
(4) The San Diego Convention Center is currently considering a potential future expansion.

(5) The Boston Convention & Exhibition Center is currently considering a potential future expansion.

Note: The Miami Beach Convention Center does not offer ballroom space.

Source: facility floorplans, management, and industry publications, 2008

# COMPARISON OF ROOMS AT HEADQUARTERS HOTELS COMPETITIVE AND COMPARABLE MARKETS



Note: The average and median calculations include only markets offering headquarters hotels.

(1) Anaheim has two hotels adjacent to the Center, the Anaheim Hilton with 1,573 rooms and the Anaheim Marriott with 1,031 rooms.

(2) San Diego currently has one attached hotel, the San Diego Marriott Hotel & Marina with 1,362 rooms and one under construction set to open in Fall 2008, the Hilton San Diego Convention Center with 1,190 rooms.

(3) San Francisco has two hotels adjacent to the Center, The W Hotel of San Francisco with 499 rooms and the San Francisco Marriott with 1,499 rooms.

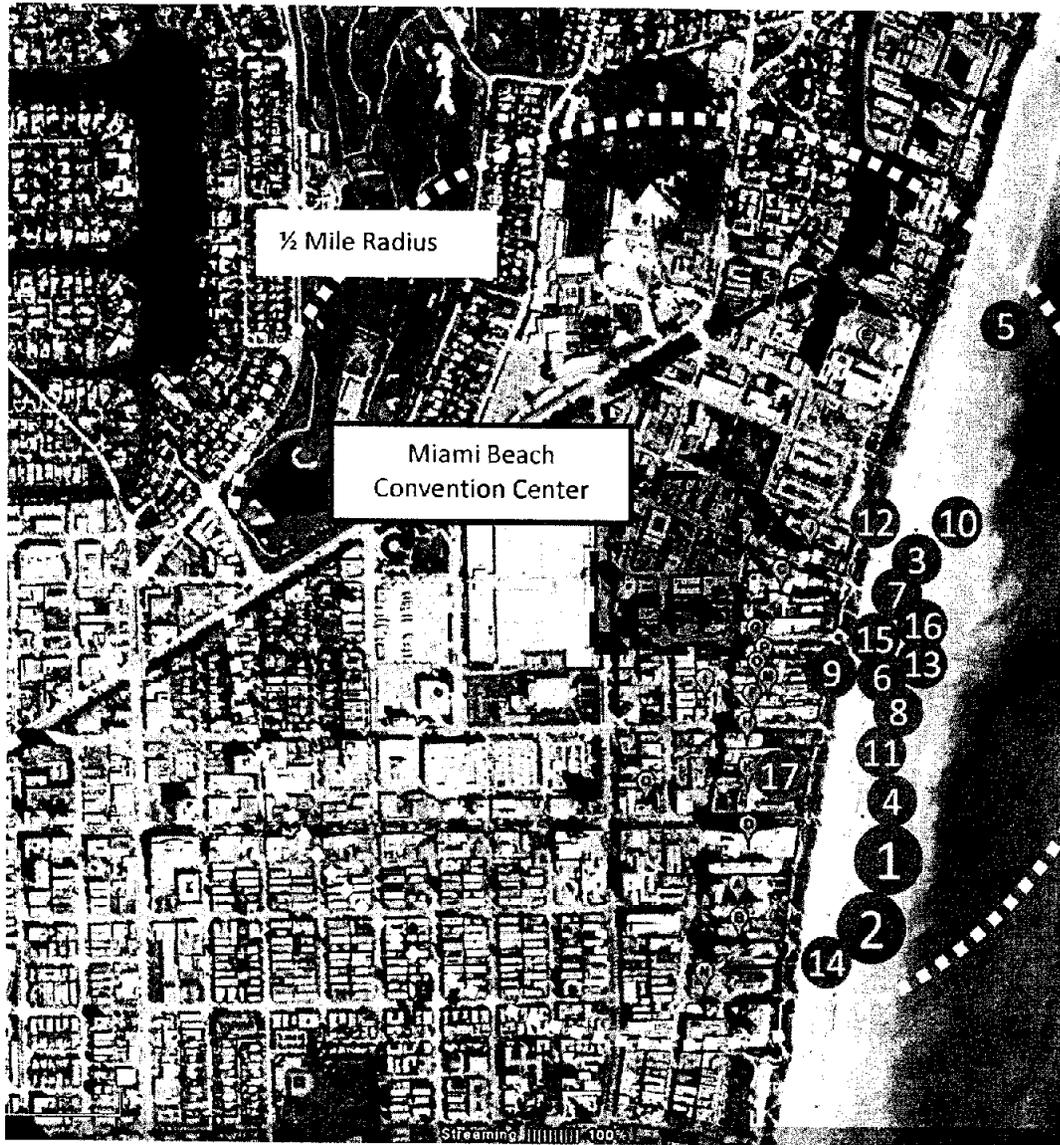
(4) Fort Lauderdale includes a proposed 1,000 room headquarters Hilton.

(5): Loews, with 790 guest rooms, is located approximately six blocks from the MBCC and often serves as the headquarters hotel.

Note: Dallas, Miami Beach and Washington, D.C. do not currently have headquarters hotels. However, planning is underway for a headquarters hotel to be constructed in Washington, D.C.

Source: Convention and Visitors Bureau's, 2008

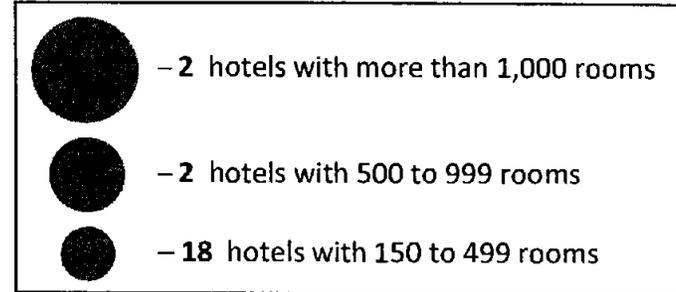
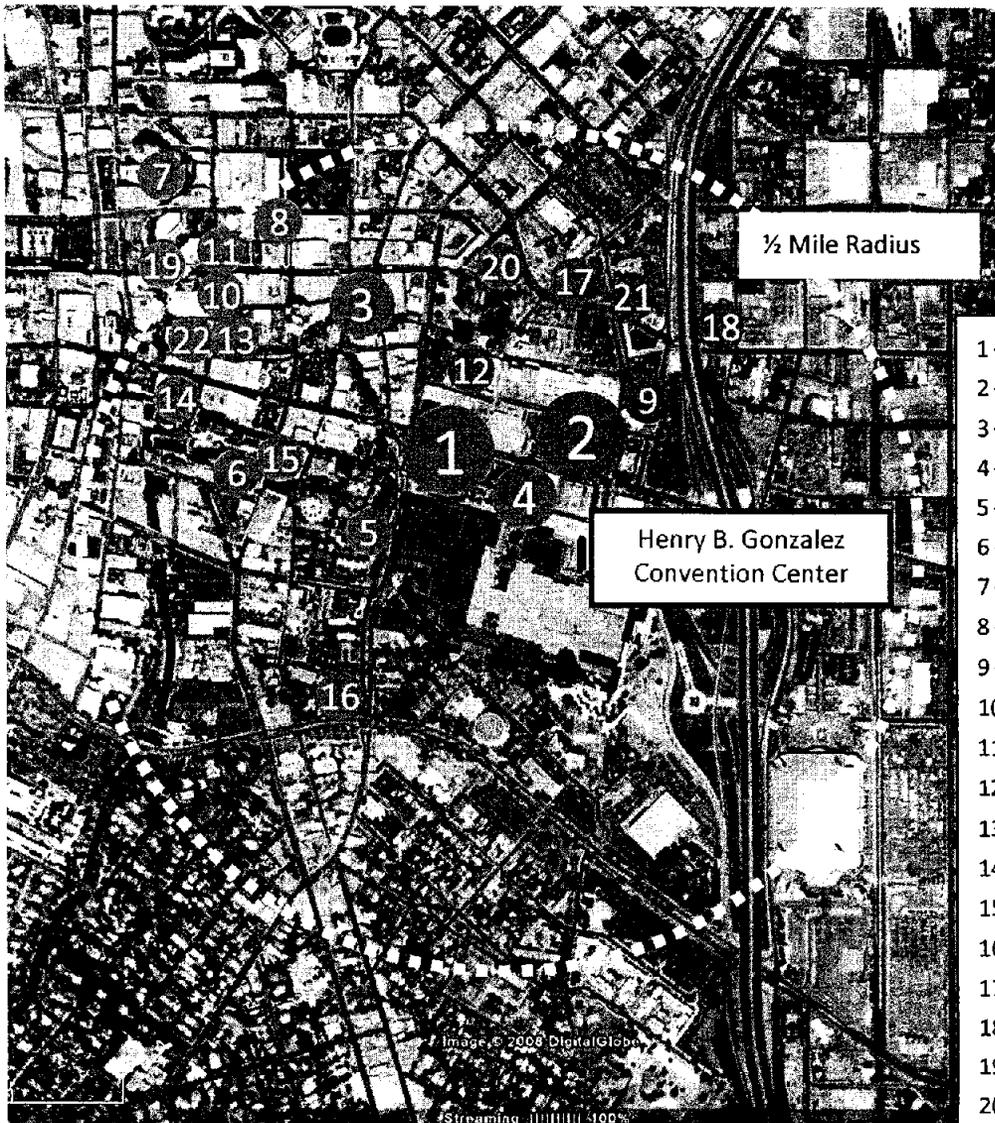
# HOTEL ROOMS WITHIN ½ MILE OF THE MIAMI BEACH CONVENTION CENTER



- – 0 hotels with more than 1,000 rooms
- – 2 hotels with 500 to 999 rooms
- – 15 hotels with 100 to 499 rooms

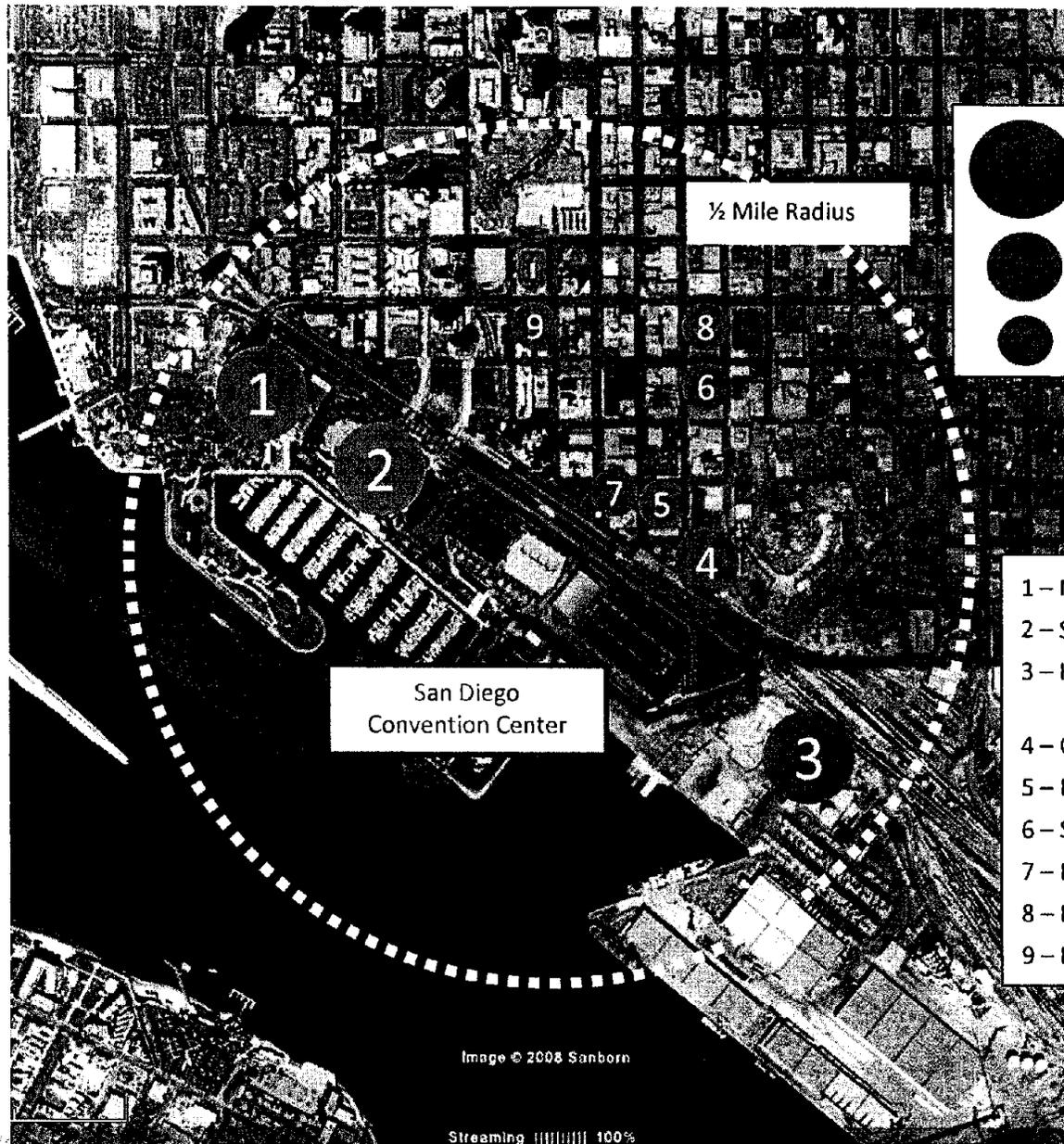
- 1 – Loews Miami Beach Hotel (790 rooms)
- 2 – Royal Palm Resort (552)
- 3 – The Shore Club (379)
- 4 – Ritz-Carlton (375)
- 5 – Gansevoort South Hotel (334)
- 6 – Doubletree Surcomber Hotel (282)
- 7 – Shelborne Beach Resort (200)
- 8 – Delano (194)
- 9 – Catalina Hotel & Beach Club (192)
- 10 – Days Inn – South Beach (172)
- 11 – The National Hotel (151)
- 12 – The Setai Resort and Residences (131)
- 13 – Marseilles Hotel (119)
- 14 – Haddon Hall Hotel (116)
- 15 – South Seas Hotel (111)
- 16 – The Raleigh Hotel (104)
- 17 – Albion Hotel (100)

# HOTEL ROOMS WITHIN ½ MILE OF THE GONZALEZ CONVENTION CENTER (SAN ANTONIO)



- 1 – Grand Hyatt San Antonio (1,003 rooms)
- 2 – Marriott Rivercenter (1,001)
- 3 – Hyatt Regency (632)
- 4 – Marriott Riverwalk (512)
- 5 – Hilton Palacio del Rio (483)
- 6 – Westin Riverwalk (473)
- 7 – Crowne Plaza Riverwalk (410)
- 8 – Wyndham St. Anthony (352)
- 9 – La Quinta Inn & Suites Conv. Ctr. (350)
- 10 – Omni La Mansion del Rio (338)
- 11 – Sheraton Gunter Hotel (322)
- 12 – the Historic Menger Hotel (316)
- 13 – Holiday Inn Riverwalk (313)
- 14 – Drury Plaza Hotel San Antonio Riverwalk (306)
- 15 – Hotel Contessa (265)
- 16 – Marriott Plaza San Antonio (251)
- 17 – Residence Inn by Marriott Alamo (220)
- 18 – Red Roof Inn Downtown (215)
- 19 – Hotel Valencia Riverwalk (213)
- 20 – Emily Morgan (177)
- 21 – Hampton Inn Downtown (169)
- 22 – Drury Inn & Suites Riverwalk (150)

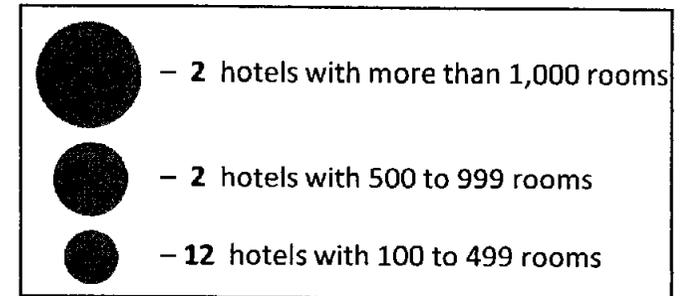
# HOTEL ROOMS WITHIN ½ MILE OF THE SAN DIEGO CONVENTION CENTER



- 3 hotels with more than 1,000 rooms
- 1 hotels with 500 to 999 rooms
- 5 hotels with 100 to 499 rooms

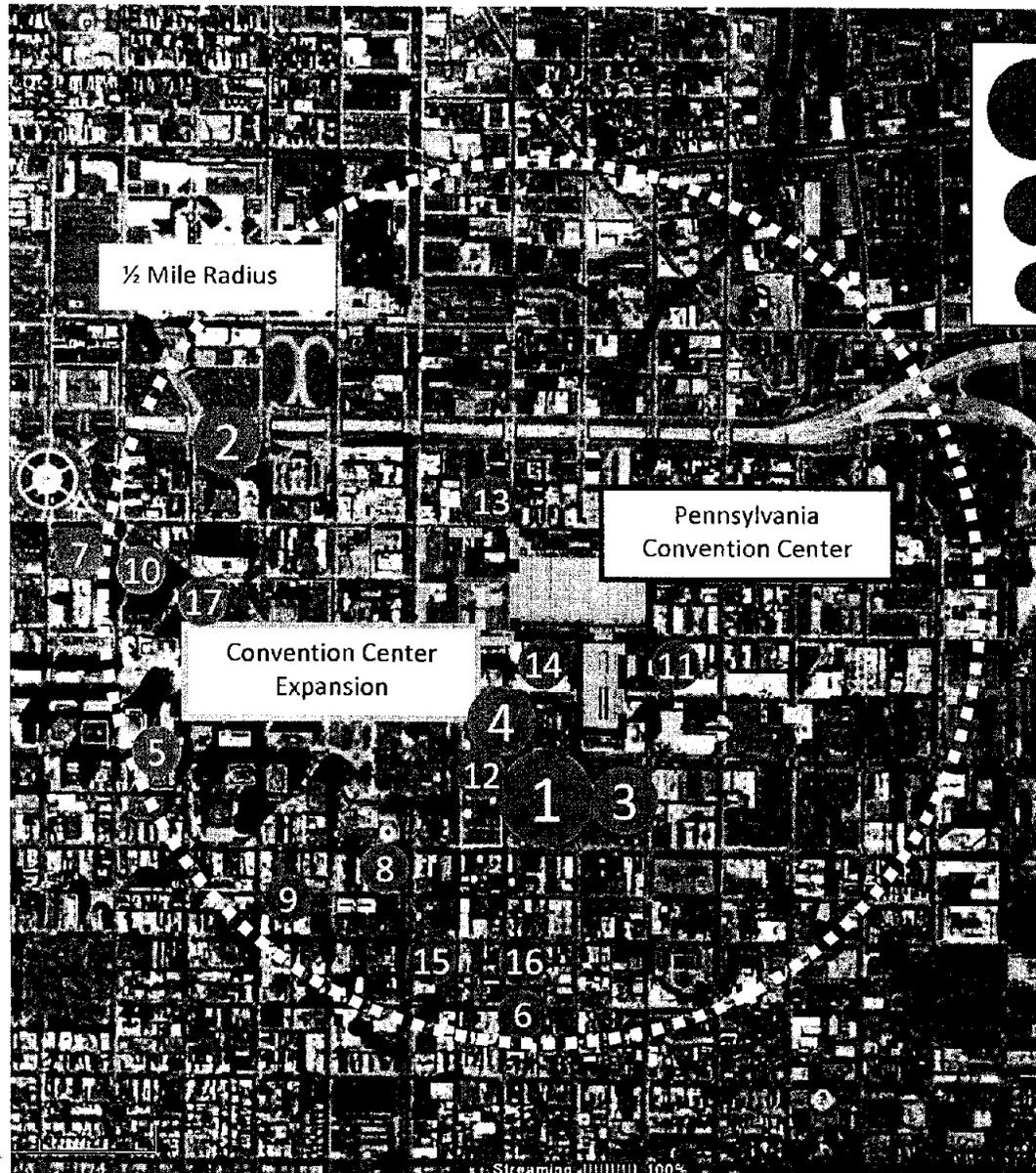
- 1 – Manchester Grand Hyatt (1,625 rooms)
- 2 – San Diego Marriott Convention Center (1,362)
- 3 – Hilton San Diego Convention Center  
(Opening December 2008) (1,190)
- 4 – Omni San Diego Hotel (511)
- 5 – Hard Rock Hotel (420)
- 6 – San Diego Marriott Gaslamp (306)
- 7 – Hilton San Diego Gaslamp (282)
- 8 – Hilton Solamar (235)
- 9 – Horton Grand Hotel (132)

# HOTEL ROOMS WITHIN ½ MILE OF THE COLORADO (DENVER) CONVENTION CENTER



- 1 – Sheraton Denver Hotel (1,225 rooms)
- 2 – Hyatt Regency Denver at CCC (1,100)
- 3 – Denver Marriott City Center (615)
- 4 – Grand Hyatt Denver (512)
- 5 – Westin Hotel Tabor Center (430)
- 6 – Crowne Plaza (364)
- 7 – The Curtis (336)
- 8 – Magnolia Hotel (246)
- 9 – Brown Palace Hotel & Spa (241)
- 10 – Comfort Inn Downtown (231)
- 11 – Hilton Garden Inn (221)
- 12 – Ritz-Carlton Denver (202)
- 13 – Hotel Monaco (189)
- 14 – Courtyard by Marriott (177)
- 15 – Hampton Inn & Suites (148)
- 16 – Hotel Teatro (110)

# HOTEL ROOMS WITHIN ½ MILE OF THE PENNSYLVANIA (PHILADELPHIA) CONVENTION CENTER

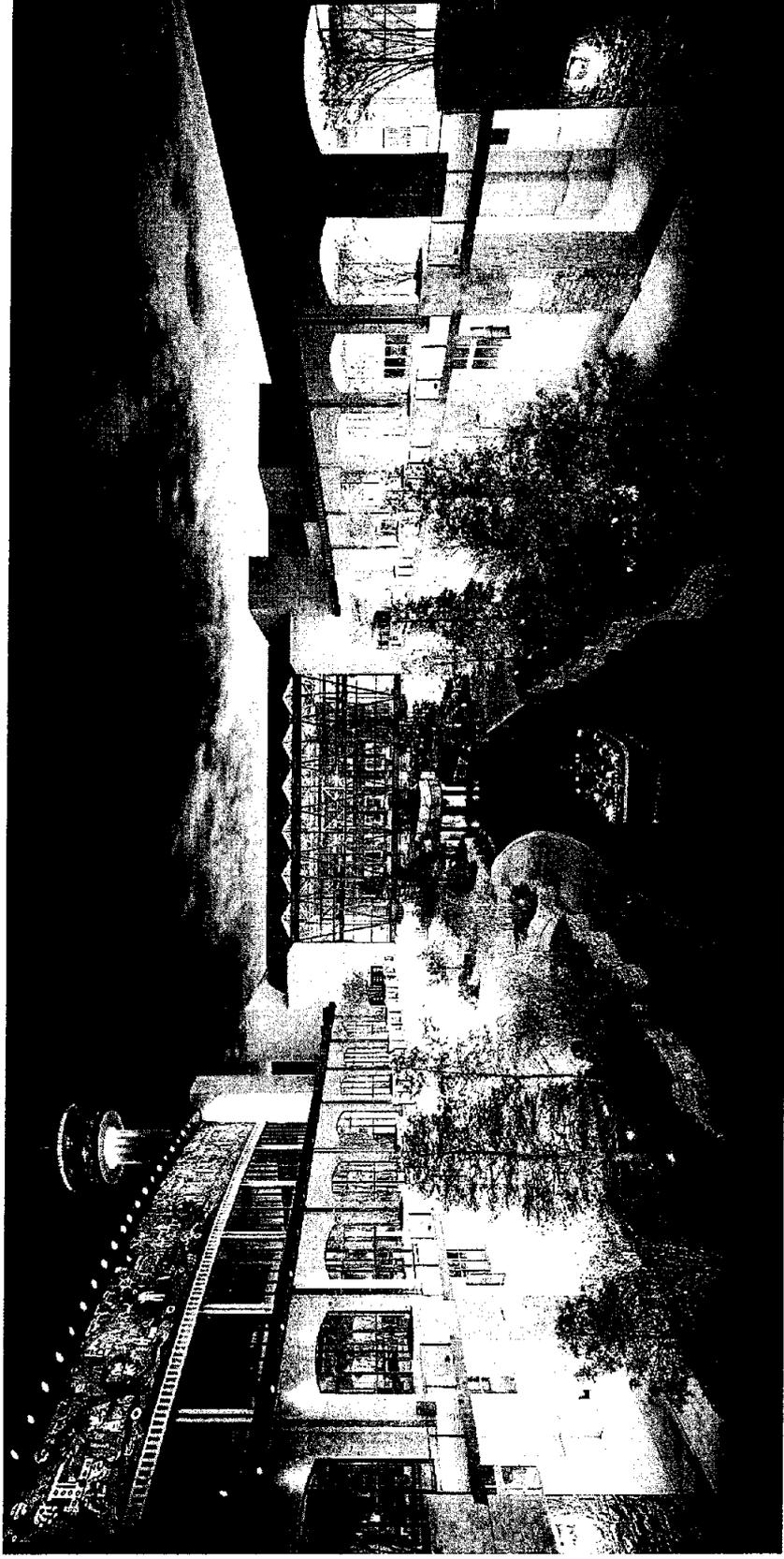


- – 1 hotel with more than 1,000 rooms
- – 3 hotels with 500 to 999 rooms
- – 13 hotels with 100 to 499 rooms

- 1 – Philadelphia Marriott (1,332 rooms)
- 2 – Sheraton City Center (758)
- 3 – Loews Philadelphia Hotel (581)
- 4 – Courtyard by Marriott (500)
- 5 – Crowne Plaza Center City (445)
- 6 – Doubletree Hotel Philadelphia (434)
- 7 – Four Seasons Hotel (364)
- 8 – The Ritz-Carlton Philadelphia (299)
- 9 – The Westin Philadelphia (290)
- 10 – Embassy Suites Center City (288)
- 11 – Hilton Garden Inn City Center (279)
- 12 – Residence Inn by Marriott (269)
- 13 – Hampton Inn Philadelphia (250)
- 14 – W Hotel (Opening 2009) (250)
- 15 – Park Hyatt Philadelphia (172)
- 16 – Holiday Inn Express Midtown (168)
- 17 – Hotel Windsor (106)

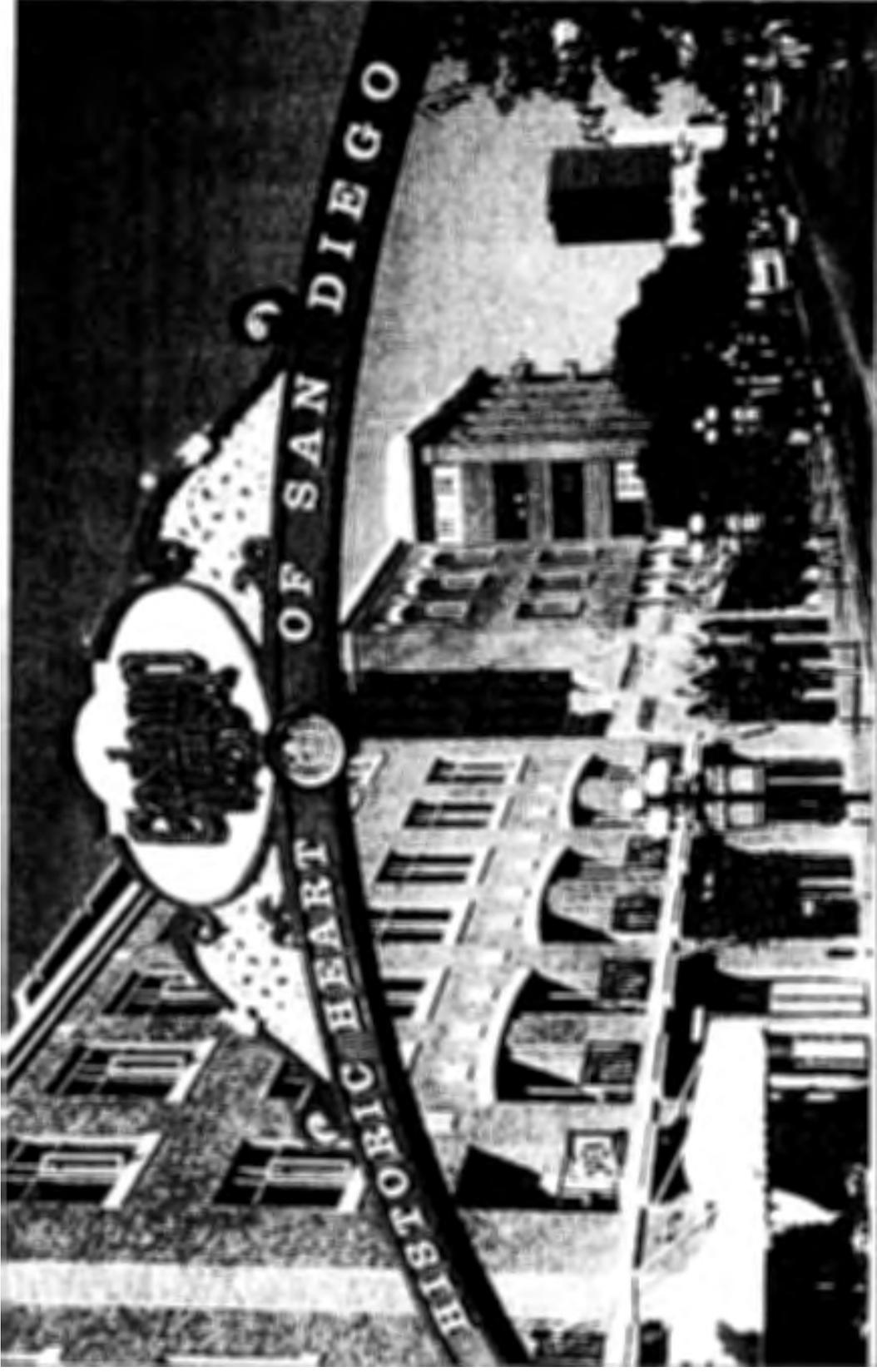
# CREATIVE DESIGN ELEMENTS

Henry B. Gonzalez Convention Center – San Antonio, TX



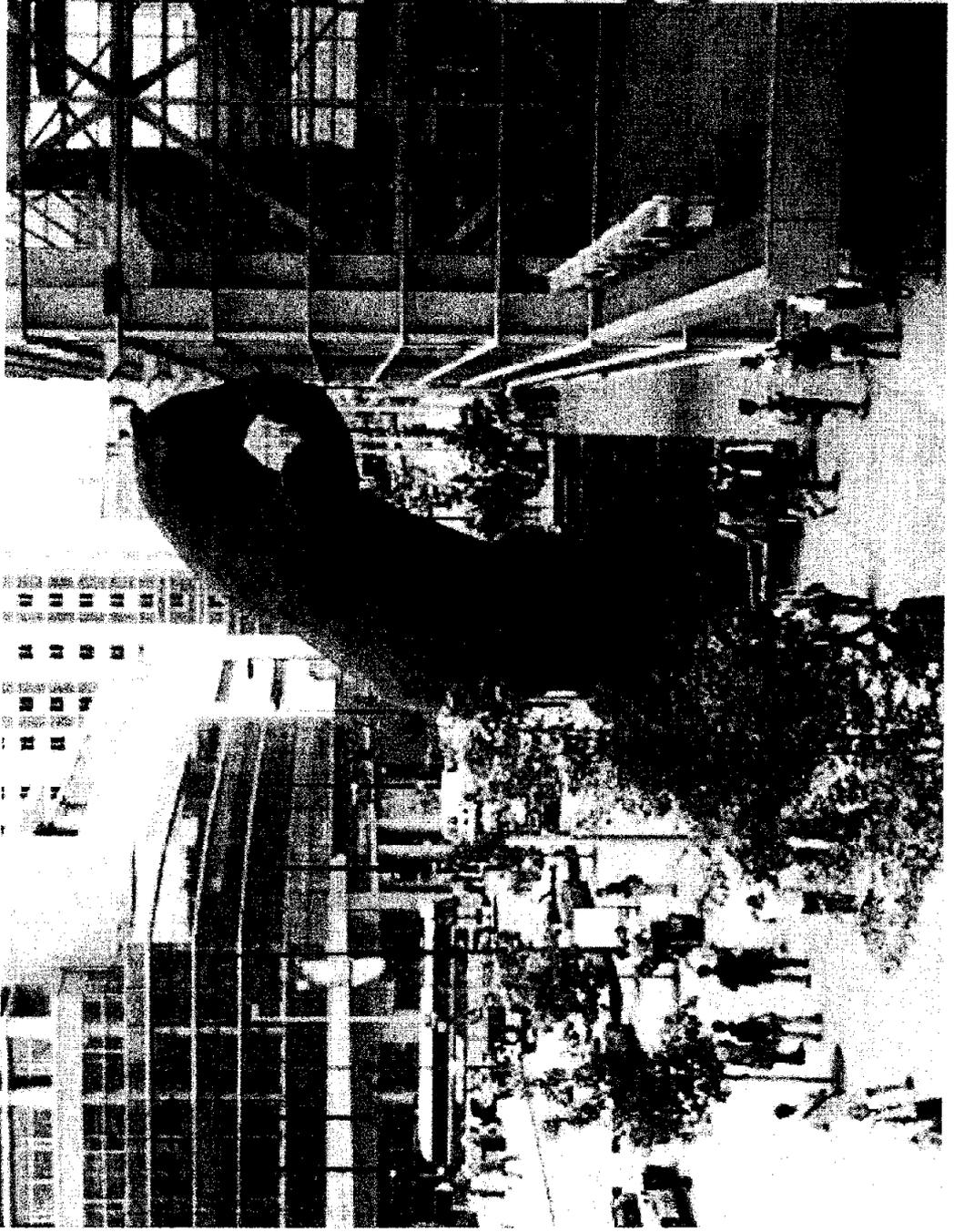
# CREATIVE DESIGN ELEMENTS

San Diego Convention Center – San Diego, CA



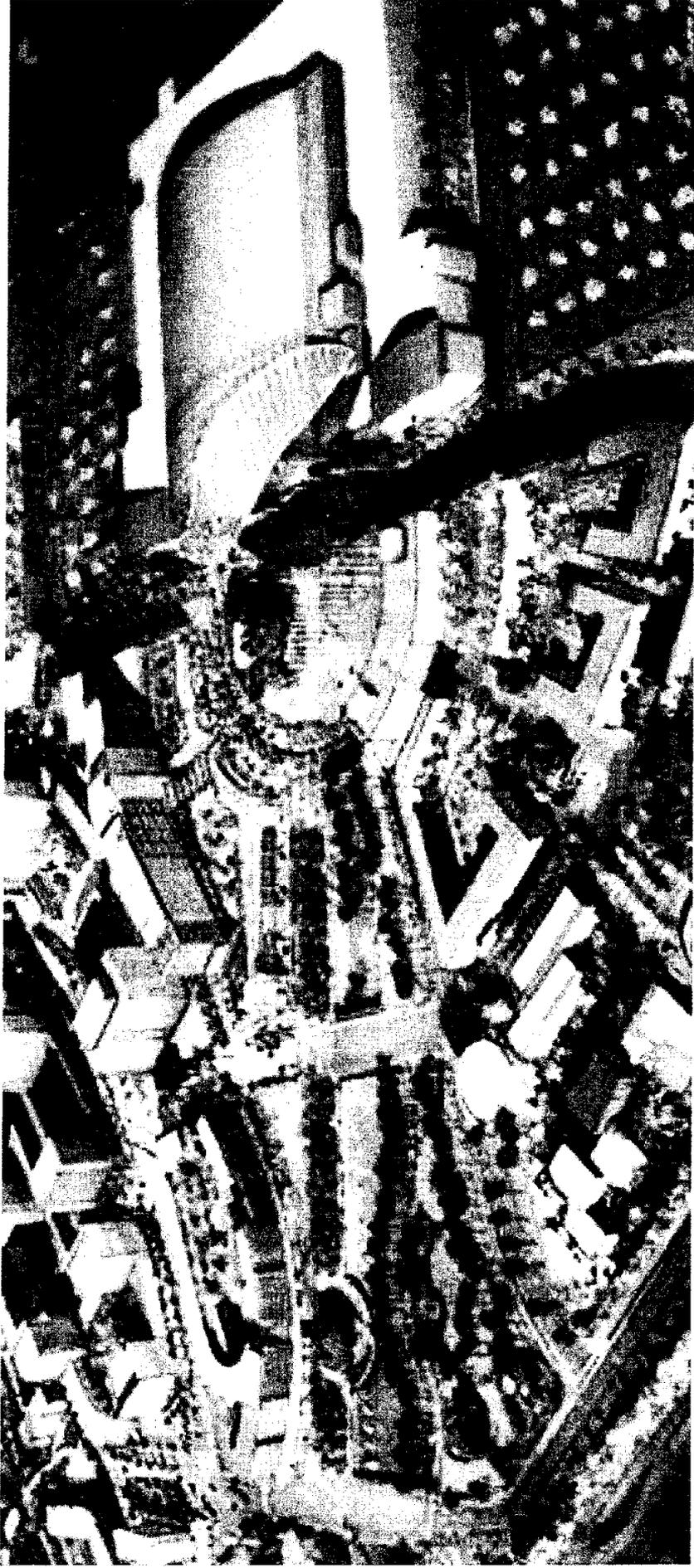
# CREATIVE DESIGN ELEMENTS

## Colorado Convention Center – Denver, CO



# CREATIVE DESIGN ELEMENTS

Puerto Rico Convention Center – San Juan, PR



# CONVENTION CENTER

## 2009 CSL RECOMMENDATIONS

- Upgrades to existing MBCC
- Target up to 100,000 square feet of added sellable space
  - Multi-use/Ballroom Space needed
  - Additional Meeting Space needed
- Unique Space Additions
  - Incorporate outdoor function space and landscaped plazas

# CONVENTION CENTER

## 2009 CSL RECOMMENDATIONS

- Development of a “Convention Center District”
  - Linkages to adjacent entertainment areas important/needed
- Adjacent or attached Convention Center Hotel needed/strongly recommended
  - Target a 1,000 room headquarter hotel
- Incorporate iconic architecture/sculpture

# CONVENTION CENTER

## STEERING COMMITTEE

- Formalized stakeholder process
- Expanded composition

### Existing Members (Stakeholder Group)

- City of Miami Beach, City Manager: Jorge M. Gonzalez (Co-Chair of Committee)
- Convention Center Advisory Board: Stuart Blumberg (Co-Chair of Committee)
- Greater Miami and the Beaches Hotel Association: Wendy Kallergis
- Greater Miami Convention and Visitors Bureau : William Talbert
- Global Spectrum: Tom Mobley
- Miami Beach Visitor and Convention Authority: Elsie Howard
- Miami-Dade County: Johnny Martinez, Director of Capital Improvements

### New Members

- PricewaterhouseCoopers: Scott Berman, Principal, Hospitality & Leisure
- Jewelry International Showcase: Michael Breslow, President
- Reed Exhibitions, Latin America: Marco Giberti, President
- National Marine Manufacturers Association: Cathy Rick-Joule, Southern Regional Manager
- Lincoln Road Merchants Association: Robert Wennett
- Resident/Business Owner: Saul Gross

# CONVENTION CENTER

## **STEERING COMMITTEE GOALS – NINE (9)**

1. Meet/exceed space elements in comparable markets (50k sf ballroom /25k sf meeting space)
2. Identify additional elements that reflect emerging trends to attract new niche markets
3. Provide additional/unique meeting venue(s)
4. Create a coordinated district that offers a walkable environment and linkages with nearby assets

# CONVENTION CENTER

## **STEERING COMMITTEE GOALS – NINE (9)**

5. Improve the current guest entry sequence
6. Establish a new unified identity and aesthetic for the facility
7. Develop strategies to offset the lack of a proximate headquarters hotel
8. Assess the current and future parking, open space and marshalling needs for the facility
9. Assess and prioritize the current infrastructure needs of the facility

# CONVENTION CENTER

## **ARQUITECTONICA SCOPE OF SERVICES**

- 1.Reconnaissance and Analysis
- 2.Work within existing zoning for the CC District
- 3.Develop alternatives for the Master Plan
- 4.Locate sites for potential future hotel development
- 5.Community Design Workshop
- 6.Prepare Basis of Design Report (BODR)
- 7.Conduct LEED Workshop
- 8.Presentation of Final Master Plan and BODR

# CONVENTION CENTER

## **BASIS OF DESIGN REPORT (BODR)**

- Serves as the basis for all future recommended improvements for the project
- Presents the results of the Master Plan process
- Is NOT a set of construction documents
  - *it is a blueprint for future design*
- Details other areas and processes that will happen next to address other specific issues
  - *e.g. traffic, neighborhood impacts, drainage, streetscape, etc.*

# CONVENTION CENTER

## EXTERNAL INPUT

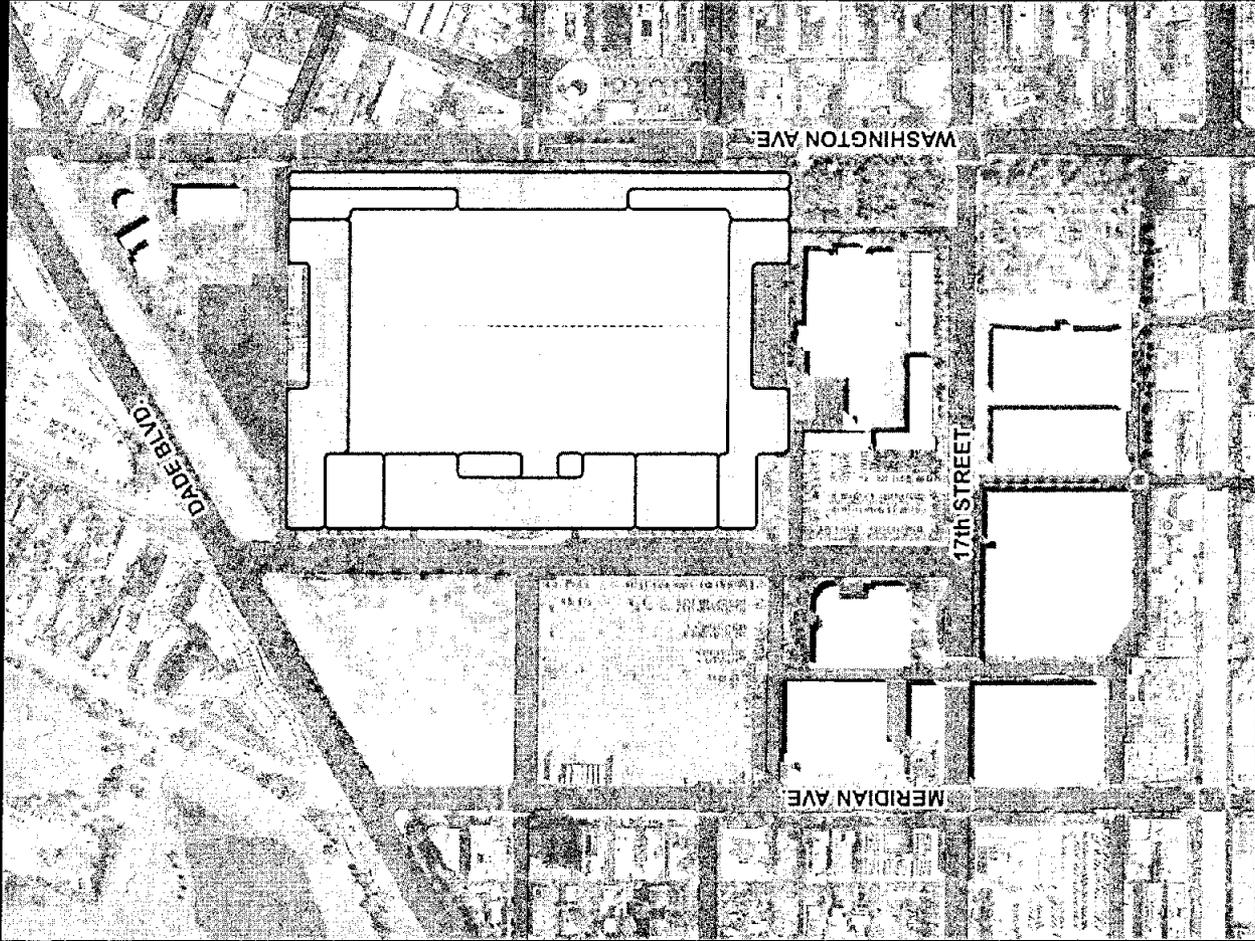
- Steering Committee
- Subcommittees
  - Community •Functionality •Programming •Big Vision
- Neighbors/Community
  - Holocaust Memorial/ Botanical Garden
  - Palm View Neighborhood/Collins Park Neighborhood
  - New World Symphony
- Community Design Workshop
- City Staff
  - Fire, Public Works, Building, CIP, Planning and Zoning, Parking

# CONVENTION CENTER

## ARQUITECTONICA'S CONSULTANT TEAM

- **Conventional Wisdom** - convention center programming and planning
- **Kimley Horn** - civil engineering and traffic control
- **DDA and Associates** - structural engineering
- **TLC Engineering for Architecture** - mechanical, electrical, fire protection & communications
- **Systems Design, International** - Food Services

**CURRENT LAYOUT:**



**MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION**

0 50 100 200 400  
 FEET  
 METERS

	BALLROOMS		FOOD		MEETING
	HALL		LOBBY		EXISTING HOUSE
	VERTICAL CIRCULATION		BACK OF HOUSE		FRONT OF HOUSE

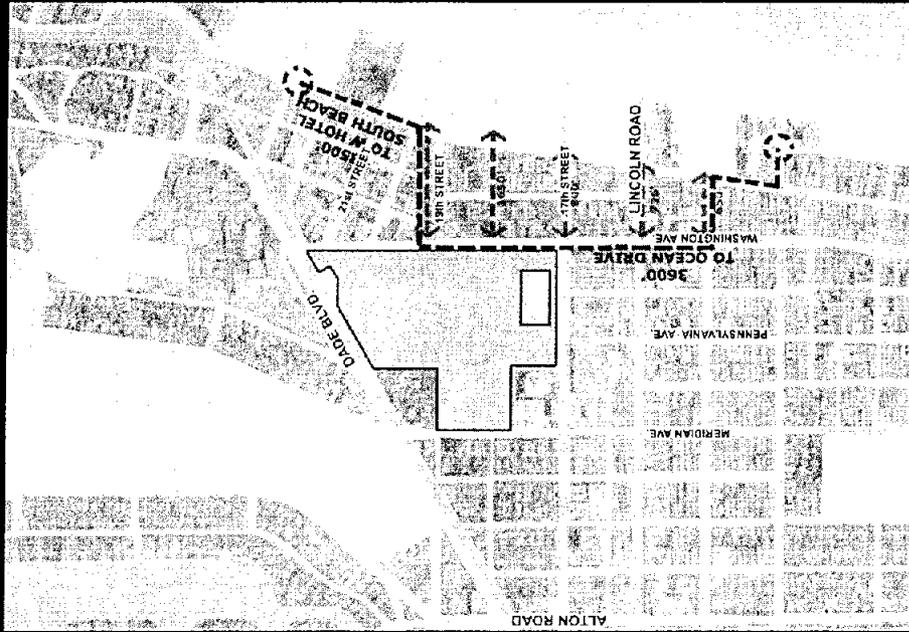
**EXISTING PLAN**

**Challenges:**

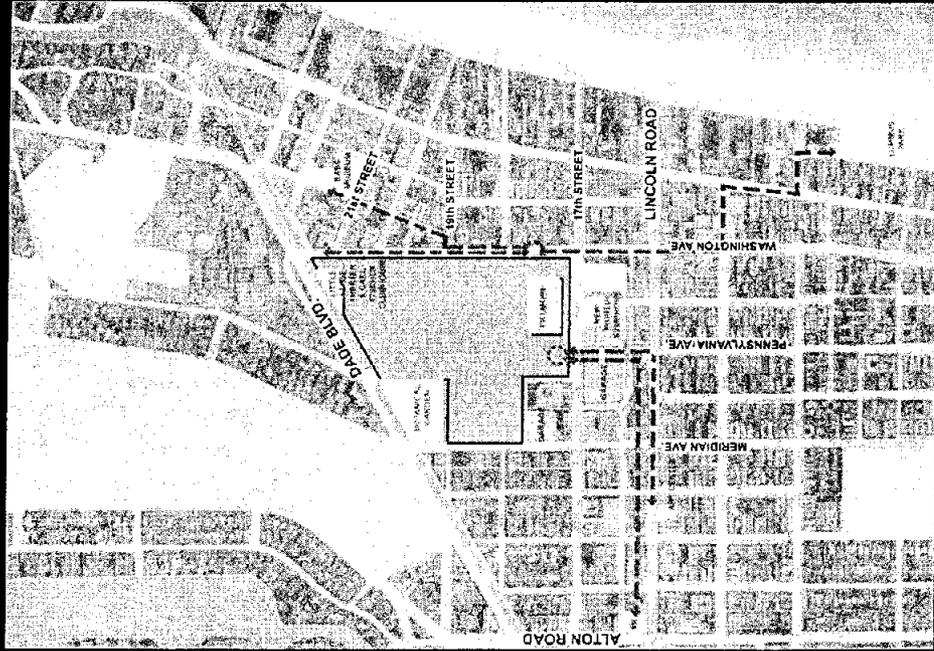
- No "front" entrance
- Limited loading areas
- No sense of place
- Current hall configuration limited

**ANALYZED:**

•Distance to hotels



MIAMI BEACH CONVENTION CENTER MASTER PLAN EXPANSION ACCESS TO HOTELS



MIAMI BEACH CONVENTION CENTER MASTER PLAN EXPANSION ACCESS TO VENUES

•Distance to entertainment venues



# PROPOSED LAYOUT

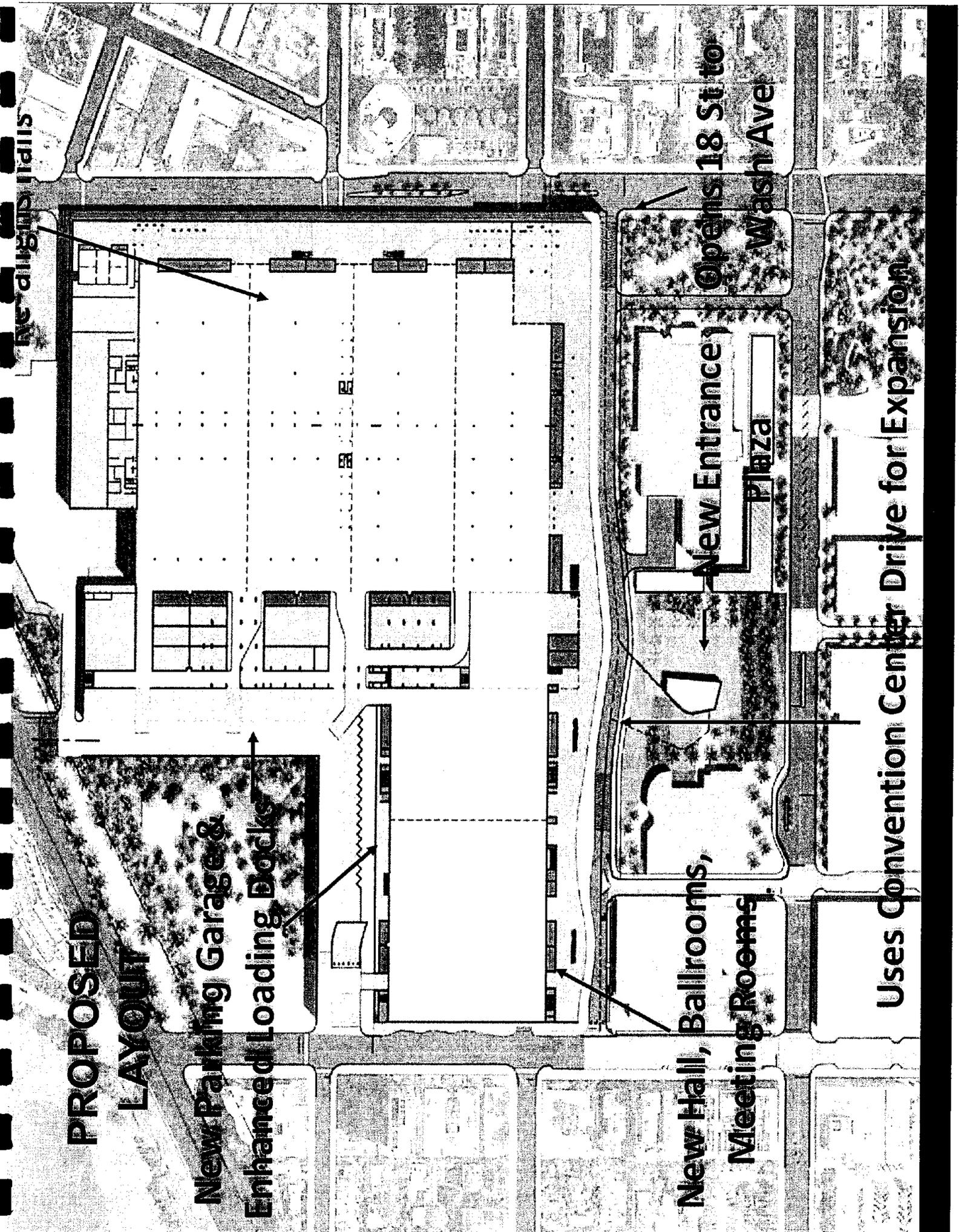
New Parking Garage & Enhanced Loading Docks

New Hall, Ballrooms, Meeting Rooms

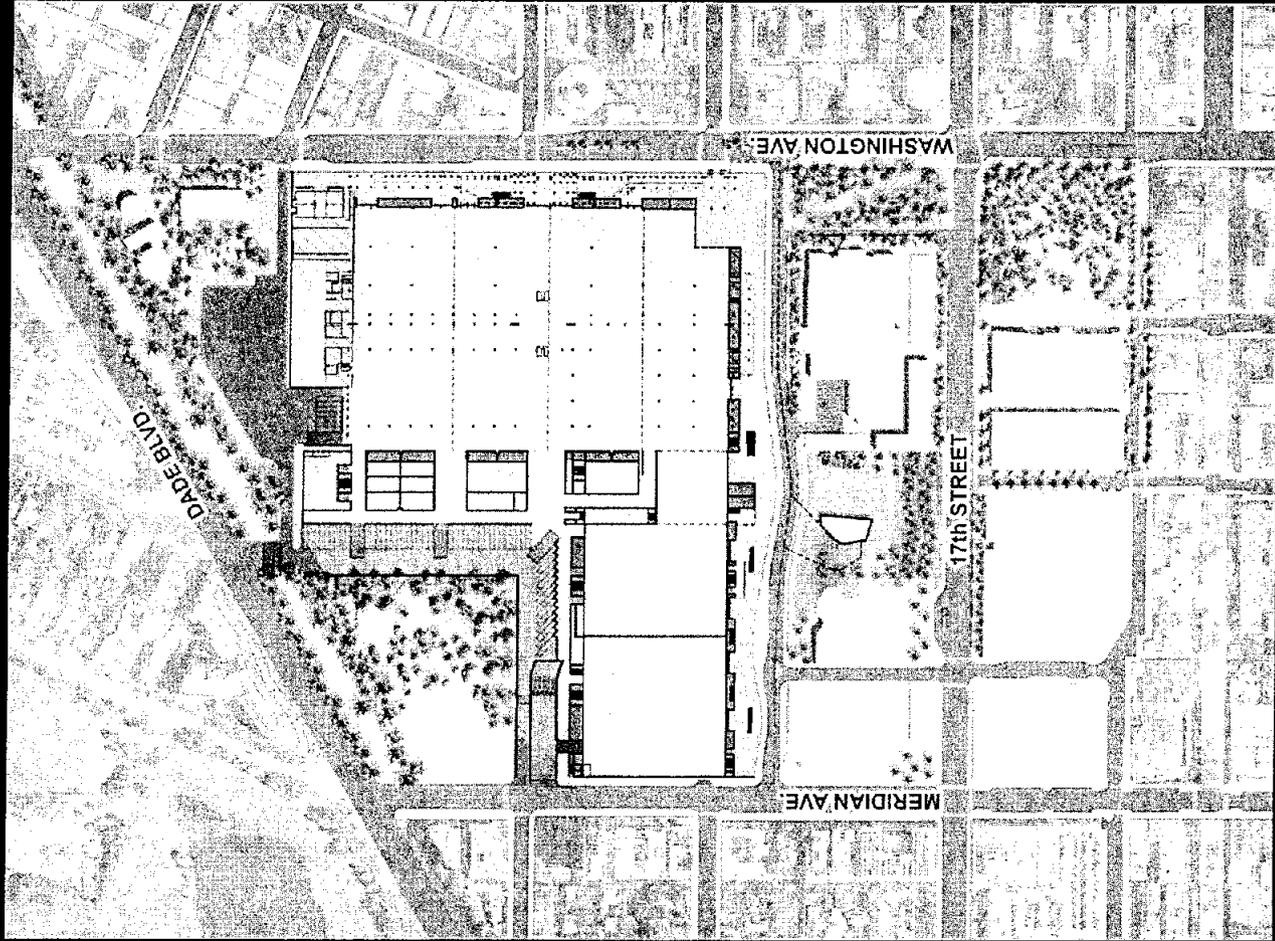
New Entrance Plaza

Opens 18 St to Wash Ave

Uses Convention Center Drive for Expansion



# PROPOSED LAYOUT LEVEL 1



**MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION**

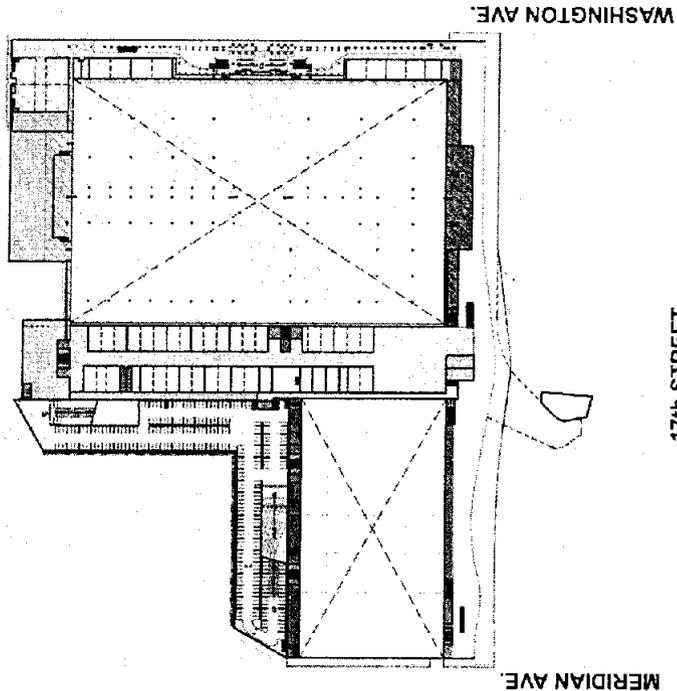
**LEVEL 1**  
ELEVATION: 0'-0"

BALLROOMS  
 HALL  
 VERTICAL CIRCULATION  
 FOOD  
 LOBBY  
 BACK OF HOUSE  
 MEETING  
 EXISTING  
 FRONT OF HOUSE

0 50 100 200 400

LEVEL 2

DADE BLDG.



MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

LEVEL 2

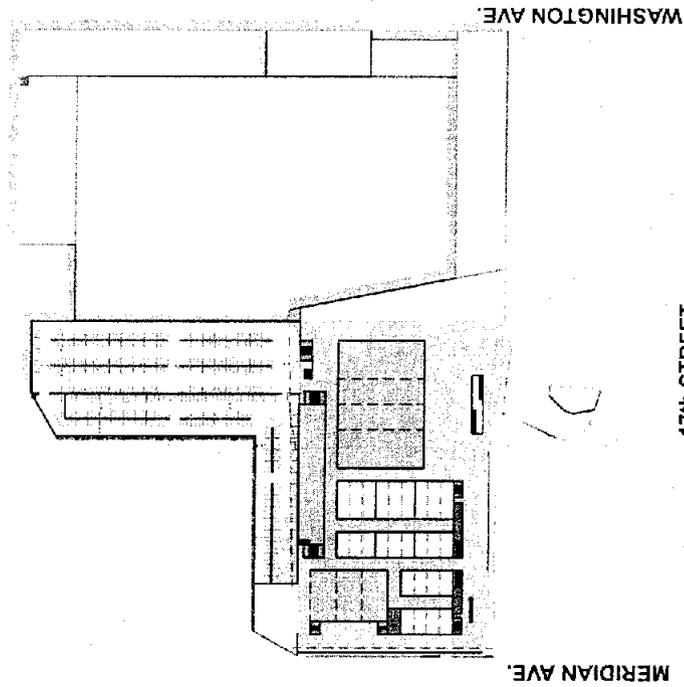
ELEVATION: 25'-0"

- BALLROOMS
- FOOD
- MEETING
- HALL
- LOBBY
- EXISTING
- VERTICAL CIRCULATION
- BACK OF HOUSE
- FRONT OF HOUSE



LEVEL 3

DADE BLVD.



MIAMI BEACH CONVENTION CENTER  
 MASTER PLAN EXPANSION

LEVEL 3

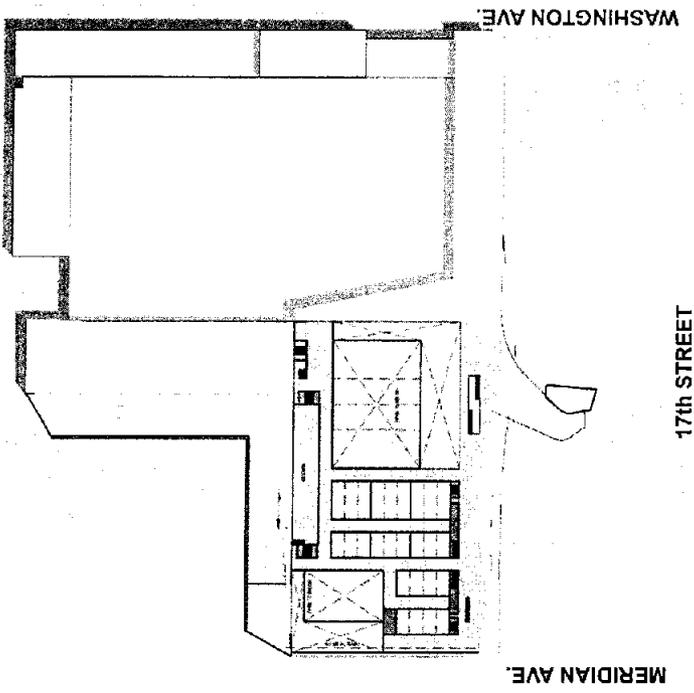
ELEVATION: 50'-0"

- BALLROOMS
- FOOD
- MEETING
- HALL
- LOBBY
- EXISTING
- VERTICAL CIRCULATION
- BACK OF HOUSE
- FRONT OF HOUSE



LEVEL 4

DADE BLDG.



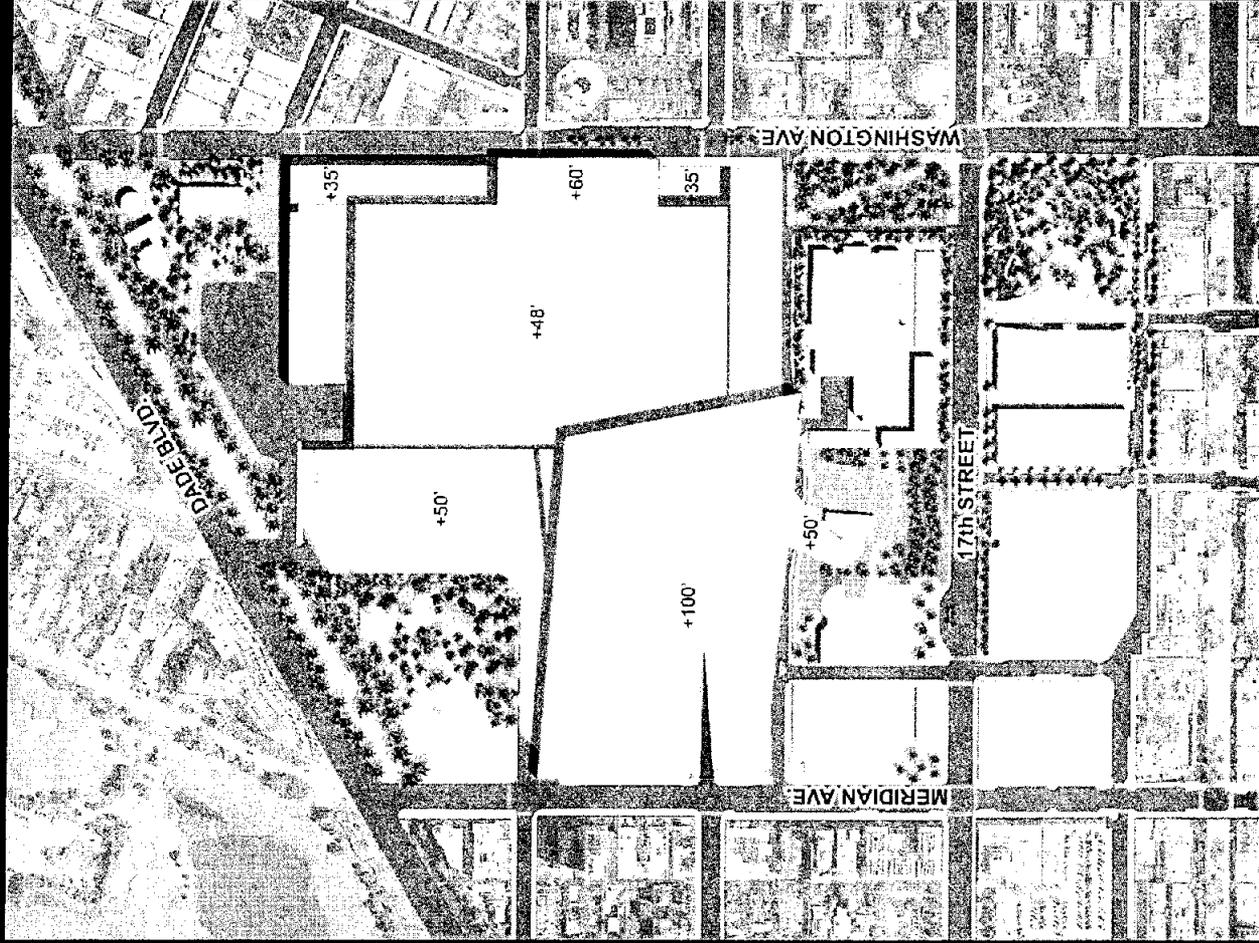
**MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION**

**LEVEL 4**  
ELEVATION: 75'-0"

0 100 200 400

	BALLROOMS		FOOD		MEETING
	HALL		LOBBY		EXISTING
	VERTICAL CIRCULATION		BACK OF HOUSE		FRONT OF HOUSE

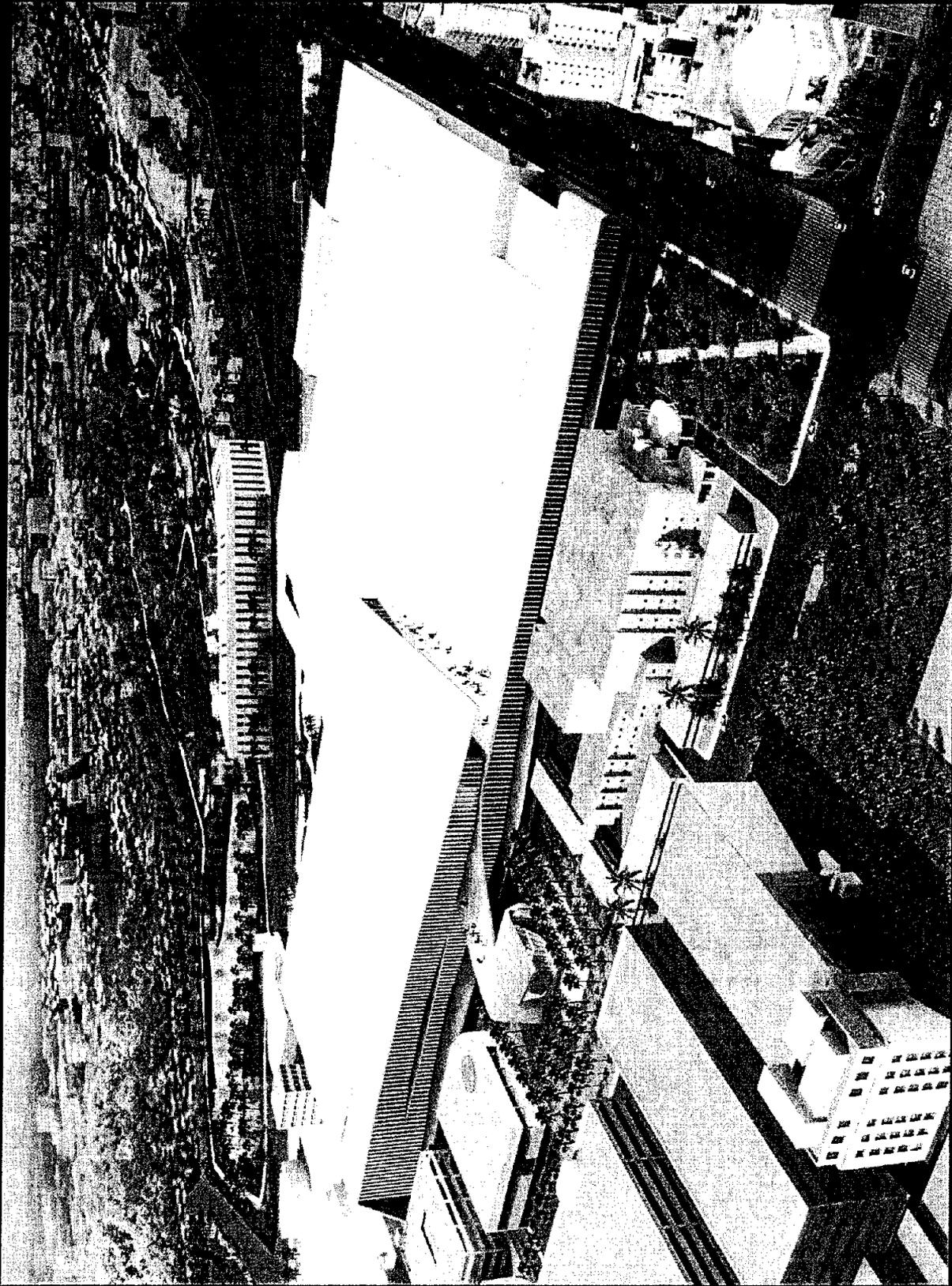
**BUILDING  
HEIGHTS  
(as per current  
zoning)**



**MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION**

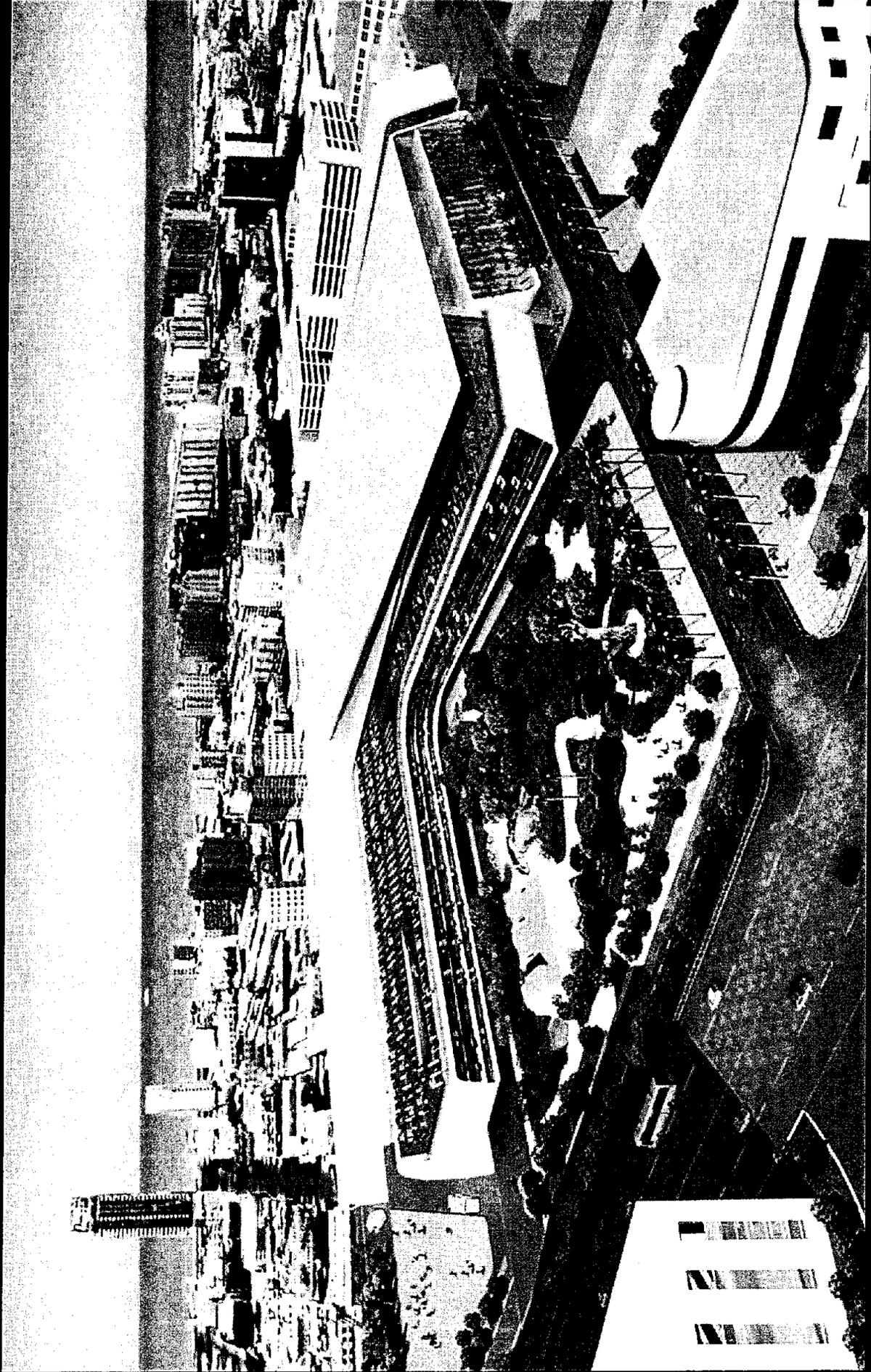
**SITE PLAN**





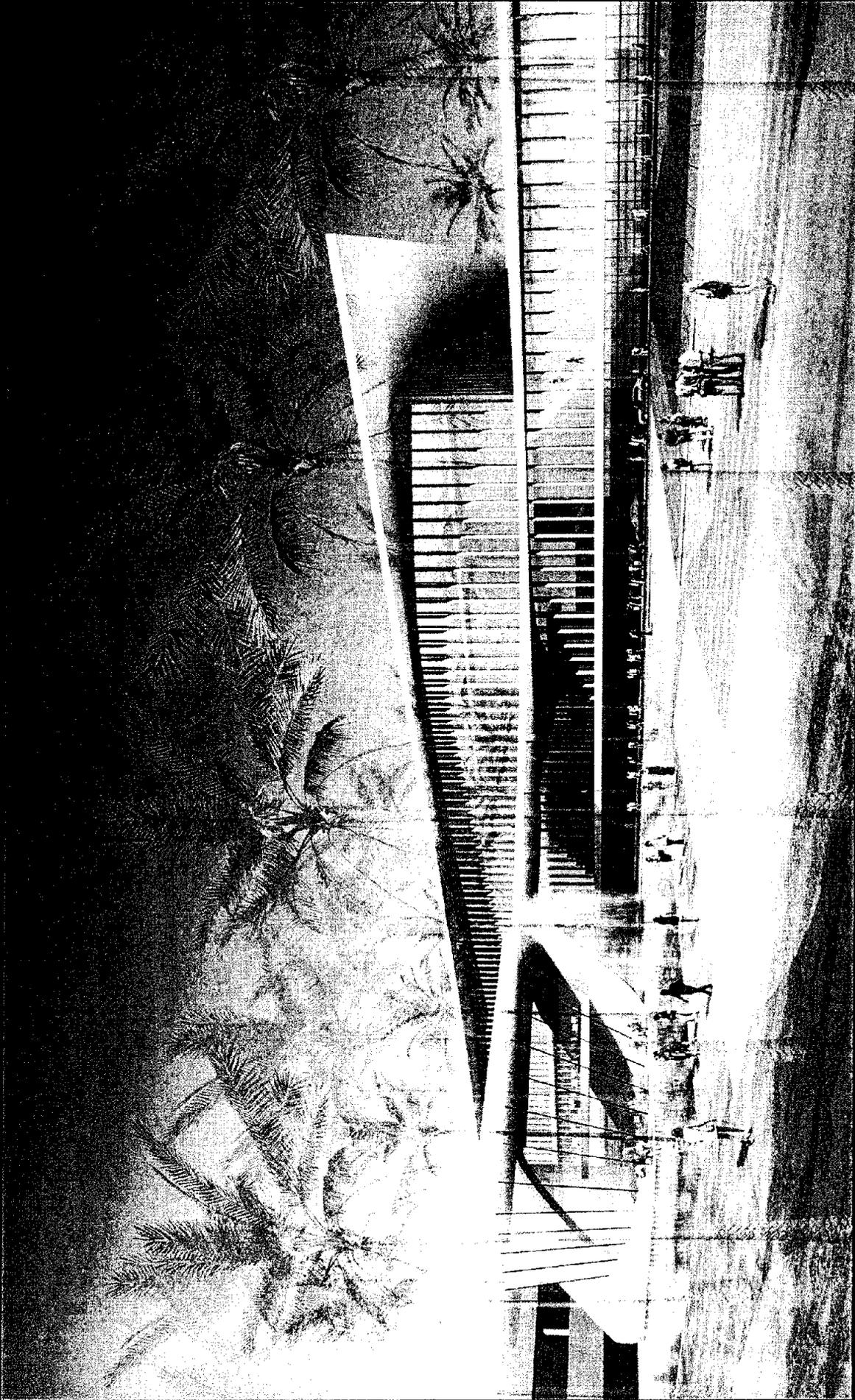
MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

AERIAL VIEW FROM WASHINGTON AVE.



MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

AERIAL VIEW FROM DADE BOULEVARD  
(With adjusted west façade)



MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

PLAZA VIEW FROM 17th STREET

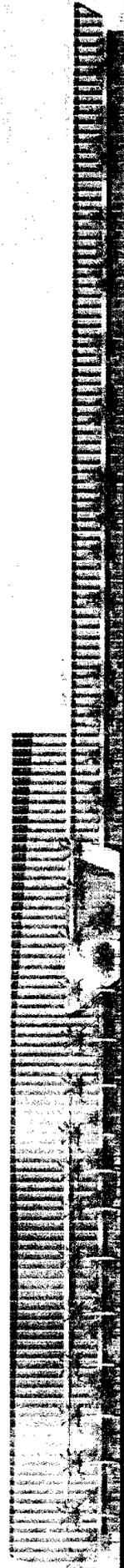


MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

▶ ENTRY DRIVE VIEW FROM WASHINGTON AVENUE

MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

SOUTH FROM "18TH STREET" (ENTRY DRIVE)



MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

EAST ELEVATION FROM WASHINGTON



MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

WEST ELEVATION ALONG MERIDIAN



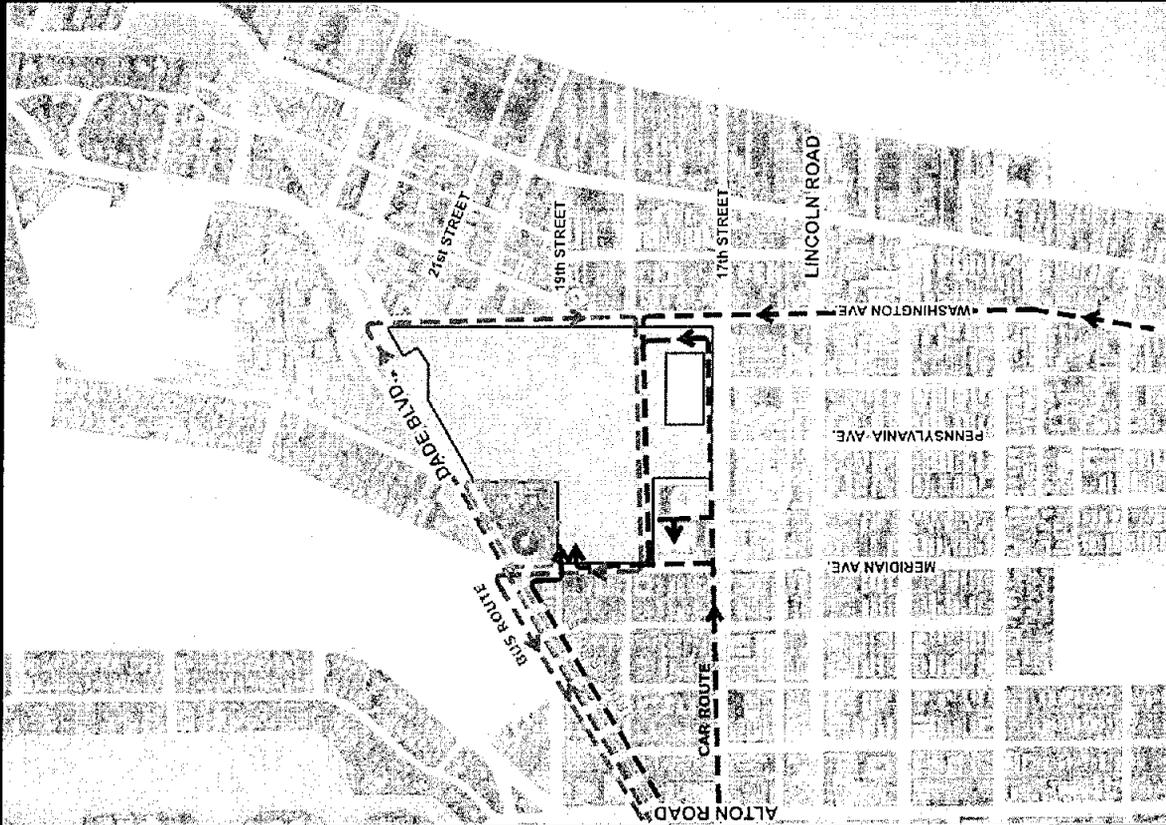
MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

NORTH FROM ALTON ROAD



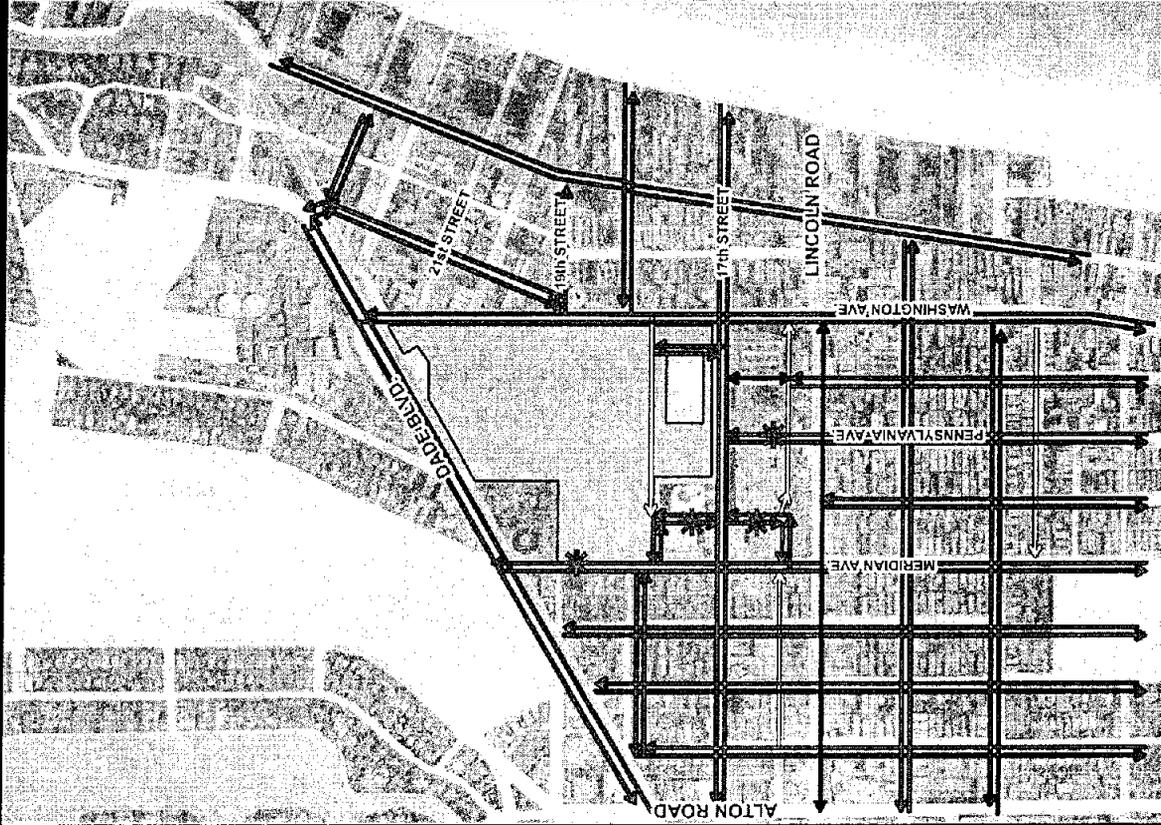
# OTHER ANALYSIS :

# Traffic Studies



MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

TRAFFIC  
CIRCULATION



MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

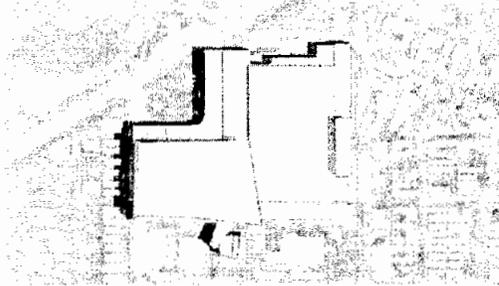
TRAFFIC STUDY

- TWO-WAY TRAFFIC
- ONE-WAY TRAFFIC
- PEDESTRIAN ONLY
- GARAGE ENTRANCE

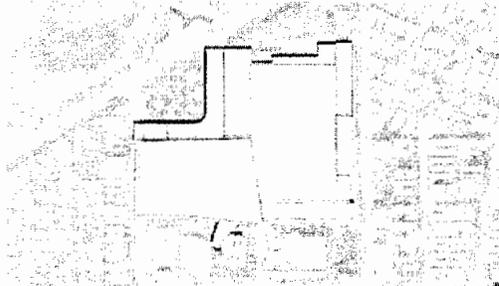
# OTHER ANALYSIS :

# Shadow Studies

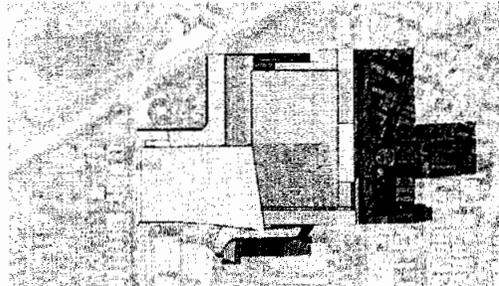
MARCH 21



9:00 AM

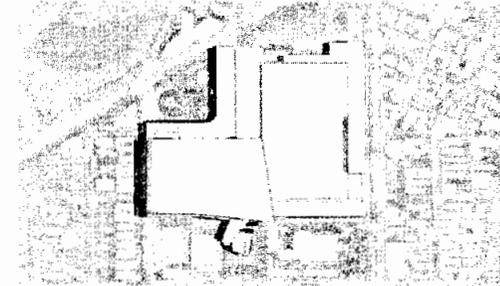


12:00 PM

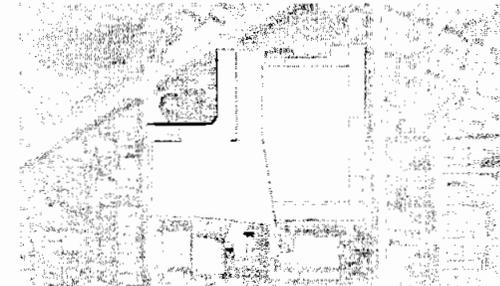


6:00 PM

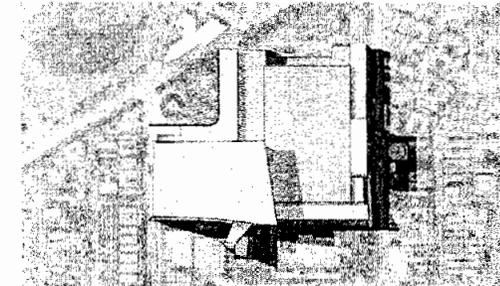
JUNE 21



9:00 AM



12:00 PM



6:00 PM

**ARQUITECTONICA**  
2501 Cook Avenue Miami, Florida 33133  
T 305.372.1812 F 305.372.1176

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## MIAMI BEACH CONVENTION CENTER MASTERPLAN

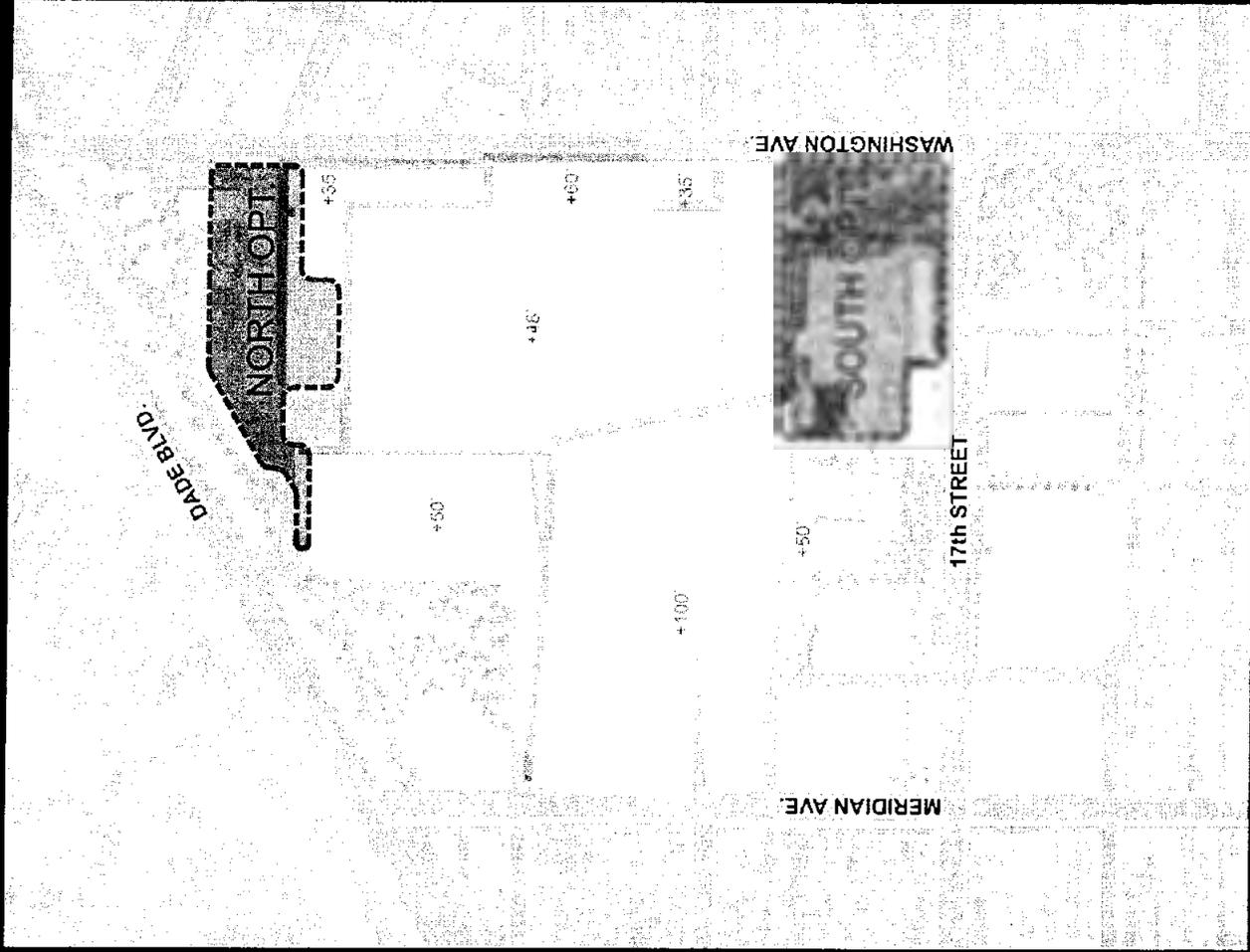
MIAMI BEACH, FLORIDA

DATE: 2.17.2011

**OTHER ANALYSIS :**

- LEED/Sustainable initiatives
- Infrastructure
- Neighborhood Interface
- Other

# POTENTIAL HQ HOTEL LOCATIONS



MIAMI BEACH CONVENTION CENTER  
MASTER PLAN EXPANSION

OUTPARCEL  
OPTION



# ADDITIONAL SF

	CURRENT	PROPOSED	DIFFERENCE
<i>Exhibit Halls</i>	502,098 sf 4 Halls	715,197 sf 6 halls	213,099 sf 2 halls
<i>Meeting Rooms</i>	125,899 sf	207,800 sf	81,901 sf
<i>Ballrooms (dedicated)</i>	0	81,600 sf	81,600 sf
<i>Pre-function/ Lobby</i>	163,327 sf	368,343 sf	205,016 sf
<i>Parking (2 lots)</i>	1,040 spaces	1,498 spaces	458 spaces

Current Space = 1.16 million sf

Proposed Space = 2.12 million sf

→ **960,000 NEW sf**

# PHASING OPTION

Phase	Description	# of mo.
1	Convention Center New Construction	24 months
	Garage	12 months
	Convention Center West Wrap	12 months
		<b>48 months</b>

2	Convention Center South Prefunction/North Loading	12 months
	Convention Center Hall B & Façade	18 months
	Convention Center Hall A & Façade	18 months
	Convention Center Renovation of Existing Halls	6 months
		<b>54 months</b>

# COST ESTIMATES

- Developed by independent cost-estimating firm (Faithful & Gould)
- Not value engineered
- Affected by costs associated with phasing the project
  - Necessary in order to keep Convention Center operational during construction
- Is not tied to a particular funding source

<i>Phase Description</i>		<i>Consultant Area</i>	<i>Budget</i>	
			<i>Totals</i>	<i>\$/S.F.</i>
1	Convention Center New Construction	1,000,855	\$ 192,298,799	\$ 192.13
2	Garage	-	\$ -	\$ -
3	Convention Center West Wrap	393,360	\$ 47,405,428	\$ 120.51
4	Convention Center South Prefunction/North Loading	98,615	\$ 17,567,375	\$ 178.14
5A	Convention Center Hall B & Façade	97,452	\$ 15,441,693	\$ 158.45
5B	Convention Center Hall A & Façade	138,428	\$ 15,945,238	\$ 115.19
6	Convention Center Renovation of Existing Halls	534,613	\$ 39,884,005	\$ 74.60
<b>1</b>	<b>TOTAL DIRECT COST</b>	<b>2,263,323</b>	<b>\$ 328,542,538</b>	<b>\$ 145.16</b>
<b>2</b>	General Conditions/Overhead/Profit	15.00%	\$ 49,281,381	\$ 21.77
	<b>TOTAL - CONDITIONS/OH/PROFIT</b>		<b>\$ 49,281,381</b>	
<b>3a</b>	<b>TOTAL ESTIMATED CONSTRUCTION COST</b>		<b>\$ 377,823,919</b>	<b>\$ 166.93</b>
<b>3b</b>	<b>TOTAL BUDGETED CONSTRUCTION COST</b>	90%	<b>\$ 340,041,527</b>	<b>\$ 150.24</b>
<b>CONTINGENCIES &amp; ALLOWANCES</b>		<b>% of CC</b>		
<b>4</b>	Labor and Material Escalation	Varies	\$ 44,668,589	\$ 19.74
	Subtotal		\$ 384,710,116	\$ 169.98
<b>5</b>	Design and Construction Contingencies	15.00%	\$ 57,706,517	\$ 25.50
	Subtotal		\$ 442,416,632	\$ 195.47
<b>6</b>	Phasing Allowance	3.00%	\$ 13,272,500	\$ 5.86
	Subtotal		\$ 455,689,132	\$ 201.34
<b>7</b>	Artwork Allowance	1.50%	\$ 6,835,336	\$ 3.02
<b>8</b>	<b>Subtotals w/ Contingencies/Allowances</b>		<b>\$ 462,524,468</b>	<b>\$ 204.36</b>
<b>INDIRECT COSTS</b>		<b>% of CC</b>		
<b>9</b>	Personal Liability and Property Damage Insurance	1.06%	4,902,759	\$ 2.17
<b>10</b>	Payment & Performance Bond		In Builder's Risk	\$ -
<b>11</b>	Builders Risk Insurance	0.16%	740,039	\$ 0.33
<b>12</b>	G C Bond (or Subguard Insurance Cost)	1.10%	5,087,769	\$ 2.25
<b>13</b>	Sales Tax		0	\$ -
<b>14</b>	<b>TOTAL INDIRECT COST</b>	<b>2.32%</b>	<b>\$ 10,730,568</b>	<b>\$ 4.74</b>
<b>15</b>	<b>TOTAL CONSTRUCTION COST w/o Garage</b>		<b>\$ 473,255,036</b>	<b>209.10</b>
		<b>Area</b>	<b>Totals</b>	<b>\$/S.F.</b>
	Parking Garage	486,480	44,214,991	\$ 90.89
<b>15a</b>	<b>TOTAL GARAGE CONSTRUCTION COSTS</b>		<b>\$ 44,214,991</b>	
	<b>TOTAL CONSTRUCTION COST w Garage</b>		<b>\$ 517,470,027</b>	<b>\$ 228.63</b>

<i>Phase Description</i>		Consultant <i>Area</i>	Budget	
			<i>Totals</i>	<i>\$/S.F.</i>
<b>DEVELOPMENT FEES</b>		<b>% of CC</b>		
16	Fixtures, Furnishings and Equipment (FF&E)	5.000%	23,126,223	\$ 10.22
17	Operating Supplies and Equipment (OSE)	1.500%	6,937,867	\$ 3.07
18	Information Technology/Telecomm	2.500%	11,563,112	\$ 5.11
19	Pre-Opening Budget	2.000%	9,250,489	\$ 4.09
20	Permits and Plan Check Fees	0.080%	370,020	\$ 0.16
21	Survey, Plats etc.	0.018%	80,942	\$ 0.04
22	Environmental Testing, Geotech and Archaeology	0.015%	69,379	\$ 0.03
23	Operator's Technical Services	0.080%	370,020	\$ 0.16
24	Legal & Closing	0.015%	69,379	\$ 0.03
25	Owner's Development Services	0.050%	231,262	\$ 0.10
26	<b>SUBTOTAL DEVELOPMENT FEES</b>		<b>\$ 52,068,692</b>	<b>\$ 23.01</b>
<b>OFFSITE, PERMITS, TESTING, FEES</b>		<b>% of CC</b>		
27	Central Plant Costs	0.000%	-	\$ -
28	3rd Party Testing	0.086%	400,000	\$ 0.18
29	LEED Commissioning	0.065%	300,000	\$ 0.13
30	Permit Cost, Sewer & Utility Connection, Impact Fees	0.150%	693,787	\$ 0.31
31	Adacent Improvements Fund	1.000%	4,625,245	\$ 2.04
32	Owner's Contingency	5.000%	23,126,223	\$ 10.22
33	<b>SUBTOTAL OFFSIT/PERMIT/TESTING FEES</b>		<b>\$ 29,145,255</b>	<b>12.88</b>
<b>DESIGN &amp; PRECONSTRUCTION FEES</b>				
34	Design Fees	9.00%	41,627,202	\$ 18.39
35	<b>SUBTOTAL DESIGN FEES</b>		<b>\$ 41,627,202</b>	<b>\$ 18.39</b>
<b>TOTAL PROJECT SOFT COST</b>			<b>\$ 122,841,149</b>	<b>\$ 54.27</b>
<b>TOTAL PROJECT COST</b>			<b>\$ 640,311,176</b>	<b>\$ 282.91</b>

# ECONOMIC IMPACT

## **PURPOSE**

Analyze the economic benefits of two scenarios:

- Expansion and Enhancement of Convention Center
- Expansion and Enhancement of Convention Center with an adjacent Convention Center Hotel

# ECONOMIC IMPACT

## **THE WASHINGTON ECONOMICS GROUP, INC. (WEG)**

- Provides customized economic and business consulting services for corporations and institutions
- Headed by former U.S. Under Secretary of Commerce for Economic Affairs, Dr. J. Antonio Villamil
  - over thirty years of high-level experience as a business executive
  - Dean of the School of Business of St. Thomas University, Miami, Florida

# CLIENTS (select sample)

## **Multinational Corporations**

- Lockheed Martin
- FedEx Latin America
- IBM
- Motorola
- SBC Communications
- Ameritech International
- Lucent Technologies
- MediaOne/AT&T
- Visa International
- MasterCard International
- Telefonica Data Systems
- PBSJ

## **Public Institutions, Non-Profit Organizations and Universities**

- Baptist Health Systems
- Jackson Health Systems
- Miami-Dade Expressway Authority
- Miami-Dade College
- Miami Museum of Science
- Zoological Society of Florida
- Florida International University
- University of Miami
- *Universidad Politécnica de Puerto Rico*
- *Sistema Universitario Ana G. Méndez*
- Florida Agricultural & Mechanical University (FAMU)
- Inter-American Development Bank (IDB)
- United Nations Economic Development Program (UNDP)

# Economic Impact Analysis for Various Miami Beach Convention Center Expansion Scenarios

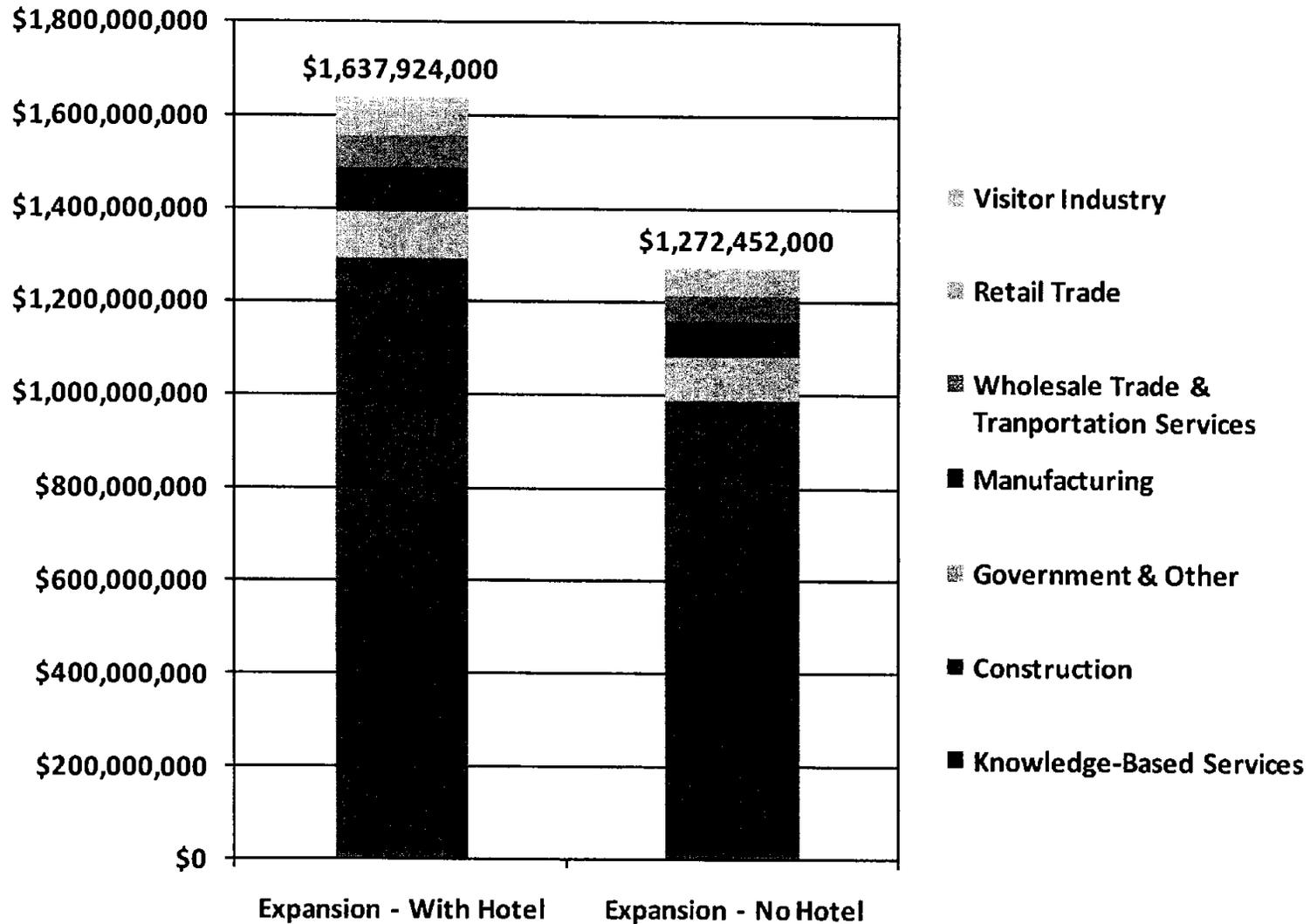
Presented by:

weg | The Washington  
Economics Group, Inc. <



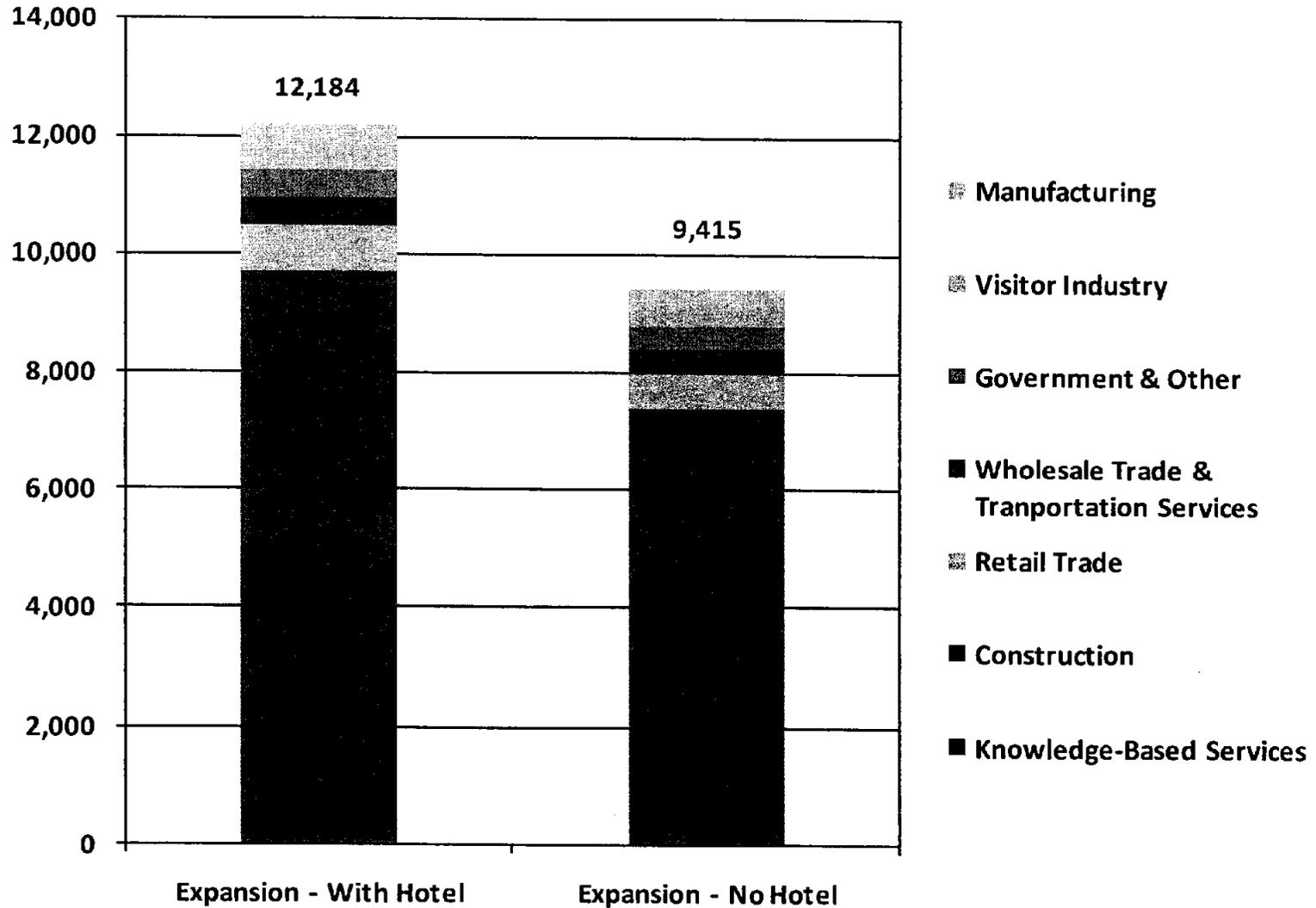
February 24, 2011

# ESTIMATED ECONOMIC IMPACTS RESULTING FROM CONSTRUCTION



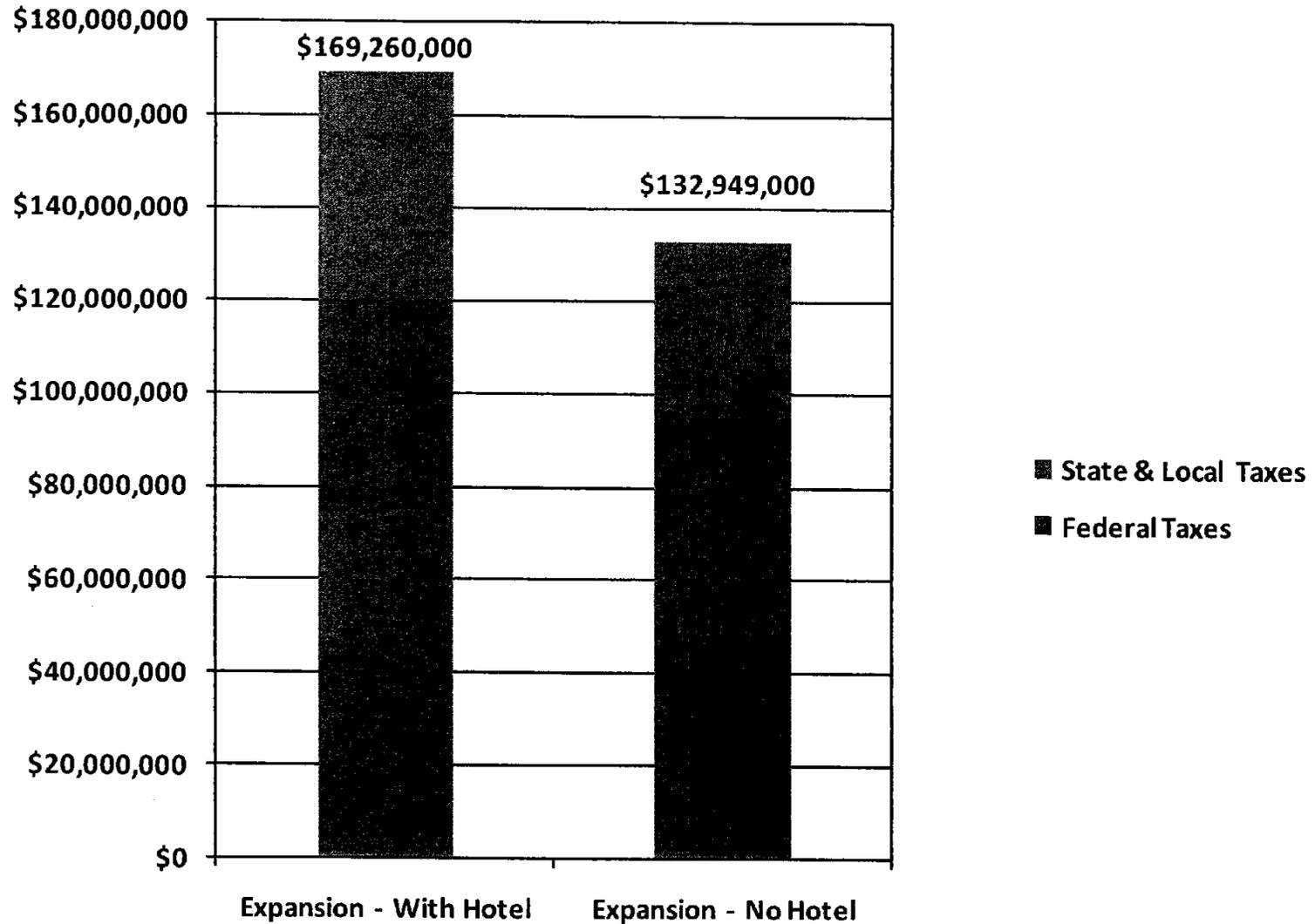
Source: The Washington Economic Group (WEG)

# ESTIMATED JOBS SUPPORTED BY CONSTRUCTION



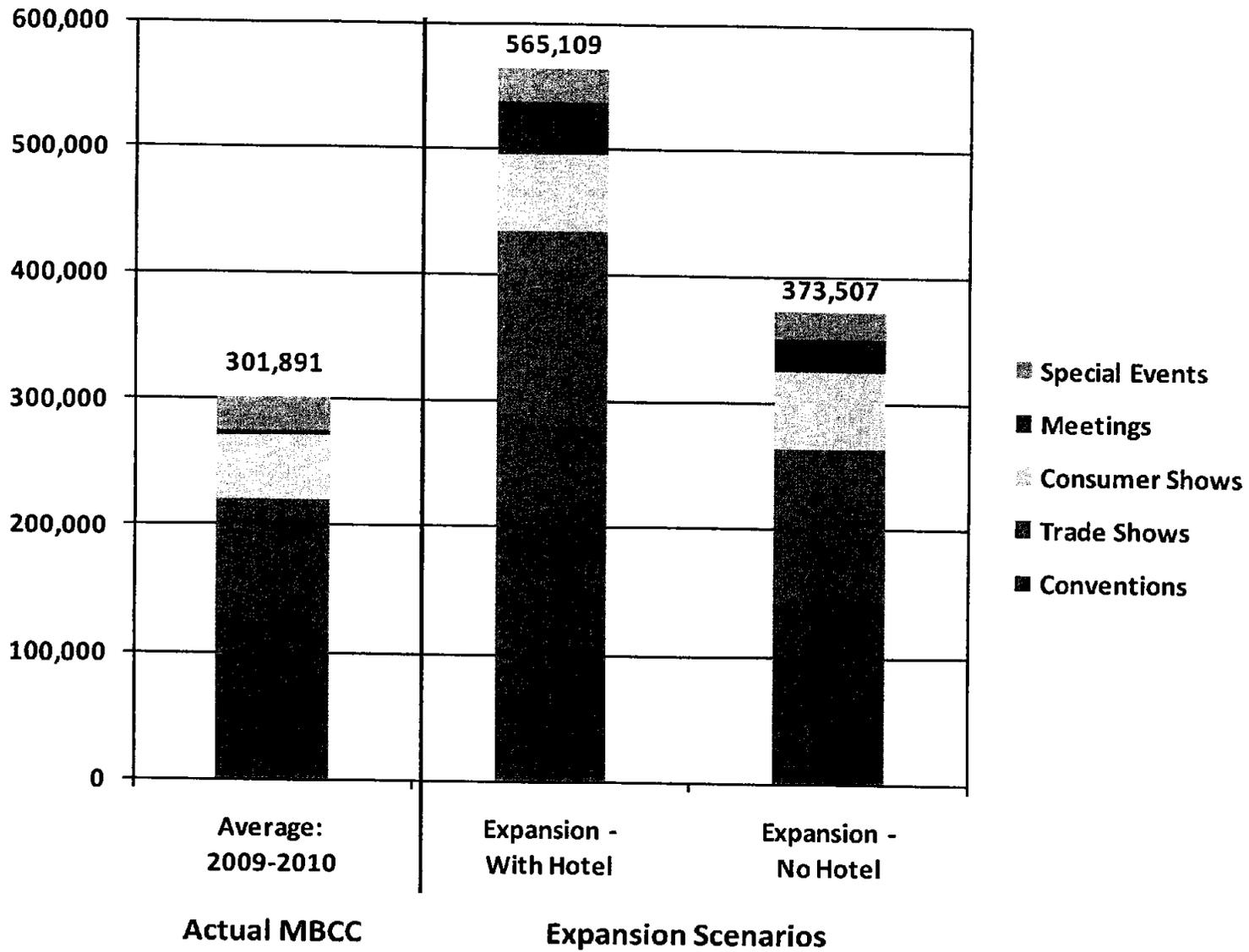
Source: The Washington Economic Group (WEG)

# ESTIMATED TAXES GENERATED BY CONSTRUCTION



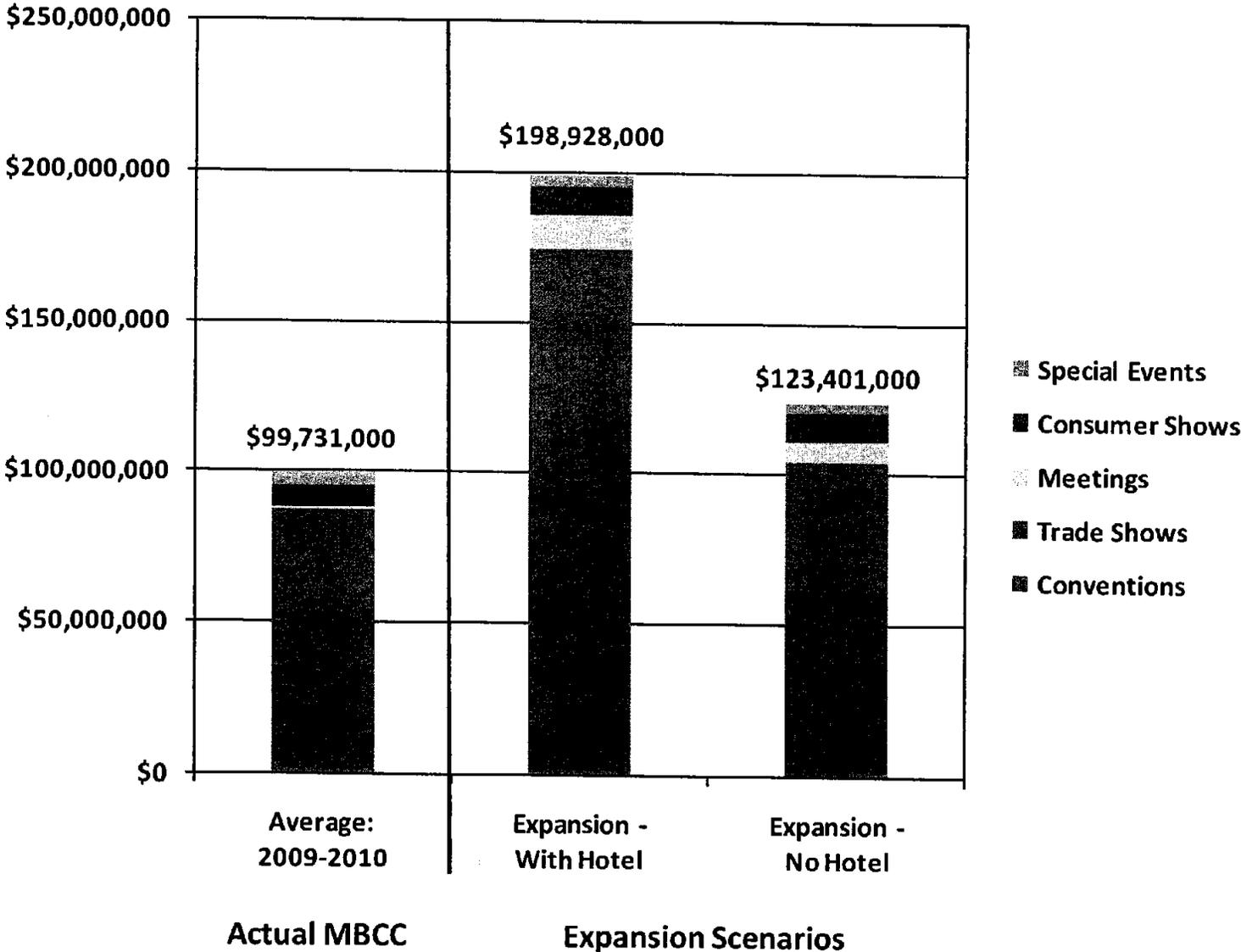
Source: The Washington Economic Group (WEG)

# ESTIMATED NON-LOCAL ATTENDEE DAYS



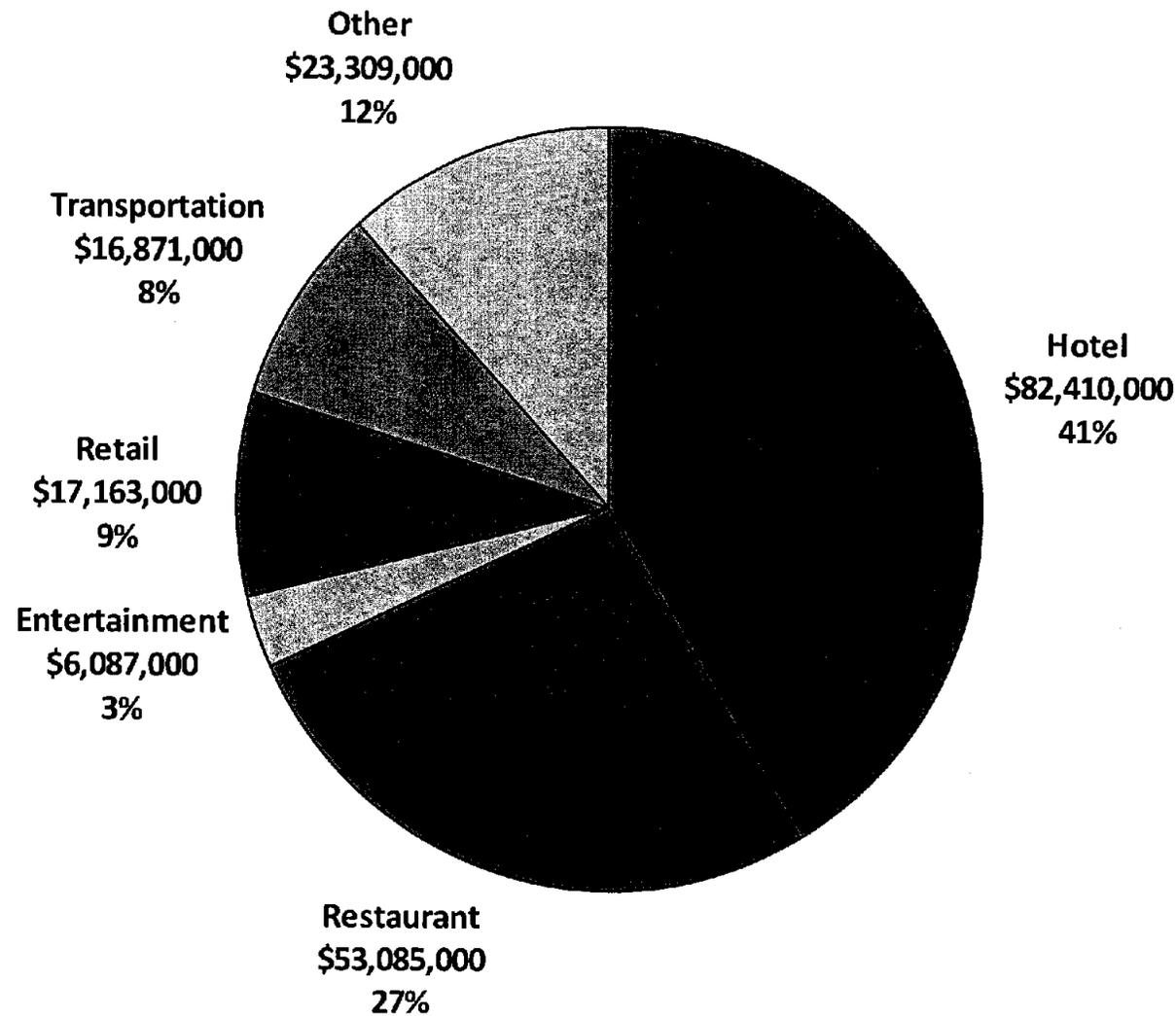
Source: CSL International

# ESTIMATED NET NEW DIRECT SPENDING



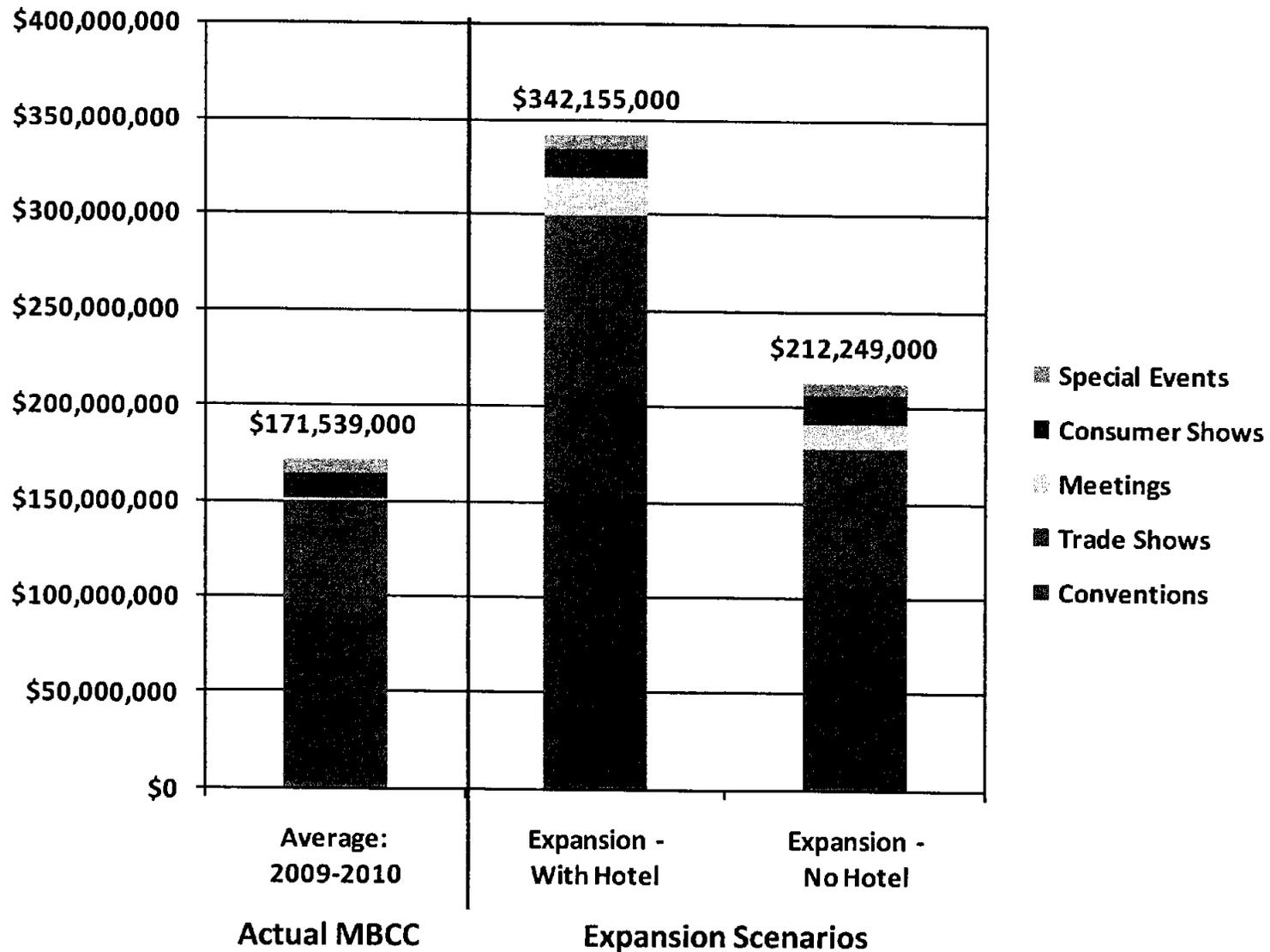
Source: CSL International

# DIRECT SPENDING BY INDUSTRY: EXPANSION WITH HOTEL SCENARIO



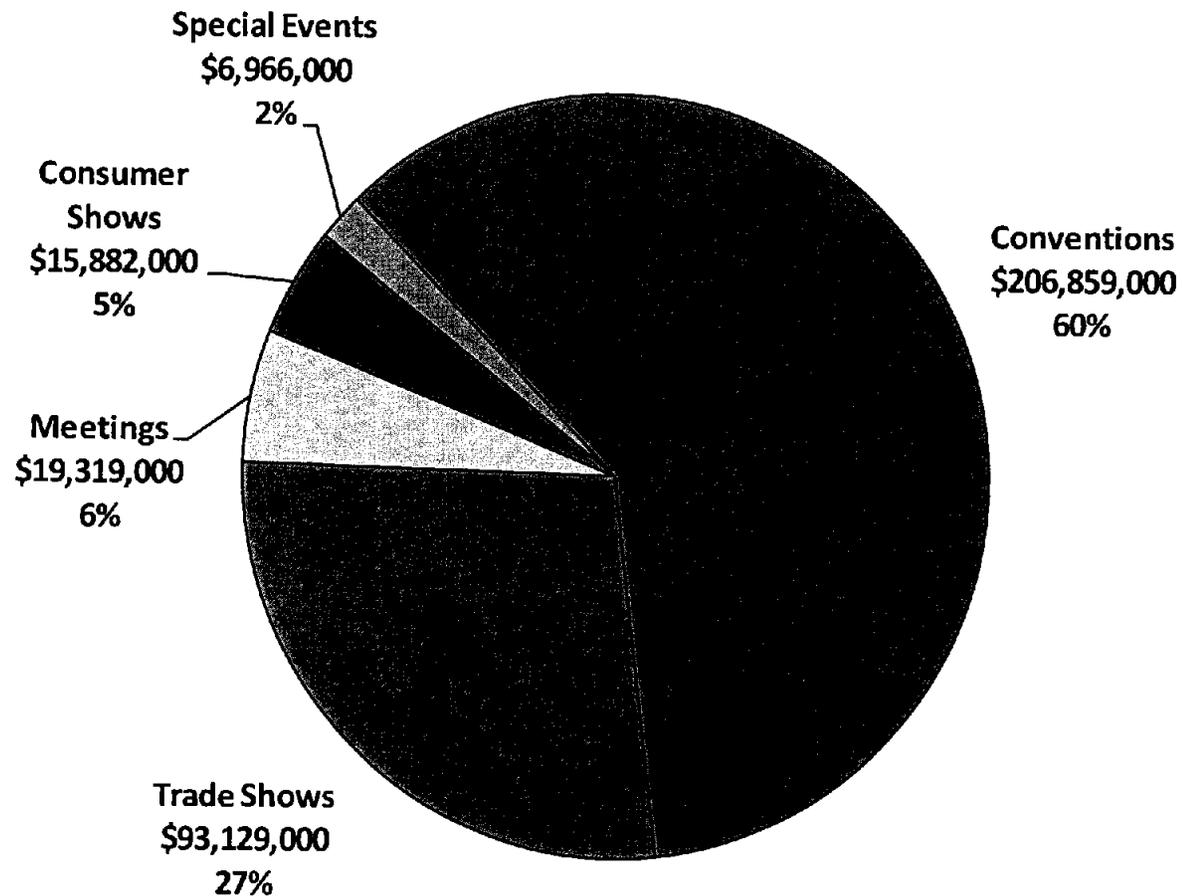
Source: CSL International

# ESTIMATED OUTPUT (TOTAL ECONOMIC ACTIVITY)



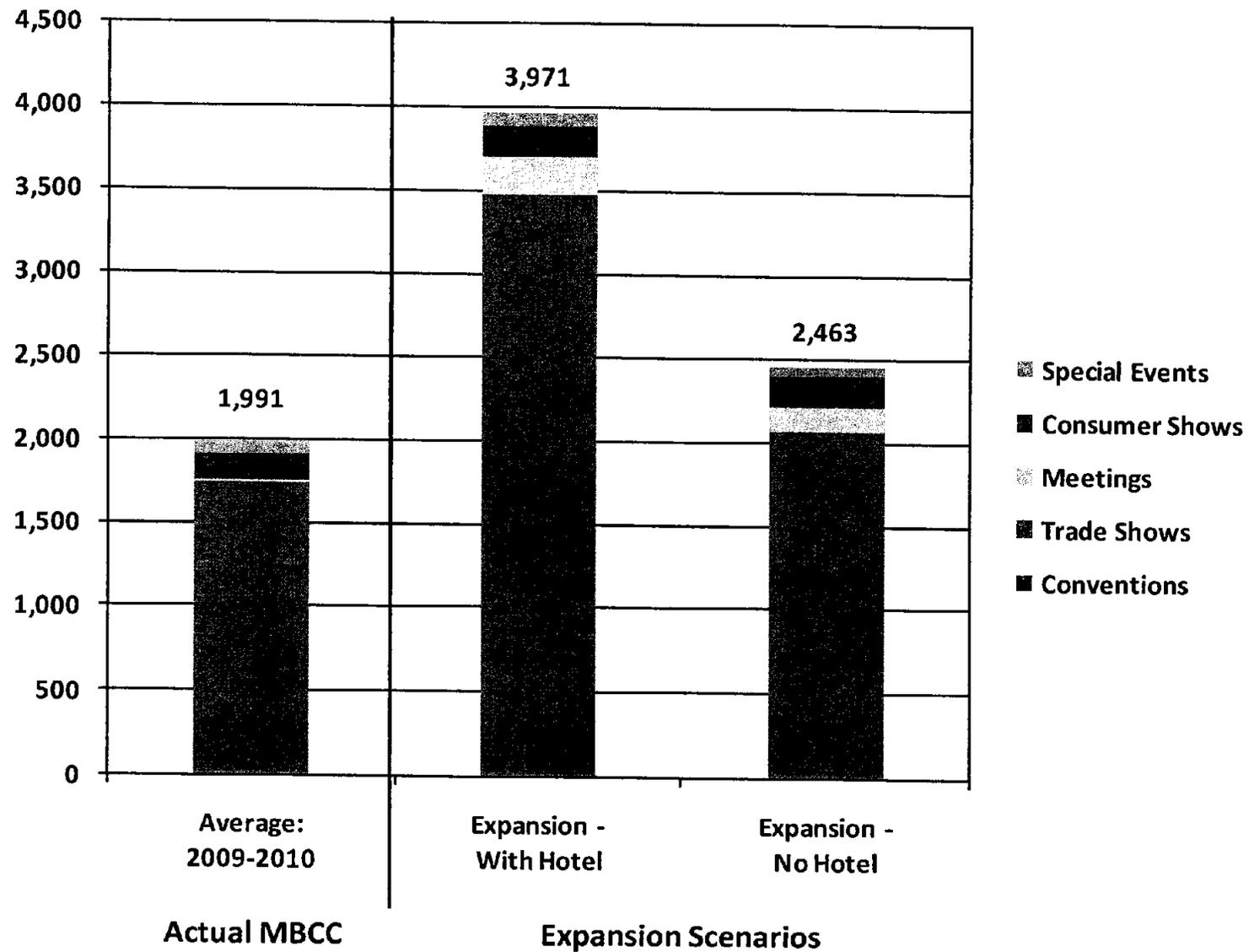
Source: CSL International

# OUTPUT GENERATED BY EVENT TYPE: EXPANSION WITH HOTEL SCENARIO



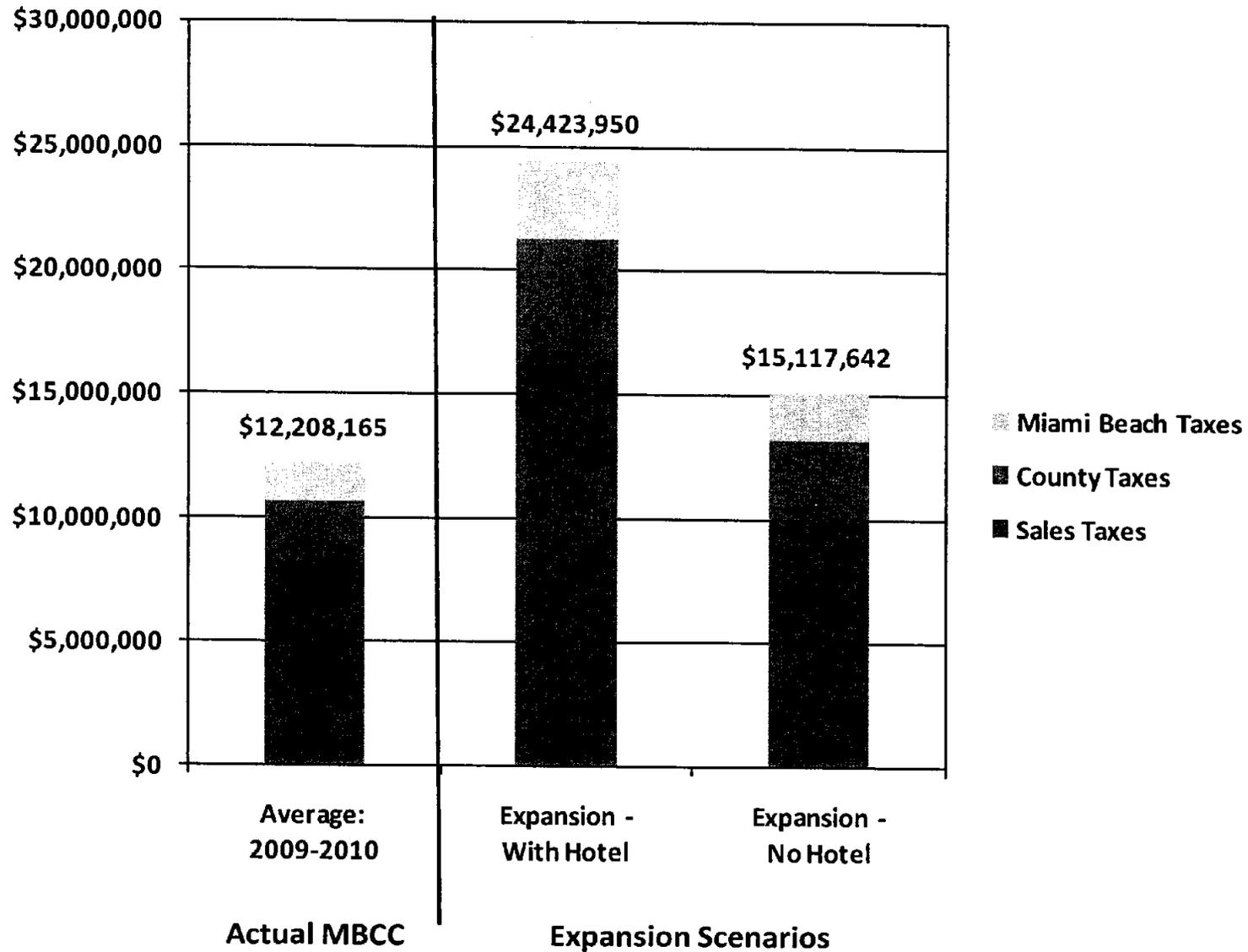
Source: CSL International

# ESTIMATED JOBS SUPPORTED



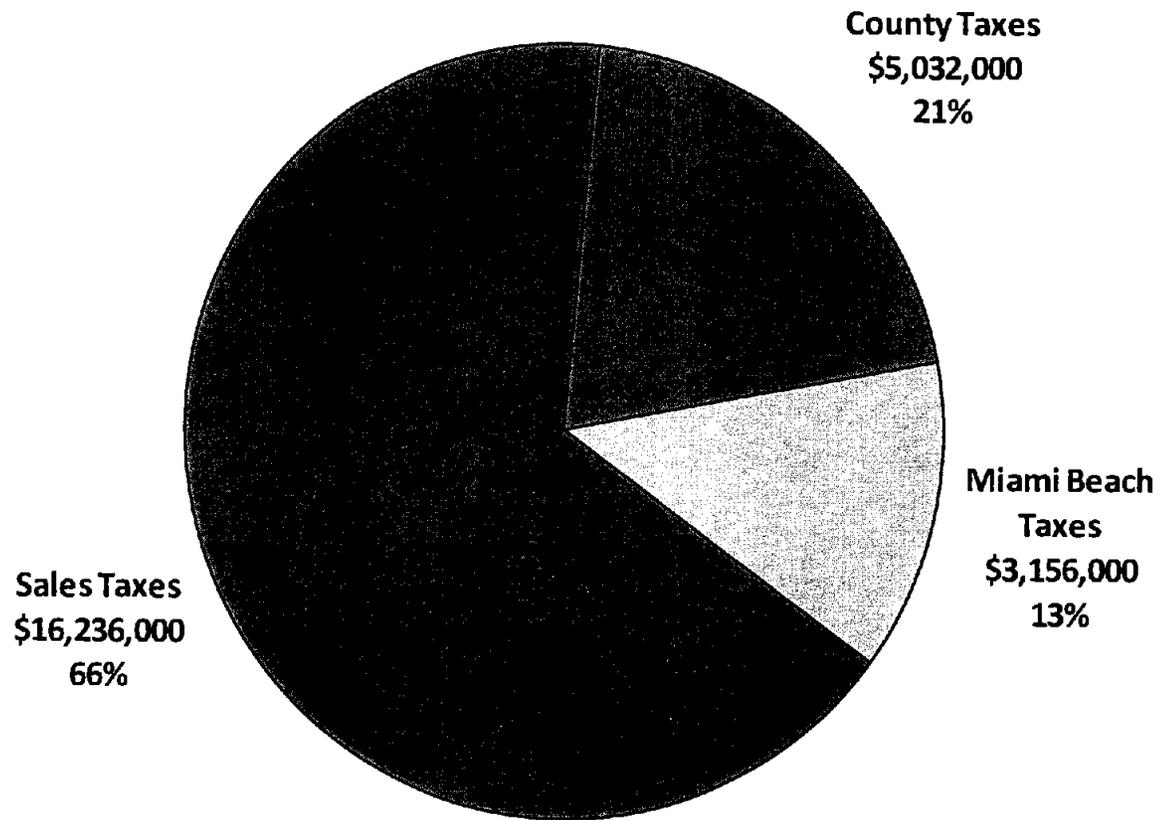
Source: CSL International

# ESTIMATED TAXES GENERATED



Source: CSL International

# TAXES GENERATED BY TAX TYPE: EXPANSION WITH HOTEL SCENARIO



Source: CSL International

CONVENTION CENTER

# Q & A