



MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: September 19, 2013

This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee has been scheduled for September 19, 2013, at 3:00 P.M. in the City Manager's Large Conference Room.

The agenda is as follows:

OLD BUSINESS

1. **Discussion of old business items to determine if they should remain on the pending items list:**
 - a) **Status update on Business Tax Process Improvement**
Patricia Walker – Chief Financial Officer
 - b) **Additional proposed amendment to the City's Living Wage Ordinance Mandating Health Benefits Plan (September 21, 2011 Commission Item R7E)**
Raul Aguila – Chief Deputy City Attorney
 - c) **Discussion of responses received from the Request for Letters of Interest (RFLI) for a North Beach parking garage**
Richard Lorber – Planning & Zoning Manager
 - d) **Discussion on water conservation methods and implementation (June 6, 2012 Commission Item C4G)**
Jay Fink – Assistant Director Public Works
 - e) **Discussion regarding upgrade to Municipal Parking Garage gated revenue control system (January 16, 2013 Commission Item C4J)**
Saul Frances – Parking Director

f) Discussion regarding the issuance of a request for qualifications for a third franchise Solid Waste contractor for residential and Commercial Solid Waste collections and disposal (March 13, 2013 Commission Item C4A) (May 8, 2013 Commission Item C2C)

Jay Fink – Assistant Director Public Works

g) Discussion regarding permit expiration courtesy notices; Amnesty for expired permits; And length of time for building permits (March 13, 2013 Commission Item C4O)

Stephen Scott – Deputy Director Building

2. **Discussion regarding existing tenant's new proposal to renew the retail lease agreement with 1560 Collins Avenue, Inc. D/B/A Shan ("Tenant"), for the use of suites B and C in the Anchor Shops, located at 1560 Collins Avenue, Suite No 2, Miami Beach, Florida ("Space"); Compared to the US Vintage proposal for this space, approved at the July 25, 2013 Citywide Projects Commission Committee**

Max Sklar – Cultural Arts & Tourism Development Director

3. **Discussion regarding a proposal from Alpha 22, LLC to lease 2,216 square feet of city-owned vacant property, located at 22nd Street and Washington Avenue, adjacent to existing restaurant space located at 816 Commerce Street, Miami Beach, Florida 33139 (Space), to be used as outdoor café, concurrent with the lease/use of the adjoining restaurant**

Max Sklar – Cultural Arts & Tourism Development Director

4. **Discussion regarding an amendment to the lease by and between the City of Miami Beach ("landlord") and Massage Partners, Inc. ("tenant") dated September 15, 2010, for the premises located at 1701 Meridian Avenue, unit 2 (a/k/a 767 17th street), Miami Beach, Florida, concerning: 1) the additional use of the demised premises as a nail salon; and 2) the use of the common area restrooms located on the second floor of the 1701 Meridian Avenue office building for tenant's nail salon customers**

Max Sklar – Cultural Arts & Tourism Development Director

NEW BUSINESS

5. **Discussion regarding Red Light Cameras in Miami Beach in light of a new State Law that goes into effect on July 1, 2013 (July 19, 2013 Commission Item R9M)**

Michael Gruen – Police Planning and Research Manager

6. **Discussion to immediately reinstate the Fee Waiver for Sidewalk Cafes in North Beach** (*July 19, 2013 Commission Item R9P*)
Eric Carpenter – Public Works Director

Finance and Citywide Projects Committee Meetings for 2013:

September 19, 2013

October 24, 2013

November 14, 2013

December 19, 2013

PENDING ITEMS: REFER TO ATTACHMENT 1

PDW/rs/kd

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

Cc. Mayor and Members of the City Commission
Management Team

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Discussion Item

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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Members of the Finance and Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager 

DATE: September 19, 2013

SUBJECT: **A DISCUSSION REGARDING EXISTING TENANT'S NEW PROPOSAL TO RENEW THE RETAIL LEASE AGREEMENT WITH 1560 COLLINS AVE., INC. D/B/A SHAN ("TENANT"), FOR THE USE OF SUITES B AND C IN THE ANCHOR SHOPS, LOCATED AT 1560 COLLINS AVENUE, SUITE NO 2, MIAMI BEACH, FLORIDA ("SPACE"); COMPARED TO THE US VINTAGE PROPOSAL FOR THIS SPACE, APPROVED AT THE JULY 25, 2013 FINANCE AND CITYWIDE PROJECTS COMMISSION COMMITTEE.**

ISSUE

Shall the Finance and Citywide Projects Commission Committee recommend in favor of approving the Tenant's five year renewal option, based upon Tenant's new proposal ("Shan Proposal"), as compared with the proposal submitted by US Vintage, Inc. d/b/a US Vintage ("US Vintage"), which was approved at the July 25, 2013 Finance and Citywide Projects Commission Committee ("FCWPC") ("US Vintage Proposal").

BACKGROUND

On March 20, 2002, the RDA authorized an assignment of the Lease from Flagler System Management, Inc., to CDP Capital/Montreal Mode Investissements, under the name of 1560 Collins Avenue, Inc., involving the operation of Absolutely Suitable, one of the first retail businesses to occupy the Anchor Shops since its opening in December, 1998. Absolutely Suitable, which has since been re-branded under the name of Shan Swimwear, occupies a 2,697 space fronting on Collins Avenue, across the street from the Loews Hotel, selling high-end swimwear and related apparel, including sun-tanning accessories, hats, skin-care products and sunglasses.

At the time of the assignment, only six years remained on the original lease term, resulting in the Tenant's request to enter into a new lease, which was approved by the RDA on October 17, 2007, with an initial term of five (5) years commencing on March 19, 2008 and expiring on March 18, 2013, with one (1) renewal option for an additional five (5) years, upon the expiration of the initial term. At the end of the initial term, the gross rent payment was \$47.50 per square foot or \$10,667.00 per month, \$128,004.00, annually.

ANALYSIS

Since the current Lease does not address rent during the renewal term, staff has been in discussions with the Tenant's Montreal-based parent company in trying to reach an agreement over an acceptable rent structure. Based upon an internal analysis of prevailing rents in the area between Collins and Washington Avenues, between 15th

Street and Lincoln Road, as well as along Collins Avenue, from 12th Street through Lincoln Rd., rents for available retail space range from a low of \$55 to a high of \$125 per square foot, with an average of \$89.35 per square foot, quoted on a triple net basis ("Fair Market Rent"), as follows:

| Comparable Market Rents for Shan Memo as of July 15, 2013 | | | | | | |
|---|--------------|-----------------|---------------------|------|------|--------|
| (Between 15th St. and Lincoln Rd.; from Washington Ave to Collins Ave.; | | | | | | |
| Along Collins Ave., from 12th St. through Lincoln Rd. | | | | | | |
| Address: | Sq.Ft | Rent/sq.ft. | Annual Rent | Type | Term | Use |
| 1200 Collins Ave | 3000 | \$ 100.00 | \$ 300,000 | NNN | NA | Retail |
| 1208 Collins Ave | 5376 | \$ 111.61 | \$ 600,015 | NNN | NA | Retail |
| 1351 Collins Ave | 4500 | \$ 85.00 | \$ 382,500 | NNN | NA | Retail |
| 1656 Collins Ave | 3000 | \$ 125.00 | \$ 375,000 | NNN | NA | Other |
| 1610 Washington Ave | 1847 | \$ 75.00 | \$ 138,525 | NNN | NA | Retail |
| 1601 Washington Ave | 3,917 | \$ 55.00 | \$ 215,435 | NNN | NA | Retail |
| 1542 Washington Ave | 5500 | \$ 82.91 | \$ 456,005 | NNN | NA | Retail |
| 1502 Washington Ave | 1741 | \$ 65.00 | \$ 113,165 | NNN | NA | Retail |
| Total | 28881 | \$ 89.35 | \$ 2,580,645 | | | |
| Source: LoopNet | | | | | | |

* Comparables attached hereto as Exhibit "1"

For further consideration, Staff is providing the FCWPC with an Anchor Shops – Retail Tenant Profile as of 07/01/2013, attached hereto as Exhibit "2". You will note that of the remaining six leases, two (US Vintage located on Collins Avenue next to the subject lessee, which pays \$65/psf, and Vacation Tours located on the corner of Washington and 16th Street) are scheduled to expire in 2014, with no renewal options available. Currently, US Vintage is awaiting approval by the Chairperson and Members of the Miami Beach Redevelopment Agency (RDA), at the RDA meeting scheduled for September 11, 2013, with respect to its proposal to terminate its current Lease and enter into a new lease, having an initial term of three years with two additional renewals of 3 years and 3 years and 364 days, respectively, at the initial base rent of \$65/psf plus CAM at the initial rate of \$1.41/psf, which proposal was recommended at the July 25, 2013 FCWPC meeting. Another lease with ArtConnection International, located on 16th Street, is scheduled to expire in 2015 with no renewal option. The remaining leases with Liquor Lounge and BBQ Beach, Inc. will expire in five and three years, respectively.

It is important to differentiate the only other recent lease agreement at the Anchor Shops, dated October 2, 2012, between the City and Tenant, Mr. R. Sports, Inc., leasing Suites 1-4, at the current rate of \$31.00 per square foot. This Tenant's rent is lower than the Fair Market Rent for the Tenant's Space because Mr. R. Sports, Inc.'s location fronts 16th Street, instead of Collins Avenue. In addition, at the time Mr. R. Sports, Inc. negotiated its lease, the space had been vacant for a period in excess of a year and a half. Mr. R. Sports, Inc. had a successful track record at its prior location on Lincoln Road, with a strong following in the sports shoe industry, bringing his brand name recognition as an asset to the Anchor Shops.

At the July 25, 2013 FCWPC meeting, US Vintage also presented Staff with an offer to lease the Tenant's space for \$65.00 per square feet, on a triple net basis, with annual CPI increases, the greater of 3% or CPI, based upon a lease term of ten years, a copy of which is attached hereto as Exhibit "3" ("US Vintage Proposal"). US Vintage already has the space abutting Tenant's current space and sells clothing for men, women and juniors, weekend wear, designer shoes, perfumes, eyewear, and Miami Beach souvenirs.

Tenant, at the time, citing a reduction in sales since their income stream from the years prior to 2008, claimed that it could not afford to pay the Fair Market Rent and proposed to pay gross rent, in the amount of \$48.00 per square foot during the first year, with annual increases thereafter, based upon the CPI index but not to exceed 3% from the previous year's rent ("Initial Shan Offer"). In the alternative, Tenant proposed that the City, at its expense, reduce the space from 2,697 square feet to 1,500 square feet ("New Reduced Space"), charging Tenant for the New Reduced Space at the Fair Market Rent. While this option would be beneficial to the Tenant, Staff did not recommend said option, based upon the unknown construction costs involved. When comparing the US Vintage Proposal, the Initial Shan Offer and a possible new tenant proposal ("New Tenant Proposal"), the US Vintage Proposal made better business sense and the FCWPC recommended the US Vintage Proposal.

Since the July 25, 2013 FCWPC meeting, Tenant's Montreal-based parent company made the business decision to keep its presence in Miami Beach, Florida and fund any shortages which Shan may have during the renewal term, as they have seen steady increases in the gross revenues in the past months. Based upon this decision, on August 28, 2013, Tenant submitted a proposal to renew its lease, for the balance of its five year renewal term ("Shan Proposal"), based upon comparable rental terms to those of the US Vintage Proposal. A copy of the Shan Proposal, inclusive of financial statement, is attached hereto and made a part hereof as Composite Exhibit "6".

Staff has prepared the following comparisons for consideration, based upon a five year period, including, the Shan Proposal; the US Vintage Proposal; the New Tenant Proposal, based upon Fair Market; and the previously submitted proposal from 7-11, Inc., as follows:

| Shan Proposal with Minimum 3% escalations | | | | | | | |
|---|------|----------|---|-----------|----------------|-----|--------|
| Years 1 | 2697 | \$ 66.41 | * | \$ | 179,108 | NNN | Retail |
| Years 2 | 2697 | \$ 68.40 | | \$ | 184,481 | NNN | Retail |
| Years 3 | 2697 | \$ 70.45 | | \$ | 190,015 | NNN | Retail |
| Years 4 | 2697 | \$ 72.57 | | \$ | 195,716 | NNN | Retail |
| Years 5 | 2697 | \$ 74.75 | | \$ | 201,587 | NNN | Retail |
| Total | | | | \$ | 950,907 | | |
| * During year one of the Lease, Shan will commence paying the new rate of \$66.41/psf on November 1, 2013; however, under the US Vintage Proposal, we would have had to give Shan time to move and the increased rent would not have occurred earlier than January of 2014. | | | | | | | |
| Shan's current lease does not provide for CAM payments so Shan included the additional sum in their rent offer in order to match the US Vintage Offer. | | | | | | | |

| US Vintage Proposal with minimum 3% annual escalations | | | | | | |
|---|------|----------|----|-------------------|-----|--------|
| Years 1 | 2697 | \$ 65.00 | \$ | 175,305 | NNN | Retail |
| Years 2 | 2697 | \$ 66.95 | \$ | 180,564 | NNN | Retail |
| Years 3 | 2697 | \$ 68.96 | \$ | 185,981 | NNN | Retail |
| Years 4 | 2697 | \$ 71.03 | \$ | 191,561 | NNN | Retail |
| Years 5 | 2697 | \$ 73.16 | \$ | 197,307 | NNN | Retail |
| Total | | | | \$ 930,718 | | |

In addition, US Vintage would be paying CAM at the initial rate of \$1.41/psf, which makes the total payment for the first year \$66.41/psf.

| New Tenant Proposal - Best Case Scenario, based upon five year Lease with 3% CPI increases | | | | | | |
|---|---------|-------------|------|----------------|------|--------|
| | Sq. Ft. | Rent/Sq.ft. | Rent | | Type | Use |
| Years 1 | 2697 | \$ 89.35 | \$ | 240,977 | NNN | Retail |
| Years 2 | 2697 | \$ 92.03 | \$ | 248,206 | | |
| Years 3 | 2697 | \$ 94.79 | \$ | 255,652 | | |
| Years 4 | 2697 | \$ 97.64 | \$ | 263,322 | | |
| Years 5 | 2697 | \$ 100.56 | \$ | 271,222 | | |
| Total Rent for Five years | | | \$ | 1,279,379 | | |
| Less Commissions | | | \$ | (51,175.17) | | |
| Less Six months of Rent Concess | | | \$ | (120,488.48) | | |
| Less nine month vacancy during marketing | | | \$ | (180,732.71) | | |
| Less Built Out Concessions | | | \$ | (50,000.00) | | |
| Net Rent to City at end of 10 years | | | \$ | 876,983 | | |

On or about September 22, 2012, staff received a letter of Intent, for a proposed lease between the City and 7-Eleven, Inc. ("7-11 Offer"), in connection with the subject Space, a copy of which is attached hereto as Composite Exhibit "4". The proposal included an initial lease term of five years, with four additional lease options of five years each (with a 10% rent increase during each renewal term), for a total maximum lease term of twenty-five years. The proposal is based upon a site with 2,000 square feet; however, the subject site has 2,697 square feet. The proposed rent for the initial five years is \$73.00 per square foot, on a triple net basis. Assuming the offer applied to the entire space, triple net rent, pursuant to the 7-11 Offer, would be \$196,881.00/year and \$16,406.75/mo, with a total five year rental income of \$984,405.00.

| | |
|---|---------------------|
| Total Rental Income for five years: | \$984,405.00 |
| Less expenses in connection with said five years: | |
| 1. Landlord Construction allowance | \$ 50,000.00; |
| 2. Rent Commencement delay of six months | \$ 98,440.50; |
| 3. Real estate commission for initial five year lease term (4%) | \$ 39,376.20; |
| Total Expenses | \$187,816.70 |
| Net Rental Income at end of the initial five year term: | \$796,588.30 |

When calculating the landlord related expenses over five years, at the rate of \$13.93 per square foot, the rate, in the best light, becomes approximately \$59.07 per square foot, on a triple net basis.

Staff would recommend moving forward with the Tenant's proposal, in that, monetarily the offer matches the US Vintage Proposal and it would keep the diversity of merchandise being sold at the Anchor Shops, while at the same time diversifying the risk of a default. Shan is current in its leasehold obligations and has been a compliant Tenant throughout its tenancy.

It should be noted that since negotiations with the Tenant have extended past the March 18, 2013 expiration date of the initial Lease, pursuant to the provisions in the Lease, the Term has been extended on a month-to-month basis at the current rental rate until revised terms are approved by the City for the remaining five-year option.

Based upon the aforementioned, the Administration is seeking the direction of the Finance and Citywide Projects Commission Committee, as follows: For purposes of continuing the lease with Tenant, a determination of Fair Market Rent, including yearly escalations; or, in the alternative, re-affirm the prior approval of the US Vintage Proposal, as approved at the July 25, 2013 FCWPC meeting.

JLM/KGB/MS/GNT

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Enclosures:

- *Market Comparable Summary Matrix- Exhibit "1"*
- *Anchor Shops Retail Tenant Profiles as of 04/01/2013 – Exhibit "2"*
- *Letter of Intent from US Vintage – Exhibit "3"*
- *Letter of Intent from 7-Eleven, Inc. – Exhibit "4"*
- *Tenant's proposal for renewal and financial statement- Exhibit "5"*

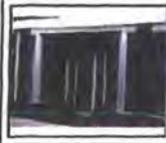
Prepared for
7/15/2013

Presented by Gisele Torres
Miami Beach - Office of Real Estate, Housing &
Community Development
(305) 673-7000
giselatorres@miamibeachfl.gov

Properties for Lease

| |  |  |  |  |  |  |
|-----------------------------|---|--|---|---|---|--|
| Address | 1208 COLLINS AVE Miami Beach, FL 33139 | 1502 Washington Avenue Miami Beach, FL 33139 | 1601 Washington Avenue Miami Beach, FL 33139 | 1200 Collins Ave Miami Beach, FL 33139 | 1656 Collins Avenue Miami Beach, FL 33139 | 1351 Collins Avenue Miami Beach, FL 33139 |
| Property Type | Retail | Retail | Retail | Retail | Retail | Retail |
| Property Subtype | Free Standing Bldg | Restaurant | Strip Center | Restaurant | Street Retail | Restaurant |
| Zoning | | | | | | |
| Building Size | 11,376 SF Bldg | 1,741 SF Bldg | 5,822 SF GLA | 15,000 SF Bldg | 16,726 SF Bldg | 16,186 SF Bldg |
| Year Built | | | | | 1941 | |
| No. Stories | | | | | | |
| Lot Size | | | | | | 7,000 SF |
| APN / Parcel ID | | | | | | |
| Space Available | 5,376 SF | 1,741 SF | 823 - 3,094 SF | 3,000 SF | 3,000 SF | 4,500 SF |
| Asking Rent | \$111.61 /SF/Yr | \$65 /SF/Yr | \$55 /SF/Yr | \$100 /SF/Yr | \$125 /SF/Yr | \$85 /SF/Yr |
| Spaces | 1 Space | 1 Space | 2 Spaces | 1 Space | 1 Space | 1 Space |
| Property Description | -Iconic stand alone retail building in the heart of South beach -Incredible visibility and frontage on Collins Ave -Floor to ceiling windows with ... | Fully built out restaurant space with all impact fees paid Ideal café space with large outdoor seating area Adjacent to Five Guys Burgers and Fries... | Located one block south of Lincoln Road. Within walking distance of retail shops and restaurants. | Great turnkey class A restaurant space in the heart of south beach. The Marlin Hotel is one of the world famous icons on Miami Beach and hosts fir... | With frontage along Collins Avenue, this newly available Sublease space has dedicated HVAC, Electric, Bathrooms, Store Entrance and more. Space was... | Nearly 40 feet of frontage on Collins Avenue. High visibility to the 27,000 cars that travel along this primary North/South corridor daily. |
| Location Description | -Nearby tenants include: Barney's Co-op, Guess, Puma, Banana Republic, Diesel, Armani A/X, Quicksilver, Victoria's Secret - Next door to luxury multi-brand boutique, The Webster | Completely renovated building Near Lincoln Road and the City Center area with abundant office space and hotels in the immediate area | On the northeast corner of Washington Avenue and 16th Street | Marlin Hotel at the corner of Collins Avenue and 12th street | Across the street from the Ritz Carlton and steps away from many of the World's Leading hotels. Parking is available in numerous nearby lots. On the corner of Lincoln Road & Collins Avenue. | Adjacent to the Clifton and neighboring several other hotels including the Beachcomber, South Beach Plaza, Dream South Beach, Kent and Lords. One block west of Ocean Drive, one block |
| Notes | | | | | | |

EXHIBIT 1



| | | |
|-----------------------------|---|---|
| Address | 1610 Washington Avenue Miami Beach, FL.33139 | 1542 Washington Ave Miami Beach, FL.33139 |
| Property Type | Retail | Retail |
| Property Subtype | Retail (Other) | Restaurant |
| Zoning | | |
| Building Size | 256,729 SF Bldg | 5,108 SF Bldg |
| Year Built | | |
| No. Stories | | |
| Lot Size | 84,639 SF | 6,520 SF |
| APN / Parcel ID | | |
| Space Available | 1,847 SF | 5,500 SF |
| Asking Rent | \$75 /SF/Yr | \$82.91 /SF/Yr |
| Spaces | 1 Space | 1 Space |
| Property Description | Frontage along Washington Avenue. Space consists of a ground floor and mezzanine level for a total of 1,847 square feet. Co-tenancy with McDonald's... | High-end restaurant/private club. All new built-out kitchen with equipment. \$100K granite statue, water walls pool, reclaimed wood and granite floo... |
| Location Description | Located one half block from Lincoln Road. Project includes a new 500-space parking garage. Strong pedestrian traffic of 20,000 at the corner of Lincoln Road and Washington Avenue. | Miami Beach prime location within walking distance to the beach, Lincoln Road and Española Way. |
| Notes | | |

Anchor Shops - Retail Tenant Profiles as of 07/01/2013

| Contract Name | Location | Square Footage | Start Date | Expire Date | Base Term | Renewal Option(s) | Current Base Rent | Current Base Rent |
|--|-------------------------|-----------------------|-------------------|--------------------|------------------|--------------------------|--------------------------|--------------------------|
| 1560 Collins Ave, Inc., Fiducie Plage Sud d/b/a Absolutely Suitable Shan | Suite #C2 (B/C) | 2,697 | 03/19/08 | 03/18/13 | 5 YRS | 1 X 5 Years | \$10,675/mo | \$47.50/sq.ft |
| Liquor Lounge, Inc. | A Suite #C1(A) | 2,250 | 12/20/08 | 12/19/18 | 12 YRS | Two (2) 5 Yrs ea | \$10,733.74/mo | \$57.25/sq.ft |
| Cadiac, Inc., d/b/a Paradizzo & Biker's Image-US Vintage | Suite #C3 (D/E) | 4,236 | 04/22/99 | 04/19/14 | 15 YRS | N/A | \$22,945/mo | \$65/sq.ft |
| Mr. R. Sports | Suite #S1-4 (F,G,H & I) | 2,884 | 10/02/12 | 10/01/15 | 3 YRS | 2 X 3 YRS | \$7,450/mo | \$31/sq.ft |
| Vacation Tours of South Beach | Suite #S1-5 (J) | 721 | 03/18/99 | 03/17/14 | 15 YRS | N/A | \$1,602.24/mo | \$26.67/sq.ft |
| Art Connection Int'l | Suite #S1-6 (K) | 721 | 11/10/04 | 11/09/15 | 11 YRS | N/A | \$2,129/mo | \$35.43/sq.ft |
| BBQ Beach, Inc. d/b/a Austen's Brew & Chew | Suite #W1 C6(L, M & N) | 6,217 | 03/01/06 | 02/28/16 | 10 YRS | 1 X 10 YRS | \$12,874.77/mo | \$24.85/sq.ft |

All tenants pay rent on gross basis, with exception of Liquor Lounge, Inc., which pays an additional \$1.39 per square foot for CAM expenses, and Mr. R. Sports, which pays an additional \$1.41 per square foot for CAM expenses.

Subj: LOI for SHAN Space
Date: 15/07/2013 16:40:21 Eastern Daylight Time
From: GiselaTorres@miamibeachfl.gov
To: Joshuaexist@aol.com
CC: MaxSklar@miamibeachfl.gov

Per your request, since your accountant is not in the office today, I had drafted letter for your review/correction/signing so that you may provide today. Please clarify which entity is making the offer and sign and scan to me. Thanks.

July 15, 2013

Gisela Nanson Torres, Leasing specialist
TOURISM, CULTURE AND ECONOMIC DEVELOPMENT DEPARTMENT
Office of Real Estate
555 17 Street
Miami Beach, FL 33139

Re: New Lease for 1560 Collins Ave, Suite #2 (2,697 square feet) - Existing SHAN space

Dear Gisela:

The following shall confirm that I am proposing the following terms in connection with a new lease for the above space.

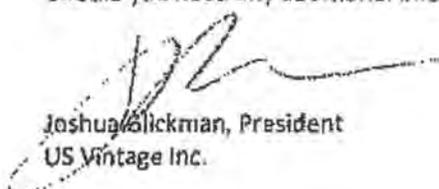
Term of Lease: 9 years and 364 days, commencing upon execution of new lease and taking possession, without rent abatements and Tenant will agree to assume all costs for all necessary build-outs

Base Rent: \$65 per square feet, based upon 2,697 square feet, \$175,305 per year/\$14,608.75 per month plus applicable taxes, with annual Basic Rent increases of the greater of 3% or CPI.

Operational Charges: \$1.41 per square feet for the first year, \$3,802.77/yr; \$316.90 per month, plus applicable taxes. Then, annually CAM will be adjusted based upon prorate share of real estate taxes, pro-rata share of estimated insurance costs, as determined by Landlord (Landlord Self-insures), and pro-rata share of maintenance.

I will be providing my most recent financials by Wednesday of this week.

Should you need any additional information, please do not hesitate to call.



Joshua Slickman, President
US Vintage Inc.

Shlomo D'Janai, Vice President
Cadiac, Inc.

EXHIBIT 3

2013 יולי 15 יום שני AOL: Joshuaexist



7-Eleven, Inc.

September 22nd, 2012

City of Miami Beach
CITY HALL
1700 CONVENTION CENTER DR
MIAMI BEACH FL
33139-1819

Re: **Letter of Intent – Building Lease**
1560 Collins Ave. Miami Beach, FL – Space currently occupied by Shan Swimwear in the building commonly known as Anchor Shops

Dear City of Miami Beach,

The following is a summary of prospective terms and conditions relative to a proposed lease agreement between City of Miami Beach ("Landlord") and 7-Eleven, Inc. ("Tenant"). This Letter of Intent has been prepared to set forth the business terms that will form the basis of negotiation of an agreement between the parties and this Letter of Intent is not intended to create a legally-binding obligation or commitment on the part of either party hereto.

LANDLORD: City of Miami Beach

TENANT: 7-Eleven, Inc.
One Arts Plaza
1722 Routh Street, Suite 1000
Dallas, Texas 75201-2506

LEASE: Tenant form of Building Lease

BUILDING: 1560 Collins Ave, Miami Beach, FL, as shown on the Preliminary Site/Floor Plan attached hereto as Exhibit A.

PREMISES: Approximately 2,000 square feet of ground floor retail space as shown on the Preliminary Site/Floor Plan.

SITE PLAN: Landlord and Tenant will confer and agree on a mutually acceptable final site plan(s) for the Premises.

LEASE TERM: 5 years

In the event that Tenant is delayed in its construction or build-out of the Premises due to any act or omission of Landlord, its agents, contractors or employees, or as a result of any condition existing at the Shopping Center as of the date hereof (a "Landlord Delay"), then the aforementioned (60) day period shall be extended three (3) days for every day of Landlord Delay, or Tenant may terminate the Lease and be reimbursed all expenses in pursuing the lease.

EXHIBIT 4

| | |
|-------------------------------|--|
| OPTION FOR EXTENDED TERMS: | Four (4) options periods of five (5) years consecutive, each exercisable upon no less than 120 days prior written notice. Tenant shall have 6 months free rent as a remodel allowance in years 11 and 21 if option(s) to extend is/are exercised |
| BASE RENT: | Years 1-5: \$147,000/yr (based on 2,000 sq ft) Tenant shall be provided a rent reduction if the Building is less than seventy percent (70%) leased. Base Rent shall increase ten percent (10%) following the primary term and upon every five (5) years thereafter. |
| RENT COMMENCEMENT: | Rent will commence one hundred eighty (180) days following the latter of (a) the date all necessary permits for construction of the Premises are obtained (see conditions) or (b) the date of Delivery (as defined in attached Construction Addendum). |
| USE: | The Premises may be used up to twenty-four (24) hours per day for the retail sale, rental or provision of merchandise and services customarily sold, rented or provided from time to time, at stores operated or franchised by Tenant or any other lawful purpose which is not in direct conflict with any exclusive uses granted to other tenants or occupants of the Building prior to the parties commencement of Lease negotiations. |
| CONDITIONS | This lease is subject to Tenant's ability to satisfy its conditions for construction and opening of a 7-Eleven Store in the Premises. Conditions: <ul style="list-style-type: none"> a. Receipt of all permits and licenses to open and operate a 7-Eleven Store. b. Property to be delivered clear and free of all hazardous materials per Tenant's satisfaction. c. Landlord to deliver a clean Title Report to Tenant <p>Tenant will have the limited right to enter upon the premises during negotiation of the lease to conduct such testing as may be appropriate to satisfy the above conditions. If Tenant does not indicate satisfaction with the conditions within 60 days of Lease execution, either party may terminate the Lease.</p> |
| EXCLUSIVES: | Landlord will not permit any occupant of the Building, other than existing tenants identified in the Lease and Tenant, to (i) operate a business which provides or offers, banking or other financial services or (ii) offers for sale or rental, in connection with all or any part of its business operations, any grocery items, including snacks, foods and beverages commonly sold at a first class convenience store cigarettes and tobacco products, unless vended by machine; beer and wine for off premise consumption; health and beauty aids; frozen or semi-frozen carbonated beverages; candy, unless gift boxed or sold in bulk; coffee or hot chocolate by the cup, newspapers, magazines and paperback books; lottery ticket, money orders, phone cards; and gift / cash cards (other than gift cards for the particular business occupying the space).. |
| LANDLORD'S WORK: | Landlord's work at the Premises will be constructed in accordance with the Construction Addendum attached hereto. Landlord shall deliver the Premises to Tenant with Landlord's Work complete on or before the date that is 60 days following Tenant's satisfaction or wavier of the Conditions, with late delivery subject to some of all of the following consequences to be specified more fully in the lease: three (3) days free rent for every day Landlord is late, termination and reimbursement to Tenant of Tenant's expenses incurred in pursuing the Lease, and the right of Tenant to assume the work and be reimbursed fully by Landlord plus an administrative fee. |
| TENANT IMPROVEMENT ALLOWANCE: | Landlord will contribute to Tenant's construction costs an allowance of \$25.00 per square foot of the Premises. |

| | |
|----------------------------|---|
| TENANT'S IMPROVEMENTS: | Tenant may make alterations, and install such improvements and FF&E in the Premises as Tenant deems necessary or desirable for Tenant's operations, consistent with Tenant's current trade dress and standards. Tenant may remove its improvements and FF&E when it vacates the Premises. |
| MAINTENANCE: | <p>Landlord will maintain at its sole expense the exterior, roof, foundation, slab and structural soundness of the Building, and any heating and air conditioning equipment (unless installed by Tenant).</p> <p>Tenant will maintain in good repair, at Tenant's sole expense the interior and exterior non-structural portions of the Building, including electrical, plumbing, heating and air conditioning equipment (if installed by Tenant).</p> |
| TAXES: | Tenant shall pay all taxes on its personal property. Tenant shall reimburse Landlord for all taxes and assessments levied against the Premises, based on the square footage of the Premises in proportion to the total square footage of all buildings within the applicable tax parcel (Pro Rata Share). |
| UTILITIES: | Tenant shall pay all charges for electric, gas (if applicable), water, sewer, cable and telephone utilities serving the Premises. Landlord shall provide separate utility company meters or sub-meter (excluding telephone and sewer) to the Premises. |
| COMMON EXPENSES: | Tenant shall pay its pro rata share of common area maintenance charges (" <u>Common Expenses</u> "). The estimated expenses for Common Expenses (including taxes and insurance) are currently \$3.00 per square foot annually. The first year of Common Expenses shall not exceed such estimate and annual increases in Common Expenses shall not exceed 3% on a non-cumulative basis. Common Expenses shall not include any management or administrative fees and shall be determined in accordance with Generally Accepted Accounting Principals (GAAP). Capital expenditures that do not pertain to common area maintenance shall not be charged to Tenant in any manner. Tenant shall not share in any expenses for elevators, stairwells or other common areas that are not used by Tenant. Tenant shall have audit rights as provided in the Lease. |
| SIGNAGE: | Subject to Tenant's receipt of any required local governmental approvals, Tenant may install its standard signage. Tenant shall share in all common signage, and shall be allowed promotional banners and awnings in and around the Premises and common area in connection with its grand opening programs during the first 12 months of the Term. |
| ASSIGNMENT AND SUBLETTING: | Tenant shall have the right to assign the Lease or sublease the whole or any part of the Premises, provided Tenant shall remain primarily liable for the payment and performance obligations under the Lease. |
| SALE OF PREMISES: | If Landlord decides to market the Premises for sale, Landlord shall notify Tenant on or before listing the Premises for sale and provide Tenant a right of first refusal. |
| BROKER: | Landlord and Tenant warrant that they have had no dealings with any real estate broker(s) or agent(s) in connection with the negotiation of this transaction except for Behar Real Estate Group, Inc. who represent the Tenant. Behar Real Estate Group, Inc. shall be compensated by Landlord per separate agreement. |

Within 5 days following the date of Landlord's execution of this Letter of Intent, Landlord shall provide Tenant with copies of the following, to the extent in Landlord's possession: (i) all surveys pertaining to the Premises and the Building; (ii) all

association requirements, declarations, covenants and/or rules (if any) governing the Premises and Building; (iii) the most current title commitments or binders pertaining to the Premises and Building; (iv) all environmental reports and records applicable to the Premises.

Landlord agrees not to negotiate with any other prospective tenant for the Premises while negotiating the lease agreement with Tenant. I look forward to your confirmation of these terms and to proceeding with the preparation of a formal lease agreement.

Sincerely,

Carlos Rivera

7-Eleven Real Estate Manager

Approved this 24th day of September, 2012

LANDLORD: City of Miami Beach

By: _____

Name: _____

Title: _____

LANDLORD'S WORK AND CONDITION OF PREMISES

Conditions of Premises:

Tenant will provide the Landlord notice, in writing, the scope of work and specifications for the following requirements, outlining the details of the existing conditions for each item listed that Landlord will be required to repair prior to delivery of the Premises. Tenant shall deliver notice to Landlord prior to the expiration of the Preliminary Term of the Lease.

- **STRUCTURAL:** Landlord shall be responsible for the baseline structural integrity of the building and structures to be used by, surrounding, or affected by, Tenant, their use, equipment and loading. Minimum load to meet or exceed building codes when built for retail floor space (100 lbs. per square foot minimum.)
- **ROOF:** Landlord shall be responsible for maintaining the roof and building such that Tenant's space and common areas remain watertight. Landlord shall provide roof certification providing the results of a water tightness test and roof inspection.
- **ENTRANCES, EGRESSES AND COMMON AREAS:** Landlord shall be responsible for maintaining all building entrances and egresses, including stairs, walkways, sidewalks, and common spaces.

Landlord shall upgrade, maintain and irrigate the landscaping throughout the center with low maintenance plantings.

Landlord shall repair any cracks in the parking lot, repave and restripe the parking lot.

Landlord to provide exterior lighting and lighting of the exterior signage from dusk to dawn with the maximum allowable foot-candles by code or average 10 luminaries per square foot throughout the parking lot.

Landlord warrants to the best of their knowledge that all handicap ramps and Shopping Center are ADA compliant.

Landlord shall repair and damaged fascia and soffit directly around the Premises.

Landlord shall repaint the exterior of the Shopping Center every two years and prior to Tenant's acceptance of the Premises.

Landlord's Work:

The following work outlined will be considered Landlord's Work to demise the Premises for Tenant's use of the Premises. The following work will be permitted and constructed by Landlord at Landlord's expense as part of the Delivery Date.

- **ELECTRICAL SERVICE:** Landlord to provide Tenant with separately metered dedicated 600 amp, 120/208 volts, 3-phase, and 4-wire electrical service to be located in Tenant's space. Service to be brought to a MDP (main disconnect panel) with service disconnect.
- **ENVIRONMENTAL SURVEYS AND ABATEMENT:** The Landlord to provide Tenant's environmental consultant access to all areas to be disturbed by Tenant construction activities including the lease area, common areas and areas for utility/HVAC and refrigeration equipment and penetrations, mechanical, electrical and plumbing lines and penetrations, sign/exterior lighting facades and penetrations, etc. Tenant's consultant may provide a lead

and asbestos survey at Tenant's expense. Landlord shall be responsible for abatement of lead and asbestos as identified to be abated and shall provide Tenant with a confirmatory report before acceptance of Premises in accordance with State guidelines.

- **WATER SERVICE:** Landlord shall provide Tenant with a dedicated water service and water meter. Service size and type shall be one inch (1") copper or PE. Service upgrades shall be the responsibility of the Landlord, the location shall be mutually agreed to between the Landlord and Tenant. Details of existing service to be provided by Landlord including service type, size, age, condition, account number, configuration by providing the As-Built surveys for the Center. The Landlord to provide access to Tenant and their contractor to investigate the adequacy of the service.
- **STORM AND SANITARY SEWER SERVICE:** Landlord to provide sanitary waste disposal systems and grease trap with adequate capacity to accommodate unimpeded flows from Tenant's restrooms, equipment and floor drains as required by code and Tenant's development plans. Minimum service size and slopes shall accommodate 20 gallons per minute sanitary waste flow. Location for connections to services to be identified by the Landlord on plans. Any modifications or tie-ins outside the demised space will be the Landlord's responsibility. Modifications, connections or disconnects of any roof or storm drains will be the responsibility of the Landlord.
- **HEATING/COOLING AND REFRIGERATION EQUIPMENT:** Landlord to provide 15 tons of HVAC equipment and duct work as specified by Tenant. Landlord will allow Tenant roof access for its remote condensing units for refrigeration and HVAC units.
- **FIRE PROTECTION SYSTEMS AND ALARMS AND BUILDING IMPROVEMENTS:** Landlord will be responsible for designing, permitting, connections, installations, testing and certifications of all fire alarm and central monitoring systems as required by applicable codes, laws, regulations and/or jurisdictional agencies. Landlord to provide: alarm plans, current fire alarm tests and certifications by licensed fire alarm and the contact information for the Landlord's alarm and central monitoring contractors.
- **TRASH:** Landlord to provide 2 dumpsters to accommodate recycling and regular trash.

DEMISING WALLS: Landlord shall provide demising walls to the underside of the roof with metal studs and drywall taped and sanded to the floor. Walls shall carry a fire rating as per local code. Walls shall be insulated (R19).

Signage



COMMISSION AGREEMENT

THIS AGREEMENT made as of September 23, 2012 by and between **City of Miami Beach** ("Owner") having an address of 1700 Convention Center Drive Miami Beach, FL 33139 and **BEHAR REAL ESTATE GROUP, INC.** having an address at 18321 West Dixie Highway Suite 204 Miami, FL 33160 ("Broker").

WITNESSETH:

WHEREAS, Owner is the owner of a certain property located at 1560 Collins Ave, Miami Beach, FL 33139 (Folio #: 02-3234-019-1090; Legal Description: ALTON BEACH 1ST SUB PB 2-77 LOTS 8 THRU 13 BLK 57 AKA LOEW'S PARKING GARAGE LOT SIZE 65701 SQ FT)

WHEREAS, Broker is hereby registering and is negotiating for the benefit of Tenant a lease ("the Lease") for the certain premises (the "Leased Premises") at the Property comprising approximately 2000 +/- Square Feet (the "Floor Area") with 7 Eleven, Inc. and / or assigns (The "Prospective Tenant"); and

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is as follows:

1. Subject to the terms and conditions set forth in this Agreement; Owner (City of Miami Beach) shall pay Broker (Behar Real Estate Group, Inc.), and Broker (Behar Real Estate Group, Inc.) shall accept, as its full and complete compensation for procuring the Lease contemplated herein with the Prospective Tenant (7 Eleven, Inc. and / or assigns), a commission equal to Four percent (4%) of the aggregate net lease value for the initial term that Owner collects rent (the "Commission") which shall be payable as follows:
 - (i) Fifty Percent (50%) of the Leasing Commission shall be due upon full execution of the lease.
 - (ii) Fifty Percent (50%) of the Leasing Commission shall be due upon Tenant opening for business.

In the event Tenant exercises its First Option Term, Landlord shall pay Behar Real Estate Group, Inc. a commission equal to three percent (3%) of the aggregate net lease value for said term.

In the event Owner sells Property prior to complete payment of the full Commission, said Commission balance shall be due to Broker upon sale of Property.
2. The Commission shall be earned and paid to Broker in the manner set forth above. Any amount of commission that remains unpaid for more than thirty (30) days after coming due shall bear interest at a rate of 18% until said balance (including accrued interest) is paid in full.
3. The lease(s) evidencing this transaction shall provide that should any part of the Commission not be paid within fifteen (15) days from its due date, Behar Real Estate Group, Inc. may notify Prospective Tenant of Landlord's non-payment and Prospective Tenant shall have the right to pay the unpaid commission amount directly to Broker as an offset against any rent due under the Leases(s).
4. The covenants and agreements contained herein shall apply to, insure to the benefit of, and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.
5. The signatories of this document each represent that he or she is an officer of the party he or she represents, and is duly authorized to execute this Agreement.
6. Broker represents and warrants that they are licensed in the State of Florida.
7. Owner represents that Behar Real Estate Group, Inc. represents the Tenant and Koniver Stern represents the Owner and are the only brokers that Owner has dealt with in connection with this transaction and agrees to indemnify Brokers against any claims, which may be brought as a result of this transaction.

- 8 In the event of any dispute between the parties arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith from the other party.
- 9 The Florida Commercial Real Estate Licensing Commission Lien Act provides that when a broker has earned a commission by performing licensed services under a brokerage agreement with you, the broker may claim a lien against your interest in the property of the broker's commission. The broker's lien rights under the act cannot be waived before the commission is earned.
- 10 This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof. This Agreement may not be modified, changed or supplemented, and no obligation hereunder may be waived, except by a written instrument signed by the party against whom the enforcement is sought.

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

LANDLORD: City of Miami Beach

WITNESS:

City of Miami Beach

Name

Name

BROKER: Behar Real Estate Group, Inc.

WITNESSES:

David Behar, President
Behar Real Estate Group, Inc.

Name

Name

Faxed, Portable Document Format or electronic signatures are acceptable as authentication.

S H A N

August 28, 2013

Ms. Gisela Nanson Torres
Tourism, Culture and Economic Development Department
Office of Real Estate
555, 17th Street, Miami Beach, FL 33139

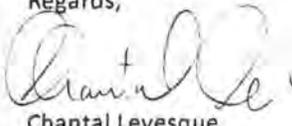
Subject: Letter of intent for the lease renewal of the 1560 Collins Avenue, suite #2

Madam,

SHAN would like to inform you that we are willing to renew our lease for a five (5) year term upon the following terms:

- Base rent of \$66,41 per square feet, based upon 2,697 square feet for first year with annual increases, the greater of 3% or CPI, during each lease term with market analysis for market rent at time of renewal, but not less than the prior year's rent obligation. The annual rent \$179,108 and monthly rent of \$14,925.67 plus applicable taxes;
- Five year renewal, March 19, 2013 ending March 12 2018;
- Parties agree that from March, 2013 to October 2013 the rent shall continue at the current rate with new Rent increase commencing November 1 2013, with first escalation on March 19, 2014 and every year thereafter, annual increases by the greater of 3% or CPI;
- No rent concessions and no build-out allowance;
- The Landlord shall have the right to periodically review Tenant's financial records and statements of operation;
- No partitioning or subleasing of space without consent of Landlord.

Regards,


Chantal Levesque

President

1560 COLLINS AVENUE, INC.
FINANCIAL STATEMENTS
MAY 31, 2012

1560 COLLINS AVENUE, INC.
INCOME STATEMENT
FOR THE YEAR ENDED MAY 31, 2012

2

| | 2012 \$ | 2011 \$ |
|--|-----------------|-----------------|
| INCOME | | |
| Sales | 639 369 | 500 536 |
| COST OF GOODS SOLD (Appendix 1) | <u>415 214</u> | <u>264 593</u> |
| GROSS PROFIT | 224 155 | 235 943 |
| OPERATING EXPENSES | | |
| Administrative and selling expenses (Appendix 2) | 248 680 | 254 631 |
| Financial expenses (Appendix 3) | <u>12 519</u> | <u>11 891</u> |
| | <u>261 200</u> | <u>266 522</u> |
| NET LOSS | <u>(37 045)</u> | <u>(30 579)</u> |

Supplementary informations are an integral part of the financial statements.

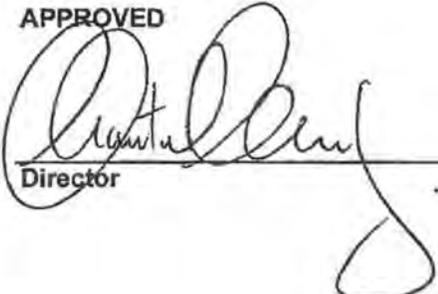
1560 COLLINS AVENUE, INC.
DEFICIT
FOR THE YEAR ENDED MAY 31,2012

| | 2012 \$ | 2011 \$ |
|-----------------------------------|-------------------------|-------------------------|
| BALANCE, BEGINNING OF YEAR | (408 499) | (377 920) |
| Net loss | <u>(37 045)</u> | <u>(30 579)</u> |
| BALANCE, END OF YEAR | <u><u>(445 543)</u></u> | <u><u>(408 499)</u></u> |

1560 COLLINS AVENUE, INC.
BALANCE SHEET
 AS AT MAY 31, 2012

| | 2012 | 2011 |
|---------------------------------|------------------|------------------|
| | \$ | \$ |
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash | 10 480 | 21 865 |
| Accounts receivable | 42 832 | 8 038 |
| Inventories | 241 634 | 174 862 |
| Prepaid expenses | 1 310 | 479 |
| | <u>296 257</u> | <u>205 244</u> |
| PROPERTY, PLANT & EQUIPMENT | 19 845 | 23 934 |
| | (NOTE 3) | |
| OTHER ASSETS | 12 978 | 12 978 |
| | <u>329 080</u> | <u>242 156</u> |
| LIABILITIES | | |
| CURRENT LIABILITIES | | |
| Accounts payable (Note 4) | 337 142 | 355 917 |
| Due to related company | 142 743 | |
| | <u>479 885</u> | <u>355 917</u> |
| DUE TO SHAREHOLDERS | 293 738 | 293 738 |
| | <u>773 623</u> | <u>649 655</u> |
| SHAREHOLDERS' DEFICIENCY | | |
| SHARE CAPITAL (Note 5) | 1 000 | 1 000 |
| DEFICIT | <u>(445 543)</u> | <u>(408 499)</u> |
| | <u>(444 543)</u> | <u>(407 499)</u> |
| | <u>329 080</u> | <u>242 156</u> |

APPROVED



Director

1. STATUTES OF INCORPORATION AND NATURE OF ACTIVITIES

The company is incorporated under the United States and State of Florida laws. It operates a boutique under the name "Shan".

2. SIGNIFICANT ACCOUNTING POLICIES

a) Inventories

Inventories are valued at the lower of cost and replacement cost, the cost being determined using the first in, first out method.

b) Property, plant & equipment

Fixed assets are accounted at cost. Depreciation is calculated using the straight-line method for leasehold improvement and the diminishing balance method for the other fixed assets, at the following annual rates:

| | | | |
|------------------------|------------|---------------|----------|
| Leasehold improvements | April 2008 | to march 2018 | 10 years |
| Office furniture | | | 20% |
| Computer hardware | | | 30% |

3. PROPERTY, PLANT & EQUIPMENT

| | \$ | \$ | 2012 \$ | 2011 \$ |
|------------------------|---------------|-------------------------------------|---------------------------|---------------------------|
| | <u>Cost</u> | <u>Accumulated amortization</u> | <u>Net book Value</u> | <u>Net book Value</u> |
| Office furniture | 12 548 | 9 567 | 2 981 | 3 975 |
| Computer hardware | 11 239 | 10 886 | 353 | 618 |
| Leasehold improvements | 27 898 | 11 386 | 16 511 | 19 342 |
| | <u>51 684</u> | <u>31 839</u> | <u>19 845</u> | <u>23 934</u> |

4. ACCOUNTS PAYABLE

| | 2012 | 2011 |
|--------------------------|----------------|----------------|
| | \$ | \$ |
| Accounts payable - trade | 335 555 | 353 199 |
| Sales taxes payable | 1 587 | 2 719 |
| | <u>337 142</u> | <u>355 918</u> |

5. SHARE CAPITAL

Issued and paid

| | 2012 | 2011 |
|--------------------|--------------|--------------|
| | \$ | \$ |
| 1000 common shares | <u>1 000</u> | <u>1 000</u> |

1560 COLLINS AVENUE, INC.
 SUPPLEMENTARY INFORMATIONS
 FOR THE YEAR ENDED MAY 31, 2012

7

| | 2012 \$ | 2011 \$ |
|--|------------------|------------------|
| Appendix 1 - COST OF GOODS SOLD | | |
| COST OF GOODS SOLD | | |
| Inventories, beginning of year | 174 862 | 138 183 |
| Purchases | 481 987 | 301 271 |
| | <u>656 849</u> | <u>439 454</u> |
| INVENTORIES, END OF THE YEAR | <u>(241 634)</u> | <u>(174 862)</u> |
| | <u>415 214</u> | <u>264 593</u> |

Appendix 2 - ADMINISTRATIVE AND SELLING EXPENSES

| | | |
|---------------------------------------|----------------|----------------|
| Salaries | 76 919 | 57 692 |
| Commissions | 15 086 | 13 215 |
| Rent | 109 660 | 109 660 |
| Telecommunications | 2 674 | 3 919 |
| Insurance | 3 252 | 3 301 |
| Advertising and promotion | 2 842 | 2 473 |
| Travelling expenses | | 6 876 |
| Alarm and Security | 833 | 934 |
| Electricity/Heating | 10 825 | 18 960 |
| Maintenance and repair - Office | 6 981 | 3 035 |
| Office supplies | 287 | 796 |
| Taxes and permits | 2 027 | 1 958 |
| Professional fees | 8 050 | 21 430 |
| Management fees | | |
| Amortization - Office furniture | 994 | 994 |
| Amortization - Computer hardware | 395 | 265 |
| Amortization - Leasehold improvements | 2 830 | 2 830 |
| Miscellaneous | 5 024 | 6 293 |
| | <u>248 680</u> | <u>254 631</u> |

Appendix 3 - FINANCIAL EXPENSES

| | | |
|---------------------------|---------------|---------------|
| Interest and bank charges | 305 | (49) |
| Credit card charges | 12 214 | 11 940 |
| | <u>12 519</u> | <u>11 891</u> |

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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance & Citywide Projects Committee Members

FROM: Jimmy L. Morales, City Manager 

DATE: September 19, 2013

SUBJECT: **A DISCUSSION REGARDING A PROPOSAL FROM ALPHA 22, LLC TO LEASE 2,216 SQUARE FEET OF CITY-OWNED VACANT PROPERTY, LOCATED AT 22ND STREET AND WASHINGTON AVENUE, ADJACENT TO EXISTING RESTAURANT SPACE LOCATED AT 816 COMMERCE STREET, MIAMI BEACH, FLORIDA 33139 (SPACE), TO BE USED AS OUTDOOR CAFÉ, CONCURRENT WITH THE LEASE/USE OF THE ADJOINING RESTAURANT.**

Background

The City has received an offer from Alpha II, LLC ("Tenant" or "Alpha") to lease a City-owned 2,216 square foot vacant parcel located at 22 Washington Avenue, ("Site" or "City-Owned Parcel"), which is adjacent and east of 816 Commerce Street, a privately owned two-story commercial building. The City-Owned Parcel is a remaining portion of an undeveloped platted lot which is the residual lot in connection with the expansion of Washington Avenue. Due to its limited size and shape, the property serves little more than to provide access to 816 Commerce Street. The proposal to lease this Site is from a restaurateur who proposes to place tables and chairs on the Site to supplement the interior seating in the adjacent, privately-owned restaurant ("Restaurant Space").

As you may recall, the City has been approached by other restaurant operators in the past regarding the use of this Site. In 2006, the City Commission approved a Lease Agreement with Manpriya, Inc. for use of the site, and the lease was fully executed; however, the project was never developed. In 2009, the City Commission approved a Lease Agreement with Moon Thai South Beach, Inc., for use of the site as an out-door café. The financial lease terms approved were substantially the same as a previous lease agreement, with an initial base rent of \$25.00 per square foot or 3% of sales. A list of operational conditions were recommended by the local neighborhood association ("Neighborhood Restrictions") and subsequently approved by the City Commission and incorporated into the lease. As had occurred previously, the proposed tenant failed to develop the site for its intended use and the lease terminated for non-payment of rent.

On November 7, 2010, the City Commission approved a Lease Agreement with Syanna, LLC ("Syanna"), whose managing principal, Symcha Zilberman, invested substantial sums in building out the interior space as well as improving the City-Owned Parcel. The lease with Syanna was subject to the Neighborhood Restrictions and was for an initial five year term, with one renewal option for a period of four years and 364 days. The base rent for the initial lease term was \$20.00 per square foot, which increased to \$25.00 per square foot for the second year and \$30.00 per square foot for years three through five. The base rent for the renewal period was subject to be negotiated by the

City and could have involved a percentage rent structure, as part of the negotiated terms. The Restaurant Space accommodates 35 people; however, as a result of the Outdoor Improvements made by Syanna, the City-Owned Parcel accommodates outdoor seating for an additional 46 people, pursuant to the site plan attached hereto as Exhibit "A". Within one year from the Rent Commencement date, the managing principal became ill, Syanna defaulted under its lease terms by failing to pay the rent and shortly thereafter closed its doors.

Analysis

This latest offer to lease the City-Owned Parcel comes from Alpha, who intends to utilize the City-Owned Parcel and adjoining Restaurant Space as a French Restaurant. Alpha's managing principal, Mr. Olivier Lubrano, currently manages and operates a French restaurant in New York, under the name of Rouge NYC. Mr. Lubrano intends to follow a similar business plan, inclusive of menu, as the one currently utilized for Rouge NYC, a copy of which is attached hereto and made a part hereof as Exhibit "B". Mr. Lubrano has more than 20 years of experience managing various businesses and more than thirteen years managing various French restaurants, as evidenced from the Resume, attached hereto and made a part hereof as Exhibit "C". Alpha currently intends to develop its site plan for the City-Owned Parcel, similar to the plan developed by the previous tenant, Syanna, ("Syanna Site Plan"), which was approved by Planning; however, Tenant's final site plan will have to be approved by the City, as Landlord, and the Planning and Zoning Department.

In order to mirror the lease terms for the Restaurant Space, Alpha proposes a lease for nine years and 364 days, in connection with the City-Owned Parcel, with an initial base rent of \$20.00 per square foot, plus 3% annual increases every year thereafter, subject to the known Neighborhood Restrictions, as evidenced from the Letter of Intent, attached hereto and made a part hereof as Exhibit "D".

In order to develop a recommendation for the lease proposal, in connection with the previous lease with Syanna, the Administration obtained an appraisal for the site prepared by Bondarenko Associates. The appraiser found no comparables as there are no other outdoor seating areas in the vicinity. The subject site is not a sidewalk café, and therefore, current sidewalk café fees are not a reasonable market comparable; however the use of the outdoor area is comparable to other outdoor concession/lease agreements with the City. The revenue to the City for said agreements, on a per square foot basis, is provided below:

| | | Annual | | Annual | Gross | | Revenue |
|-------------------|----------------------|-------------|---------|----------|-----------|--------|-------------|
| Concessionaire / | | Gross | % | Base | Amount | Square | To City |
| Tenant | Address | Revenue | To City | Rent | To City | Feet | Per Sq. Ft. |
| Smith & Wollensky | 1 Washington Ave. | \$3,133,119 | 10% | N/A | \$313,312 | 581 | \$539.26 |
| Syanna | 816 Commerce St. | N/A | N/A | \$66,480 | \$66,480 | 2,216 | \$30.00 |
| Cinematheque | 1130 Washington Ave. | N/A | 15% | N/A | \$7,000 | 671 | \$10.43 |
| Damian J. Gallo | 1701 Meridian Avenue | N/A | N/A | 10140 | \$10,140 | 507 | \$20.00 |

It should be noted that the outdoor concession areas for this Site have been previously unsuccessful, including for Syanna. Cinematheque, similarly closed prematurely because it was not generating sufficient revenue to stay open.

In determining a fair market rate for use of the outdoor concession, The Administration took the average per square foot rate from the highest rent paid under the Syanna Lease and Cinematheque, which was approximately \$20.00 per square foot. Smith and Wollensky was not considered to be comparable to the operation proposed by Alpha.

Based on the foregoing, the Administration has negotiated the following terms, with the exception that The Administration would recommend securing a three month deposit, instead of one month:

| | | | |
|------------------------------|----------------------|---------------|--------------|
| Proposed Gross Terms: | | | |
| Lease Term: | 9 Years and 364 days | | |
| Renewal Option | None | | |
| Area | 2,216 | Square Feet | |
| Proposed Rent for Lease Term | | | |
| | Price/psf | Annual Rent | Monthly Rent |
| Year 1 | \$ 20.00 | \$44,320.00 | \$ 3,693.33 |
| year 2 | \$ 20.60 | \$45,649.60 | \$ 3,804.13 |
| year 3 | \$ 21.22 | \$ 47,019.09 | \$ 3,918.26 |
| year 4 | \$ 21.85 | \$ 48,429.66 | \$ 4,035.81 |
| year 5 | \$ 22.51 | \$ 49,882.55 | \$ 4,156.88 |
| year 6 | \$ 23.19 | \$ 51,379.03 | \$ 4,281.59 |
| year 7 | \$ 23.88 | \$ 52,920.40 | \$ 4,410.03 |
| year 8 | \$ 24.60 | \$ 54,508.01 | \$ 4,542.33 |
| year 9 | \$ 25.34 | \$ 56,143.25 | \$ 4,678.60 |
| year 10 | \$ 26.10 | \$ 57,827.55 | \$ 4,818.96 |
| total | | \$ 508,079.13 | |
| Security Deposit | 1 month | \$3,693.33 | |

In order to allow Alpha time to obtain its governmental approvals to open for business, the Administration is recommending that rent commence at the later of one month from execution of the Lease, the date the restaurant opens for business, but no later than six (6) months from the Lease execution date. This rent abatement will allow Tenant time to develop the site, start up its operations, and establish cash flow in order start remitting rent.

In addition, as provided in the Syanna Lease, The Administration is asking the Committee whether they wish to allow Alpha a one-time exclusion (only if needed) to pull a special event permit in order to host its grand opening event (subject to Special Event permit requirements and reviews). At no other time during the lease term would the Tenant be allowed to apply for a special event permit.

The balance of Alpha's proposed lease terms generally include, but are not limited to the following provisions (consistent with the terms approved for Syanna), inclusive of the Neighborhood Restrictions:

- 1) Tenant, at its sole cost and expense, may develop the City-Owned Property into the aforementioned outdoor café (at the City's discretion);
- 2) Tenant agrees to use the City's property solely as an outdoor café to serve the patrons and guests of the adjoining restaurant at 816 Commerce Street. Furthermore, Tenant agrees not to place any speakers in or around the Property and/or attach any speakers to the exterior of the restaurant building at 816 Commerce Street. The restriction to Tenant's use is consistent with expressed City Commission concerns relating to the previous leases on this property and has been incorporated in Tenant's Letter of Intent in order to mitigate those concerns;
- 3) Alpha must obtain approvals from the Planning Department and the City Administration in the design and layout of the outdoor café pavers, tables, chairs and umbrellas;
- 4) In addition to the above-referenced security deposit, Alpha agrees to provide a performance bond, or other similar instrument (e.g. irrevocable letter of credit, surety bond, etc.) acceptable to the City, in an amount equal to the estimated costs to construct any proposed improvements;
- 5) Any delivery, take-out, valet, taxi or sidewalk café must only utilize Commerce Street; these activities will not be allowed on Washington Avenue;
- 6) No televisions will be permitted to be part of the outdoor café;
- 7) There shall be no bar counter allowed outside. Liquor and food operations involving the outdoor café shall only be done in conjunction with the adjacent restaurant operations and only when the interior kitchen is operational;
- 8) Tenant will not apply for Special Event permits;
- 9) Tenant's operation will not interfere with pedestrian traffic;
- 10) Tenant's hours of operation are currently established as follows: Sunday through Thursday 11:30am to 11:00pm; Friday through Saturday 11:30am to midnight.

CONCLUSION

Based on the unique disposition of this undeveloped parcel of land, and its limited use due to the size and location, it has been determined that the parcel would not be subject to public bidding as it could only be used with any functionality by the adjacent property.

The Administration therefore recommends in favor of pursuing a lease agreement with Alpha, as proposed, with the exception of requiring that Tenant pay three months of rent as a deposit, instead of one month.

JLM/KGB/MS/GNT

Attachments:

- "A" - Syanna Site Plan
- "B" - Rouge NYC Business Plan and Menu
- "C" - Managing Principal's Resume
- "D" - Alpha Letter of Intent

cc: Jimmy L. Morales, City Manager
Kathie G. Brooks, Assistant City Manager
Max Sklar, Director for Tourism, Culture and Economic Development
Gisela Nanson Torres, Leasing Specialist

Rouge NYC

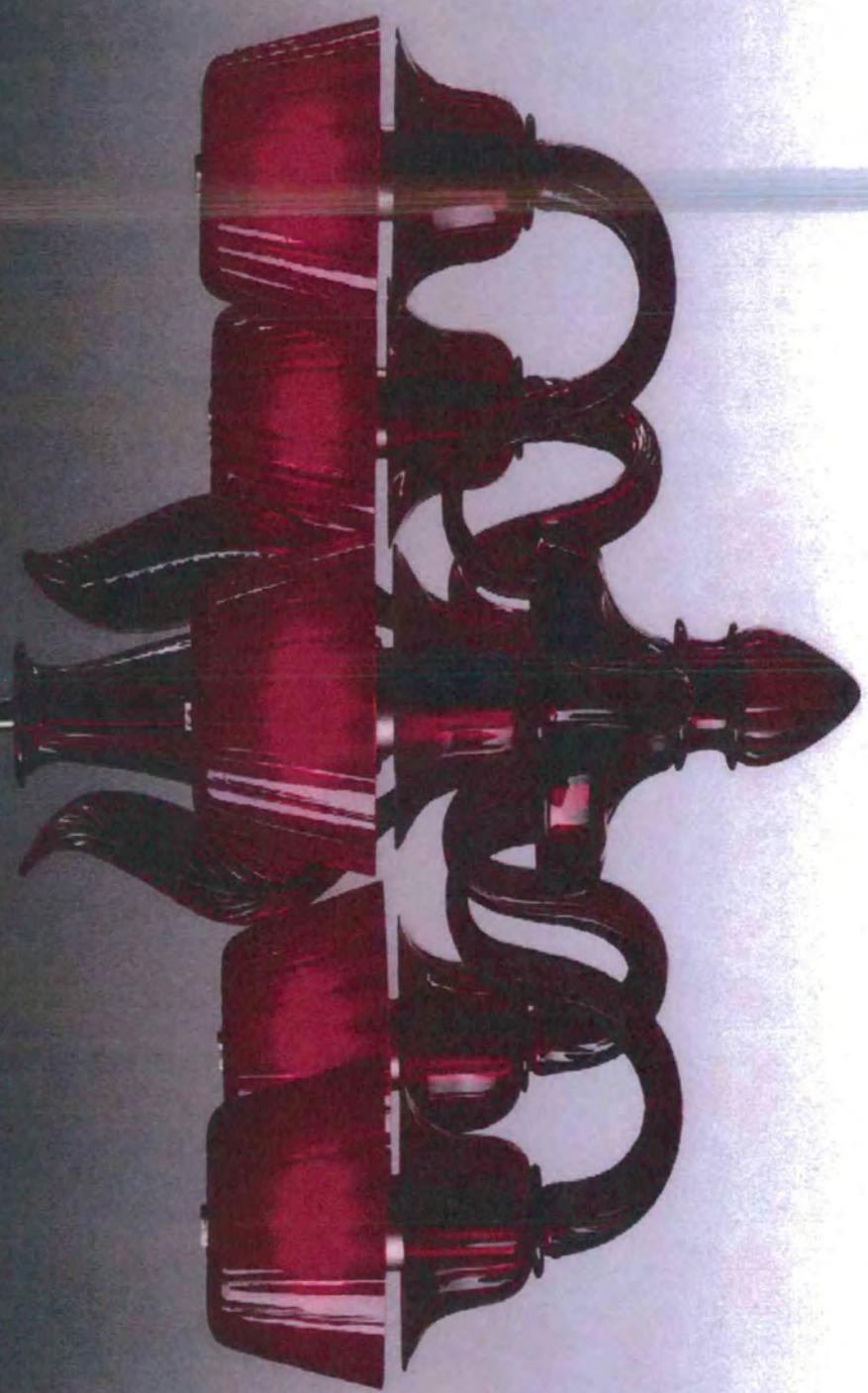


EXHIBIT B

Table of Contents

1. Business Overview

2. Corporate Structure

3. Key

Management and Operations
Management Company Structure
Rouge NYC Wine Bar Team

Market Analysis

4. Competitive Landscape

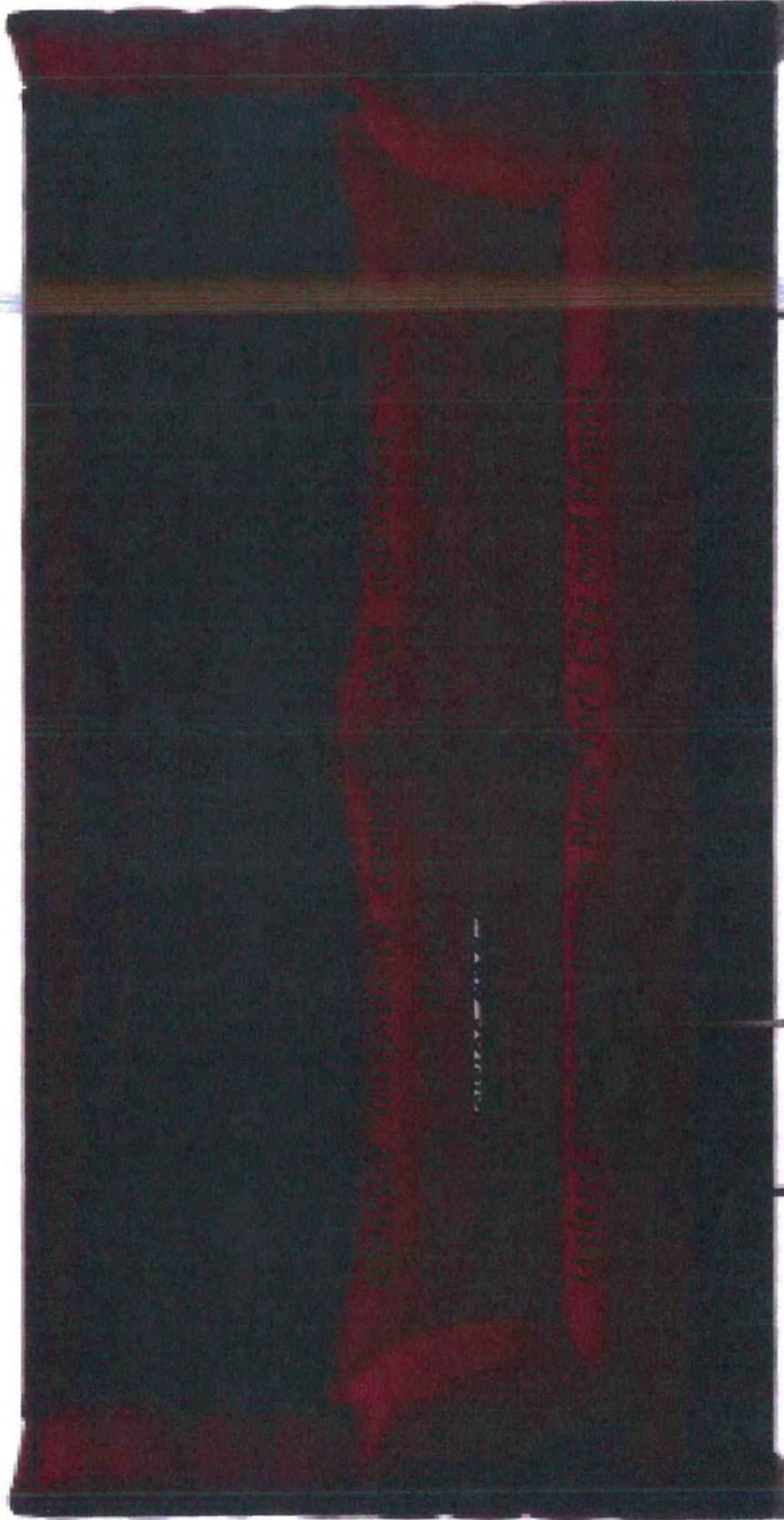
5. Industry analysis and

6. Customer Demographics

7. Market Segmentation and Market

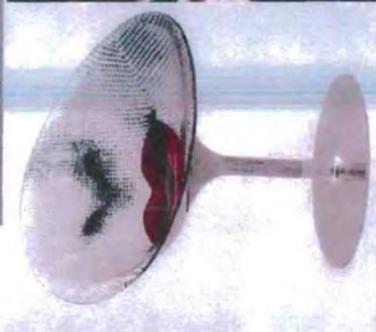
8. Rouge NYC Co

Business



12/09/2013

Concept



Concept

*Unlike traditional bars or large brand-managed
and restaurants, we believe our Concept will
provide our clients with a **distinctive** experience.*

*Each of our Rouge NYC Bars and restaurants has a
personality specifically tailored to fit the local
market environment and a **sophisticated design** that
will be an **acclaimed popular** “destination”
restaurant and **highly personal**.*

Corporate Strategy

Our corporate strategy is to achieve growth by leveraging our management experience and food and beverage brands for expansion into both new and existing markets and by targeting strategic internal growth opportunities.

- ❖ We may intend to concentrate on opportunities to sign management contracts and develop our brands without the need to acquire significant ownership interests in properties.
- ❖ We believe that our management team and operating infrastructure will provide us with the ability to successfully integrate assets into our business as we grow and expand.
- ❖ Moreover, we believe our flexibility with respect to the physical configuration of venues gives us more options to grow in any given market as compared to many of our competitors who require very particular specifications so that their Bars and restaurants will all look the same.

Keys to successes

Rouge NYC has identified several business elements that must be implemented in order to succeed in this competitive market.



Management and Operations

Rouge Hospitality Management company manages and operates each of our Rouge NYC restaurants, bars, boutique hotels.

Each Restaurant, bar, hotel is generally staffed in accordance with standards set by our employees with personnel dedicated to each of the properties.

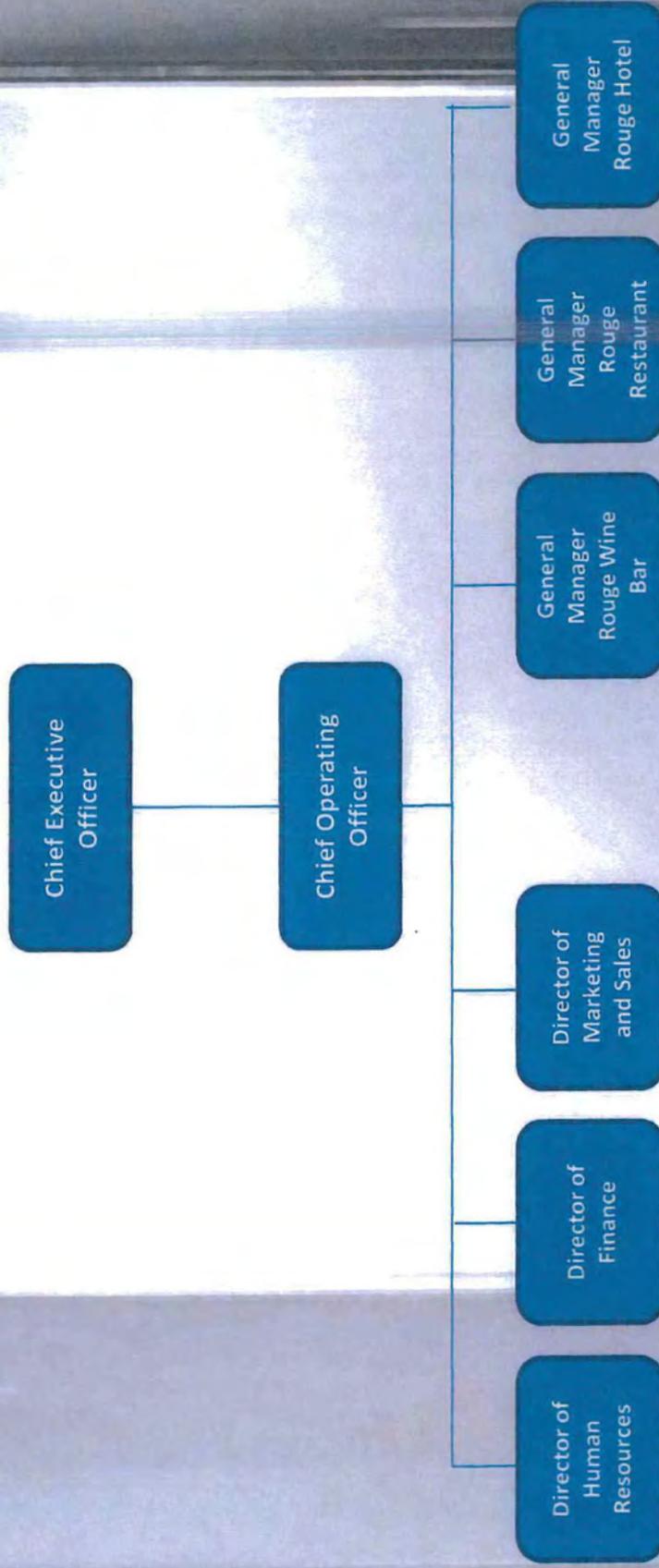
The corporate office provides support directly to certain functions at the hotel such as sales, marketing and revenue management.

This organizational structure allows for each property to be run in a comprehensive and dynamic fashion while ensuring integrity of our guest experience and overall value.

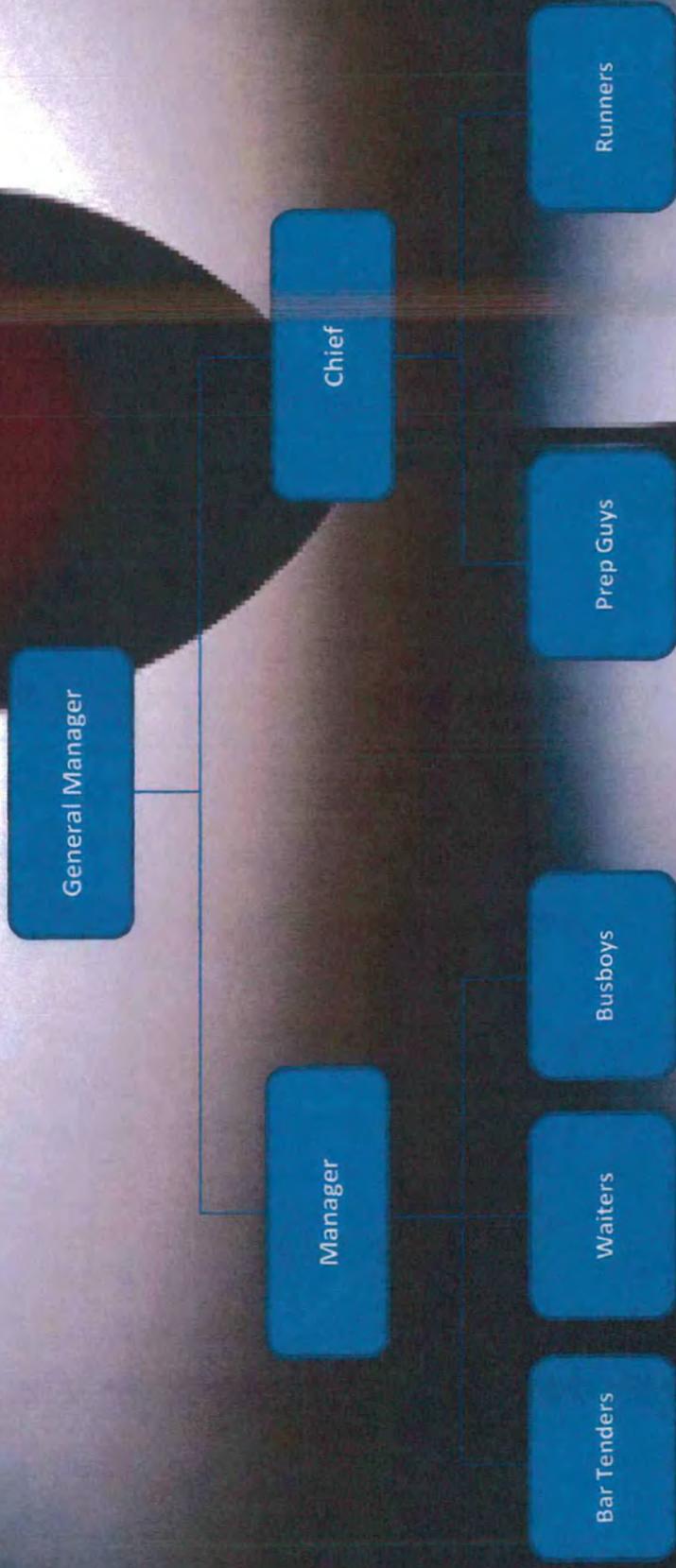
Our management team is headquartered in New York City and coordinates our management and operations. The management team reviews business performance, oversees financial budgeting and forecasting for our restaurants, bars and hotels. The management team oversees internal accounting and audit functions, administers insurance plans and line items, oversees all human resources procedures to ensure compliance with labor law, safety and Profitability.

In addition, the management team is responsible for overseeing all sales and marketing activities at each of our businesses, distribution, advertising and promotional activities, forecasting future business prospects and identifying, employing and training new management and support staff. The management team is also responsible for the design, development, production and service quality of all products, programs and overall brand image for all hotels and overall

Management Company Structure



Wine Bar Team Structure



Market Analysis - Competitive Landscape

The US bar and nightclub industry includes about 45,000 establishments (single-location companies and branches of multi-location companies) with combined annual revenue of about \$20 billion. No major companies dominate; varying state liquor laws complicate the ability to form large chains. The industry is highly fragmented: the 50 largest companies account for about 5 percent of revenue.

Personal income and entertainment needs drive demand. The profitability of individual companies depends on the ability to drive traffic and develop a loyal clientele. Large companies can offer a wide variety of food, drinks, and entertainment, and have scale advantages in purchasing, financing, and marketing. Small companies like Rouge NYC Wine Bar can compete effectively by serving a local market, offering unique products or entertainment, or providing superior customer service. The industry is labor-intensive: average annual revenue per worker is about \$60,000.

Bars and nightclubs compete with other venues that offer alcoholic drinks or entertainment, including restaurants, hotels, and casinos. Drinking establishments also compete with the home consumption of alcohol.

Market Analysis – Industry analysis and risks

- Major sources of revenue include beer (about 35 percent of sales), distilled spirits or hard liquor (30 percent), food and non-alcoholic beverages (20 percent), and wine (7 percent). Rouge NYC specializes in Wine.
- While most customers go to bars and nightclubs to socialize, bar activities tend to focus more on drinking, while nightclubs focus on entertainment and dancing...
- According to the IBISWorld Bar Business & Nightclub Business Industry Report: Bar business & nightclub business revenues grew 3.5% in 2011 and is projected to increase 3.2% to \$22.7 billion in 2012. This is a promising development since bar business revenue growth has been relatively flat since 2007: despite the projected 3.2% increase in 2012, the 5 year average annual revenue growth will likely be slightly negative (-0.7%) through 2012. Part of this trend owes to the large decline in bar and nightclub revenues in 2009, when industry revenue fell 9.3% due to a significant contraction in consumer spending and adjustments in alcohol consumption patterns. In 2010, the bar business and nightclub business industry began to recover with revenue growth of 1.1% over the year.
- The societal shift away from alcohol toward healthier lifestyles is contributing to a decline in the amount of household spending devoted to trips to bars and nightclubs. Over the five years to 2012, alcohol consumption should grow modestly by about 0.08% per year.

Market Analysis – Industry analysis and risks

- Bar business and nightclub business revenues are considered luxury spending by many consumers. The Great Recession and accompanying higher unemployment rates brought lower consumer spending (down 1.9% in 2009), leading many consumers to reduce luxury spending, including trips to bars and nightclubs. A rebound in consumer spending (+2.0% in 2010, +2.3% in 2011) has brought many consumers back to the bars and nightclubs. Consumer spending is forecast to grow 2.0% in 2012, which should continue to help improve bar business and nightclub business revenues.
- We note an emerging trend: the increase in the number of consumers choosing packaged beverages for home consumption rather than at bars or nightclubs. This trend is expected to have lasting impacts on both the bar business and nightclub business. The number of bar & nightclub business establishments is forecast to decline slightly (an average of 1.0% per year to 66,602 in 2017), while employment levels are expected to slip an average of 1.2% per year to 345,253 in 2017. Despite these bar & nightclub business trends, revenues are expected to grow as the economy improves and consumer spending increases, with industry revenue projected to climb at about 2.5% per year over the next 5 years, reaching \$25.7 billion in 2017.

Bar & Nightclubs Business Customer Demographics

Regarding liquor spending in bars and nightclubs (including wine):

- Target Customers. Householders aged 25 to 34 spend 66% (\$83.25) above the national average household expenditure, householders aged under 25 spend 30% (\$65.50) more than the average household expenditure, and householders aged 45 to 54 spend 11% above the national average of household expenditure (\$55.62).
- Ethnicity. Spending by non-Hispanic whites liquor is 13% more than the national household average and comprises 87% of the market, spending by other ethnic groups relative to the national average: Hispanic (38% less, 7% of market), Black (51% less, 6% of market), Asian (8% more, 4% of market).
- Geography. Differences in spending on liquor at restaurants and bars emerge regionally: Midwest (1% less, 23% of market), West (33% more, 30% of market), Northeast (4% more, 19% of market), South (2% less, 28% of market).
- Income levels. Households earning \$100,000 or more spent 82% more than the average household on liquor, households earning \$70,000 – \$100,000 spend 20% more than average, households earning \$40,000 to \$70,000 spend about 8% more than average, while households earning less than \$40,000 spend about 46% less than average.

Market Segmentation - Target Market

Rouge NYC has identified two target customer segments which are particularly attractive. The first segment customers are the wine lovers who are looking for some sort of quality and wide selection of French wines and traditional French cuisine in a relaxed NYC atmosphere. This group travels to where ever there are tables as their choice for Rouge NYC wine bar will be the result of specific researches and expectations. The second group comprises the young working population (between 25 and 40 years old) who wants to socialize and drink most likely after work. This group either works in this area or leave in the neighbor districts of Manhattan.

While the two groups share the same interest in Wine and Food, they are distinct groups and each one will need to be reached via different methods. The first Group needs to hear about Rouge NYC through different general Media that covers different types of people but focusing on the restaurant and bar sectors. (Timeout, seamless.com etc..). The second group needs to be reached through local media.

Marketing and Communication Strategy

- Unlike many bars, our managers are trained to sell the experience, not simply the product. By branding the “experience,” we showcase the kind of creativity that happens inside our bars and prove that our guests come to us for much more than just a drink or a dinner. Our objective is to create differentiation by selling an “experience” and brand.
- While our marketing initiatives are customized in order to account for local preferences and market conditions, consistent major campaign and branding concepts will be utilized throughout all our marketing activities. These concepts will be developed by our central brand and marketing teams.
- We will place significant emphasis on branded communication strategies that are multi-layered and non-traditional. We believe our public relations and social networking outreach strategy will be a highly cost-effective marketing tool for us. Through highly publicized events, prospective customers are more likely to be made aware of our hotels through word-of-mouth or magazine, newspaper articles or social networking entries and high-profile events rather than direct advertising.
- This publicity will be supplemented with focused marketing activities to our existing customers. Our in-house marketing and public relations team coordinates the efforts of third-party public relations firms to promote our bars through magazines, electronic national or local Food and beverage medias (ie: Timeout NYC). We regularly host events that attract potential clients and journalists, generating articles in newspapers and magazines.

Sources

- <http://www.ibisworld.com/industry/default.aspx?indid=1685>
- ¹ “Bars & Nightclubs in the US.” January 2012. IBISWorld. Santa Monica: CA. University of Texas at San Antonio, John Peace Library. San Antonio, TX. Order full report from <http://www.ibisworld.com/about/faq.aspx>. 01 Apr 2012

ROUGE

Appetizers

Lobster Salad
Artichoke Salad
Salade Nicoise with fresh tuna
Fish soup
Haricots verts with Foie gras
Beef Carpaccio
Tuna tartare
See food Carpaccio (octopuss, schrimp , fish from the fresh market)
Apple tarte with foie gras

Poissons - From the Sea

Grilled fish (fresh from the market)
Grilled Lobster
French traditionnal octopuss "daube"
Branzino
Fish "en croute de sel"
Gambas with lemon reduction sauce

Viande- Meat

Souris d'agneau
Filon mignon grille fleur de sel
Roasted organic chicken
Roast beef
French traditionnal "Roti de Veau" au jus de truffe
Tajine de poulet

Accompagnement- Side

Ratatouille
Coquillettes aux truffes
Spinach with roasted garlic
Green Salad
French Fries with rosmary

Dessert

Mousse au chocolat
Trio de "crème brulee" Vanilia, cofee, pistachio
Fraise a la chantilly maison
Tarte
Millefeuille
Fruit frais
Home made sorbet granite
French Cheeses plate

Mr. Olivier LUBRANO
95 Wall Street, Apt. 1605
New York, NY, 10005
USA
Cellphone : +1 718-502-5914
Email : o.lubrano@gmail.com

PROFESSIONAL EXPERIENCE:

- From June 2012 **Restaurant Le Seaven, Radisson Hotel,**
Owner and creator of the concept
Restaurant located on the rooftop of this five star hotel.
- October 2010- June 2012 **Restaurant La Petite Maison, New York**
General Manager
Fine dining french restaurant with 140 seats,
Managing staff of 45 people, including kitchen
- June 2007 – September 2010 **Palais Club Cannes. France (Club and restaurant)**
General Manager
Bar and full kitchen french restaurant with 120 seats
- September 2006 – June 2010 : **Tantra Restaurant. Cannes, France**
Co-owner
Full kitchen french restaurant
- June 2000 – April 2006 **Restaurant Le Cabanon**
Co-owner
Full kitchen french restaurant with fish specialities
- March 2006 – June 2007 : **Caption UK Ltd, London. UK**
Sales Manager and Associate
Company specialized in Silver Jewelry.
I was recruited as sales manager and following the good
performances obtained, the owner of the company
proposed to me to become associated.
- June 2000 – february 2006 : **Kulte, the French Brand . Marseille. France**
Sales Manager.
I was in charge of the customers and the sales
representatives. (220 retailers and 12 sales representative)
increasing business Turnover of 70% in 3 years.
- December 98 – May 2000 : **Le Galoubet, Restaurant . Val Thorens . France**
Floor Manager
Management of the reservations customers.
Manager of the staff of Waiters (16 people)
- March 96 – September 98 : **Balle de Match. Paris, France**
Sales Manager
Balle de Match is a press, communicaton and advertising
agency.

September 90 – February 96 : **Decathlon sport store. Toulon. France**
Department Manager and Store Manager
After a first period of 3 years as department manager,
I became store manager.
I had during this period a training specialized in
recruitment, management and human resources.

EDUCATION :

1989-90 : School of Management in Restaurant Business
1988-89 : Business School of the « Chambre de Commerce et d'Industrie de Paris »
1987 : Lycee Langevin – Toulon
Baccalaureat (U. S. equivalent High School Diploma).

SPECIALS SKILLS:

English Language: Fluent
Italian Language: Basic
Computer skills: Familiar with Microsoft Office, Word, Excel....
Travel: Once every year to Italy, UK. 2 times in NY in 2009.

August 9, 2013

Mr. Max Sklar, Director
Tourism, Culture & Economic Development
Office of Real Estate
1755 Meridian Avenue, Suite 500
Miami Beach, FL 33139

Re: Non-Binding Letter of Intent and proposal by Alpha 22, LLC to lease a 2,216 square foot outdoor space at 816 Commerce Street (22 Washington), Miami Beach FL 33139 ("Premises").

Dear Mr. Sklar:

Please consider the below outlined terms and conditions, subject to future approval by the City, in connection with a possible lease of the above referenced City-owned property.

| | |
|--|---|
| Tenant: | Alpha 22, LLC; DBA: To be Determined |
| Landlord: | City of Miami Beach |
| Premises: | 2,216 square foot space, more particularly described in the attached Exhibit "A" |
| Use: | For an outdoor café to serve patrons and guests of the adjoining restaurant at 816 Commerce Street and for no other use or purpose, subject to the restrictions attached hereto as Exhibit "B" and any other necessary restrictions to be contained in the final lease, at the sole discretion of Landlord. |
| Base Rent: | \$20.00/PSF, plus sales tax, for the first year, with 3% annual increases thereafter. |
| Term: | Initial nine years and 364 days from Lease Commencement; Concurrent with adjoining restaurant lease, terminable upon termination of adjoining restaurant lease. |
| Possession/ Lease Commencement: | Upon lease Commencement of the adjoining restaurant lease. |
| Rent Commencement: | The later of one month from execution of lease or date restaurant opening premises for business at 816 |

Commerce (22 Washington), but no later than (6) six months from lease execution date.

Security Deposit:

One month of Base Rent, plus sales taxes.

Option:

N/A

Property Taxes:

Tenant shall be responsible for all Property Taxes and other impositions in connection with the Leased Premises, to the extent that such Property Taxes and other impositions become due.

Delivery Condition:

As-Is

Sales Tax:

Tenant shall pay any and all applicable sales and use tax.

Additional Restrictions:

Tenant agrees that any (i) valet parking and/or a taxi cab stand; (ii) delivery and/or take-out service; and (iii) any Sidewalk Café permit, if approved by the City in conjunction with the Tenant's restaurant operation at 816 Commerce Street shall not utilize Washington Avenue and will be limited to Commerce Street.

No application for a City of Miami Beach special event permit shall be sought by Tenant for the Demised Premises and Tenant's restaurant building at 816 Commerce Street during the term of the Lease Agreement.

It is understood and agreed that the Demised Premises shall be used by the Tenant during the term of this Agreement only for the uses contemplated herein, and for no other purpose or use whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit waste on the Demised Premises, use the Demised Premises for any illegal purpose, or commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises for any purpose not expressly permitted herein, then the City may declare this Agreement in default, or without notice to Tenant, restrain such improper use by injunction or other legal action.

Improvements – Required Approvals/Procedures:

Capital improvements contemplated for the Lease Premises require and are subject to Landlord's prior written consent. Plans for such improvements are also subject to Landlord's review and approval in writing. Moreover, such construction shall be properly permitted and done in compliance with all applicable Municipal, County, State and Federal regulatory requirements, and shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City.

Without the prior written consent of the City, Tenant shall not permit the painting and display of any signs, plaques, lettering or advertising material of any kind on or near the Demised Premises. All additional signage shall comply with signage standards established by the City and comply with all applicable building codes, and any other Municipal, County, State and Federal laws.

Performance Bond:

Tenant shall deliver a Performance Bond, or other similar instrument (e.g. Letter of Credit, Surety Bond, etc.) acceptable to the City, in an amount equal to the estimated cost to demolish and remove, at the City's sole discretion, any improvements constructed on the Demised Premises, at the termination and/or expiration of the Agreement.

Tenants Insurance:

Comprehensive General Liability in an amount not less than \$1,000,000 per occurrence.

Workers Compensation and Employers Liability Coverage in accordance with Florida Statutes.

Tenant's Maintenance Obligations

Tenant shall be responsible for day-to-day maintenance and repairs of the Leased Premises.

Utilities:

Tenant shall be responsible for all utility costs, including without limitation, water, gas, electricity, sewer, storm water, and any other utility service provided to the Leased Premises.

Commission:

Landlord shall not be responsible for payment of a commission in connection with the lease of the subject property.

This proposal and shall not be deemed to be a commitment by or binding upon Landlord or Tenant until a lease has been negotiated and executed by the parties.

Should you have any questions with respect to this Letter of Intent please do not hesitate to contact me.

Sincerely,

Alpha 22, LLC

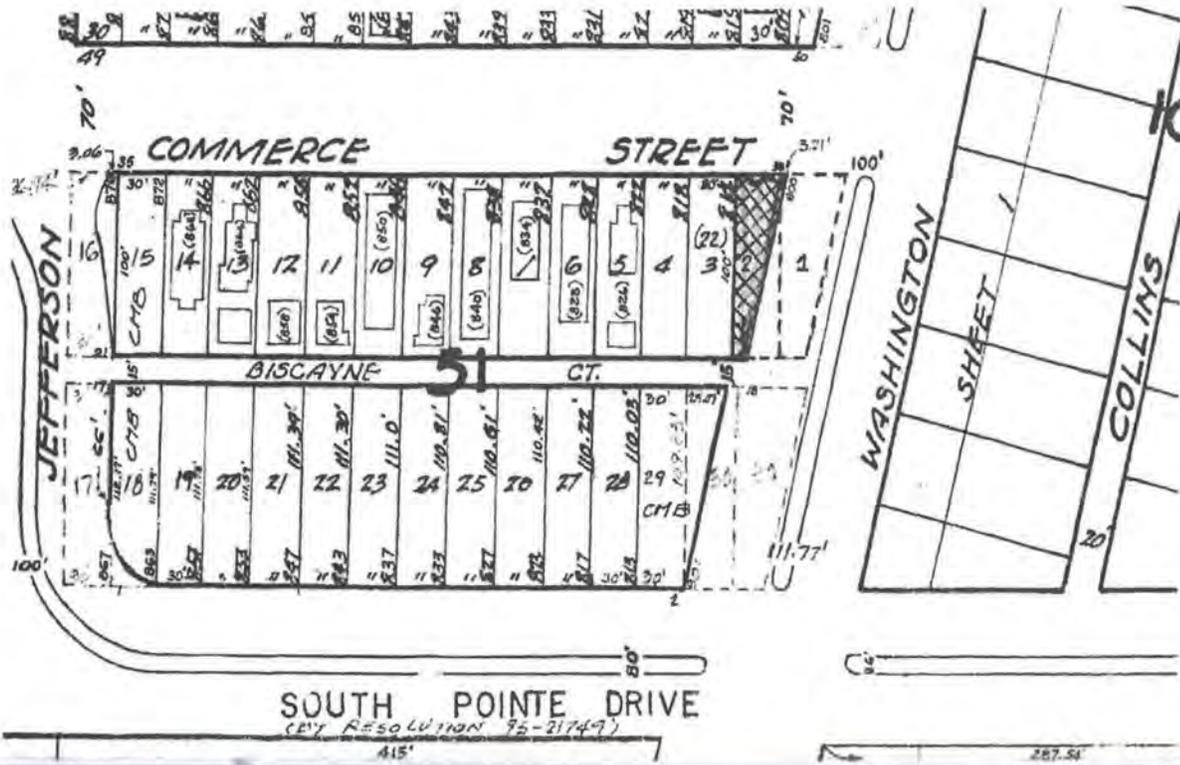
By:  _____
Oliver Lubrano, Manager

F:/RHCD/\$all/ECON/\$all/Asset/Asset/22 Washington/LOI from Alpha 22, LLC 8-5-13

EXHIBIT A

Description of Demised Premises

A portion of Lots 1 and 2, Block 51, Ocean Beach Addition No. 3, according to the plat thereof, recorded in Plat Book 2, at page 81, of the Public Records of Dade County, Florida, being more particularly described as follows: Bounded on the North by the South R/W line of Commerce St.; Bounded on the West by the East line of Lot 2; Bounded on the South by the North R/W line of Biscayne Court; Bounded on the East by a line that is a perpendicular distance of 100 feet westerly and parallel to the East R/W line of Washington Avenue.



Additional Requirements

The Demised Premises shall be maintained in a clean, neat and orderly appearance at all times by the Tenant. The area of the sidewalk, curb and gutter immediately adjacent to the Demised Premises shall be cleared of all debris during hours of operation, and again at the close of each business day, or as may otherwise be determined by the City Manager.

The Tenant shall be responsible for cleaning the floor surface on which the outdoor seating is located at the close of each business day. In addition, the following conditions shall apply:

- a. Tables, chairs, umbrellas and any other outdoor cafe furniture shall be maintained in a clean, attractive, and orderly appearance, and shall be maintained and kept in good repair at all times;
- b. All outdoor furniture shall be of high quality, design, materials, and workmanship so as to ensure the safety and convenience of the public;
- c. Only the outdoor cafe furniture specifically shown on the approved site plan shall be allowed in the Demised Area;
- d. All tables, chairs, umbrellas, and any other outdoor furniture shall be readily removable, and shall not be physically attached, chained, or in any other manner affixed to any public structure, street furniture, signage, and/or other public fixture, or to a curb and/or public right-of-way;
- e. The stacking or piling up of chairs shall be prohibited on the Demised Premises;
- f. At close of business, all tables, chairs and any other outdoor furniture shall be removed from the Demised Premises and stored in a non-visible location from the public right-of-way. Any exception to this requirement shall be at the sole and absolute discretion of the City Manager and/or his/her designee.
- g. No storage of dishes, silverware or other similar restaurant equipment shall be allowed in the Demised Area, or in any other portion of the public right-of-way, or outside the structural confines of the building in which the restaurant is located, during non-business hours;
- h. There shall be no live entertainment or speakers placed in the Demised Area;
- i. Only one menu board shall be permitted to be displayed on the Demised Premises, the location of which shall be set back next to the main entrance door of the enclosed area of the restaurant;
- j. No food preparation, food storage, refrigeration apparatus or equipment, or fire apparatus or equipment, shall be allowed on the Demised Premises;
- k. No food displays shall be permitted on Demised Premises. No advertising signs or business identification signs shall be permitted, except that the restaurant name and/or its logo may be permitted on umbrellas but such logos and/or lettering may not exceed six inches in height;
- l. Plants shall be properly maintained. Distressed plants shall be promptly replaced. Plant fertilizers which contain material that can stain the sidewalks shall not be allowed;
- m. The City Manager or his/her designee may cause the immediate removal, relocation and/or storage of all or part of any furniture located on the Demised Premises in emergency situations or for public safety considerations. Upon written and/or verbal notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning by Miami-Dade County, whichever occurs first, the Tenant shall, within no more

than four hours of same, remove and place indoors all tables, chairs and any other outdoor furniture located on the Demised Premises. The notification by the City Manager of a hurricane or other major weather event, or the issuance of a hurricane warning, shall constitute a public emergency situation as referenced in this division. The City Manager may remove, relocate, and/or store any outdoor furniture found on the Demised Premises that has otherwise not been removed by the Tenant pursuant to this subsection. Any and all costs incurred by the City for removal, relocation and/or storage of Tenant's furniture shall be the responsibility of the Tenant.

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee Members

FROM: Jimmy L. Morales, City Manager 

DATE: September 19, 2013

SUBJECT: **A DISCUSSION REGARDING AN AMENDMENT TO THE LEASE BY AND BETWEEN THE CITY OF MIAMI BEACH ("LANDLORD") AND MASSAGE PARTNERS, INC. ("TENANT") DATED SEPTEMBER 15, 2010, FOR THE PREMISES LOCATED AT 1701 MERIDIAN AVENUE, UNIT 2 (A/K/A 767 17TH STREET), MIAMI BEACH, FLORIDA, CONCERNING: 1) THE ADDITIONAL USE OF THE DEMISED PREMISES AS A NAIL SALON; AND 2) THE USE OF THE COMMON AREA RESTROOMS LOCATED ON THE SECOND FLOOR OF THE 1701 MERIDIAN AVENUE OFFICE BUILDING FOR TENANT'S NAIL SALON CUSTOMERS**

BACKGROUND

On September 15, 2010, the Mayor and City Commission passed Resolution No. 2010-27488, approving a Lease Agreement between the City and Massage Partners, Inc. ("Tenant") for the use of approximately 1802.89 square feet of City-owned property, located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), Miami Beach, Florida ("Leased Premises"); said Lease having a term of nine (9) years and 364 days, commencing on December 2, 2010, and ending on November 30, 2020.

As stated in Section 7 of the Lease Agreement, the Leased Premises shall be used by the Tenant only for the purpose(s) of providing therapeutic massage services, facials, and any other products or services authorized pursuant to Tenant's Franchise Agreement with Massage Envy Franchising, LLC ("the Franchisor"). Any additional uses shall be subject to the prior written approval of the City Manager, in his sole and reasonable discretion. Furthermore, pursuant to Subsection 8.C.2 of Tenant's Franchise Agreement, the Tenant shall not offer, sell, give away or otherwise provide any services or products not authorized by the Franchisor.

The Tenant has requested permission from the City to expand the use of the Leased Premises to include nail salon services in a small portion of space ("Proposed Nail Salon Space") located at the front of the Leased Premises and separated by partition walls from the space from which the Tenant currently provides massage services.

The Franchisor has stated it cannot approve the sharing of signage, entryways or bathrooms by its franchisees with other businesses. The Leased Premises contains a separate entryway for the Proposed Nail Salon Space as well as a separate area for window signage. However, the Leased Premises do not contain a separate restroom which can be utilized by the nail salon customers. Subsequent to numerous discussions between the Administration and the Tenant, it was determined that a separate restroom is also required by the City in order for the Proposed Nail Salon Space to obtain the applicable business licenses.

The Finance and Citywide Projects Committee (FCWPC) considered this request at the November 9, 2012 meeting. The Committee asked that a standby letter of credit be issued for the contractor's liens which were filed. The Committee also asked staff to determine a proportionate share for use of the restroom and determine the appropriate CAM fees to be charged and bring it back to the Finance and Citywide Committee with the methodology used to calculate the fees.

The request was brought back to the FCWPC on July 25, 2013. After discussing the matter, Mayor Matti Bower expressed concern regarding the City's liability if there is access into a City building when not occupied on the weekends. Commissioner Jorge Exposito suggested that Massage Partners try to get a waiver from the Franchisor in order to use its restrooms. Chairperson Deede Weithorn recommended Massage Partners work with their next door neighbors, the Permit Doctor, to use their restrooms, and provide evidence to the City via an affidavit.

The Committee asked for direction from the Building Department to determine if the use of the common area bathrooms located on the second floor of the 1701 Meridian Avenue office building is permitted under the Building Code. The Committee also asked if the Building Code allows for Massage Partners to use the Permit Doctor's bathrooms via an agreement between the tenants.

ANALYSIS

The Tenant has requested to expand its product/service line to include a nail salon, which is a natural extension of the current services provided. As previously stated, Section 7 of the Lease Agreement specifically states the Leased Premises shall be used by the Tenant only for the purpose(s) of providing therapeutic massage services, facials, and any other products or services authorized pursuant to Tenant's Franchise Agreement with Massage Envy Franchising, LLC ("the Franchisor"). Any additional uses shall be subject to the prior written approval of the City Manager, in his sole and reasonable discretion. The Administration is agreeable to allowing an additional use of the Leased Premises as a nail salon, subject to written approval by the City Manager.

The use of additional restroom facilities located in the 1701 Meridian Avenue office building is also required in order to comply with both the Franchisor's stipulations and the requirements of the City. The Administration is also agreeable to providing the Tenant the non-exclusive, revocable use of the common area restrooms located on the 2nd Floor of the 1701 Meridian Avenue office building, subject to the Tenant complying with any additional insurance requirements and/or regulatory requirements.

Calculation of Rent:

Tenant currently pays a base rental rate of \$27.60 per square foot for the Leased Premises, plus operating expenses at \$4.00 per square foot, and also escrows funds for real estate taxes at the current rate of \$7.78 per square foot, and insurance costs at a rate of .90 per square foot.

Per Subsection 3.2.1 of the Lease Agreement, "Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, water service to the Building, sewer

service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees. Based on this definition, the Administration believes the Tenant already pays for the common bathroom and its water and sewer expenses.

However, the FCWPC requested the Administration provide a methodology for calculating additional fees for use of the 2nd floor restroom at it's November 9, 2012 meeting. Currently, the retail tenants at the 1701 Meridian Avenue building pay \$4.00 PSF for operating expenses and the office tenants pay \$6.00 PSF. The difference is due to certain expenses which are not passed through to the retail tenants, such as electricity since the retail tenants are separately metered.

If the FCWPC were inclined to charge additional rent for use of the restroom on the second floor of 1701 Meridian Avenue, the cost may be calculated based upon the size of the restrooms, which are 104 square feet for the men's room and 144 square feet for the women's room. The Administration recommends the combined square footage of 248 square feet should be subject to the \$6.00 PSF which the office tenant's currently pay. Accordingly, the rent for the use of the bathrooms would be \$1,488 per year (248 sf x \$6.00), payable in monthly installments of \$124.

Outstanding Liens:

The Tenant performed extensive renovations to the space, and in consideration of the Tenant's improvements, the City delayed rent commencement for one year after Lease commencement. The Tenant improvements were conducted by Tenant's contractors, one of whom filed two Claims of Lien against the leasehold interest in August 2012. The contractor claimed he was owed \$66,300.67 by the Tenant. The City placed the Tenant on notice of default. The Tenant in turn filed a Contest of Lien. The City, pursuant to Section 15 of the Lease Agreement, requested the Tenant provide the City with security in the amount of \$99,451.00 immediately in connection with the Claim of Lien. On October 31, 2012, the contractor informed the Administration that negotiations were ongoing with Massage Partners and that the Tenant had offered to pay \$40,000 of the \$66,300.67. On June 26, 2013, the City received two Releases and Satisfaction of Recorded Claims of Lien (attached hereto and marked "Attachment 1"). The City Attorney's office has determined said Releases are acceptable to the City.

Pending Lawsuit:

Tenant is suing the adjacent tenant to the west of the Leased Premises, South Florida Salon Group, Inc. ("SFSG") for specific damages relating to the rights to approximately 160 square feet of space which are part of SFSG's lease with the City. The City was named as a party in the initial Complaint. The City Attorney's office required that any allegations as to the City be removed from the lawsuit. The City has since been removed and is no longer a party in the

lawsuit. The City Attorney's office has determined the revised Complaint (attached hereto and marked "Attachment 2") is devoid of any allegations as to the City.

Use of Permit Doctor's Restrooms:

The Building Department will not allow Massage Partners to use an adjacent business' restroom (Permit Doctor), even if the adjacent business agrees to such arrangement and provides an affidavit.

Use of Common Area Restrooms on Second Floor:

The Building Department was not inclined to allow the use of the common area bathrooms of the office building since they could not be accessed through internal, common space. However, because the Chief Plumbing Inspector had already approved the use of the common area restrooms the Building Official has said he will allow it.

The entrance to the office building is open/unlocked Monday – Friday 7:00 AM to 7:00 PM and is closed on the weekends. The only persons with access to the building outside of these hours are City employees with City-issued identification/access cards. The Tenant has said they will only be open during Massage Envy hours which are Monday – Friday 8:00 AM to 10:00 PM and Saturday/Sunday 9:00 AM to 9:00 PM.

Massage Partners has said they are willing to escort any patrons of the nail salon to the common area restrooms. Massage Partners has also offered to install a security camera in the lobby of the office building. The camera would be connected to, and recorded by, Massage Partners' security equipment in the Premises. The City is named as an additional insured on Tenant's liability insurance

CONCLUSION AND RECOMMENDATION

From a business and practical standpoint, the Administration, as Landlord, has no objection to the additional use of the Premises as a nail salon, subject to the City Manager approving the additional use in accordance with the terms of the Lease.

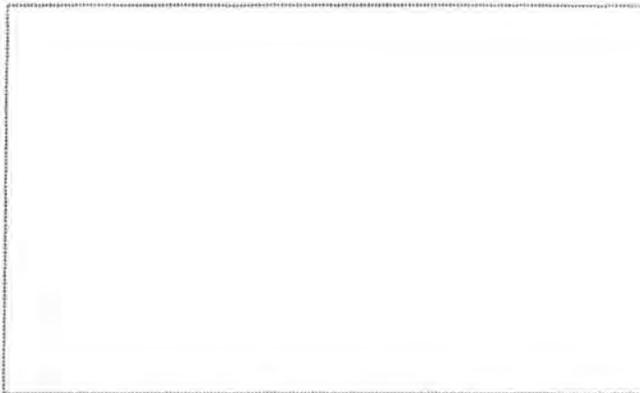
The nail services and use of the restroom on the 2nd floor do not require City Commission approval. However, if the FCWPC recommends charging additional rent for use of the restroom, City Commission approval would be required for the increased rent.

The Administration seeks a recommendation from the Finance and Citywide Projects Committee.


JLM/KAB/MAS/MMM

Attachment 1

**RELEASE
AND
SATISFACTION
OF
RECORDED CLAIM OF LIEN**



THIS INSTRUMENT PREPARED BY:
Ruben A. Diaz Jr., President
CAPITOL STEET STRUCTURES
2188 N.W. 25th Avenue
Miami, Florida 33142
(305) 633-5008

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

The undersigned (lienor) having filed a Claim of Lien in the amount of **TWENTY-FIVE THOUSAND, TWO HUNDRED, TWENTY-FOUR DOLLARS AND 18/100 (\$25,224.18)** against the property of **MESSAGE PARTNERS, INC. (Tenant)** on **July 25th, 2012** in Official Record Book **28202**, at Page **4847**, in the Office of the Clerk of the Circuit Court of **Miami-Dade** County, State of Florida, against real property described as:

LEASEHOLD INTEREST IN: 1701 MERIDIAN AVENUE, UNIT 2, (A/KA 767 17TH STREET), MESSAGE ENVY, MIAMI BEACH, FLORIDA, A/K/A "1701 MERIDIAN BUILDING CONDOMINIUM UNIT 2", CONDOMINIUM RECORD'S BOOK 25724, PAGE 1183, MIAMI-DADE COUNTY, FLORIDA, FOLIO NO. 02-3234-206-0020.

NOW THEREFORE, the lienor, for the good and valuable consideration of **TWENTY-FIVE THOUSAND, TWO HUNDRED, TWENTY-FOUR DOLLARS AND 18/100 (\$25,224.18)**, does hereby acknowledge having received full payment and satisfaction of the Claim of Lien and does direct the Clerk of the Circuit court to cancel and discharge the Claim of Lien in accordance with Section 713.21 of the Florida Statutes.

Signed, sealed, and delivered this 3 day of May, 2013.

**CAPITOL STEET STRUCTURES
2188 N.W. 25TH AVENUE
MIAMI, FLORIDA 33142**

Ruben A. Diaz Jr., President

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared **Ruben A. Diaz Jr.**, to me known to be the person described in, or has produced as identification and did take an oath, and who says that he/she is the **President** of, **CAPITOL STEET STRUCTURES** and that he/she hereby executed the foregoing instrument and he/she acknowledged before me that he/she executed the same for and on behalf of **CAPITOL STEET STRUCTURES** . and at its special instance and request.

WITNESS my hand and official seal in the County and State last aforesaid this 3rd day of May A.D., 2013.

My Commission Expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
Sonia Perez

(Typed or Printed Name of Notary Public)

**RETURN TO: CAPITOL STEET STRUCTURES
c/o P.O. BOX 820838
Pembroke Pines, Florida 33082**

NOTARY PUBLIC-STATE OF FLORIDA
Sonia Perez
Commission #DD908137
Expires: JULY 29, 2013
BONDED THRU ATLANTIC BONDING CO., INC.

Attachment 2

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: 2012-37796 CA 15

Florida Bar No.: 221351

MASSAGE PARTNERS, INC., a :
Florida corporation d/b/a Massage :
Envy, :

Plaintiff, :

vs. :

SOUTH FLORIDA SALON GROUP :
INC., a Florida corporation d/b/a Blo :
Bar, :

Defendant. :

SECOND AMENDED COMPLAINT

Plaintiff, MASSAGE PARTNERS, INC., a Florida corporation d/b/a
Massage Envy (hereinafter "MASSAGE ENVY") sues the Defendant, SOUTH
FLORIDA SALON GROUP, INC., a Florida corporation d/b/a Blo Bar
(hereinafter "BLO BAR"), and says:

1. This is an action for specific performance of a contract and for damages for an amount in excess of \$15,000.00.

JURISDICTIONAL ALLEGATIONS

2. The Plaintiff, MASSAGE ENVY, is a Florida corporation engaged in business in Miami-Dade County, Florida.
3. The Defendant, BLO BAR, is a Florida corporation engaged in business in Miami-Dade County, Florida.
4. Venue is proper in Miami-Dade County, Florida.
5. Commencing September 15, 2010, the Plaintiff, MASSAGE ENVY, became a tenant at the property located at 1701 Meridian Avenue, Unit 2, Miami Beach, Florida, where it operates a massage franchise. The landlord is the City of Miami Beach.
6. Prior to February 1, 2012, Unit 1 (the space next door to and directly adjacent to Unit 2) became vacant and available to rent. The Defendant, BLO BAR, desired to enter into a lease with the City of Miami Beach to lease 1701 Meridian Avenue, Unit 1, Miami Beach, Florida..
7. The square footage of the entire Unit 1, which BLO BAR desired to

lease from the City of Miami Beach is approximately 1,300 square feet.

8. The Plaintiff, MASSAGE ENVY, interested in expanding its existing operation, also desired to rent 160 square feet of Unit 1; and, on February 1, 2012, MASSAGE ENVY and BLO BAR entered into a written agreement whereby the Defendant, BLO BAR, agreed not to sign a lease with the City of Miami Beach for a specific portion of Unit 1 consisting of those 160 square feet so that those 160 square feet could be used by MASSAGE ENVY. A copy of the written agreement and floor plan describing the 160 square feet is attached hereto as Exhibit 1.
9. On February 1, 2012, the Defendant, BLO BAR, also signed a letter of agreement prepared by the leasing agent for the City of Miami Beach which sets forth the specific details of BLO BAR's agreement not to rent the subject 160 square feet from the City of Miami Beach. A copy of the letter of Agreement is attached hereto as Exhibit 2.
10. After the Plaintiff, MASSAGE ENVY, and the Defendant, BLO BAR, signed the written agreement setting forth their mutual agreement that BLO BAR would not sign a lease with the landlord,

City of Miami Beach, to rent the subject 160 square feet, BLO BAR breached its agreement with MASSAGE ENVY by entering into a written lease with the landlord to rent the subject 160 square feet in breach of its covenant with MASSAGE ENVY.

11. Thereafter, the Defendant, BLO BAR, built the interior of Unit 1; and, instead of allowing Plaintiff to construct the interior partition wall to incorporate the 160 square feet for Plaintiff's use, constructed interior walls that incorporated the 160 square feet that BLO BAR had agreed not to lease for itself.

COUNT I
(SPECIFIC PERFORMANCE OF AN AGREEMENT
COVENANT NOT TO LEASE)

12. MASSAGE ENVY re-adopts and re-alleges the allegations contained in paragraphs 1 - 11.
13. The Plaintiff, MASSAGE ENVY, is entitled to specific performance of the written Agreement requiring the Defendant not to lease those 160 square feet of Unit 1's space.
14. The Plaintiff, MASSAGE ENVY has demanded that the Defendant, BLO BAR, perform the Agreement to relinquish the 160 square feet; however, the Defendant refuses to abandon possession of the 160

square feet and refuses to comply with the written Agreement not to lease or use the 160 square feet.

15. The agreement by BLO BAR not to rent the 160 square foot space pertains to real property which by its nature is unique; and, therefore, Plaintiff, MASSAGE ENVY, seeks the equitable remedy of specific performance because it has no adequate remedy at law.
16. The Plaintiff, MASSAGE ENVY, has performed the agreement with BLO BAR and is entitled to a decree of specific performance to require the Defendant, BLO BAR, not to use the 160 square feet that it agreed not to lease and use.
17. When Defendant, BLO BAR entered into its lease with the City of Miami Beach, BLO BAR was aware it was required to enter into a lease for only rent 1,140 square feet of the premises and not incorporate those 160 square feet into the premises.

WHEREFORE the Plaintiff, MASSAGE ENVY, prays that the Court:

- 1) Enter a decree of specific performance requiring the Defendant, BLO BAR, to vacate possession of the 160 square feet pursuant to the terms of the agreement not to lease;
- 2) Enter a judgment against the Defendant, BLO BAR, for the damages

incurred by the Plaintiff, MASSAGE ENVY, as a result of the breach of the written agreement by Defendant, BLO BAR;

- 4) Grant any other equitable relief that the court deems proper and can fashion to require the Defendant, BLO BAR, to comply with its written agreement; and
- 5) Award costs and attorney's fees to Plaintiff.

COUNT II
(BREACH OF CONTRACT AGAINST BLO BAR)

18. The Plaintiff, MASSAGE ENVY re-adopts and re-alleges the allegations contained in paragraphs 1 - 11.
19. The Plaintiff, MASSAGE ENVY, and the Defendant, BLO BAR, entered into a written contract dated February 1, 2012 where the Defendant, BLO BAR, agreed:
 - a. Not to lease a specific 160 square foot portion of Unit 1, 1701 Meridian Avenue, Miami Beach, Florida, leaving the 160 square feet for MASSAGE ENVY;
 - b. With respect to any lease entered into by BLO BAR and the landlord, the parties agreed that MASSAGE ENVY is an intended third party beneficiary to enforce its rights under the

Agreement.

- c. MESSAGE ENVY would pay for the construction of the partition wall between Unit 1 and 2 along the perimeter of the 160 square feet of the location.
20. BLO BAR breached the terms of the Agreement by:
 - a. Failing to allow MESSAGE ENVY to construct a partition wall between Unit 1 and 2, along the perimeter of the 160 feet of the location.
 - b. Entering into a lease agreement with the City of Miami Beach for the entire 1,300 square feet (including the subject 160 square feet) instead of only 1,140 square feet as BLO BAR agreed with MESSAGE ENVY that BLO BAR would do.
21. As a result of the breach of the agreement by the Defendant, BLO BAR, the Plaintiff, MESSAGE ENVY has been damaged by the loss of use of the 160 square feet of space and the compensation damage in the loss of profits to its business. The 160 square feet was going to be used to create two additional massage rooms to increase the total massage rooms from 9 to 11.
22. The Plaintiff, MESSAGE ENVY, has demanded that the Defendant,

BLO BAR, perform the contract but the Defendant, BLO BAR, has failed to perform the contract entitling the Plaintiff, MASSAGE ENVY, to recover damages including the loss of profits as a result of the breach by the Defendant, BLO BAR.

23. The Plaintiff, MASSAGE ENVY, is entitled to recover attorney's fees pursuant to the terms of the Agreement.

WHEREFORE, the Plaintiff, MASSAGE ENVY, prays that the Court enter a Judgment against the Defendant, BLO BAR for damages in excess of \$15,000.00 together with interest, attorney's fees and costs.

SILVER & SILVER
108 South Miami Avenue, 2nd Floor
Miami, Florida 33130
E-mail: silver-silver@msn.com
Tel: (305) 374-4788
Fax: (305) 358-6535

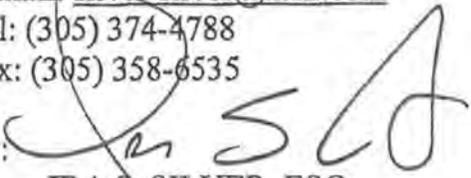
By: 
IRA S. SILVER, ESQ.
FBN 221351

EXHIBIT 1

Agreement

THIS AGREEMENT (hereinafter referred to as the "Agreement") made this 1st day of February, 2012, is between MASSAGE PARTNERS, INC. (hereinafter referred to as "Massage Envy") and SOUTH FLORIDA SALON GROUP, INC. (hereinafter referred to as "Blo Bar"). Blo Bar and Massage Envy are hereinafter referred to each as a "party" or collectively as the "parties."

RECITALS AND BACKGROUND:

WHEREAS, Massage Envy is currently a tenant of 1701 Meridian Avenue, Unit 2, Miami Beach, Florida and was seeking to expand its leased premises by renting currently vacant Unit 1 at the same address;

WHEREAS, Blo Bar wishes to open in S. Beach and was seeking to also lease Unit 1;

WHEREAS, the parties were competing with each other to rent the same Unit 1 space (hereinafter referred to as the "Location") and driving up the price, and risking that one party may get the entire Location leaving the other party with no part of the Location;

WHEREAS, the parties realize that they are better off not driving up the price and mitigating the aforesaid risk by coming to a mutually beneficial agreement so as to share the Location,

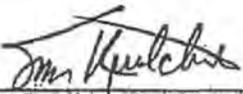
NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and agreements of the parties and other good, and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties intending to be legally bound hereby agree as follows.

1. Purpose. The parties agree that the above recitals and background are true and hereby incorporate them into this Agreement. Subject to the terms and conditions of this Agreement, the parties agree to stop competing for the entire Location so that Blo Bar will rent from the landlord only 1,140 square feet of the Location and Massage Envy will rent from the landlord 160 square feet of the Location (in the back-right corner of the Location) *
2. Nails Exclusive. Blo Bar agrees not to perform any nails services at the Location; and, Blo Bar assigns to Massage Envy (or its designee) all rights, title, and exclusive interest to perform nail services at the Location and at Unit 2. This Agreement shall supersede any and all other paperwork created to date or in the future. With respect to any lease entered into by Blo Bar and the landlord, the parties agree that Massage Envy is an intended third party beneficiary to enforce its rights under this Agreement.
3. Parties' Duties. Massage Envy will pay for the construction of the partition wall between Unit 1 and Unit 2 along the perimeter of its 160 square feet of the Location. The parties agree to use their respective best efforts, to cooperate with each other, and to conduct themselves in a manner consistent with achieving the purpose of this Agreement. The parties understand that this Agreement and the terms of this Agreement are material inducements for Massage Envy to cease attempting to rent the entire Location from the landlord; and, the parties understand that Massage Envy is relying upon Blo Bar's

agreements to abide by the terms of this Agreement so that Massage Envy secures the 160 square feet and the exclusive rights to nails services.

4. Termination. If, within ninety (90) calendar days from the last execution of this Agreement, Blo Bar does not rent its portion of the Location 1 from the landlord, Massage Envy shall be free to attempt to rent the whole Location; but, Blo Bar, and any successor or affiliate shall still be bound by this Agreement. Time is of the essence.
5. Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.
6. Scope of Application. This Agreement shall be binding upon and inure to the benefits of the parties hereto, their respective heirs, and respective successors. The prevailing party attempting to enforce the terms of this Agreement shall be entitled to recover its reasonable legal fees and costs.
7. Entire Agreement and Modification. This Agreement is intended by the parties to be, and constitutes, a final, exclusive, and entire expression of the understanding between the parties with respect to the matters set forth in this Agreement and supersedes all prior understandings, if any, with respect thereto. This Agreement shall not be modified or amended except in writing executed by all Parties. The individuals signing this Agreement on behalf of their corporate entities represent they are fully empowered to do so.

IN AGREEMENT:



Massage Envy, Date 2/1/12



Blo Bar, Date 2-1-12

*Please see attached drawing to identify space partition

EXHIBIT 2

**KONIVER
STERN GROUP**
RETAIL REAL ESTATE & BROKERAGE

January 31, 2012

Via email: Olari@famnam.com

Re: **City of Miami Beach Retail - 17th St Unit 1**

Dear Eric:

On behalf of the owners of the above referenced development, I am pleased to present the following basic terms and conditions under which the owners would enter into a lease agreement with your client at the above referenced development:

| | |
|----------------------------------|--|
| Shopping Center Name: | City of Miami Beach Retail |
| Tenant: | South Florida Salon Group |
| Use: | Premises shall be used for the operation of a Blow dry Salon. The back right 160 sq. ft. of the space** shall be transferred to the next door tenant, Massage Partners, Inc's lease, and such tenant will create a partition wall and will receive exclusive manicure and pedicure rights. |
| Premises: | Approx 1,140 sq. ft. |
| Term: | Five (5) years with a Five (5) year option |
| Rent: | Year 1: \$51.00/psf. |
| Increases: | Three percent (3%) every year |
| Lease Commencement: | The date Lease is fully executed by Landlord and Tenant. |
| Rent Commencement: | 90 days from the date Landlord delivers |
| Condition of Delivery: | As-Is |
| Prepaid Rent: | One months rent, due upon lease execution |
| Minimum Security Deposit: | Six months rent, due upon lease execution |
| Construction Escrow: | Construction funds to be deposited into the tenant's attorney's escrow account to securitize construction. To be based upon General Contractor's final contract. |
| Contingency: | The terms of this proposal are valid upon approval of Tenant's Lease Application and up to ten (10) days from the date of Proposal. |

1665 Washington Avenue, Penthouse
Miami Beach, Florida 33139
T (305) 532-6100 F (305) 532-6101

www.koniversterngroup.com

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TO: Finance and Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager

DATE: September 19, 2013

SUBJECT: **DISCUSSION REGARDING CITY'S THE RED LIGHT CAMERA PHOTO ENFORCEMENT PROGRAM**

BACKGROUND

In light of the new State law regulating red light camera photo enforcement that became effective on July 1, 2013, Commissioner Michael Gongora placed the Red Light Camera Photo Enforcement Program on the agenda for discussion at the July 17, 2013 City Commission meeting. In addition to the enactment of the new law, Commissioner Gongora pointed out that the program was providing less revenue than expected.

During the July 17, 2013 Commission meeting, discussion centered on the new State law governing red light camera photo enforcement, specifically the role of the Special Master to adjudicate Notice of Violation appeals, the impact of the program on motor vehicle crashes at the red light camera intersections and the lack of revenue derived from the fines.

In preparation for that Commission meeting, staff of the Miami Beach Police Department, along with the City Attorney's and City Clerk's Office, prepared a Letter to the Commission (LTC) addressing the status of the City's red light camera photo enforcement program (LTC #244-2013 attached). As a result of the discussion on July 17, 2013, this matter was referred to the Finance and Citywide Projects for further review of the program relative to crash data and financials.

ANALYSIS

As indicated in Letter to the Commission #244-2013, crashes at intersections where the red light cameras are located have been declining. The number of notice of violations has decreased since the inception of the program, primarily due to the various changes in State law governing red light cameras. However, since the enactment of the new red light camera legislation in July 2013, which requires a complete stop before making a right turn, the number of right turn violations have increased dramatically. Although there are only two (2) months of data available, the average number of violations issued per day in July and August has increased to 4.48 per camera per day from 1.42 in Fiscal Year 2011/2012 and 1.99 in Fiscal Year 2012/2013 (year to date).

To further stress this impact, over these two (2) months, 70% of the total number of violations issued were right turn violations. In addition, the total number of notices of violation has also increased. This is not an aberration, as other police agencies in Dade and Broward Counties are experiencing similar spikes in the total number of notice of violations attributed directly to the new law governing right turns.

The table below depicts crashes at intersections with red light camera crashes, number of notice of violation issued, number of violations issued per day by camera, and revenue collected by Fiscal Year for comparison purposes.

| | Fiscal Year 2010/2011 | Fiscal Year 2011/2012 | Fiscal Year 2012/2013 <i>(through August 2013)</i> |
|--|--------------------------|--------------------------|--|
| Number of Notice of Violations Issued | 7,707 | 5,220 | 6,713 |
| Average Number of Notice of Violations issued per camera per day | 2.10 | 1.42 | 1.99 |
| Total Number of Crashes at Red Light Camera Intersections | 59 | 49 | 23 |
| Total Revenue | \$437,764.62 | \$290,550.14 | \$214,501.99 |

SPECIAL MASTER PROVISION

The new legislation requires municipalities with red light cameras to establish local hearing officers (Special Master) for drivers who want to appeal notice of violations. The Miami Beach Police Department anticipates that on a yearly basis approximately 1,200 violation notices will be appealed to the Miami Beach Special Master. A Code Violation Clerk, as well as a Special Master, will be needed to process the increased volume of work. The cost for both the Code Violation Clerk and the Special Master should be completely offset by the court cost that will be imposed. Further, these additional support positions were included in the Fiscal Year 2013/14 Proposed Budget for consideration by the City Commission.

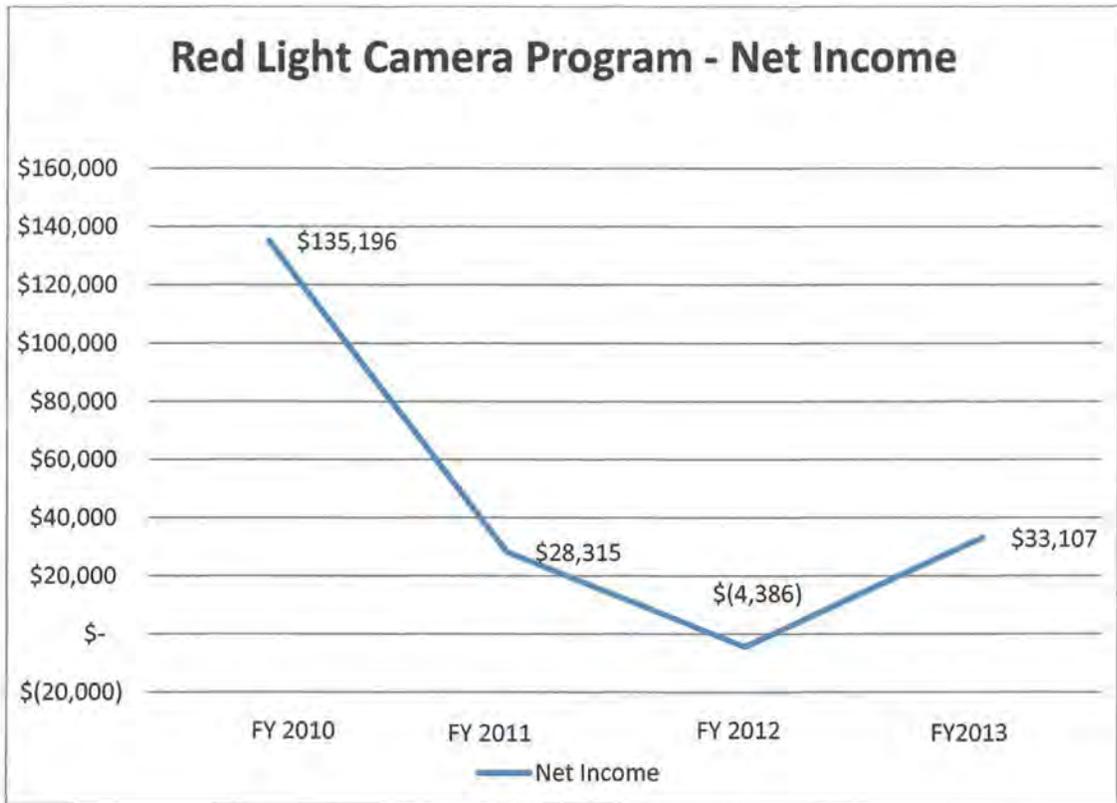
FINANCIAL STATUS OF THE PROGRAM

Since the inception of the City's red light camera photo enforcement program in April of 2010, where the program was enforced under a City Ordinance to where the program is now pursuant to State Statute, there have been several legal challenges that have led to two (2) major changes to the program. These major changes have negatively impacted the City's ability to generate revenue. Pursuant to the City's Red Light Camera Ordinance, which was repealed on July 1, 2010, the City derived \$125 for each notice of violation in addition to late fees.

On July 1, 2010, the Florida Legislature enacted the Mark Wandall Act, which essentially made red light camera infractions enforceable only under State law pursuant to FSS Chapter 316. As part of this change, Notice of Violation fines increased to \$158 per violation, with the State receiving \$83 and only \$75 going to the municipalities. This change alone accounted for a significant decline in revenue.

This provision, coupled with the change in criteria from a complete stop when making a right turn to "careful and prudent manner", now allowed a rolling turn. This one change led to a significant decline in the number of Notice of Violations and subsequently, a decline in total revenue.

However, with the latest change to the law requiring a complete stop before making a right turn on a red light, revenue has spiked significantly. As of July 2013, net revenue for the program since its inception is \$192,231.87.



CONCLUSION

It appears that with enactment of the new law, the Red Light Camera Photo Enforcement program will become financially viable. This prediction is based on the July and August Notice of Violations issued, the 2010 experience under the City Ordinance when a complete stop while making a right turn was a requirement, and the experience of other local police agencies. In terms of public safety it is apparent the program has had a positive impact on the number of crashes as evidenced by a steady decline at the majority of the intersections.

Attachments


 JLM/RAM/MNO/DM/MG

Red Light Camera Photo Enforcement

Exhibit A

| CAMERA LOCATIONS | ISSUED NOTICE OF VIOLATIONS (NOV) | | | | CUMALTIIVE AVG. NOV'S ISSUED PER DAY |
|--------------------------------|---|-------------|-------------|--|---|
| | FY2009/2010 (April 15- September 30, 2010) | FY2010/2011 | FY2011/2012 | FY2012/2013 (Oct 2012 – June 2013) | |
| DADE BLVD - WASHINGTON AVE | 1992 | 357 | 99 | 217 | 2.42 |
| 17 ST - WASHINGTON AVE - SB | 295 | 690 | 815 | 442 | 2.03 |
| 17 ST - WASHINGTON AVE - EB | 354 | 332 | 380 | 343 | 1.28 |
| 17 ST - ALTON RD - WB | 152 | 651 | 690 | 606 | 1.99 |
| 23 ST - PINETREE DR - SB | 215 | 447 | 275 | 219 | 1.05 |
| CHASE AVE - ALTON RD - NB | 1598 | 2450 | 1439 | 578 | 5.51 |
| 41 ST - PRAIRIE AVE | 145 | 153 | 88 | 53 | .39 |
| INDIAN CREEK - 63 ST - SB | 407 | 1655 | 489 | 535 | 2.80 |
| INDIAN CREEK - 71 ST - NB | 438 | 438 | 577 | 318 | 1.61 |
| INDIAN CREEK - ABBOTT AVE - SB | 0 | 534 | 368 | 576 | 1.34 |
| TOTAL | 5596 | 7707 | 5220 | 3887 | 2.03 |

Crash Data – Red Light Camera Program

Exhibit B

| LOCATION | Oct. 1, 2009 – Sept. 30, 2010 | Oct. 1, 2010 – Sept. 30, 2011 | Oct. 1, 2011 – Sept. 30, 2012 | Oct. 1, 2012 – August 31, 2013 |
|---------------------------------|----------------------------------|----------------------------------|----------------------------------|-----------------------------------|
| 17 ST AND ALTON RD | 7 | 9 | 10 | 7 |
| 17 ST AND WASHINGTON AVE | 14 | 11 | 3 | 4 |
| DADE BLVD AND WASHINGTON AVE | 3 | 6 | 0 | 1 |
| 23 ST AND PINETREE DR | 2 | 0 | 0 | 0 |
| CHASE AVE AND ALTON RD | 6 | 6 | 1 | 0 |
| 41 ST AND PRAIRIE AVE | 3 | 3 | 3 | 1 |
| 63 ST AND INDIAN CREEK | 14 | 9 | 2 | 3 |
| ABBOTT AVE AND INDIAN CREEK | 4 | 2 | 0 | 1 |
| 71 ST AND INDIAN CREEK | 6 | 3 | 4 | 2 |
| TOTAL | 59 | 49 | 23 | 19 |

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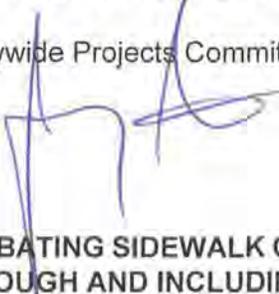


MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Members of the Finance and Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager 

DATE: September 19, 2013

SUBJECT: **A DISCUSSION REGARDING ABATING SIDEWALK CAFÉ FEES FOR BUSINESSES NORTH OF 63RD STREET, THROUGH AND INCLUDING SEPTEMBER 30, 2015.**

BACKGROUND

The Miami Beach City Code Chapter 82 authorizes the City to charge restaurants with sidewalk cafes a \$150.00 annual permit fee, plus \$20.00 per square foot for the café area. The City does not charge Sidewalk Café fees for businesses situated on State Roads because they were outside its jurisdiction. This created a competitive disadvantage for sidewalk cafes on City streets in the North beach Area.

In 1998, pursuant to Ordinance No. 98-3146, Sidewalk Café fees were abated during the North Shore construction project and for a year after completion as an economic development measure. Pursuant to Ordinance No. 2000-3237 adopted on April 12, 2000, the City Commission extended the fee waiver provisions to September 30, 2001.

At its January 15, 2003, the Finance and Citywide Projects Committee (FCWPC) recommended that the City of Miami Beach again waive Sidewalk Café fees for all businesses north of 63rd Street and annually review this waiver at budget time, in order to create a more equitable completion and stimulate business for sidewalk cafés in the North Beach Area. On February 26, 2003, the City Commission adopted Ordinance No. 2003-3397 which reinstated the fee waiver provisions subject to a two year budget analysis and review by the Administration. Later that same year, the City Commission adopted Ordinance No. 2003-3423 on July 30, 2003 repealing the Sidewalk Café fee abatement provisions.

At the July 19, 2013 meeting, the City Commission referred a discussion to immediately reinstate the fee waiver for sidewalk cafes in North Beach to the FCWPC, scheduled for September 19, 2013. In addition, the Commission requested that a new fee abatement program be established for the square footage fee on sidewalk café permits issued for locations north of 63rd Street.

At the September 11, 2013 meeting, the City Commission referred this item to the Neighborhoods/Community Affairs Committee, in addition to the FCWPC and requested that the item be brought back to the full Commission with a proposed Ordinance thereafter.

CONCLUSION

The following is presented to the members of the Finance and citywide Projects Committee for consideration and further discussion.

MT/EC/JJF

F:\WORK\3ALL\1) EMPLOYEE FOLDERS\FIORELLA SARMIENTO\FINANCE COMMITTEE- ALL ITEMS\Sidewalk Cafe Fees Waiver.doc

F&CWP Pending Items - Commission Referrals

Attachment 1

| Item # | Title | Referred By | Date Referred | Date Expiring per Reso # 2013-28147 | Note |
|--------|---|----------------------|---|-------------------------------------|---|
| 1 | Status update on Business Tax Process Improvement. | Jorge R. Exposito | | 09/23/2013 | Awaiting new business tax system |
| 4 | Additional proposed amendment to the City's Living Wage Ordinance Mandating Health Benefits Plan | City Managers Office | September 27, 2011 Commission Item R7E | 09/23/2013 | per Raul Aguilera - waiting for the Supreme Court to rule on this |
| 6 | Discussion of responses received from the Request For Letters of Interest (RFLI) for a North Beach parking garage | City Managers Office | | 09/23/2013 | |
| 61 | Discussion on water conservation methods and implementation | Jonah Wolfson | June 6, 2012 Commission Item C4G | 09/23/2013 | 4/25/13 CDM Smith to provide a study for Single Family homes with the current data back to the Committee. |
| 80 | Discussion Regarding: Business Tax Receipt Renewal Notices; How We Handle Over Charges; Reasons For Miscalculations; And Corrective Action Plan. | Jorge R. Exposito | October 24, 2012 Commission Item C4B | 09/23/2013 | 1/24/13 Monitor this item and bring it back before the Committee in November 2013 to see how it worked |
| 101 | A Discussion Regarding Upgrade To Municipal Parking Garage Gated Revenue Control System. | City Managers Office | January 16, 2013 Commission Item C4J | 09/23/2013 | |
| 120 | Discussion regarding the issuance of a request for qualifications for a third franchise Solid Waste contractor for residential and Commercial Solid Waste collections and disposal | Ed Tobin | March 13, 2013 Commission Item C4A May 8, 2013 Commission Item C2C | 09/23/2013 | 3/21/13 The Committee recommended bringing the item back to Finance with the RFW so that the City is prepared when the franchise contractor sale is finalized. |
| 124 | Discussion regarding permit expiration courtesy notices,Amnesty for expired permits,And length of time for building permits | Deeda Weithorn | March 13, 2013 Commission Item C4O | 09/23/2013 | |
| 127 | Discussion regarding small cells on existing poles | Michael Gongora | April 17, 2013 Commission Item C4I | 10/17/2013 | |
| 144 | Discussion of budgetary resources to keep funding social programs | Jonah Wolfson | June 5, 2013 Commission Item PA11 | 12/05/2013 | |
| 147 | Discussion regarding exploring the impacts from the reduction of On-Street Parking Spaces on Alton Road between 6th Street and Michigan Avenue caused by the FDOT Project | Deeda Weithorn | June 5, 2013 Commission Item C4K | 12/05/2013 | |
| 150 | Discussion regarding the renewal option pertaining to the retail lease agreement with 1560 Collins Ave., Inc, d/b/a Shan ("tenant"), for the use of suites b and c in the Anchor Shops, located at 1560 Collins Avenue, Suite No 2, Miami Beach, Florida ("space"); consideration of the US Vintage proposal; and, should tenant decide not to renew, authority to negotiate a termination agreement with tenant, simultaneously with the authority to either accept the US Vintage proposal or market the space. | | | | 7/25/13 The Committee recommended allowing US Vintage, Inc. to lease the space at 1560 Collins Avenue in 6 months and allow Shan to continue to pay rent for 6 months without a lease renewal |
| 153 | Discussion regarding a proposal from Alpha 22, LLC to lease 2,216 square feet of city-owned vacant property, located at 22nd Street and Washington Avenue, adjacent to existing restaurant space located at 816 Commerce Street, Miami Beach, Florida 33139 (Space), to be used as outdoor café, concurrent with the lease/use of the adjoining restaurant | | | | |
| 154 | Discussion on the Review and Recommendations for improving the City's Procurement Code completed by the National Institute for Public Procurement (NIGP) | Jimmy Morales | July 19, 2013 Commission Item C4B | 01/19/2014 | |
| 155 | Discussion regarding Proposed Comprehensive Records Management Plan | Jimmy Morales | July 19, 2013 Commission Item C4C | 01/19/2014 | |
| 156 | Discussion regarding Walker Parking to conduct a parking supply and demand analysis | Jimmy Morales | July 19, 2013 Commission Item C4D | 01/19/2014 | |
| 157 | Discussion regarding proposed City Wide survey of Single Family Home Districts in order to determine the number of architecturally significant homes in the City | | July 19, 2013 Commission Item C4M | 01/19/2014 | |
| 158 | Discussion regarding a possible partnership between the City of Miami Beach and the Bicycle Action Committee (BAC) in an effort to promote safety for Bicyclists | Deeda Weithorn | July 19, 2013 Commission Item C4P | 01/19/2014 | |
| 159 | Discussion regarding Red Light Cameras in Miami Beach in light of a new State Law that goes into effect on July 1, 2013 | Michael Gongora | July 19, 2013 Commission Item R9M | 01/19/2014 | |
| 160 | Discussion to immediately reinstate the Fee Waiver for Sidewalk Cafes in North Beach | Jerry Libbin | July 19, 2013 Commission Item R9P | 01/19/2014 | |
| 171 | Discussion regarding the recommendations of the Budget Advisory Committee (BAC) regarding the City of Miami Beach Self-Insured Health Care Insurance Plans and the 2014 premium costs for active employees and retirees | | | | |

RESOLUTION NO. 2013-28147

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

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

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

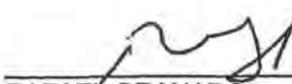
WHEREAS, the Committee also requested elected officials should be noticed of when their items will be discussed at committee and agreed that one courtesy deferral should be accommodated if the Commissioner is out of town or unable to attend; and

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

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

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

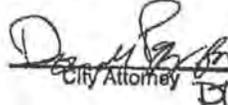
ATTEST:


RAFAEL GRANADO
CITY CLERK



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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney
Date 3/18/13

COMMISSION ITEM SUMMARY

Condensed Title:

A Resolution accepting the recommendation of the Neighborhood and Community Affairs Committee automatically withdrawing items referred to City Commission Committees if not heard within six (6) months from its referral date and recommending inclusion of a report in the City Commission agenda transmitting a list of withdrawn items.

Key Intended Outcome Supported:

Increase Community Satisfaction with City Government.

Supporting Data (Surveys, Environmental Scan, etc.): N/A

Item Summary/Recommendation:

The subject was referred to the Neighborhood / Community Affairs Committee at the request of Commissioner Libbin at the February 6, 2013 City Commission meeting in an effort to eliminate unnecessary time and effort spent on items which are not ready to be discussed. Commissioner Libbin requested a discussion regarding items referred to Commission Committees if not heard within six (6) months of its referral dates the items should either be referred again to the Committee or removed altogether.

The item was heard at the February 19, 2013 Neighborhood / Community Affairs Committee. The Committee discussed the subject and ultimately unanimously passed a motion that all items referred to various City Commission Committees should be heard as soon as possible regardless of whether the referring City Commissioner is present for the discussion. The Committee also requested that elected officials should be noticed of when their items will be discussed at committee and agreed that one courtesy deferral should be accommodated if the commissioner is out of town or unable to attend. However, after six (6) months the item should be withdrawn and report of withdrawn items should be included in the City Commission agenda.

The Administration recommends the resolution be approved.

Advisory Board Recommendation:

The item was discussed at the February 19, 2013 Neighborhood and Community Affairs Committee (NCAC) meeting.

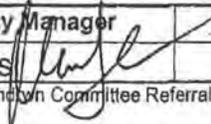
Financial Information:

| Source of Funds: | Amount | Account |
|------------------|--------|---------|
| 1 | N/A | |
| OBPI | Total | |

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Sign-Offs:

| | | |
|---------------------|---|---|
| Department Director | Assistant City Manager | City Manager |
| | MAS  | KGB  |

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MIAMI BEACH

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

COMMISSION MEMORANDUM

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

FROM: Kathie G. Brooks, Interim City Manager

DATE: March 13, 2013

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

ADMINISTRATION RECOMMENDATION

Adopt the Resolution

KEY INTENDED OUTCOME SUPPORTED

Increase Community Satisfaction with City Government.

BACKGROUND

The subject was referred to the Neighborhood / Community Affairs Committee at the request of Commissioner Libbin at the February 6, 2013 City Commission meeting in an effort to eliminate unnecessary time and effort spent on items which are not ready to be discussed. Commissioner Libbin requested a discussion regarding items referred to Commission Committees if not heard within six (6) months of its referral dates the items should either be referred again to the Committee or removed altogether.

The item was heard at the February 19, 2013 Neighborhood / Community Affairs Committee. The Committee discussed the subject and ultimately unanimously passed a motion that all items referred to various City Commission Committees should be heard as soon as possible regardless of whether the referring City Commissioner is present for the discussion. The Committee also requested that elected officials should be noticed of when their items will be discussed at committee and agreed that one courtesy deferral should be accommodated if the commissioner is out of town or unable to attend. However, after six (6) months the item should be withdrawn and report of withdrawn items should be included in the City Commission agenda.

CONCLUSION

The Administration recommends adopting the resolution approving the recommendation of the NCAC automatically withdrawing items referred to City Commission Committees if not heard within six (6) months from its referral date and recommending inclusion of a report in the City Commission agenda transmitting a list of withdrawn items.

KGB/MAS

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