

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: July 22, 2016



This shall serve as written notice that a meeting of the Finance and Citywide Projects Committee (FCWPC) has been scheduled for July 22, 2016, at 2:30 P.M. in the City Commission Chambers.

The agenda is as follows:

BUDGET BRIEFING:

OLD BUSINESS

- 1. Finalizing proposed FY 2016/17 Capital Budgets**
Status: Item under separate cover.
- 2. Proposed Uses of Law Enforcement Trust Funds**
Status: Item under separate cover.
- 3. Finalizing proposed FY 2016/17 Operating Budget**
Status: Item under separate cover.

NEW BUSINESS

- 4. Proposed Water and Sewer rates**
Status: Item enclosed.
- 5. Stormwater Update**
Status: Item enclosed.

REGULAR AGENDA:

OLD BUSINESS

6. Discussion regarding whether or not to pursue food and beverage concessions for Soundscape Park, Collins Park, and the Miami Beach Botanical Garden (May 21, 2014 Commission Item C4C)(Continued from May 20, 2016 FCWPC Meeting)

Max Sklar – Tourism, Culture & Economic Development Director

Referred by: Tourism, Culture and Economic Development

Status: Item deferred. Staff is in discussion with the Bass Museum and the Botanical Garden and will return to the FCWPC as soon as additional information is available.

7. Discussion regarding the proposed site options for the new Fire Station No. 1 (January 13, 2016 Commission Item C4A)(Continued from April 22, 2016 FCWPC Meeting)

David Martinez – Capital Improvement Projects Director
Virgilio Fernandez – Fire Chief

Referred by: Capital Improvement Projects

Status: Item enclosed.

8. Discussion Seeking Citywide WiFi Solutions And CMB Becoming Its Own Internet Service Provider (January 13, 2016 Commission Item C4C)(Continued from March 18, 2016 FCWPC Meeting)

Ariel Sosa – Information Technology Director

Referred by Commissioner: Michael Grieco

Status: Item deferred.

9. Discussion Regarding Miami New Drama Becoming The Resident Theater And Venue Manager For The Colony Theater As A Pilot Program (April 13, 2016 Commission Item C4M)(Continued from May 20, 2016 FCWPC Meeting)

Max Sklar – Tourism, Culture & Economic Development Director

Referred by Commissioner: Micky Steinberg, Michael Grieco, Joy Malakoff

Status: Item enclosed.

10. Discussion To Consider The Closed Captioning For The Hearing Impaired Of The City's Video-Recorded Meetings And Events (April 13, 2016 Commission Item R9M)(Continued from April 22, 2016 FCWPC Meeting)

Tonya Daniels – Office of Communications Director

Referred by Commissioner: John Elizabeth Aleman

Status: Discussion item.

11. Discussion Regarding A Competition Swimming Pool (April 27, 2016 Commission Item R9E)

John Rebar – Parks and Recreation Director

Referred by Commissioner: John Elizabeth Aleman

Status: Under separate cover.

12. Discussion Regarding Advertising Opportunities Within Municipal Parking Garages And Not Visible From The Right-Of-Way (May 11, 2016 Commission Item C4B)

Tonya Daniels – Communications Director

Referred by: Parking

Status: Item enclosed.

13. Discussion Regarding A City Employee Healthy Cafeteria (May 11, 2016 Commission Item R9T)

Max Sklar – Tourism, Culture & Economic Development Director

Alex Denis – Procurement Director

Referred by Mayor: Philip Levine

Status: Item deferred.

NEW BUSINESS

- 14. a. Discussion Regarding 300 Alton Road (May 11, 2016 Commission Item C4D)**
b. Discussion Regarding Proposed Miami Beach Marina Development Agreement (May 11, 2016 Commission Item R9J)

Max Sklar – Tourism, Culture & Economic Development Director
Thomas Mooney – Planning Director

Referred by Commissioner: Ricky Arriola

Status: Item deferred.

- 15. Discussion To Work With Miami-Dade County Public Schools (MDCPS) To Assess The Viability And Interest In A City Of Miami Beach School Bus Service Within The 2-Mile Boundary Of School Bus Service Provided By MDCPS (May 11, 2016 Commission Item C4K)**

Jose Gonzalez – Transportation Director
Leslie Rosenfeld – Chief Learning Development Officer

Referred by Commissioner: John Elizabeth Aleman

Status: Item deferred. Commissioner John Aleman requested to bring this item back in September to have time to issue the survey to the parents after the children return to school.

- 16. Discussion Regarding A Review Of The Fine Schedule For Littering On The Beach (May 11, 2016 Commission Item R9R)**

Robert Santos-Alborna – Code Compliance Assistant Director

Referred by Mayor: Philip Levine

Status: Discussion item.

- 17. Discussion Regarding Building A Satellite City Center At The North Beach Police Station (June 8, 2016 Commission Item C4C)**

David Martinez – Capital Improvement Projects Director
Daniel Oates – Police Chief

Referred by Commissioner: Kristen Rosen Gonzalez

Status: Discussion item.

- 18. Discussion Regarding The Exchange Of Property With The Owner Of 5860 North Bay Road In Order To Resolve The Existing Boundary Lines, And The Location Of A Future City Pump Station And Sewer Line (June 8, 2016 Commission Item C4F)**

Eric Carpenter – Assistant City Manager

Referred by Commissioner: Joy Malakoff

Status: Under separate cover.

- 19. Discussion Regarding Change Orders Protocol/Policy for Construction Projects (June 8, 2016 Commission Item R7R)**

Eric Carpenter – Assistant City Manager

Referred by: Public Works

Status: Discussion item.

- 20. Discuss Regarding Future Uses Or The Potential Sale Of Vacant City-Owned Land Located At 226 87th Terrace (July 13, 2016 Commission Item C4J)**

Referred by Commissioner: Michael Grieco

Status: Discussion item.

Finance and Citywide Projects Committee Meetings for 2016:

September 23

October 28

November 18

December 16

AW/kd

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Cc. Mayor and Members of the City Commission
Management Team

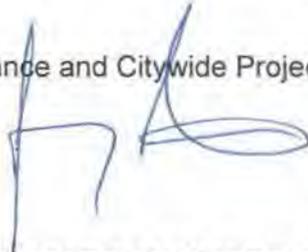
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COMMITTEE MEMORANDUM

To: Members of the Finance and Citywide Projects Committee

From: Jimmy L. Morales 

Date: July 22, 2016

Subject: **DISCUSSION AND UPDATE ON WATER/SEWER BUDGET AND RATES**

Water Budget

The 2016 approved and amended operating budget included revenues and expenditures of \$35,017,000. After six months revenues and expenditures were \$15,840,925 and \$12,546,181 respectively. All indications are that we will complete the year within the approved budget. The 2017 proposed budget is \$34,148,000 and no rate increases are being requested.

Sewer Budget

The 2016 approved and amended operating budget included revenues and expenditures of \$48,069,000. After six months revenues and expenditures were \$21,239,395 and \$23,775,944 respectively. The projections indicate sewer expenditures will exceed the approved budget by approximately \$2,335,000. The primary cause of the budget overage is sewage treatment fees.

Sewage treatment fees have been and continue to be impacted by dewatering at construction sites. DERM now prohibits typical dewatering into the stormwater system leaving the sanitary sewer as the simplest alternative. New construction projects are being designed with the contractors being responsible for dewatering cost reducing future impacts. Recently one property was confirmed and several others are suspected, of pumping its ground water directly into our sewer system. With higher than normal tides this past year the volumes and cost to the city was higher than in previous years.

The 2017 proposed budget is \$53,768,000; \$5,699,000 higher than 2016 as amended requiring new revenue. The additional revenue will be used for the following:

- Miami/Dade notified the City that the sewage treatment fees will increase 5.7% beginning in fiscal year 2017 for an increase in cost of \$1,502,000. And its "tru-up" will increase \$638,000.
- DERM fees will increase in fiscal year 2017 from 7.5% to 8% of total revenue, for an increase of \$612,000.
- Debt service in 2017 increases \$ 2,506,000:
 - \$1,309,000 increase due to existing debt structure obligations
 - \$1,197,000 increase for 2017 \$20,000,000 issue
- Other total operating costs for 2017 remain consistent with the past year (2016).

Rates

Currently the water rate is \$4.61 per 1000 gallons with a minimum purchase requirement at \$4.43 per 1000 gallons. For example a typical 3/4" meter has a minimum charge of \$22.15 for 5,000 gallons of water (\$4.43 per 1000 gallons). The difference in rate for the volume of water included in the minimum usage charge is a result of the volumetric charge being increased (Ordinance no. 2015 -3967, passed 09-30-2015) without the minimum usage charge being increased and this should be at a minimum adjusted to align the charges. Currently our sanitary sewer charge is \$8.23 per 1000 gallons without any minimum charges.

The current water rate structure does not promote conservation with a minimum usage included, although this tends to promote revenue stability it does encourage water consumption and may place an undue burden on the low water users. There should be a base charge collected from all users designed to recover between 30% and 40% of fixed costs and a flow charge for all water used which promotes conservation with a payment being only for what a customer uses. This structure is consistent with the rate of other local governments in Florida and is employed by the Florida Public Service Commission in the regulation of privately-owned utilities. Fitch Ratings, which rates the City's bonds, states "Because a greater percentage of fixed charges lead to less volatility in a utility's revenue stream than a system that relies extensively or completely on volumetric charges, Fitch views favorably utilities whose fixed-charge component generates a significant amount (greater than 30%) of their revenue stream." The base charge would be different by meter-size based on the implied capacity requested by a customer demanding the larger meter. The base charge should be applied year-round; currently part-time or seasonal residents are able to discontinue service when they are absent avoiding all water charges from the city yet we continue to experience operation and maintenance costs to be able to serve when needed (referred to as "readiness-to-serve"). Full-time residents, who use less than the monthly water minimum, may see relief in the total water bill.

The current sanitary sewer charge does not include any type of minimum cost or readiness to serve charge. The result is our full time residents and businesses pay a higher proportion of the sewer cost than part-time residents. Part-time residents receive no sanitary sewer charge when they are not here and we continue to experience maintenance cost to be able to serve them when needed. There should be a base charge collected from all users designed to recover between 30% and 40% of fixed costs and a flow charge for the exact amount used. This fee would also vary by class of service and meter size to recognize difference in capacity needs.

The DERM fees, water purchase costs and sewerage treatment fees are uncontrollable costs of the city that are passed on to our customers. We should have an automatic adjustment clause to account for any increase in DERM fees, water purchase costs, and sewerage treatment fees without having to go through a formal rate review process. In addition, many utilities in Florida have an annual inflationary or price index to recover the costs of general inflation on the cost of services absent a formal rate hearing. A price index should be applied, based on the CPI, for costs not associated with DERM fees, water purchases, sewerage treatment fees. Both the pass-through and price index provide a mechanism to maintain operating margins and capital funding from rates for the long-term fiscal benefit of the utility.

Conclusion

The information above is presented for discussion and direction.

JLM/ETC/JF/RWG

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COMMITTEE MEMORANDUM

TO: Members of the Finance and Citywide Projects Committee
FROM: Jimmy L. Morales, City Manager
DATE: July 22, 2016
SUBJECT: **AN UPDATE ON THE STATUS OF THE STORMWATER UTILITY**

BACKGROUND

At its April 23, 2014 meeting, the City Commission approved Resolution 2014-28580 accepting the recommendations of the Mayor's Blue Ribbon Panel on Flooding and Sea Rise to design and implement the upgrade of the City's storm drainage system to meet the new design criteria set by the Commission with a potential estimated cost of \$400 million and with the completion time of 3 to 5 years.

At its May 20, 2014 meeting, the Finance and Citywide Projects Committee (FCWPC) presented the funding strategy for this program, and recommended the issuance of three separate \$100 million stormwater bonds. The first one would be in FY 2014/15 and the other two would be in FY 2016/17 and FY 2018/19 respectively. The remainder of the required funds was to be covered by the 2015 updated interlocal agreement between the City and Miami-Dade County regarding the former Convention Development Tax

CURRENT STATUS

The City has completed construction of four new pump stations and one pump station upgrade in the West Avenue neighborhood, three pump station upgrades in the Sunset Harbour neighborhood, and one pump station on Crespi Boulevard. Current construction efforts include six pump stations in the Venetian Islands neighborhood, one on Lower North Bay Road, two at the Convention Center, and a pump station retrofit in the Sunset Harbour neighborhood, as well as South Point. Neighborhood projects are also in progress on Palm Island, Hibiscus Island, and Sunset Islands III and IV that include five additional pump stations. Designs for pump stations for Middle North Bay Road and the La Gorce neighborhood are underway. A joint FDOT/City project for flood mitigation of Indian Creek Drive from 25th to 41st Streets that includes an upgraded stormwater system and one pump station has commenced.

Staff is currently working with Bond Counsel and Financial Advisor to develop the best strategy to fund the next \$100 million of stormwater project needs. Based on the projected revenue requirements of the FY 2016/17 budget including the debt service of the next \$100 million, the current monthly rate of \$16.67 per ERU will need to be increased to \$22.67 per ERU. Annually, the rate would be increased from \$200.04 per ERU to \$272.04 per ERU.

In addition, a consultant is performing an evaluation of the stormwater utility to determine the appropriate calculations for ERU methodology. Concurrently staff is evaluating the appropriateness and methodology for implementing a Stormwater Impact fee for new construction projects and fee in lieu of providing stormwater infrastructure for all current illicit discharges. These evaluations should be complete by the end of the calendar year.

CONCLUSION:

The preceding is presented to the members of the Committee for information and discussion.

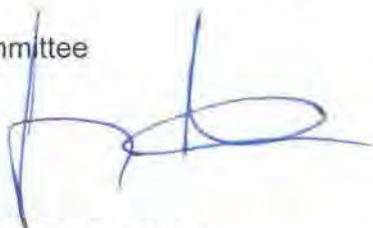
JLM/ETC/RWC

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COMMITTEE MEMORANDUM

TO: Finance & Citywide Projects Committee
FROM: Jimmy Morales, City Manager
DATE: July 22, 2016
SUBJECT: Proposed Site Options for New Fire Station No. 1



BACKGROUND

On June 17, 2016, the Finance & Citywide Projects Committee (FCWPC) recommended staff to prepare an option that provides at least 118 parking spaces plus the 32 parking spaces needed for the fire station and to accommodate as many additional parking spaces as possible within the maximum overall building height of 35 feet. This is consistent with requests made by the Neighborhood and Community Affairs Committee (NCAC) at their June 10th, 2016 meeting. The NCAC also requested to revisit the option of constructing the new fire station at its current location, and to discuss the potential constraints with the Flamingo Park Neighborhood Association representatives.

ANALYSIS

Two (2) options have been developed within the existing area encompassing the surface parking lot and PAL building (Exhibit A). Both options include demolition and construction of a new PAL building, the development of a new Fire Station and a parking garage within the existing footprint of the surface parking lot and the existing PAL building. The project will be phased to provide for the construction of the new Fire Station and new PAL building concurrently, followed by the demolition of the existing PAL building and construction of the new parking garage. The options include:

Option 1:

- One-story fire station (20 feet in height)
- Two-story PAL building (13,367 SF) (27 feet in height)
- Three (3) level parking garage with 174 spaces (20 feet in height)
- Project timeline is approximately 26 months (design criteria package, selection of design builder and design/construction)
- Probable order of magnitude estimate

○ Fire Station Const. Cost	\$ 5,367,516
○ PAL Building Const. Cost	\$ 3,110,208
○ Parking Garage (174 spaces) Const. Cost	\$ 4,072,035
○ Temporary Parking Lot	\$ 670,000
○ Soft Costs	\$ 4,392,415
○ Total	\$17,612,174

Option 2:

- Fire station and PAL building remains the same as Option 1
- Four (4) level parking garage with 256 spaces (35 feet in height)
- Project timeline remains the same as Option 1
- Probable order of magnitude estimate

○ Fire Station Const. Cost	\$ 5,367,561
○ PAL Building Const. Cost	\$ 3,110,208
○ Parking Garage (256 spaces) Const. Cost	\$ 5,991,040
○ Temporary Parking Lot	\$ 670,000
○ Soft Costs	<u>\$ 5,064,067</u>
Total	\$20,202,831

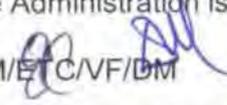
The Current Fire Station No.1 (FS1) site presents a physical and logistical constraint which does not allow construction of a facility that would provide the same level of service as compared to the Flamingo Park parking lot site. The constraints are as follows:

- Reduced number and size of apparatus bays
- Insufficient parking to support present or future needs of the Fire Department
- Building height waiver will be required (greater than 50 feet)
- Jefferson Avenue would have to be raised in order to transition the driveway between the street and the building
- Temporary relocation of the Fire Station operation during construction
- Demolition of the two existing buildings (including the Morris Lapidus building)
- Existing sanitary sewer pump station and infrastructure on site limit building foot print size

The property appraisal for the current FS1 was completed as previously requested by FCWPC. The Market Value of the fee simple interest in "As is" condition is Four Million Eight Hundred Fifty Thousand dollars (\$4,850,000), as indicated by J. Alhale Appraisals, Inc. (Exhibit B). The appraisal concluded that the Highest and Best Use of the site is the demolition of the existing improvements, and its subsequent redevelopment as a City-owned facility or with a residential condominium apartment building, in a private ownership (would be zoned RM-1, same as all surrounding properties).

CONCLUSION

The Administration is seeking a recommendation on how to proceed.

JLM/ETC/VF/DM 

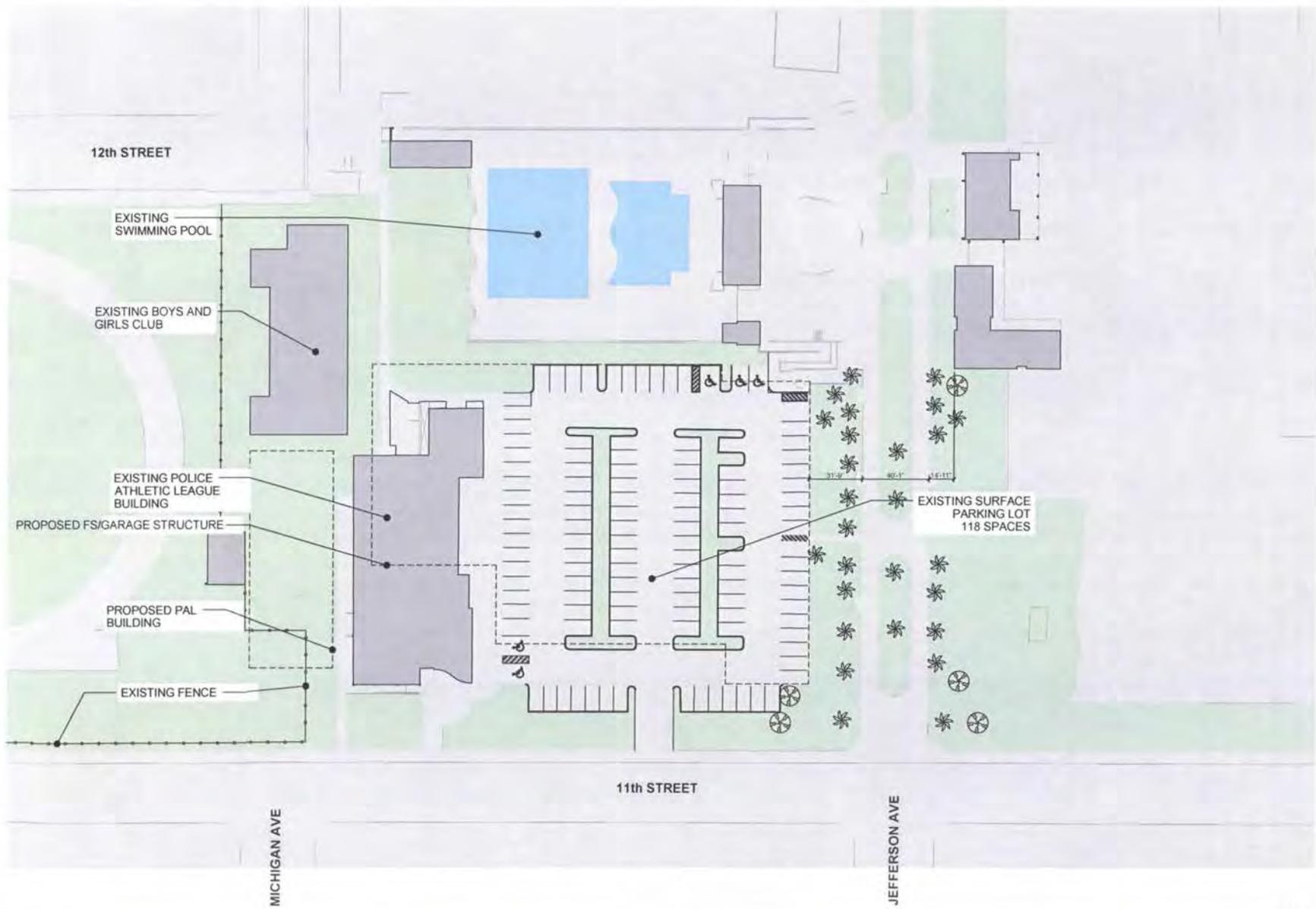
Attachments: Exhibit A and B

Exhibit A

**Finance and Citywide Projects Committee
New Fire Station No.1 Complex at Flamingo Park**

July 22, 2016
Office of Capital Improvement Projects

MIAMIBEACH



12th STREET

BOYS AND GIRLS CLUB

EXISTING SWIMMING POOL

EXIT STAIR

EDIT POOL FACILITY RAMP TO SUPPORT ENTRY TO OTHER COMB DEPARTMENTS

BUILDING AREA		
PROGRAM	AREA	LEVEL
APPARATUS BAYS	6,550	1
BUILDING SUPPORT	876	1
FIRE STATION LIVING QUARTERS	6,035	1
FIRE STATION TRAINING	3,025	1
TOTAL F.S.	16,485	
PAL BUILDING	13,367	1 & 2



PUBLIC ACCESS TO PARKING GARAGE

ENTRY TO OTHER COMB DEPARTMENTS

NEW PARKING AND FIRE STATION DOES NOT ENCROACH ON PARK SPACE

FIRE PERSONNEL ACCESS FROM PARKING

PARKING - OPTION 1		
PROGRAM	AREA	SPACES
LEVEL 1	24,085	61
LEVEL 2	24,085	77
LEVEL 3	11,885	36
TOTAL	60,055	174

POLICE ATHLETIC LEAGUE BUILDING AREA: 9,884 SQ FT PER FLOOR

NEW PARKING STRUCTURE 174 SPACES

FIREFIGHTERS PARKING 37 SPACES

APPARATUS BAYS 6,550 SQ FT ±0'-0" (+9'-4" NAVD)

FIRE STATION LIVING QUARTERS AREA: 6,035 SQ FT

EXISTING PAL BUILDING OUTLINE

VEHICULAR GARAGE ENTRY

MICHIGAN AVE

11th STREET

-7'-3" (+2.21' NAVD CURRENT ROADWAY)
-5'-9" (+3.70' NAVD FUTURE ROADWAY)

JEFFERSON AVE

NOTE:
ALL PROPOSED STRUCTURES ARE LESS THAN 35 FEET IN HEIGHT

PARKING - OPTION 2		
PROGRAM	AREA	SPACES
LEVEL 1	24,085	81
LEVEL 2	24,085	77
LEVEL 3	24,085	77
LEVEL 4	11,495	41
TOTAL	83,750	256

Exhibit B

**APPRAISAL REPORT
OF A 21,000 SF SITE CURRENTLY IMPROVED
WITH A 2-STORY FIRE AND RESCUE STATION
LOCATED AT
1051 JEFFERSON AVENUE
MIAMI BEACH, FLORIDA**

**DATE OF VALUATION:
JUNE 15, 2016**

**J. ALHALE APPRAISALS, INC.
Real Estate Appraisers and Consultants**

J. ALHALE APPRAISALS, INC.
REAL ESTATE APPRAISERS AND CONSULTANTS
3475 SHERIDAN STREET, SUITE 313
HOLLYWOOD, FLORIDA 33021

JOZEF ALHALE, MAI
STATE CERTIFIED GENERAL APPRAISER
NO. RZ0001557

CELL: (305) 613-7477
E-MAIL: jbalhale@aol.com
WWW.jalhaleappraisals.com

June 20, 2016

Mr. Roberto Rodriguez
City of Miami Beach
Capital Improvement Projects Office
1700 Convention Center Drive
Miami Beach, Florida 33139

Re: 1051 Jefferson Avenue, Miami Beach, Florida

Dear Mr. Rodriguez:

Pursuant to your request for an appraisal of the above referenced property, I submit the following appraisal report.

Legal Description: Lots 14, 15 and 16, Block 69, Ocean Beach Addition No. 3, as recorded in Plat Book 2, Page 81 of the Public Records of Miami-Dade County, Florida.

I have made a physical inspection of the subject site and improvements, reviewed the site survey prepared by Norman M. Giller & Associates, Inc., and the building plans dated June 23, 2005 and prepared by the City of Miami Beach Property Management, as well as the facility assessment report dated July 31, 2015 and prepared by Borrelli & Partners, and performed market research to provide estimates of the Highest and Best Use, the Market Value of the Fee Simple Interest in the subject property in its current "as is" condition (land value, less estimated cost of demolition of existing improvements, except the pump station), as of June 15, 2016.

It is my estimate that the Market Value of the Fee Simple Interest in the subject property in its current "as is" condition (land value, less estimated cost of demolition of existing improvements, except the pump station), as of June 15, 2016, was:

MARKET VALUE OF THE FEE SIMPLE INTEREST IN "AS IS" CONDITION
(LAND VALUE, LESS ESTIMATED COST OF DEMOLITION)
FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS
(\$4,850,000)

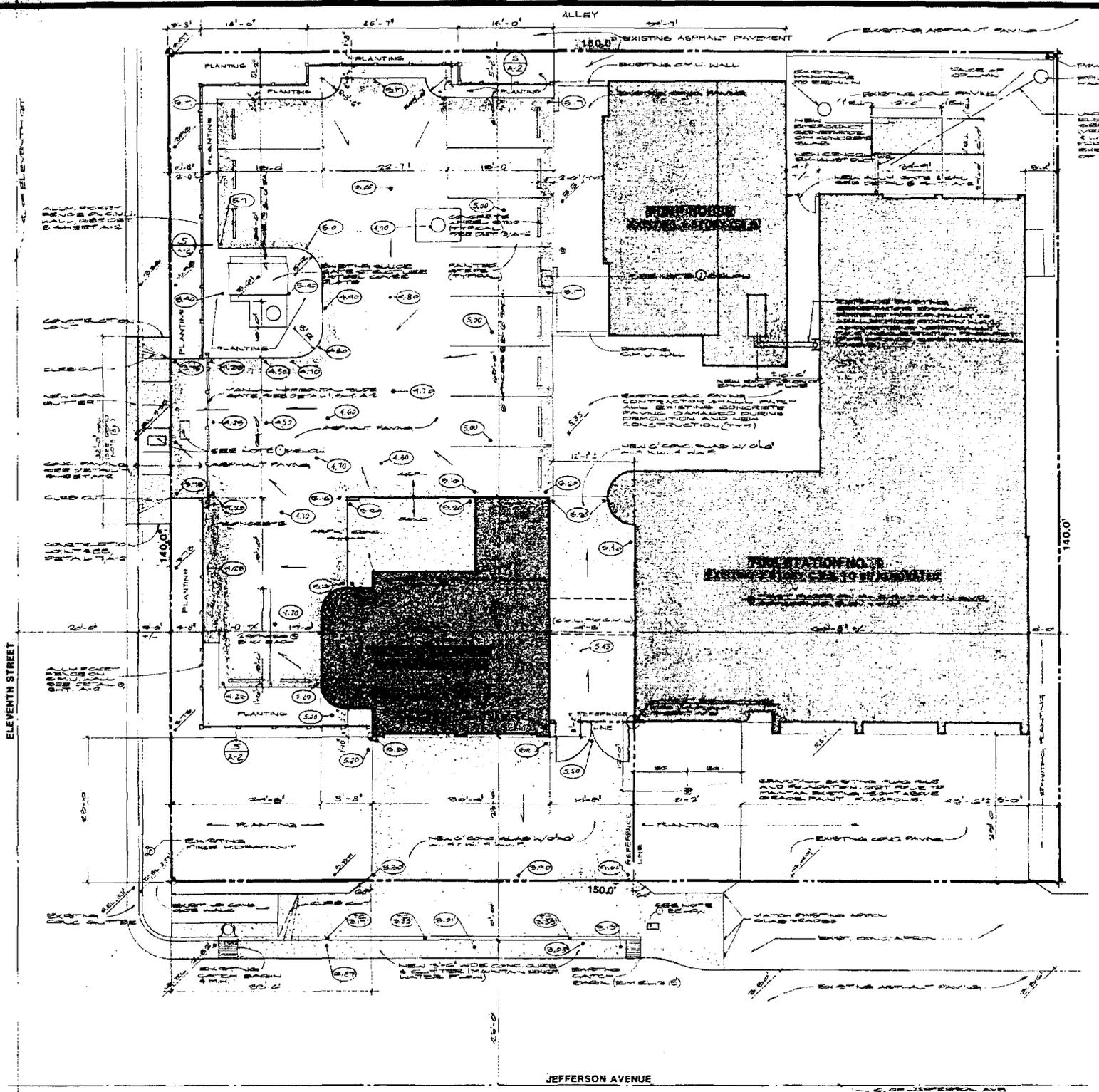
Sincerely,



Jozef Alhale, MAI
State Certified General Appraiser
License No. RZ 0001557

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SITE PLAN



SITE PLAN NOTES

- 1) ADJUST EXISTING METER & VALVE BOXES, MANHOLE COVERS, ELECTRICAL PULL BOXES & OTHER AT-SPACE STRUCTURES, AS REQUIRED TO ACCOMMODATE NEW GRADE ELEVATIONS.
- 2) MAINTAIN EXISTING WATER FLOWS AT CONCRETE GUTTERS.
- 3) ALL WORK WITHIN THE PUBLIC RIGHT OF WAY TO BE DONE IN ACCORDANCE WITH FLORIDA D.O.T. STANDARDS & THE CITY OF MIAMI BEACH PUBLIC WORKS MANUAL.

1051 Jefferson Avenue, Miami Beach, Florida



Subject Property
1051 Jefferson Ave
Miami Beach, FL 33139

Flood Map Report

For Property Located At



1051 JEFFERSON AVE, MIAMI BEACH, FL 33139-4809

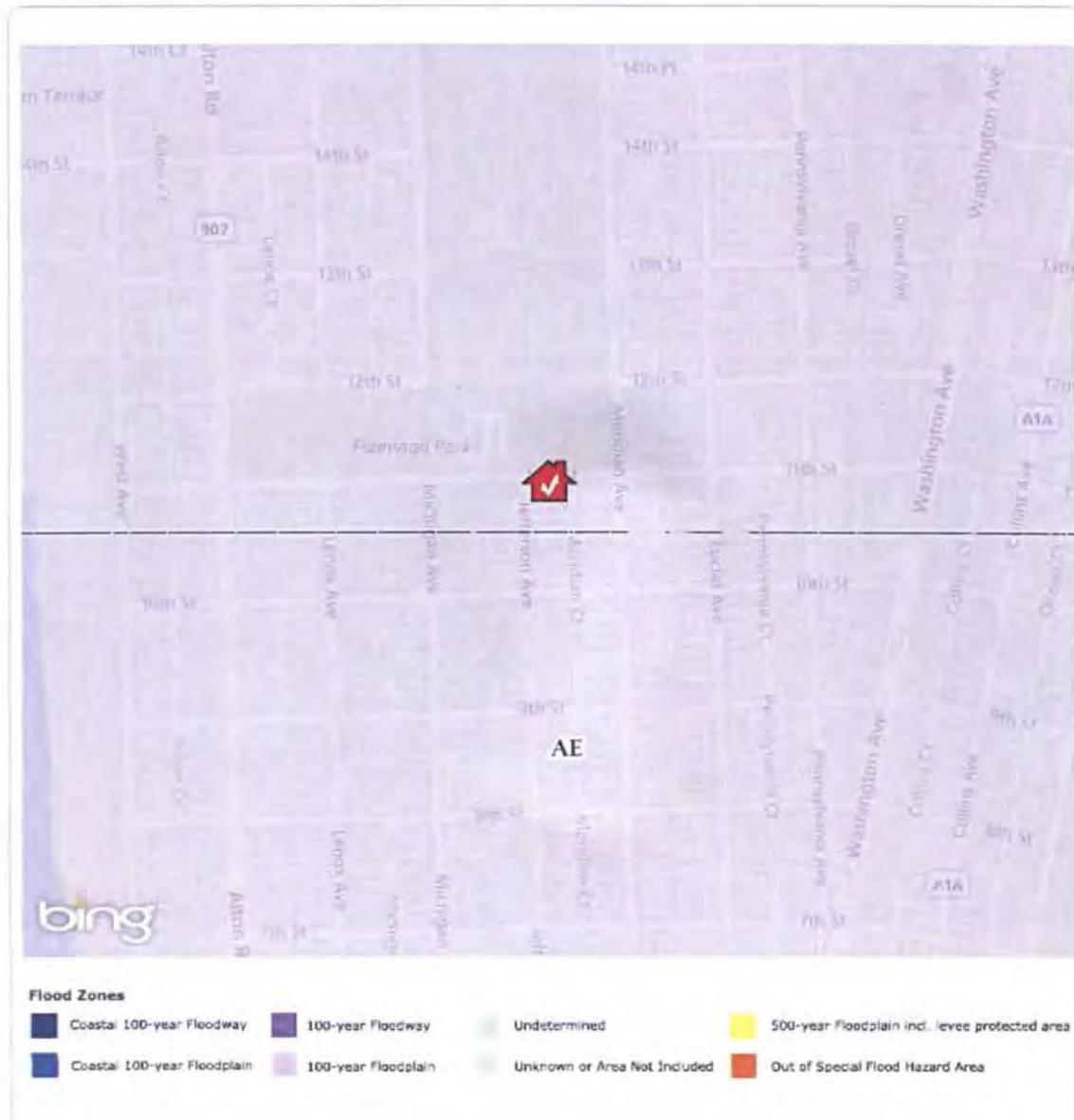
Report Date: 06/13/2016

County: DADE, FL

Flood Zone Code	Flood Zone Panel	Panel Date
AE	120651 - 12086C0317L	09/11/2009
Special Flood Hazard Area (SFHA)	Within 250 ft. of multiple flood zones?	Community Name
In	No	MIAMI BEACH

Flood Zone Description:

Zone AE-An area inundated by 100-year flooding



SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Location: Southeast corner of 11th Street and Jefferson Avenue, Miami Beach, Florida

Address: 1051 Jefferson Avenue
Miami Beach, Florida

Census Tract/Block: 43.040 / 3

Folio No: 02-4203-009-4330

Owner of Record: City of Miami Beach
City Hall
Miami Beach, Florida 33139-4809

Legal Description: Lots 14, 15 and 16, Block 69, Ocean Beach Addition No. 3, as recorded in Plat Book 2, Page 81 of the Public Records of Miami-Dade County, Florida

Description: The subject property is a 21,000 SF corner site with 150 feet of frontage along the east side of Jefferson Avenue, 140 feet of frontage along the south side of 11th Street and 150 feet of frontage along the west side of a rear alley. The site has been improved with Fire Station No.1 which was built in 1967 (49 years old) and a Rescue Station which was reportedly added in 1990. The 2-story fire-station is located at the southern portion of the site and has a Gross Building Area of approximately 6,640 SF, while the 2-story rescue-station is located at the northwest portion of the site and has a gross building area of 1,350 SF.

The fire-station building was designed by the famous architect Morris Lapidus in 1967, in the Miami Modernist (MiMo) style which is unique to Miami-Miami Beach in the 1950's and 1960's. While the nearly 50-year old building has unique exterior architectural features, it is in fair to below average condition, and sorely lacks the functional standards of a modern fire rescue service.

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

-- Continued --

Description
(Continued):

We have reviewed the facility assessment report dated July 31, 2015 and prepared by Borrelli & Partners. As per our site inspection which concurs with the findings of the detailed report, the subject building does not meet floor elevation requirements determined by the Federal Emergency Management Association (FEMA), does not meet ADA (Americans with Disabilities Act) standards, and has a significant amount of regular wear and tear due to its advanced age, heavy use as a fire/rescue station serving a rapidly growing community, in a beachfront climate which requires heavy and continues maintenance to prevent and deal with structural deterioration/spalling, etc.

The fire station is reportedly under threat of shut-down, should storm-water stage levels exceed the current finished floor elevation. The exterior paved areas are reported to have cracks, causing drainage and settlement concerns, and further deterioration. Several trees, which are adjacent to the existing structures, contain base and root system which could be a potential impact to the surrounding foundation/asphalt pavement, as well as the exterior wall finish. The station has terrazzo floors which was can be found in many Art Deco and MIMO inspired designs; however, due to the impact of the heavy fire-engines' weight and wheel turning, there is significant amount of damage to the flooring.

In addition, the three bays are quite narrow to adequately house and maneuver today's larger fire-engines. As per the report, the exposed surface of the concrete slab on grade can expose and damage the reinforcement bars which will result in rusting and spalling of concrete surface that will undermine its structural integrity. There is further damage and chipping to the fluted columns and exposed rebars at the front of the building. Part of the most prominent MIMO architectural feature, the exposed concrete surfaces have been damaged, then repaired using concrete mortar instead of the original aggregate texture, as designed by the architect. Cracking and loose material are also present along the building's facade, in addition to a reported serious bee problem, making hives within the western wall's cracks.

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

-- Continued --

Description
(Continued):

The property does not have a sprinkler system, as required by the Florida Building Code. It does not have an elevator, and is not ADA-compliant. The interior of the subject property, the living quarters, bathrooms, the kitchen area, electrical and plumbing systems, light fixtures, plumbing fixtures, ventilation, all show significant signs of wear and tear due to the advanced age of the improvements, and may pose hazard to the occupants, including increased possibility of a fire. The building has one split air-conditioning system, and a single thermostat located on the return, provides inadequate temperature control throughout the building. In addition, the electric duct heater has a lot of air leakage which is causing condensation and corrosion of a few of its components and supports.

The professionally prepared report further concludes and recommends the full site re-construction and demolition of the existing older improvements, due to the reasons listed herein. It should be noted that the extensive repairs needed are not economically and physically feasible, as the improvements might have to be elevated (if at all possible, to meet the elevation requirements dictated by FEMA) and the cost would most likely exceed the 50% of the depreciated replacement hard cost of the existing \pm 50-year improvements (the cost of the renovations/repairs can not exceed 50% of the depreciated hard cost in "as is" condition, i.e., "50% Rule").

Based on the review of the professionally prepared facility assessment report, visual evidence collected during the site inspection, conversation with the occupants of the subject fire station, we concur that the existing improvements do not measure up to today's fire station standards, are in fair to below average condition, with excessive cost to remedy the situation, if it were at possible to achieve. Accordingly, we have concluded that the Highest and Best Use of the site is the demolition of the existing improvements, and its subsequent redevelopment as a City-owned facility (administrative offices, fire station, rescue station, sports/community/cultural center, etc.,) or with a residential condominium apartment building, in a private ownership (would be zoned RM-1, same as all surrounding properties).

Site Area: 21,000 SF

**J. ALHALE APPRAISALS, INC.
Real Estate Appraisers and Consultants**

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

-- Continued --

Flood Zone: Flood Zone "AE" - An area inundated by 100-year flooding; National Flood Insurance Program, Community Panel Number 120651-12086C0317L, as revised on September 11, 2009.

Zoning: GU as a City-owned property; or RM-1 Low Intensity Multi-Family Residential District in private ownership

Highest and Best Use: The Highest and Best Use of the site is the demolition of the existing improvements, and its subsequent redevelopment as a City-owned facility (administrative offices, fire station, rescue station, sports/community/cultural center, etc.) or with a residential condominium apartment building, in a private ownership (would be zoned RM-1, same as all surrounding properties).

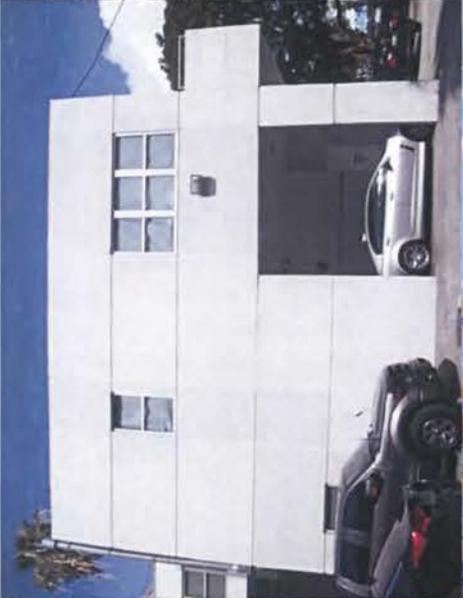
Property Rights Appraised: Fee Simple Interest

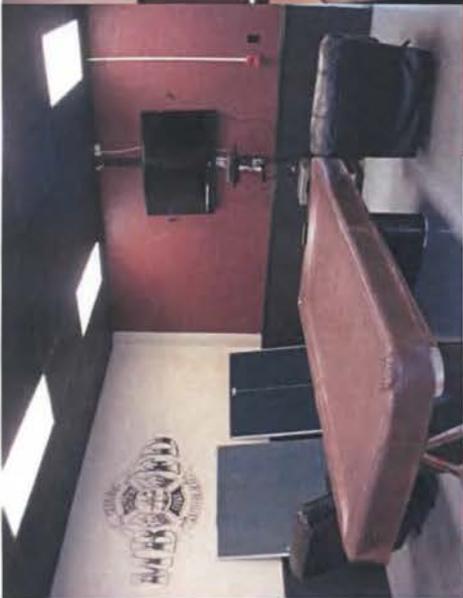
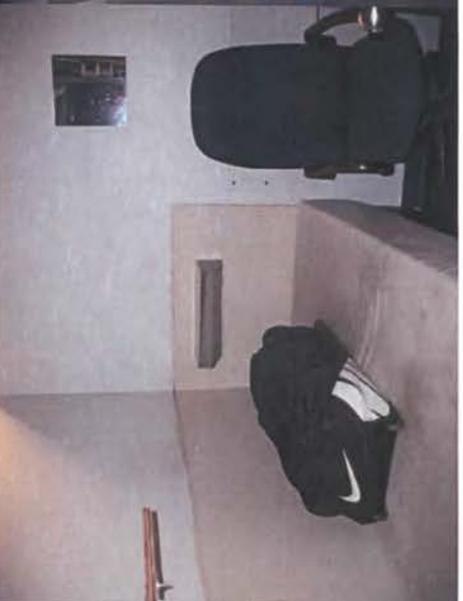
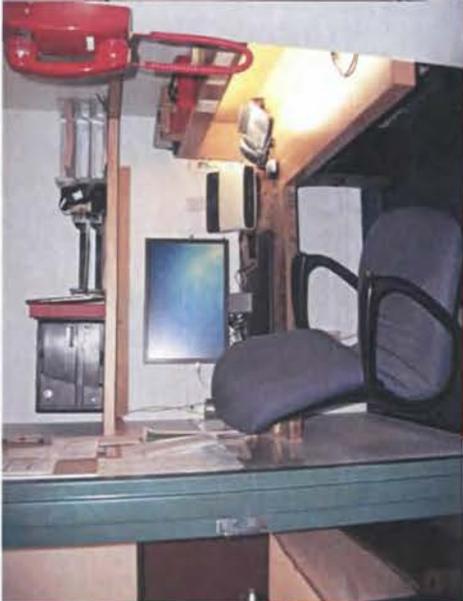
Date of Appraisal, Inspection and Valuation: June 15, 2016

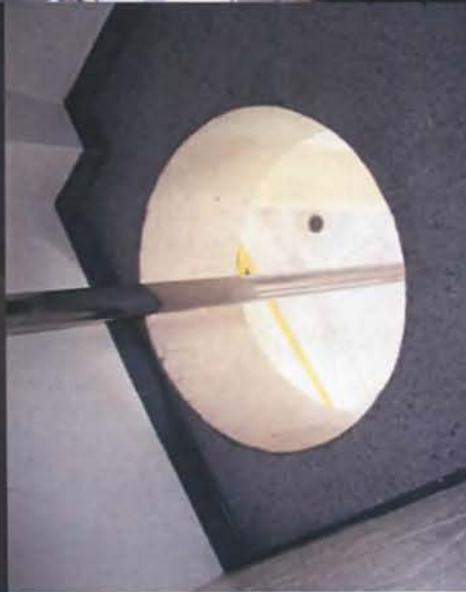
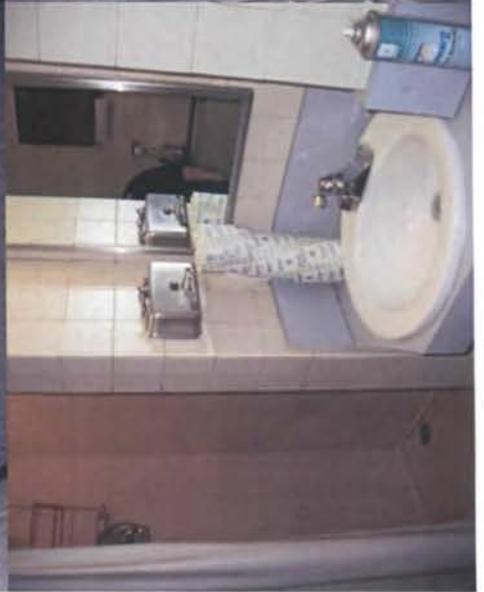
MARKET VALUE ESTIMATES IN "AS IS" CONDITION
(LAND VALUE, LESS ESTIMATED COST OF DEMOLITION):

Income Capitalization Approach to Value:	Not Applicable
Sales Comparison Approach to Value:	\$4,850,000
Cost Approach to Value:	Not Applicable
Reconciled Final Value Estimate:	\$4,850,000









PURPOSE/FUNCTION OF THE APPRAISAL

The purpose of this appraisal report is to provide estimates of the Highest and Best Use, the Market Value of the Fee Simple Interest in the subject property in its current "as is" condition (land value, less estimated cost of demolition of existing improvements, except the pump station), as of June 15, 2016. The function of this appraisal report is to assist the client (City of Miami Beach and/or designated parties) in executive decision making and/or collateral/asset valuation relative to determining the future use of the subject site. The intended user of this appraisal report is the City of Miami Beach and/or designated parties.

SCOPE OF THE APPRAISAL

I have made a physical inspection of the subject site and improvements, reviewed the site survey prepared by Norman M. Giller & Associates, Inc., and the building plans dated June 23, 2005 and prepared by the City of Miami Beach Property Management, as well as the facility assessment report dated July 31, 2015 and prepared by Borrelli & Partners, and performed market research to provide estimates of the Highest and Best Use, the Market Value of the Fee Simple Interest in the subject property in its current "as is" condition (land value, less estimated cost of demolition of existing improvements, except the pump station), as of June 15, 2016.

The scope of the appraisal involves the research and analysis of factual data relative to the subject property, as well as market data necessary for the development of the Sales Comparison Approach to Value (land valuation). The data and information used in developing our findings, projections and valuation estimates have been derived from published information, direct interviews, analysis of similar properties and other sources which were considered appropriate as of the valuation date.

PROPERTY RIGHTS APPRAISED

This appraisal report is made with the understanding that the present ownership of the property includes all the rights that may be lawfully held under a fee simple estate.

Fee Simple Interest is defined in The Dictionary of Real Estate Appraisal, 2010 Edition, which was sponsored by the Appraisal Institute as follows: Absolute ownership unencumbered by any other interest or estate; subject only to the limitations imposed by the governmental powers of eminent domain, escheat, police power and taxation.

DATE OF VALUATION

June 15, 2016.

STATEMENT OF OWNERSHIP AND HISTORY

The subject property is owned by the City of Miami Beach, as per the Public Records of Miami-Dade County, Florida. As per the Public Records of Miami-Dade County, Florida, there was no other arm's length transfer of ownership at the subject property during the five year period prior to the valuation date. We have not been informed of any other current listings, options and/or pending contracts in effect at the subject property, as of the date of valuation.

ESTIMATED MARKETING AND EXPOSURE PERIOD

Based on my analysis of the market, recent listings which have been since closed, as well as discussions with owners and Realtors active in the subject area, it is the appraiser's opinion that if the subject property was listed for sale with an experienced Realtor, the marketing and marketing and exposure period would be approximately three to nine months. Accordingly, this marketing and exposure period is considered to currently represent the most probable amount of time necessary to expose and actively market the subject property to achieve a sale consistent with the Market Value.

DEFINITION OF MARKET VALUE

Market Value is defined in The Interagency Appraisal and Evaluation Guidelines, dated December 2, 2010, as follows:

The most probable price, which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

NEIGHBORHOOD ANALYSIS

The subject property is located at the southeast corner of 11th Street and Jefferson Avenue, across the street from the Flamingo Park municipal sports facility, in the South Beach section of Miami Beach, Florida. The immediate area surrounding the subject property is comprised of low-rise and mid-rise rental and condominium apartment buildings along 11th Street and Jefferson Avenue, as well as commercial buildings with retail, office and restaurant space; office buildings, and other retail/service uses along Alton Road, Washington Avenue, 5th Street, Collins Avenue and Ocean Drive.

Miami Beach is an island located just off the southeast coast of Miami-Dade County, Florida. The island is approximately one mile wide, ten miles long and travels in a northerly/southerly direction parallel to mainland Miami-Dade County. The town of Surfside borders Miami Beach to the north starting at approximately 87th Street. The Atlantic Ocean acts as the eastern and southeastern border, while Biscayne Bay/the Intracoastal Waterway lies to the west. Five causeways connect Miami Beach to the mainland; the MacArthur Causeway (Highway No. 41); the Venetian Causeway; the Julia Tuttle Causeway (Interstate 195); the Broad Causeway (State Road No. 922) and the North Dade Causeway (State Road No. 934).

As the City's economy drastically improved in the last twenty-five years, Miami Beach has experienced an influx of younger and more affluent residents. Close proximity to Miami's downtown business district, the Art Deco entertainment district and access to the beach are all considered to be contributing factors to the area's discovery as a place to live and work. The continued faith in the City's economy is reflected by the consistent increase in building permit activity over the last twenty years. Developers and real estate professionals in Miami Beach have been aggressively marketing their properties to local and out-of-town residents and families. In the last fifteen years, the development and redevelopment activity has well spread over the waterfront corridors of Ocean Drive, Collins Avenue and Ocean Drive, as well as the Art Deco district, the 5th Street corridor and the area south of 5th Street which is referred to as the overall South Pointe area.

The subject property is located 1/3 mile north of 5th Street (connecting to MacArthur Causeway) which is the gateway to the South Beach area of Miami Beach, connecting it with the Central Business District of Miami. The subject property is located 1/3 mile south of Lincoln Road which is an upscale pedestrian corridor which is considered ground-zero for retail/restaurant space in South Beach, commanding the highest rental rates and sale prices. The subject property is within walking distance of the service, entertainment, retail corridors of Washington Avenue, Alton Road, Lincoln Road, Collins Avenue and Ocean Drive. The viability of the subject neighborhood is further enhanced by the ease of accessibility to/from downtown Miami and the Central Business District (CBD) and other major employment centers within Miami-Dade County.

The area surrounding the subject property has been developed with mostly residential and municipal facilities and therefore, no nuisances, hazards or other adverse influences were observed. No notable signs of external obsolescence were observed and the overall appeal of the improved properties is considered to be above average to good.

ACCESS TO THE SITE

11th Street and Jefferson Avenue provide direct access to the subject site.

DESCRIPTION OF THE SITE

The 21,000 SF corner site has 150 feet of frontage along the east side of Jefferson Avenue, 140 feet of frontage along the south side of 11th Street and 150 feet of frontage along the west side of a rear alley. The subject site is level at street grade and does not have any apparent drainage or other problems which would restrict or limit the use of the site. No soil boring tests or engineering reports were submitted to the appraiser; however, the site is assumed to have stable subsoil conditions as do most properties in the immediate area.

The appraiser has not been informed of any adverse subsoil conditions revealed by an environmental assessment conducted by a firm with experience in identifying such substances, nor is he qualified to detect such substances that may exist. It is assumed that the subject site would be typical for properties located in the subject area with no apparent soil problems which would restrict or limit the usage of the site.

If any adverse subsoil conditions are identified and do exist, these conditions would be considered to have a material affect on the Market Value estimate. The valuation analysis assumes the sites to be free of any adverse subsoil conditions, and is subject to the satisfactory removal of any contaminating materials in accordance with technical, environmental and governmental guidelines.

UTILITIES

Public utilities available to the subject site include electricity, water, sewer, gas and telephone service. Electricity is provided by FPL. Police and fire protection, water and sewer services are provided by the City of Miami Beach.

FLOOD ZONE

Flood Zone "AE" - An area inundated by 100-year flooding; National Flood Insurance Program, Community Panel Number 120651-12086C0317L, as revised on September 11, 2009.

ZONING

The subject property is classified as RM-1, Low Intensity Multi-family Residential District. RM-1 District is designed for low intensity multiple family residences. The permitted uses are single-family detached dwellings, townhomes, apartments, apartment-hotels and hotels.

ZONING

-- Continued --

The following are select requirements of the RM-1 zoning classification from the Miami Beach zoning code:

Floor Area Ratio:	1.25
Minimum Lot Area:	5,600 SF
Minimum Lot Width:	50 feet
Minimum Unit Size:	400 SF for existing apartments 550 SF for new construction
Average Unit Size:	550 SF for existing apartments 800 SF for new construction
Maximum Building Height:	40 feet within the architectural district; 50 feet otherwise.
Off-Street Parking:	One parking space/dwelling unit; one parking space per four seats or one parking space per 60 SF of floor area where there is no seating for bars; one parking space per one seat for outdoor cafes. As per the officials at the Zoning Department of the City Of Miami Beach, off-street parking spaces are not required to be provided for existing buildings, as of October 1, 1993.

The subject property is a legal non-conforming use, and represents a compatible neighborhood use.

ASSESSMENT AND REAL ESTATE TAXES

The subject property is located within the City of Miami Beach and is subject to both the City of Miami Beach and Miami-Dade County ad valorem taxes. The Florida Statutes provide for assessment and collection of yearly Ad Valorem Taxes on Real and Personal Property. The assessment for the property is established each year as of January 1st by the Miami-Dade County Property Appraiser's Office at 100% of "Just Value". The tax due is computed according to annual millage rates established by Dade County. Millage rates are the amount paid to each taxing body for every \$1,000 of assessed value. Taxes are payable in November with a 4% discount and become delinquent on April 1st.

The subject property is assessed at \$2,100,000 or \$100/SF for land, \$631,709 for improvements, \$38,617 for extra features, or a total of \$2,770,326 (less \$2,770,326 for municipal exemption), with no real estate taxes.

J. ALHALE APPRAISALS, INC.
Real Estate Appraisers and Consultants

HIGHEST AND BEST USE

DEFINITION

The Highest and Best Use is a market-driven concept. It may be briefly defined as representing the most profitable, competitive use to which a site can be put, or that use which may reasonably be expected to produce the greatest net return to the land over a given period of time. In addition, the concept may further be defined as the available use and program of future utilization that produces the highest present land value.

Highest and Best Use is further defined in The Dictionary Real Estate Appraisal, 2010 Edition, which was sponsored by the Appraisal Institute as follows:

That reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.

It is to be recognized that in cases where a site has existing improvements on it, the Highest and Best Use may very well be determined to be different from the existing use. The existing use will continue, however, unless and until land value in its Highest and Best Use exceeds the total value of the property in its existing use.

The estimate of Highest and Best Use is based upon four stages of analysis:

1. The possible use or uses which are physically possible for the site under analysis.
2. The permissible use or uses which are permitted relative to zoning, historic preservation regulations, environmental controls and/or deed restriction of the site under analysis.
3. The feasible use or uses which are considered economically and financially feasible for the site in terms of existing and projected market conditions.
4. The Highest and Best Use in consideration of those legally permissible, physically possible, financially feasible and maximally productive uses which will result in the highest net return or the highest present worth.

HIGHEST AND BEST USE, AS VACANT

The estimate of the Highest and Best Use of the land, as if vacant, requires market analysis in terms of market conditions of supply and demand. The value of land is based upon the level of utility that is in demand and that will produce amenities or net income to the user. Therefore, the use which creates the greatest land value and which is considered compatible in terms of the restriction imposed by the physical, legal, financial and maximally productive factors is inherent in this analysis.

The physically possible uses of the subject site, as vacant, would include a variety of commercial and multi-family residential uses. This is based upon analysis of the size, frontage, exposure, access, location and buildable utility characteristics of the 21,000 SF corner site.

Analysis of the permissible uses at the subject site takes into account those uses which would be permitted by existing zoning and/or deed restrictions, providing that no deed restrictions are in effect at the subject site which would restrict certain uses of the site. The subject site is zoned as RM-1, Low Intensity Multi-family Residential District which is designed for low intensity multiple family residences. The permitted uses are single-family detached dwellings, townhomes, apartments, apartment-hotels and hotels, with a Floor Area Ratio of 1.25, or a maximum buildable area of 26,250 SF.

After analysis of the physically possible and legally permissible uses to which the overall subject site could conceivably be put, a study of those uses which would be maximally productive is required. Therefore, an alternative use analysis was performed relative to that use which would represent the Highest and Best Use of the subject site, as if vacant.

The subject site is located at the southeast corner of 11th Street and Jefferson Avenue, across the street from the Flamingo Park municipal sports facility, in the South Beach section of Miami Beach, Florida. The immediate area surrounding the subject property is comprised of low-rise and mid-rise rental and condominium apartment buildings along 11th Street and Jefferson Avenue, as well as commercial buildings with retail, office and restaurant space; office buildings, and other retail/service uses along Alton Road, Washington Avenue, 5th Street, Collins Avenue and Ocean Drive.

As the City's economy drastically improved in the last twenty-five years, Miami Beach has experienced an influx of younger and more affluent residents. Close proximity to Miami's downtown business district, the Art Deco entertainment district and access to the beach are all considered to be contributing factors to the area's discovery as a place to live and work. The continued faith in the City's economy is reflected by the consistent increase in building permit activity over the last twenty years. Developers and real estate professionals in Miami Beach have been aggressively marketing their properties to local and out-of-town residents and families. In the last fifteen years, the development and redevelopment activity has well spread over the waterfront corridors of Ocean Drive, Collins Avenue and Ocean Drive, as well as the Art Deco district, the 5th Street corridor and the area south of 5th Street which is referred to as the overall South Pointe area.

HIGHEST AND BEST USE, AS VACANT

The subject site is located 1/3 mile north of 5th Street (connecting to MacArthur Causeway) which is the gateway to the South Beach area of Miami Beach, connecting it with the Central Business District of Miami. The subject property is located 1/3 mile south of Lincoln Road which is an upscale pedestrian corridor which is considered ground-zero for retail/restaurant space in South Beach, commanding the highest rental rates and sale prices. The subject property is within walking distance of the service, entertainment, retail corridors of Washington Avenue, Alton Road, Lincoln Road, Collins Avenue and Ocean Drive. The viability of the subject neighborhood is further enhanced by the ease of accessibility to/from downtown Miami and the Central Business District (CBD) and other major employment centers within Miami-Dade County. The area surrounding the subject property has been developed with mostly residential and municipal facilities and therefore, no nuisances, hazards or other adverse influences were observed. No notable signs of external obsolescence were observed and the overall appeal of the improved properties is considered to be above average to good.

About a 2,250 SF portion of the subject site, along the eastern portion and along the rear alley is improved with a pump station that can not be relocated. However, the remainder of the 21,000 SF site can still be developed, by providing a perpetual easement to the pump station area, and still utilizing the 26,250 SF buildable area (based on 21,000 SF site area), and placing the parking areas/ingress/egress at the northeast quadrant of the subject site, along 11th Street.

Based upon analysis of those uses which would be considered physically possible, legally permissible and economically feasible, it is the appraiser's estimate that the Highest and Best Use of the subject site would be the development of a residential condominium building, within the constraints of prevailing market conditions.

HIGHEST AND BEST USE, AS IMPROVED

Analysis of the physically possible, legally permissible and maximally productive uses of the subject site has led to the conclusion that its future development with a condominium apartment building within the constraints of the applicable zoning criteria represents the Highest and Best Use of the subject site, as if vacant.

However, the subject site has been improved with Fire Station No.1 which was built in 1967 (49 years old) and a Rescue Station which was reportedly added in 1990. The 2-story fire-station is located at the southern portion of the site and has a Gross Building Area of approximately 6,640 SF, while the 2-story rescue-station is located at the northwest portion of the site and has a gross building area of 1,350 SF. The fire-station building was designed by the famous architect Morris Lapidus in 1967, in the Miami Modernist (MiMo) style which is unique to Miami-Miami Beach in the 1950's and 1960's. While the nearly 50-year old building has unique exterior architectural features, it is in fair to below average condition, and sorely lacks the functional standards of a modern fire rescue service.

We have reviewed the facility assessment report dated July 31, 2015 and prepared by Borrelli & Partners. As per our site inspection which concurs with the findings of the detailed report, the subject building does not meet floor elevation requirements determined by the Federal Emergency Management Association (FEMA), does not meet ADA (Americans with Disabilities Act) standards, and has a significant amount of regular wear and tear due to its advanced age, heavy use as a fire/rescue station serving a rapidly growing community, in a beachfront climate which requires heavy and continues maintenance to prevent and deal with structural deterioration/spalling, etc.

The fire station is reportedly under threat of shut-down, should storm-water stage levels exceed the current finished floor elevation. The exterior paved areas are reported to have cracks, causing drainage and settlement concerns, and further deterioration. Several trees, which are adjacent to the existing structures, contain base and root system which could be a potential impact to the surrounding foundation/asphalt pavement, as well as the exterior wall finish. The station has terrazzo floors which was can be found in many Art Deco and Mimo inspired designs; however, due to the impact of the heavy fire-engines' weight and wheel turning, there is significant amount of damage to the flooring.

In addition, the three bays are quite narrow to adequately house and maneuver today's larger fire-engines. As per the report, the exposed surface of the concrete slab on grade can expose and damage the reinforcement bars which will result in rusting and spalling of concrete surface that will undermine its structural integrity. There is further damage and chipping to the fluted columns and exposed rebars at the front of the building. Part of the most prominent Mimo architectural feature, the exposed concrete surfaces have been damaged, then repaired using concrete mortar instead of the original aggregate texture, as designed by the architect. Cracking and loose material are also present along the building's facade, in addition to a reported serious bee problem, making hives within the western wall's cracks.

HIGHEST AND BEST USE, AS IMPROVED

The property does not have a sprinkler system, as required by the Florida Building Code. It does not have an elevator, and is not ADA-compliant. The interior of the subject property, the living quarters, bathrooms, the kitchen area, electrical and plumbing systems, light fixtures, plumbing fixtures, ventilation, all show significant signs of wear and tear due to the advanced age of the improvements, and may pose hazard to the occupants, including increased possibility of a fire. The building has one split air-conditioning system, and a single thermostat located on the return, provides inadequate temperature control throughout the building. In addition, the electric duct heater has a lot of air leakage which is causing condensation and corrosion of a few of its components and supports.

The professionally prepared report further concludes and recommends the full site reconstruction and demolition of the existing older improvements, due to the reasons listed herein. It should be noted that the extensive repairs needed are not economically and physically feasible, as the improvements might have to be elevated (if at all possible, to meet the elevation requirements dictated by FEMA) and the cost would most likely exceed the 50% of the depreciated replacement hard cost of the existing \pm 50-year improvements (the cost of the renovations/repairs can not exceed 50% of the depreciated hard cost in "as is" condition, i.e., "50% Rule").

Based on the review of the professionally prepared facility assessment report, visual evidence collected during the site inspection, conversation with the occupants of the subject fire station, we concur that the existing improvements do not measure up to today's fire station standards, are in fair to below average condition, with excessive cost to remedy the situation, if it were at possible to achieve. Accordingly, we have concluded that the Highest and Best Use of the site is the demolition of the existing improvements, and its subsequent redevelopment as a City-owned facility (administrative offices, fire station, rescue station, sports/community/cultural center, etc.,) or with a residential condominium apartment building, in a private ownership (would be zoned RM-1, same as all surrounding properties).

THE VALUATION PROCEDURE

The valuation procedure is defined in the 2010 Edition of the Dictionary of Real Estate Appraisal which was sponsored by the Appraisal Institute as follows: The act, manner and technique of performing the steps of a valuation method.

In order to provide an estimate of the Market Value of the Fee Simple Interest in the subject property in its current "as is" condition (land value, less estimated cost of demolition of existing improvements, except the pump station), as of June 15, 2016.

The Sales Comparison Approach to Value is based upon a comparison between recently sold sites and the subject site, utilizing the sale price per square foot of buildable area unit of comparison.

THE SALES COMPARISON APPROACH (LAND VALUATION)

In order to estimate the value of the subject site, the land is analyzed as vacant and available to be put to its Highest and Best Use. There are several different techniques which can be utilized in the valuation of land. The technique selected must relate to the specific factors inherent in the appraisal problem at hand. The land valuation technique selected must reflect the prudent and rationale behavior of the most probable, typically informed purchaser/investor. In addition, the availability of reliable and verified market data further leads to the selection of the applicable land valuation technique.

1. The Sales Comparison Approach analyzes the sales of similar vacant sites, with comparison and adjustment made from these sales to the subject site.
2. The Abstraction Method analyzes the sales of improved properties with an allocation made between land and improvement value. The indicated allocation may establish a typical ratio of land value to total value or to derive from the portion of the sales price allocated to land an estimate of land value for use as a comparable land sale.
3. The Cost of Development Method provides an estimate of the value of undeveloped land based upon the creation of a platted subdivision, development and sale of said parcel. The method assumes that the most probable purchaser of the land would be a developer/investor who plans to dispose of the developed sites at a profit. The costs of development are subtracted from the estimated proceeds of sale resulting in a net income projection which is discounted over the market absorption period.
4. The Land Residual Method treats the net income available to support the investment in the site as a residual. The income required to cover the investment in new improvements that represent the Highest and Best Use of the site is deducted from the Net Operating Income resulting in an estimate of the net income to the land which is then capitalized to estimate the land value.

The comparable land sales are considered reasonably similar to the subject property in terms of zoning, location, physical characteristics, topography and buildable utility. The sales represent bona-fide "arm's length" transactions which are representative of prevailing market values. Our analysis has taken into account those differentials relative to financing, time of sale, size, location, frontage/exposure, zoning, developmental potential and functional utility of the comparable sales as they compare to the subject site.

COMPARABLE LAND SALES

	Subject Site	Land Sale 1	Land Sale 2	Land Sale 3	Land Sale 4	Land Sale 5	Land Sale 6	Land Sale 7	Land Listing 7
Address	1051 JEFFERSON AVENUE MIAMI BEACH FLORIDA	8505-8521 HARDING AVENUE MIAMI BEACH FLORIDA	8011-8035 HARDING AVENUE MIAMI BEACH FLORIDA	1312-1320 14TH TERRACE MIAMI BEACH FLORIDA	1030 15TH STREET MIAMI BEACH FLORIDA	1340 FLAMINGO WAY MIAMI BEACH FLORIDA	1435 BAY ROAD MIAMI BEACH FLORIDA	1020 PENNSYLVANIA AVENUE MIAMI BEACH FLORIDA	1020 PENNSYLVANIA AVENUE MIAMI BEACH FLORIDA
Frontage/Exposure On	JEFFERSON AVE. 11TH STREET	HARDING AVENUE	HARDING AVENUE	14TH TERRACE WEST AVENUE	15TH STREET LENOX AVENUE MICHIGAN AVENUE	14TH COURT	14TH COURT BAY ROAD	PENNSYLVANIA AVE.	PENNSYLVANIA AVE.
Folio No.	02-4203-009-4330	02-3202-005-0640 02-3202-005-0650	02-3202-007-0270 02-3202-007-0280 02-3202-007-0290 02-3202-007-0300	02-3233-016-0460 02-3233-016-0470	02-4203-009-6965	02-3233-016-0320	02-3233-016-0310	02-4203-009-1160	02-4203-009-1160
Net Site Size (SF)	21,000	19,800	22,000	16,000	28,416	5,000	6,000	7,000	7,000
Net Site Size (Acre)	0.48	0.45	0.51	0.37	0.65	0.11	0.14	0.16	0.16
Zoning	RM-1	RM-1	RM-1	RM-1	RM-1	RM-1	RM-1	RM-1	RM-1
Floor Area Ratio (FAR)	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
Buildable Area	26,250	24,750	27,500	20,000	35,520	6,250	7,500	8,750	8,750
Date of Sale	-	1/8/2016	7/7/2015	6/23/2015	5/29/2015	4/28/2015	4/28/2015	9/11/2013	LISTED
Grantee	-	STARK DEVELOPMENT LLC	HARDING EXCALIBUR, LLC	CASALUNA LLC	SHOMA LINCOLN INVESTMENTS, LLC	TBD HARBOR 265, LLC	TBD HARBOR 265, LLC	1020 PENNSYLVANIA AVENUE, LLC	DORON MAROM
Grantor	-	8505 HARDING LLC	SEA MOON, INC.	WEST AVENUE DEVELOPMENT, LLC	BELLSOUTH TELECOM., LLC	RS REALTY INVESTMENTS, LLC	SJ REALTY INVESTMENTS, LLC	DORON MAROM	LISTED
O.R. Book / Page	-	29923 / 2582	29691 / 647	29677 / 2294	29643 / 4660	29601 / 784	29601 / 788	28839 / 2954	LISTED
Consideration	-	\$5,050,000	\$5,000,000	\$4,100,000	\$6,050,000	\$1,175,000	\$1,525,000	\$1,000,000	\$2,175,000
Financing	-	CASH TO THE SELLER	CASH TO THE SELLER	CASH TO THE SELLER	CASH TO THE SELLER	CASH TO THE SELLER	CASH TO THE SELLER	CASH TO THE SELLER	LISTED
Sale Price	-	\$5,050,000	\$5,000,000	\$4,100,000	\$6,050,000	\$1,175,000	\$1,525,000	\$1,000,000	\$2,175,000
Sale Price/SF of Net Site Area	-	\$255.05	\$227.27	\$256.25	\$212.91	\$235.00	\$254.17	\$142.86	\$310.71
Sale Price/SF of Maximum Buildable Area	-	\$204.04	\$181.82	\$205.00	\$170.33	\$188.00	\$203.33	\$114.29	\$248.57
Time Adjustment	0%	0%	0%	0%	0%	0%	0%	0%	0%
Time Adjusted Sale Price	-	\$5,050,000	\$5,000,000	\$4,100,000	\$6,050,000	\$1,175,000	\$1,525,000	\$1,000,000	\$2,175,000
Time Adjusted Sale Price Per Sq. Ft. of Site Area	-	\$255.05	\$227.27	\$256.25	\$212.91	\$235.00	\$254.17	\$142.86	\$310.71
Time Adjusted Sale Price Per Sq. Ft. of Buildable Area	-	\$204.04	\$181.82	\$205.00	\$170.33	\$188.00	\$203.33	\$114.29	\$248.57
ADJUSTMENTS:									
Location:	-	10%	10%	0%	0%	0%	0%	0%	0%
Frontage / Exposure:	-	10%	10%	0%	0%	10%	0%	10%	10%
Size/Physical Development Potential:	-	0%	0%	0%	0%	10%	10%	10%	10%
Functional Utility:	-	-15%	-15%	-15%	-15%	-15%	-15%	-15%	-15%
Total:	-	5%	5%	-15%	-15%	5%	-5%	5%	5%
Plus: Estimated Demolition Cost	-	\$60,000	\$40,000	\$0	\$0	\$10,000	\$10,000	\$0	\$0
Adjusted Price	-	\$5,362,500	\$5,290,000	\$3,485,000	\$5,142,500	\$1,243,800	\$1,458,800	\$1,050,000	\$2,283,800
Adjusted Price/SF of Net Site Area	-	\$270.83	\$240.45	\$217.81	\$180.97	\$248.78	\$243.13	\$150.00	\$326.28
Adjusted Price/SF of Buildable Area	-	\$216.67	\$192.36	\$174.25	\$144.78	\$199.01	\$194.51	\$120.00 Previous Sale	\$281.01 Asking

THE SALES COMPARISON APPROACH (LAND VALUATION) -- Continued --

The Sales Comparison Approach to Value is based on the principle of substitution; that is, when a property is replaceable in the market, its value tends to be set at the cost of acquiring an equally desirable substitute property assuming no costly delay in making the substitution. The Sales Comparison Approach to Value is based on a comparison between recently sold sites in Miami Beach and the subject site, utilizing the sale price/SF of site area and sale price/SF of buildable area methods of comparison. Refer to the previous page.

ANALYSIS OF COMPARABLE SALES

Financing

The comparable sales were "arm's length" and "cash to the seller" transactions, with typical terms of purchase and therefore, no adjustment for financing was required.

Time of Sale

The comparable land sales analyzed herein have occurred between April 2015 and January 2016, as well as a current listing which was last sold in September 2015. The comparable sales reflect current market conditions in the subject area and therefore, no quantitative adjustment was applied to the comparable sales.

Location

Comparable Sale Numbers One and Two are in North Beach, between 80th Street and 85th Street, along Harding Avenue and therefore, a negative adjustment was made for location. The subject property and the remaining comparable sales are located in South Beach, between 10th Street and 15th Street, within a 1/3-mile radius, thereby requiring no location positive adjustment.

Frontage/Visibility/Exposure

The subject corner site is superior to Comparable Land Sale Numbers One, Two, Five and Seven which are interior sites, thereby requiring a positive adjustment.

Configuration

The subject site and the comparable sites are generally shaped rectangular, with adequate frontage and depth, thereby requiring no adjustment for configuration.

Physical Development Potential

Comparable Sale Numbers Five, Six and Seven were inferior to the subject site in terms of physical development potential due to their significantly smaller size which provide inferior development potential, thereby requiring a positive adjustment.

THE SALES COMPARISON APPROACH (LAND VALUATION) -- Continued --

ANALYSIS OF COMPARABLE LAND SALES - Continued

Topography

The subject site and the comparable land sales were generally level at street-grade. However, we have estimated the cost of demolition at the comparable sales, if there were older improvements which would be razed for redevelopment.

Functional Utility

As stated, about a 2,250 SF portion of the subject site (comprising 10.7%), along the eastern portion and along the rear alley is improved with a pump station that can not be relocated. However, the remainder of the 21,000 SF site can still be developed, by providing a perpetual easement to the pump station area, and still utilizing the 26,250 SF buildable area (based on 21,000 SF site area), and placing the parking areas/ingress/egress at the northeast quadrant of the subject site, along 11th Street. We have applied a negative adjustment to the comparable sales due to the limitation posed by the pump station area to the type of the development which might take place at the subject site.

THE SALES COMPARISON APPROACH (LAND VALUATION) -- Continued --

CORRELATION OF VALUE

The comparable sales indicated unadjusted sale price/SF of site area of \$255.05, \$227.27, \$256.25, \$212.91, \$235.00, \$254.17 and \$310.71 (listing; last sold for \$142.86 in September 2013).

The comparable sales indicated unadjusted sale price/SF of buildable area of \$204.04, \$181.82, \$205.00, \$170.33, \$188.00, \$203.33 and \$248.57 (listing; last sold for \$114.29 in September 2013).

After the analytical adjustments, the comparable sales indicated adjusted sale price/SF of site area of \$270.83, \$240.45, \$217.81, \$180.97, \$248.76 and \$243.13 for the closed sales; and \$326.26 for the current listing.

After the analytical adjustments, the comparable sales indicated adjusted sale price/SF of buildable area of \$216.67, \$192.36, \$174.25, \$144.78, \$199.01 and \$194.51 for the closed sales; and \$261.01 for the current listing.

Based on the preceding analysis, \$175/SF to \$200/SF of buildable area and \$225/SF to \$250/SF of site area reflect reasonable ranges of Market Value of the Fee Simple Interest in the subject site, "as if" vacant. Then:

26,250 SF x \$175/SF =	\$4,593,750
26,250 SF x \$200/SF =	\$5,250,000
21,000 SF x \$225/SF =	\$4,725,000
21,000 SF x \$250/SF =	\$5,250,000
Estimated Market Value of the Fee Simple Interest in the Subject Property, "as if" Vacant (Rounded)	\$4,925,000
Estimated Cost of Demolition of Existing Improvements	- \$75,000
Estimated Market Value of the Fee Simple Interest in the Subject Property in "as is" Condition (Rounded)	\$4,850,000

RECONCILIATION AND FINAL VALUE ESTIMATE

MARKET VALUE ESTIMATES IN "AS IS" CONDITION
(LAND VALUE, LESS ESTIMATED COST OF DEMOLITION):

Income Capitalization Approach to Value:	Not Applicable
Sales Comparison Approach to Value:	\$4,850,000
Cost Approach to Value:	Not Applicable
Reconciled Final Value Estimate:	\$4,850,000

In order to provide an estimate of the Market Value of the Fee Simple Interest in the subject property in its current "as is" condition (land value, less estimated cost of demolition of existing improvements, except the pump station), as of June 15, 2016.

The Sales Comparison Approach to Value is based upon a comparison between recently sold sites and the subject site, utilizing the sale price per square foot of buildable area unit of comparison.

It is my estimate that the Market Value of the Fee Simple Interest in the subject property in its current "as is" condition (land value, less estimated cost of demolition of existing improvements, except the pump station), as of June 15, 2016, was:

MARKET VALUE OF THE FEE SIMPLE INTEREST
IN "AS IS" CONDITION
(LAND VALUE, LESS ESTIMATED COST OF DEMOLITION)
FOUR MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS
(\$4,850,000)

CONTINGENT AND LIMITING CONDITIONS

We assume no responsibility for matters legal in nature, nor do we render any opinion as to the title, which is assumed to be marketable. The property is appraised as though under responsible ownership and management.

When applicable, the sketch in this report is included to assist the reader in visualizing the property, and we assume no responsibility for its accuracy. We have made no survey of the property. We are not required to give testimony or appear in court because of having made this appraisal, with reference to the property in question, unless arrangements have been previously made thereof. Additional professional valuation services rendered would require further compensation under a separate contractual agreement.

Where applicable, the distribution of the total valuation in this report between land and improvements applies only under the existing program of utilizations. The separate valuations for land and building must not be used in conjunction with any other appraisal and are invalid if so used.

We assume that there are no hidden or unapparent conditions of the property, subsoil or structures which would render it more or less valuable. We assume no responsibility for such conditions or for engineering which might be required to discover such factors.

Information, estimates and opinions furnished to us and contained in this report were obtained from sources considered reliable and believed to be true and correct. However, no responsibility for accuracy can be assumed by us.

No one other than the undersigned prepared the analyses, conclusions and estimates concerning the real estate set forth in this appraisal.

Neither all nor any part of the contents of this report, or copy thereof, shall be used for any purpose by any but the client without the previous written consent of the appraiser, and/or the client; nor shall it be conveyed by any including the client to the public through advertising, publications, news, sales or other media, without the written consent and approval of the author, particularly the valuation conclusions, identity of the appraiser, or any reference to any professional society or institute or any initialed designation conferred upon the appraiser.

This appraisal report has been made in conformity with and is subject to the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute, the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and the requirements of the State of Florida for state certified real estate appraisers, as well as current Federal regulatory agency criteria.

CONTINGENT AND LIMITING CONDITIONS

-- Continued --

The existence of hazardous materials, which may or may not be present on the property, was not observed. We have no knowledge of the existence of such materials on or in the property, nor are we qualified to detect such substances. The presence of potentially hazardous materials and/or substances may affect the value of the property. The value estimate reflected in this appraisal report is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

The Americans with Disabilities Act ("ADA") became effective January 26, 1992. We have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the "ADA". It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the "ADA" could reveal that the property is not in compliance with one or more of the requirements of the Act. Since we have no direct evidence relating to this issue, we did not consider possible non-compliance with the requirement of "ADA" in estimating the value of the property.

The appraisal report can not be used in connection with a real estate syndicate(s) or securities related activity(ies) and is invalid if so used without the previous knowledge or written consent of the appraiser. Said activities include but would not be limited to activities which are required to be registered with the United States Securities and Exchange Commission or any state regulatory agency regulating investments made as a public offering, as well as activities involving Real Estate Investment Trusts, Limited Partnerships, Mortgage Backed Securities and any other transaction which is subject to the securities Exchange Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisors Act of 1940 or State Blue Sky or securities laws or any amendments thereto.

About a 2,250 SF portion of the subject site, along the eastern portion and along the rear alley is improved with a pump station that can not be relocated. However, the remainder of the 21,000 SF site can still be developed, by providing a perpetual easement to the pump station area, and still utilizing the 26,250 SF buildable area (based on 21,000 SF site area), and placing the parking areas/ingress/egress at the northeast quadrant of the subject site, along 11th Street.

This analysis is based on the assumption that the site can be reasonably developed in accordance with its Highest and Best Use, while preserving the pump station and underground lines. Furthermore, it is assumed that the County and the City would not withhold permits for such a development scenario, at a reasonable permitting cost and without atypical delays emanating from a prolonged approval/permitting process.

J. ALHALE APPRAISALS, INC.
Real Estate Appraisers and Consultants

CERTIFICATION

The undersigned do hereby certify that, to the best of our knowledge and belief, except as otherwise noted in the appraisal report:

- The statements of fact contained in this report, upon which the analyses, opinions and conclusions expressed herein are based, are true and correct.
- I have performed no services as an appraiser regarding the property that is the subject of this appraisal assignment, within the three year period preceding the acceptance of this assignment.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are our personal, unbiased professional analyses, opinions and conclusions.
- We have no present or prospective interest in the property that is the subject of this report and we have no personal interest or bias with respect to the parties involved.
- The amount of our compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- Our analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute, the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation and the requirements of the State of Florida for state certified real estate appraisers, as well as current Federal regulatory agency criteria.
- My engagement in this assignment was not contingent upon developing or reporting predetermined values. The appraisal assignment has not been based on a required minimum valuation, a specific valuation, or the approval of a loan.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives, as well as the Florida Real Estate Appraisal Board.
- As of the date of this report, Jozef Alhale has completed the requirements of the continuing education program of The Appraisal Institute.
- The appraiser has personally inspected the subject property which is described in this report.

J. ALHALE APPRAISALS, INC.
Real Estate Appraisers and Consultants

CERTIFICATION

- No one other than the undersigned prepared the analyses, conclusions and opinions concerning real estate that are set forth in this appraisal report, nor provided significant professional assistance to the person signing this report.

It is the opinion of the undersigned that the estimated the Market Value of the Fee Simple Interest in the subject property in its current "as is" condition (land value, less estimated cost of demolition of existing improvements, except the pump station), as of June 15, 2016, was as described herein.



Jozef Alhale, MAI
State Certified General Appraiser
License No. RZ 0001557

ADDENDA

JOZEF ALHALE, MAI
3475 Sheridan Street, Suite 313
Hollywood, Florida 33021

(305) 613-7477 jbalhale@aol.com www.jalhaleappraisals.com

QUALIFICATIONS

- Experience:** Twenty-eight years in the field of real estate appraisal, appraisal review, consultation, expert witness, economic research and market analysis.
- Membership:** Appraisal Institute, MAI
Miami Society of Commercial Realtors
Miami Association of Realtors
- Professional Experience:** J. Alhale Appraisals, Inc., President, September 2009 to present
J.B. Alhale & Associates, Inc., President, May 1994 to present
Dixon and Friedman, Inc., Senior Appraiser, Oct. 1991 - May 1994
R.G. Davis & Associates, Inc., Fee Appraiser, Jan. 1991 - Oct. 1991
Izenberg Appraisal Assoc., Inc., Staff Appraiser, July 1988 - Dec. 1990
- Academic Education:** Master of Science, Computer Science
Rensselaer Polytechnic Institute, Troy, New York
- Bachelor of Arts, Cum Laude, Computer Science
New York University, New York, New York
- Associate Engineering Degree, Computer Science
Tel Aviv University, Tel Aviv, Israel
- Licensed:** State Certified General Real Estate Appraiser - State of Florida
Real Estate Salesman - State of Florida
- Assignments:** **Appraisals** - Vacant land, industrial facilities, shopping centers, office buildings, rental and condominium apartment buildings, hotel/motel facilities, other special-purpose properties, air rights, as well as valuation of Leased Fee and Leasehold Interests, undivided partial interests for financing, litigation, divorce, estate taxes, gift taxes, trusts, etc.
- Consulting** - Economic research, expert witness, Highest and Best Use analysis, market analysis, feasibility analysis pertaining to commercial, industrial, lodging, retail, office, multi-family residential and special-purpose properties.

J. ALHALE APPRAISALS, INC.
Real Estate Appraisers and Consultants

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COMMITTEE MEMORANDUM

TO: Finance and Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager

DATE: June 22, 2016

SUBJECT: **MANAGEMENT AGREEMENT FOR COLONY THEATER PILOT PROGRAM- MIAMI NEW DRAMA**

RECOMMENDATION

The Administration is seeking approval from the Finance and Citywide Projects Committee.

ANALYSIS

At the December 9, 2015 Commission meeting, Commissioners Steinberg and Malakoff referred a discussion of how to incentivize local theater in Miami Beach to both the Cultural Arts Council (CAC) and the Finance and Citywide Projects Committee (FCPC). This discussion was prompted by the announcement of a major new professional theater company, Miami New Drama, under the direction of multiple-award winning director and playwright Moises Kauffman and Michel Hausmann, and the challenges faced by its month-long run of *The Golem of Havana*, which opened at the Colony Theater on January 16, 2016. The subject was discussed at length by the CAC at its meeting on January 7, 2016. Since this time, Miami New Drama has worked diligently with staff to develop a comprehensive strategic and operational plan that would allow for a presenting and producing organization to manage the Colony Theater.

At the April 13, 2016 City Commission meeting, Commissioners Steinberg, Grieco, and Malakoff sponsored another referral to both the CAC and FCPC to consider having Miami New Drama manage the Colony Theater as a pilot program. On May 12, 2016, Mr. Hausmann presented Miami New Drama's vision to the members of the CAC, who voted unanimously in favor of the organization's proposal to oversee the artistic direction and operation of the Colony Theater beginning FY 16-17. The Finance and Citywide Projects Committee (FCPC) met on May 20, 2016 and recommended in support of the proposal, directed staff to negotiate a Management Agreement that would include options for City funding and to return to the FCPC with a draft of the agreement for review and consideration.

On June 8, 2016, the City Commission accepted the recommendation of the FCPC and a draft Management Agreement has been produced for consideration. Please note that the attached draft Management Agreement has not yet been reviewed by the City Attorney's Office and additional changes may be subsequently recommended. However, in the interest of time, the item is being presented for your review.

BACKGROUND

The CAC has long lamented the dearth of live drama in Miami Beach. The City is home to the region's major ballet company, orchestra, art fair and museum; live theater is the missing component of the well-rounded cultural personality that sets Miami Beach apart from the rest of the

region. In assessing the need for theater, the CAC has strongly recommended that the management of the Colony be transferred to a professional resident theater company that would present a specific number of its own extended-run productions each year, while still making the theater available and affordable to its current stable of non-profit users. Given time to cultivate an audience, the Colony's resident company could become the leading regional theater of the area, filling the gap in our current cultural landscape. South Florida has not had a nationally-respected regional theater since the closing of the Coconut Grove Playhouse many years ago.

Global Spectrum took over management of the City's theaters on October 1, 2008. Since that time, they have made improvements to operations, marketing, customer service, and capital. However, the Colony Theater is operational for only 30% of the year, with regular event attendance operating below 40%. The facility is currently operated as a rental venue with little artistic oversight or curatorial method and has operated at a loss ranging from \$30,000 to \$100,000 for the last several fiscal years.

Miami New Drama's inaugural production, *The Golem of Havana*, presented an alternative to what the Colony Theater could be by producing the following results:

- More than 6500 people attended the show in its extended 5 week run breaking every record for past productions at The Colony Theater
- 40% of the performances were completely sold out
- Average capacity was well over 70%
- The show garnered national attention and received rave reviews from The Miami Herald, The Huffington Post and Florida Theater on Stage, among others.
- Grossed over \$250,000
- The highest grossing theater show in Miami's recent history

Under the direction of multiple-award winning director and playwright Moises Kauffman and Michel Hausmann, Miami New Drama is a newly founded not-for-profit 501(c)3 presenting and producing organization committed to theatrical excellence and theater-making as a means of social engagement, cultural conversation and human interaction. The company presents world-class relevant work by American, Latin American and international artists designed for the intersections of Miami Beach's multicultural 21st century audience. By sharing work where cultures dialogue and communities intersect, Miami New Drama aims to reach audiences as diverse as the city itself.

Miami New Drama's productions include an eclectic mix of original plays, musicals, classics and world premieres, including work commissioned specifically for Miami New Drama. These productions will utilize a mix of the best local, national and international talent to incubate work from scratch. Actors, directors and designers culled from the Miami community and beyond will create work that reflects the best of Miami Beach, while highlighting some of the best theatrical talent in the world.

As directed by the FCPC as its May 20, 2016 meeting, staff has negotiated a draft Management Agreement with Miami New Drama, which outlines the following key terms and conditions:

- The City of Miami Beach shall provide funding to Miami New Drama in the amount of \$100,000 in quarterly installments, payable within fifteen (15) days following the end of each Quarter
- The agreement shall be for an initial term of two (2) years, commencing on October 1, 2016 and ending on September 30, 2018. At its sole option and discretion, the City may extend

this agreement for up to one (1) additional five (5) year term, and one (1) additional two (2) years and 364 day term.

- Miami New Drama will honor event rentals which have been booked prior to the date of the execution of this Agreement and receive from the City all revenues from the agreements. Miami New Drama shall also honor any rent waivers that have been approved by Resolution of the Mayor and City Commission.
- Miami New Drama shall cause at least 75 events at the facility for each contract year, serving more than 30,000 visitors per year
- Miami New Drama shall provide day-to-day operational and administrative services in support of its management activities to ensure that the facility shall be operated, managed and maintained in a first class manner, including but not limited to, acquisition of services, equipment, supplies and facilities; maintenance and property management; security; personnel management; record-keeping; collections and billing; and promotional activities, including but not limited to public relations, social media and paid marketing outreach.
- Miami New Drama shall provide quarterly reports to the City detailing event records and programmatic plans, marketing and promotional activities, maintenance and capital work, and operational/administrative budgets.
- The City remains responsible for maintenance of the major building systems (i.e. HVAC, roof, plumbing, electrical, and elevator) and for long term building capital improvements.
- Miami New Drama shall be responsible for the purchase of any equipment related to the venue that needs to be replaced due to normal wear and tear.

Additional terms and conditions can be found in the attached draft Management Agreement (Exhibit A).

Also attached is the Strategic and Operational Plan presented by Miami New Drama (Exhibit B) which provides the following:

- Company Overview
- Budgets
- Staff
- Maintenance
- Affiliations
- Management Support Documents
- Grant Support
- Public Relations/Marketing Plan

CONCLUSION

The CAC recommended that the management of the Colony be transferred to Miami New Drama as a “pilot program.” Miami New Drama will act as the resident professional theater company, producing its own shows while continuing to make the theater available to its nonprofit users, benefitting our residents and visitors while also promoting Miami Beach as an international cultural destination. City staff recommends that if the FCPC agrees to the terms and conditions of the proposed Management Agreement, the Agreement should move forward for consideration at the September 14, 2016 meeting of the City Commission. Additionally, if a favorable recommendation is received from the FCPC, the Administration will also draft and present an amendment to the Management Agreement between the City and Spectra Venue Management to remove the Colony Theatre from their management responsibility.

**MANAGEMENT AGREEMENT BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA
AND
MIAMI NEW DRAMA
FOR THE MANAGEMENT OF THE COLONY THEATRE**

THIS AGREEMENT, is made and executed as of this ____ day of _____, 2016 [Effective Date], by and between the CITY OF MIAMI BEACH[CITY], a municipal corporation organized and existing under the laws of the State of Florida whose address is 1700 Convention Center Drive, Miami Beach, Florida 33139 , and MIAMI THEATER HUB, INC (DBA MIAMI NEW DRAMA)[MIND], a Florida not-for-profit corporation whose principal address is 169 East Fisher Street, PH Miami, FL 33131-

BACKGROUND

City is the owner of the COLONY THEATRE [the "COLONY"] located at 1040 Lincoln Road, Miami Beach, Florida 33139; and which is more particularly described and depicted in Exhibit "A" attached hereto and made a part hereof [the "Facility"].

MIND is a Florida not-for-profit (c)3 arts organization that seeks to showcase South Florida as theater destination while at the same time increase educational awareness and cultural exchange through the presentation of theater pieces of all genres, including but not limited to musicals, drama, classics and world premieres, as well as world premieres specifically for MIND.

At the December 9, 2015 Commission meeting, Commissioners Steinberg and Malakoff referred a discussion of how to incentivize local theater in Miami Beach to both the Cultural Arts Council (CAC) and the Finance and Citywide Projects Committee (FCPC).

The subject was discussed further by the CAC at its meeting on January 7, 2016. Since this time, Miami New Drama has worked diligently with staff to develop a comprehensive strategic and operational plan that would allow for a presenting and producing organization to manage the COLONY.

At the April 13, 2016 City Commission meeting, Commissioners Steinberg, Grieco, and Malakoff sponsored another referral to both the CAC and FCPC to consider having Miami New Drama manage the COLONY as a pilot program.

On May 12, 2016, Michel Hausmann on behalf of Miami New Drama presented Miami New Drama's vision to the members of the CAC, who voted unanimously in favor of the organization's proposal to oversee the artistic direction and operation of the Colony Theatre beginning FY 16-17.

The FCPC met on May 20, 2016 to consider the pilot program. The FCPC recommended in support of the proposal, directed staff to negotiate a Management Agreement that would include options for City funding and to return to the FCPC with a draft of the agreement for review and consideration.

On June 8, 2016, the City Commission adopted Resolution No. 2016-29429 accepting the recommendation of the Finance and Citywide Projects Committee directing the administration to negotiate a management agreement with Miami New Drama Theater Company to become the resident company and venue manager for the Colony theatre and pilot program.

On _____, the City Commission adopted Resolution No. _____ approving agreement with MIND for management of the Facility.

City desires to engage MIND, and MIND desires to accept the engagement, to provide management services for the Facility on the terms and conditions set forth herein.

NOW THEREFORE recognizing the aforementioned recitals as true and correct and incorporating herein, and the recitation of the mutual covenants and conditions herein contained, it is agreed by the parties hereto as follows:

SECTION 1. Definitions.

For purposes of this Agreement, the following terms have the meanings referred to in this Section 1:

"Affiliate" -- an entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity. For purposes of this definition, "control" means ownership of equity securities or other ownership interests which represent more than 51% of the voting power in the controlled entity.

"City" -- as defined in the first paragraph of this Agreement.

"City Commission" -- the governing and legislative body of the City.

"City Manager" -- the chief executive officer of the City or such person as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any or all matters pertaining to this Agreement.

"Commencement Date" -- as defined in Section 2.

“Contract Year” -- each one year period beginning October 1st, and ending September 30th.

“Effective Date” -- provided that this Agreement has been approved by the City Commission and executed by City and MIND, the date as defined in the first paragraph of this Agreement.

“Event” -- all uses which involve a scheduled beginning and ending time, typically all within the same day. With respect to “Series” (as such term is hereafter defined), each Performance within the Series shall constitute an Event.

“Event Expenses” -- any and all expenses incurred or payments made by MIND in connection with the occurrence of an Event at the Facility, including, but not limited to, costs for staffing (including production managers and other Event staff) and costs relating to setup and clean-up within the facility.

“Expiration Date” -- as defined in Section 2

“Facility” -- as defined in the Background Section of this Agreement and as depicted in Exhibit A hereto.

“Facility Rentals” -- temporary use of the Facility at specific intervals of time pre-determined and agreed upon by MIND.

“Fiscal Year” -- each one year period beginning October 1st and ending September 30th.

“Governmental Requirements” -- laws, ordinances, rules, regulations, statutes, policies and procedures (including administrative guidelines), and other legal requirements of any governmental body or authority or any agency thereof, including, without limitation, federal, state, County, and municipal).

“Net Operating Loss/Profit” -- with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenue for such Fiscal Year, in the case of a loss, and the excess, if any, of Operating Revenue for such Fiscal Year over Operating Expenses for such Fiscal Year, in the case of a profit.

“Operating Expenses” -- any and all expenses and expenditures of whatever kind or nature incurred, direct or indirectly, by MIND in promoting, operating, maintaining, insuring and managing the Facility, including, but not limited to, employee compensation and related expenses (e.g., base salaries, bonuses, severance and other allowances), employee benefits and related costs, supplies, materials, costs of any interns and independent contractors, advertising, all costs of maintaining the Facility as required by this Agreement, marketing and public relations costs and commissions, janitorial and cleaning expenses, data processing costs, dues, subscriptions and membership costs, amounts expended to procure and maintain permits and licenses, sales taxes imposed upon rentals, professional fees directly relating to the operation of the Facility, printing and stationery costs, Event Expenses, postage and freight costs, equipment rental costs, computer equipment leases and line charges, telephone switch and telecommunications services, artist and talent fees, costs, and expenses, show settlement charges, security expenses, travel and entertainment expenses in accordance with MIND normal policies, the cost of

employee uniforms, safety and medical expenses, exterminator costs, costs relating to the maintenance of signage inventory and systems, the cost of compliance with Governmental Requirements, all premiums for insurance carried by MIND pursuant to Section 14, and all other costs of operating the Facility. Operating Expenses shall not, however, include any costs of litigation between City and MIND, or any other costs that are specified in this Agreement as costs to be paid by City. All Operating Expenses shall be determined in accordance with generally accepted accounting principles consistently applied and recognized on a full accrual basis.

“Operating Revenues” -- any and all revenues of every kind or nature derived from operating, managing or promoting the Facility, including, but not limited to, concession fees, rentals, revenues from merchandise sales, advertising sales, equipment rentals, box office revenues, food service and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, only the amount of such revenues paid by the concessionaire to the Facility shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however, if such revenues are collected in the first instance by and retained by such subcontractors, only the amount of such revenues paid by such contractors to the Facility shall be included as Operating Revenues), miscellaneous operating revenues, revenues generated from separate agreements with MIND Affiliates, including but not limited to rentals and co-producers of events, pertaining to the Facility, and miscellaneous revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. For the sake of clarity, the parties acknowledge that revenues from the sale of tickets for events at the Facility are not Operating Revenues, but are instead a portion of the promoter and/or performer of each such Event. To the extent that MIND collects any ticket sale revenue on behalf of a promoter and/or performer, such ticket sale revenue shall be the source of funds from which MIND collects the rental charges and other event reimbursements owed by the promoter and/or performer for use of the Facility, which such charges and reimbursements are Operating Revenues hereunder. Operating Revenues shall not, however, include any revenue from valet parking or any other parking charges with respect to the Facility or Events and shall not include any revenues from sponsorship fees which are specifically reserved to City “Renewal Term” -- as defined in Section 2.

“Quarterly/Quarter(s)” – October 1st, January 1st, April 1st and July 1st of each Fiscal Year.

“Series” A sequence of events which may or may not involve the same production elements, but can be characterized by a unifying theme and schedule.

“MIND” -- as defined in the first paragraph of this Agreement.

SECTION 2. TERM.

2.1 Initial Term. This Agreement shall be for an initial term of two (2) years, commencing on October 1, 2016 (Commencement Date), and ending on the September 30, 2018 (Expiration Date), unless earlier terminated pursuant to the provisions of this Agreement.

2.2 Renewal Term(s). At its sole option and discretion, the City may extend this Agreement for up to one (1) additional five (5) year terms, and one (1) additional two (2) years and 364 day term, (a Renewal Term), by providing MIND with not less than 365 days prior written notice prior to the Expiration Date.

2.2.1 Notwithstanding anything in this Section 2, in the event before the end of the Initial Term or any of the Renewal Terms, MIND decides not to renew the Agreement, it shall provide the City Manager with written notice of its intent not to renew at least 365 days prior to the Expiration Date.

SECTION 3. COLONY THEATRE FACILITY.

The Facility subject to this Agreement shall be those facilities and spaces more specifically described in Exhibit "C."

SECTION 4. OPERATION AND MANAGEMENT OF THE FACILITY.

1. General Scope. The City engages MIND to operate, manage, maintain, promote and market the Facility during the Term, upon the terms and conditions hereinafter set forth.
2. Manager of the Facility. MIND accepts the engagement and agrees to operate, manage, promote and market the Facility in a manner consistent with other similar facilities. Subject to the terms of this Agreement, MIND shall be, as agent of the City, the sole and exclusive manager of the Facility to operate, manage, maintain, promote and market the Facility during the Term. In such capacity, except as otherwise expressly reserved under this Agreement to the City, and/or except for such matters as are subject to the approval of the City or City Manager, MIND shall have exclusive authority over the management and operation of the Facility and all activities therein, subject to subsections 4.4 and 4.5 hereof.
3. Permitted Uses. MIND shall use the Facility solely and exclusively primarily as a venue for its not-for-profit cultural presentation company. The Facility shall be used primarily as venue for top-quality cultural entertainment. Notwithstanding the foregoing and pursuant to Section 5.4 of this Agreement, the venue may also be used as a live theatrical entertainment venue and public auditorium, or any combination thereof, and for such ancillary uses as are customarily related to such primary use, including, without limitation, broadcasting, recording, filming, private parties or functions, summer and winter children's theater camps, in each case in conjunction with an

Event or rental function then being held; and sale of merchandise related to any Event then being held. The Facility does not include dedicated parking for the building. Patrons of Events may park in public parking lots and garages if and to the extent available, upon paying the applicable parking charges. Such uses shall include only the following

- a. Performance venue
- b. Events facility;
- c. Rehearsal space;
- d. MIND administrative offices;
- e. Sale of merchandise related to an Event then being held;
- f. Private parties and/or functions in conjunction with an Event then being held;
- g. As an ancillary use, third party rentals may occur from time to time;
- h. Facility for film / television / photographic/ audio productions.

No other uses shall be permitted without the prior written approval of the City Manager, which approval may be granted or withheld in his/her sole discretion. Any such other use which the City Manager approves must, however, be in accordance with (i) the Articles of Incorporation and other charter documents of MIND; (ii) all laws and regulations applicable to not-for-profit entities; (iii) all applicable Governmental Requirements; and (iv) all ad valorem tax exempt uses of property under Chapter 196, Florida Statutes.

4. Prohibited Uses. It is understood and agreed that the Facility shall be used by MIND during the Term only for the stated purposes in subsection 4.3, and for no other purposes or uses whatsoever, without express written permission of the City Manager. Notwithstanding anything contained in subsection 4.3, or any other term or condition of this Agreement: (1) MIND will not make or permit any use of the Facility that directly or indirectly, is forbidden by any Governmental Requirement, or that may be dangerous to life, limb or property; and (2) MIND may not commit waste on the Facility, use the Facility for any illegal purpose, commit a nuisance on the Facility, or allow any toxic, hazardous or dangerous substance to be brought into the Facility or stored therein (other than small quantities of materials customarily used in the operation of a live theatrical performance and production venue, which shall be used and stored in compliance with applicable law). In the event that MIND uses the Facility for any purposes not expressly permitted herein, then the City through its City Manager may declare this Agreement in default and, in addition to all other remedies available to City, restrain such improper use by injunction or other legal action, with or without notice to MIND.

~~5. Cessation/Suspension of Approved Use(s) and/or Business Activity(ies).~~

Notwithstanding anything contained in this Agreement, and except for the Permitted Uses

expressly set forth in subsection, 4.3 and in the event that another particular use(s) and/or business activity(ies) has(ve) been approved by the City Manager, and the City Manager thereafter, upon reasonable inquiry, determines that the continuation of such use(s) and/or activity(ies) is(are), or may be, inconsistent, contrary to, and/or detrimental to the Permitted Uses set forth in this Agreement, and/or to the health, safety and/or welfare of the residents of and visitors to the City of Miami Beach, then the City Manager, upon thirty (30) days prior written notice to MIND of same, may revoke, suspend, and/or otherwise disallow the objectionable uses(s) and/or business activity(ies), and MIND shall immediately cease and desist in providing, and/or continuing with, said use(s) and/or business activity(ies) within the time period and in the manner prescribed in the City, subject to such additional guidelines, as may be determined and established by the City Manager, in his/her sole and reasonable discretion and judgment.

6.5. SECTION 5. SCOPE OF SERVICES.

- 1) **General.** MIND shall perform and furnish management services, personnel, and systems and materials, as are appropriate or necessary to operate, manage, supervise, maintain, promote and market the Facility in a manner consistent with the operations, management, promotions and marketing of other similar first-class facilities.
- 2) **Required Number of Events, Continuous Operation, & Conclusion of Events.** In order to ensure the continuous operation of the Facility, and commencing on the October 1, 2016 MIND shall cause at least 150 Events to be held at the Facility for each Contract Year (and proportionately for any partial Contract Year during the term). The aforesaid 150 Events shall be calculated by counting each separate Event as a Series.
- 3) MIND shall cause the Facility to be available to open on a year round basis, subject to closures for reasonable periods for rehearsal, set design, repairs, maintenance and alterations. All Events and all uses shall conclude prior to 2:00 a.m. unless otherwise approved by the City Manager, in writing; provided, however, that MIND's employees and/or contractors may be permitted to remain at the Facility beyond 2:00 a.m. in the event that same is necessary for purposes of taking down and/or dismantling a production, cleaning the Facility after a performance, etc., so long as MIND's activities at the Facility during this time do not disrupt and/or negatively impact the surrounding neighborhood. In the event of such disruption, the City Manager and/or his/her designee shall have the right to either strictly enforce the hours of operation, or impose reasonable guidelines upon MIND as a condition to keeping the Facility open for the aforestated purposes (beyond 2:00 a.m.)

4. Booking Policies. The City and MIND agree and acknowledge that the Facility will be used by MIND for cultural and entertainment events, but that MIND may also, from time to time, rent the Facility to third party presenters consistent with the terms herein. Except as otherwise provided herein, MIND shall have the sole authority to approve the scheduling of any Event in the Facility and Events requiring or having co-promotions and may refuse to book any type or category of events for any reason whatsoever consistent with City ordinances and regulations. MIND shall have no obligation to book any type or category of Events (or specific Event) that are inappropriate or unprofitable, as reasonably determined by MIND, or which may in any way interfere with the day to day activities of area residents and businesses. Notwithstanding the preceding, or any other term or condition of this Agreement, the City Manager shall have the right to prohibit certain Events or uses from occurring at the Facility, upon the City Manager's reasonable determination that such Event or use might present unreasonable safety concerns, or violate (or otherwise not comply with) Governmental Requirements. Notice of any such determination shall be sent by written notice to MIND within thirty (30) days after the City Manager has received the quarterly booking report from MIND that specifies the potential Event.

5. Attached hereto as Exhibit "F" is a list of events or rentals which have been booked prior to the date of execution of this Agreement. MIND shall honor all such bookings and shall receive from City, or its agent, all revenues from the agreements that have already been paid and shall receive all remaining revenues under the agreements. MIND shall also honor any rentals that have been approved by Resolution of the Mayor and City Commission of the City.

7.6. Specific Services. Without limiting the generality of the foregoing, MIND shall perform all of the following services, all without the necessity of first obtaining City's approval (except where otherwise expressly required in this Agreement), and all of which shall be performed by MIND in a manner consistent with the management and operation of other similar first class facilities:

- a. employ, supervise, and direct all employees and personnel consistent with the provisions of this Agreement. All employees and/or subcontractors shall be employees and/or subcontractors of MIND, its Affiliates or third parties, and not of City. MIND shall be solely responsible for assuring that the Facility is adequately staffed with competent, qualified personnel to fulfill its responsibilities under this Agreement;

- b. administer relationships with all third parties for the use, day to day maintenance and operation of the Facility, initiate and participate in any and all negotiations, renewals and extensions relating to such third party relationships, and enforce contractual agreements concerning any such third party relationships;
- c. negotiate, execute in its name as agent for the City, deliver and administer any and all licenses, occupancy agreements, sponsorship agreements (excluding name-in-title agreements), rental agreements, booking commitments, concession agreements (excluding food and beverage concessions and valet parking agreements), supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, general maintenance stage equipment, , staffing and personnel needs, including guards and ushers, telephone, extermination and other services which are necessary or appropriate, and all other contracts and agreements in connection with the management, maintenance, promotion and operation of the Facility; provided that (1) if any such license, agreement, commitment or contract has a term that extends beyond the remaining Term, such license, agreement, commitment or contract shall be automatically assigned to City as of the expiration or termination date of this Agreement and that the City Manager may terminate any such agreement without payment hereafter at any time upon not less than ten (10) days written notice; (2) MIND shall have the authority to approve the scheduling of any Event to be held at the Facility, subject to the limitations and requirements of this Agreement; and any contract entered into between MIND and a subsidiary and/or Affiliate company shall be at terms and for prices customarily charged by such subsidiary and/or Affiliate company for comparable goods and services elsewhere at rates that are competitive within the industry;
- d. maintain the Facility (including all structural components thereof and all electrical, HVAC, life safety, mechanical, plumbing, elevator and other systems and equipment), which shall be maintained by MIND in a good and clean condition consistent with other similar first class facilities and in compliance with all Governmental Requirements, ordinary wear and tear, and casualty loss excepted. Maintenance responsibility shall include, without limitation, preventative and any and all other maintenance and as required in Exhibit "C" to this Agreement (entitled "City of Miami Beach Minimum Specifications for Maintenance of the Colony") and MIND shall keep on-site maintenance manuals and records reflecting all of MIND's maintenance activities, all of which shall be available for inspection by the City Manager upon request. MIND shall submit to City Manager periodic (not less than quarterly)

reports specifying all maintenance work performed during such period, which reports shall be used by the City's Tourism, Culture and Economic Development Department (or its consultant) as part of an annual City maintenance inspection and review.

Format and content of reports shall be agreed upon by both parties.

MIND warrants and represents to City that, prior to the Effective Date, MIND inspected the Facility, and MIND hereby accepts the Facility "as-is, where-is and with all faults." In addition, the City shall ensure that all equipment, bathing, plumbing, HVAC, fire extinguishers, fire alarms, and smoke detectors are in working order and that the building is up to applicable codes before commencement of the agreement.

- e. rent, lease, or purchase all equipment and maintenance supplies necessary or appropriate for the day-to-day operation and maintenance of the Facility;
- f. establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts, and any other commitments relating to the Facility to be negotiated by MIND in the course of its management, operation, building and production of the Facility; provided, however, that MIND shall, on or before the Commencement Date, submit its proposed initial rates and rate schedule to the City Manager for his/her review and approval (which review/approval shall not be unreasonably withheld, conditioned or delayed) and, thereafter, MIND shall consult with the City Manager about any adjustments to the rates and rate schedules at the Facility to be made by MIND, prior to MIND's implementation of same;
- g. pay when due, all Operating Expenses from MIND's own funds;
- h. after consultation with the City Manager and the City Attorney, and subject to approval by the City Attorney or his designee, institute as agent for the City, the costs of which shall be included as Operating Expenses, such legal actions or proceedings necessary or appropriate in connection with the operation of the Facility (using legal counsel approved by the City Attorney), including, without limitation, to collect charges, rents or other revenues due to the City or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility; institute on MIND a own behalf (and not as agent for City) without consultation or approval of the City, the costs of which shall be

included as Operating Expenses, such legal actions or proceedings necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents or other revenues due to the City or MIND or to cancel, terminate or sue for damages under, any license, use, advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility;

- i. maintain a master set of all Event records, booking records and schedules for the Facility (which shall be available for inspection by the City Manager upon request);
- j. provide day-to-day administrative services in support of management activities to ensure that the Facility shall be operated, managed and maintained and performed in a first class manner consistent with similar first class facilities including, but not limited to, acquisition of services, equipment, supplies and facilities, maintenance and property management; personnel management; record-keeping; collections and billing; and similar services;
- k. engage in advertising, solicitation, and promotional activities necessary to effectively market the Facility and Events, and manage related social media platforms for the Facility. Any marketing materials created for the Facility shall remain the exclusive property of MIND. In connection with its activities under the terms of this Agreement, MIND is required to use the logo and brand identity of the City of Miami Beach, and of the Facility, as approved by the City Manager;
- l. act as a collection agent for the City on sales taxes as required for for-profit facility rentals of the Facility and remit to the State of Florida such sales taxes;
- m. comply with all City Ordinances;
- n. Except as otherwise approved by the City Manager, MIND shall not license or allow the use of any portion of the Facility to other than short-term users (i.e., less than sixty (60) consecutive days). MIND shall require that all users of the Facility provide certificates of insurance evidencing appropriate insurance and any other insurance required by the applicable license, use or occupancy agreement. Copies of these certificates shall be furnished to the City Manager prior to any Event or use. Such insurance shall be kept in force at all times by all licensees, users, lessees and concessionaires. All liability policies

shall name the City and MIND as additional insureds. MIND shall also require all users of the Facility to execute (among the terms of the license or occupancy agreement) an agreement to indemnify, defend and hold harmless the City. MIND standard license or occupancy agreement shall, at a minimum, include the insurance and indemnity requirements contained herein; shall further be subject to the prior review and approval of the City Manager and City Attorney's Office; and – if and when approved – shall be attached as Exhibit "D" hereto.

- o. MIND acknowledges the City has entered into a Lease with Colony Theater Café, Inc (d.b.a Segafredo) for the 769 sq ft restaurant/café space, 250 sq ft in the Colony Theatre lobby for use of the food and beverage concession and storage area, and 306 sq ft adjacent to the Colony Theatre building for a dumpster/storage area. MIND also acknowledges that Segafredo owns and maintains a liquor license for the aforementioned Lease. In exchange for operating the Concession stand in the Colony Theatre lobby, Segafredo is responsible to pay 50% of the water consumption of the Colony Theatre building on a monthly basis, as invoiced by the City, and maintain the restrooms in the Theatre lobby at all times except for when a show is in progress.

SECTION 6. COMPENSATION TO THE CITY FOR USE OF THE FACILITY (USE FEE).

Base Use Fee. For the term of the Agreement, MIND shall pay City an annual Use Fee for the right to use the Facility as follows:

1. in the amount of \$1.00 annually in consideration for MIND's investments of programming, building, marketing and improvements.

All payments are payable annually, commencing on the Commencement Date and thereafter on the first day of each Contract Year. If the Commencement Date occurs on a day other than the first day of a calendar month, the first Contract Year shall include the partial month on which the Commencement Date occurs and the following twelve (12) calendar months. The Base Use Fee (and all other amounts due hereunder) shall be paid to City in legal tender of the United States of America at the following address: Tourism, Culture, and Economic Development Department, 1700 Convention Center Drive, Miami Beach, Florida 33139; or at such other place that City may from time to time designate by notice in writing.

Additional Fees and Charge. In addition to the Base Use Fee as set forth in subsection 6.1, MIND shall also be responsible for payment of the following Additional Fees and Charges:

1. Operating Expenses. MIND shall pay all costs and expenses related to Operating Expenses. MIND hereby irrevocably and unconditionally guarantees to the City that Operating Revenues shall at all times be sufficient to pay as and when due all Operating Expenses and any and all other amounts that MIND is obligated to pay pursuant to this Agreement, and further covenants and agrees that if at any time there are insufficient Operating Revenues to pay all of the foregoing amounts, as and when required, MIND shall immediately pay the difference from MIND's own funds. This obligation is absolute and unconditional and shall even apply if Operating Revenues are reduced or limited by facts or circumstances not contemplated by the parties or for reasons beyond the parties' control. The provisions of this section shall survive any termination or expiration of this Agreement.
2. Notwithstanding subsection 6 MIND shall be responsible for payment for capital improvements or infrastructure within the Facility.
3. Sales Tax. MIND shall pay and include any and all additional sums for applicable sales and use tax, now or hereafter prescribed by state, federal or local law, concurrent with and to the extent any sales tax is imposed in connection with any payment due hereunder by MIND.

SECTION 7 – INTENT TO SELL OMITTED

SECTION 8 - RIGHTS RESERVED TO CITY

1. Right of Entry. Representatives, consultants and employees of the City shall have the right to enter all portions of the Facility to inspect and to observe the performance of MIND of its obligations under this Agreement to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines or other matters in, on, or about the Facility, or to do any act or thing which they may be obligated or have the right to do under this Agreement. Nothing contained in this subparagraph is intended or shall be construed to limit any other rights of the City under this Agreement. MIND shall not unreasonably interfere with the activities of MIND hereunder, and the City's actions shall be conducted such that disruption of MIND work shall be kept to a minimum and there shall be no disruption of any Event by City (the City's actions in its proprietary capacity of the foregoing, shall not diminish any rights of City in its governmental capacity).
2. Signage. The following provisions shall govern the name-in-title rights, interior naming rights, and the related signage rights with respect to the Facility:

Exterior Marquee messaging will be controlled by MIND and will list events taking place within the Facility. MIND shall include City requested public information messages where such public information messages do not unduly limit or interfere with the Facility's event messaging.

MIND shall provide, at its sole expense and responsibility, any required signs within the Facility. All signage shall be approved by the City, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage shall be subject to the prior approval of the City as to size, shape and placement of the sign. MIND may provide the City with a standard sign template(s) and the City may approve the template for ongoing use without the requirement of approving each use.

Notwithstanding the preceding paragraph, the City Commission's consent and approval shall be required if MIND seeks to change the name of the Facility to anything other than "Colony Theatre", and any such name change must be approved by a 5/7 vote of the City Commission.

3. Interior Naming Rights; Interior Signage: MIND shall be entitled to all permanent (meaning for a specific area such as a VIP lounge together with a duration in excess of twelve (12) months) interior signage (including proceeds derived therefrom shall be Operating Revenues); provided, however, that the names affixed thereon (including, without limitation, any sponsorship names) are subject to the City Manager's prior written approval, which shall not unreasonably be withheld, and conditioned on the following: no event may, any such signage include the names of any company selling the following types of products ("Prohibited Names"): guns, tobacco or sexual products.

Nothing contained herein shall preclude MIND from allowing sponsors from using temporary banners and temporary signage within the Facility with respect to any Event, so long as the banners and signage do not include any Prohibited Names.

4. General Requirements: All signage (whether interior, exterior, permanent and/or temporary) shall comply with all applicable Governmental Requirements, and shall be maintained by MIND in good condition.

SECTION 9. LIMITED FUNDING BY CITY.

1. —During the first Contract Year of the initial term of this Agreement (From October 1, 2016 through September 30, 2017), the City shall provide funding to MIND, in the amount of \$100,000.00 ("City Contribution(s)"), payable within fifteen (15) days following the end of

each Quarter, with the first payment, in the amount of \$25,000.00, due October 15, 2016; \$25,000.00 due on January 15, 2017, \$25,000.00 due on April 15, 2017, and \$25,000.00 due on July 15, 2017. MIND shall submit an invoice for each payment of such City Contribution and also submit the corresponding reports due for that particular Quarter. The City, in its sole discretion, may condition payment of the City upon MIND providing the requisite reports under this Agreement, including, without limitation, those reports set forth in Sections 5 and 12 of this Agreement. Thereafter, subject to funding availability, the City shall provide a City Contribution, in an amount of \$100,000.00 annually, during the balance of the Initial Term and any Renewal Terms (should said Renewal Term be granted, at the sole option of the City), toward the operation of the Facility. Except as set forth in this Section 9, and other costs which the City has expressly agreed to pay under the terms of this Agreement, the City will have no other funding or other financial obligations with respect to the Facility or its Operating Expenses or its operations. Additionally, MIND and City have entered into this Agreement with the expectation and belief that, as of the Effective Date, no governmental body will impose any additional taxes upon the Facility nor any sales, income, excise or other taxes. Notwithstanding the preceding sentence, the City makes no representation to MIND, -either expressed or implied, that any or all of such taxes may or may not be imposed at any time during the term of the Agreement.

2. Community Benefit Fund: The Community Benefit Fund at the Jackie Gleason Theater was established by Resolution No. 83-17447 to provide discounted show tickets to senior citizens and low-income residents. The Fund levies a \$1.50 surcharge on each ticket sold. The fund's purpose was further defined by Resolution No. 92-20454 to "present and promote performances, programs, shows and entertainment at reduced prices or free admission for the residents of Miami Beach." On February 10, 2016, the City Commission adopted Resolution No. 2016-29287, which created a rent waiver grant program for the Colony Theatre through the use of the Community Benefit Fund. The rental fee waiver grant program for the Colony Theatre was created to incentivize live theater in Miami Beach. Grants will cover not-for-profit theater rental fees for up to four days per week, and are available only for live dramatic productions. Dance, music, stand-up comedy, cabaret, burlesque and film screenings are not eligible for this grant. Grants will be administered by the Tourism Culture and Economic Development Department following review and recommendation by the Miami Beach Cultural Arts Council.

MIND agrees to continue to allow City to rent the Facility for twelve (12) Events per

calendar year. MIND agrees that the rental charge for each of the 12 rentals paid by the City under this program shall be fixed at _____ for the entire Term. The City reserves the right to discontinue such rent waiver grant program in the event that revenues become inadequate to subsidize the program, or for any reason in the City's sole and absolute discretion.

SECTION 10. RECEIPTS AND DISBURSEMENTS

MIND shall establish and maintain in one or more depositories, one or more operating, payroll and other bank accounts for the operation and management of the Facility, as MIND shall determine. All Operating Revenues collected by MIND from the operation of the Facility shall be deposited into the accounts and all Operating Expenses shall be paid by MIND as agent for the City from the accounts. Any amounts remaining in the operating accounts upon expiration or termination of this Agreement for any reason, after payment of all other amounts that MIND is required to pay under this Agreement through the date of expiration or termination, shall be promptly paid to the City.

SECTION 11: ALTERATIONS, MAINTENANCE AND REPAIRS

1. MIND shall not make any additions, improvements or alterations (collectively "Alterations") to the Facility without the City Manager's prior written consent. The cost of all Alterations made by MIND shall be borne solely by MIND from its own funds and shall not constitute Operating Expenses, unless otherwise approved by the City under the category of Capital Improvements or Maintenance. The City Manager shall not unreasonably withhold, condition or delay his/her consent to any Alterations except that the City Manager may withhold consent, in his/her sole and absolute discretion, with respect to any Alterations that change the structural elements or life-saving systems or that affect the exterior of the Facility; Notwithstanding anything to the contrary, however, MIND shall not under any circumstances be permitted to make any Alterations that: (i) affect the structural portions of the Facility, or (ii) fail to comply with any applicable Governmental Requirements; or (iii) interfere in any material manner with the proper functioning of any mechanical, electrical, plumbing, HVAC, life safety or other systems, facilities or equipment of the Facility.
2. Except as required pursuant to Section 5.4, it is understood by the parties hereto that MIND shall not be responsible, nor required to pay for, any other costs related to capital improvements or infrastructure (i.e. including, but not limited to, plumbing and sewer lines, major electrical,

structural, HVAC, roof, etc.) with regard to the Facility.

3. MIND shall obtain all required permits for Alterations performed by, through or under MIND and shall perform or cause to be performed such Alterations in compliance with all Governmental Requirements. Under no circumstances shall MIND make any Alterations which incorporate any Hazardous Substances including, without limitation, asbestos-containing construction materials, into the Facility. Any request for City Manager's consent to any proposed Alterations by, through or under MIND shall be made in writing and shall contain plans or other written materials describing the work in detail reasonably satisfactory to the Manager, provided that architectural plans shall not be required unless required for the issuance of a building permit. City Manager shall provide or deny consent within twenty (20) business days following receipt of MIND written request, the failure to provide or deny consent within such twenty (20) business day period shall be deemed a consent. Should the work proposed by MIND be consented to by City Manager modify the basic floor plan of the Facility and the building permit therefor require architectural plans, then MIND shall, at its expense, furnish City with as-built drawings and CAD disks for such work. Unless City Manager otherwise agrees in writing, all Alterations made or affixed to the Facility (excluding movable trade fixtures, equipment, personal property and furniture) (including, without limitation, all upgrades constructed pursuant to subparagraph (b)), shall become the property of City and shall be surrendered with the Facility at the expiration or termination of this Agreement. With respect to Alterations costing in excess of \$200,000 City Manager shall require MIND to obtain a payment bond for the work.
4. Maintenance. MIND shall, at its sole cost and expense, have sole responsibility for basic maintenance to be performed on a regular basis on all facilities, improvements, and facilities and utilities infrastructure equipment at the Facility. Any and all repairs or replacement of the same is the responsibility of the City. MIND shall, at its sole cost and expense, and to the satisfaction of the City, keep and maintain the Facility, and all improvements thereon, in good, clean, and sanitary order. The City shall, at its sole cost and expense, have the sole responsibility for maintaining the grounds of the Colony. To that end, the parties herein acknowledge, and MIND herein agrees to be bound by, the minimum maintenance standards set forth in Exhibit "C" to this Agreement, entitled "City of Miami Beach Minimum Specifications for Maintenance of the Colony." It is further understood that MIND shall provide the City with a quarterly maintenance report, in a format to be approved by the City Manager.

5. Personal Property. A list of City-owned personal property included in the Agreement for use by MIND during the Term hereof is attached and incorporated herein as Exhibition "E". MIND hereby accepts such equipment in its "as-is" condition, and without any warranty(ies) and, at its sole cost and expense, acquire and maintain all replacement and such other equipment as may be necessary to maintain the Facility in a condition which satisfies those maintenance standards set forth in Exhibit "C", but shall not have an obligation to improve the condition of the personal property beyond the "as-is" condition in which it was accepted, all of which shall be noted on the inventory. MIND shall have the right, at the initial inventory and at any point thereafter, to decline the use and responsibility for any personal property not useful for its operation of the Facility, and may turn such personal property over to the City in the condition in which it was accepted. The City shall have the right to periodically take an inventory of any or all City-owned equipment at the Facility.

SECTION 12. RECORDS, AUDITS AND REPORTS

1. Records and Audits. MIND shall keep full and accurate accounting books and records relating to all Operating Revenues and Operating Expenses, all in accordance with generally accepted accounting principles. MIND shall give the City such books and records during reasonable business hours and on reasonable advance notice. All books and records shall be made available on-site at the Facility or electronically. MIND shall keep and preserve for at least three (3) years following each Fiscal Year, or for as long as such records are required to be retained pursuant to Florida Public Records Law (whichever is longer), all sales slips, rental agreements, purchase order, check books, credit card invoices, bank books or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, on or before 90 days following each Fiscal Year, MIND shall furnish to the City a line item (i.e., by categories) Statement of Operating Costs and Operating Revenues (and profit or loss) for the Facility for the preceding Fiscal Year, and including the number of tickets sold and Events held, prepared in accordance with generally accepted accounting principles certified as accurate by MIND's Chief Accounting Officer or Chief Financial Officer.
2. The City Manager shall have the right at any time, and from time to time, to cause independent auditors or the City's own accountants or auditors to audit all of the books of MIND relating to Operating Revenues, Operating Expenses, tickets and Events including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. No costs incurred by the City in conducting such audit shall be considered an Operating Expense.
3. Annual Plan. Commencing upon October 1, 2016, MIND shall provide to the City on or before

June 1st of each year, an annual management plan, which shall include the annual operating budget for the then current Fiscal Year but may not have a complete booking plan or event schedule. The annual plan shall include information regarding MIND'S anticipated operations for such Fiscal Year, including planned operating and maintenance activities, anticipated capital improvements and capital equipment purchases and an anticipated budget therefore, anticipated Events at the Facility (to the extent known at such time), and planned equipment and furnishings purchases. MIND shall have the right from time to time to make any changes it deems necessary or appropriate to any such annual plan so long as the annual plan is consistent with MIND'S fulfillment of its obligations hereunder.

4. Programmatic Plan. Accompanying MIND's proposed annual budget shall be the Facility Programmatic Plan for the next fiscal year, detailing the then-known activities planned, and the number of residents and visitors anticipated to be impacted.
5. Major Capital Repairs. Accompanying MIND's proposed annual budget shall be a detailed list of then-known major capital repairs anticipated for the Facility which remain the sole responsibility of the City.
6. MIND shall submit to the City, every Quarter, within fifteen (15) days from the end of each Quarter, commencing with the January 2017 Quarter, a detailed report ("Programmatic Quarterly Report") setting forth the following information:
 - a. Event Records and Programmatic Information
 - i. A listing of events hosted during the previous Quarter, including number of attendees and the charge to the public for the event, if any.
 - ii. The Events scheduled or anticipated for the upcoming Quarter
 - iii. The number of Facility Rentals, and the charge for said Facility Rentals, including previous Quarter and Upcoming Quarter.
 - b. Marketing and Promotional Activity
 - i. A detailed plan and budget illustrating marketing and promotional efforts
 - ii. Examples of consistent marketing materials, including social media campaigns, paid marketing, outreach and public relations that ensure both the Miami Beach community and South Florida residents in general are aware of programs taking place at the Facility. All materials should have proper use of City of Miami Beach logo.
 - c. Maintenance and Capital
 - i. All maintenance work performed during the previous Quarter, including cost
 - ii. All maintenance work anticipated for the upcoming Quarter, including cost
 - d. Staffing and Administration

- i. A detailed plan and budget illustrating staffing

SECTION 13. INDEMNIFICATION.

MIND shall indemnify, hold harmless and defend (with counsel approved by the City Attorney) the City, its officers, agents, servants and employees from and against any and all claims, liabilities, demands, causes of action, costs and expenses (including reasonable attorneys' fees at trial and all levels of appeal) of whatsoever kind or nature ("Claims") arising out of (i) MIND shall indemnify, hold harmless and defend (with counsel approved by the City Attorney) the City, its officers, agents, servants under this Agreement; or (iii) any other claim arising, directly or indirectly, from the operation or management of the Facility or any Event held therein or rental or use of the Facility, provided that there is expressly excluded from the foregoing obligations any Claims to the extent resulting from the gross negligence or willful misconduct of the City, its officers, agents (excluding MIND), contractors (excluding MIND) and employees or the use of the Facility by the City, its officers, agents (excluding MIND), and employees, pursuant to Section 16 hereof.

In addition, MIND shall indemnify, hold harmless and defend the City, its officers, agents, servants and employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of MIND not included in the paragraphs or subsections above and for which the City, its officers, agents, servants or employees, are alleged to be liable. This subsection shall not apply, however, to any such liability as may be the result of the gross negligence or willful misconduct of the City, its officers, agents, servants or employees.

The provisions of this Section 13 shall survive expiration or termination of this Agreement.

SECTION 14. INSURANCE REQUIREMENTS.

MIND shall maintain, at MIND's sole cost and expense, the following types of insurance coverage at all times throughout the Term of this Agreement:

- 14.1 General liability insurance with not less than the following limits:
- General aggregate _____ \$2,000,000
 - Products (completed operation aggregate
aggregate) _____ \$2,000,000
 - Personal and advertising (injury) _____ \$1,000,000
 - (Per occurrence) _____ \$1,000,000
 - Fire damage _____ \$ 100,000

• Medical Expense	_____ \$ 5,000
• Liquor Liability (aggregate)	_____ \$2,000,000
• (Per occurrence)	_____ \$1,000,000

14.2 Workers Compensation Insurance shall be required under the Laws of the State of Florida.

14.3 Fire Insurance for the Facility shall be the responsibility of the City.

14.4 Builder's Risk. MIND shall carry Builder's Risk insurance during any period of construction of Alterations or any other period of construction by, through or under MIND.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days written notice to the City and then subject to the prior written approval of the City's Risk Manager. MIND shall provide the City with a Certificate of Insurance for each such policy, which shall name the City as an additional named insured. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City's Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City's Risk Manager. Should MIND fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and all sums expended by the City in obtaining said insurance, shall be repaid by MIND to the City, plus ten percent (10%) of the amount of premiums paid to compensate the City for its administrative costs. If MIND does not repay the City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid, and such failure shall be deemed an event of default hereunder.

MIND shall be the named insured under all such policies. The City shall be an additional insured under the insurance policies described in subsections 14.1, 14.3 and 14.4 hereof, as its interests may appear, and all such insurance policies shall contain a provision covering the indemnification liabilities hereunder.

The terms of insurance policies referred to in Section 14 shall preclude subrogation claims against MIND, the City and their respective officers, employees and agents.

SECTION 15. OWNERSHIP OF ASSETS.

Ownership. The ownership of the Facility and all buildings and real estate, all existing (and replacements thereof) technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facility at the time of the commencement of this agreement shall remain with the City. Any and all technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property purchased by MIND for use at the facility shall remain property of

MIND. Ownership of and title to all intellectual property rights of whatsoever value held in the City's name shall remain in the name of the City. The ownership of data processing programs and software owned by the City shall remain with the City, and the ownership of data processing programs and software owned by MIND shall remain with MIND. MIND shall be granted permission to use and have access to prior customer lists or similar materials developed by the City for the use of the Facility. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property purchased by MIND with Operating Revenues for use at and for the Facility shall vest in the City automatically and immediately upon purchase or acquisition, except for those items which by the terms of this Agreement shall remain the property of MIND. The assets of the City as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned. Notwithstanding anything to the contrary contained in this Agreement, any personalty, furnishings, and movable equipment that are not a fixture and are not integral to the operation of the Facility, purchased by MIND and used at the Facility shall be the sole property of MIND. Ownership of and title to all intellectual property rights of whatsoever value related marketing and promotional materials, designs, slogans, social media profiles, and web pages will remain the exclusive property of MIND.

SECTION 16. USE BY THE CITY

The City shall have the right to use the Facility, in any portion thereof, subject to availability, for the benefit of the community for such purposes including, but not limited to, meetings, City-sponsored special events, receptions, and other purposes as deemed necessary by the City Manager, in his/her sole and absolute discretion, without the payment of a rental or use fee, except the direct out-of-pocket expenses incurred in connection with such use shall be paid by the City.

SECTION 17. ASSIGNMENT/ SUBLET.

1. Except as otherwise specifically provided in this Section 17, MIND may not voluntarily or by operation of law assign, encumber, pledge or otherwise transfer all or any part of MIND's interest in this Agreement or subcontract its management duties hereunder without the City's prior written consent, which may be granted or withheld in City's sole and absolute discretion. Any attempt by MIND to assign all or any part of its interest and any attempt to subcontract its management duties hereunder without first having obtained City's prior written approval shall be void and of no force or effect. In the event of any assignment, transfer, encumbrance or subcontract, MIND shall nevertheless remain liable for all obligations hereunder and the transferee shall be jointly and severally liable for all obligations thereafter arising under this Agreement. MIND specifically recognizes that City selected MIND to be the manager of the Facility as a result of

the City's evaluation of MIND's specific qualifications and experience in operating similar first class facilities.

2. The provisions of subsection 17.1 above shall not prevent MIND in the performance of its management duties hereunder to grant licenses and concessions and rental agreements for Events and entering into a concessions agreement for the concession operations at the Facility.

SECTION 18. SECURITY.

MIND shall provide reasonable security to protect the Facility and its equipment, materials and facilities, including any City equipment, furnishings, and fixtures used by MIND, and shall be solely responsible to the City for any loss or damage to any City equipment, furnishings, and fixtures so used by MIND.

SECTION 19. PERMITS; LICENSES; TAXES; APPLICABLE LAWS.

MIND agrees to obtain and pay for all permits and licenses necessary for the conduct of its business, including a liquor or beer and wine license at the Facility, and agrees to comply with all laws governing the responsibility of an employer with respect to persons employed by MIND. MIND shall also be solely responsible for payment of any and all taxes levied on the Facility and its operations. In addition, MIND shall comply with all rules, regulations and laws of the City of Miami-Dade County; the State of Florida; and the U.S. Government now in force or hereafter adopted.

SECTION 20. UTILITIES; RESPONSIBILITY FOR TAXES AND ASSESSMENTS.

1. Utilities. MIND shall be solely responsible and shall pay (whether to the City or directly to the utility) before delinquency, all charges for all water and sewer, and electricity utilities used at the Facility.
- 1-2. Procedure of Taxes Assessments. MIND agrees to, and shall pay before delinquency, all taxes and assessments of any kind assessed or levied, whether upon MIND or the Facility, by reason of this Agreement or by reason of any use(s) and/or activity(ies) of MIND upon or in connection with the Facility. The parties acknowledge that MIND's operation and use of the Facility is for public purposes, and therefore anticipate that, as of the Effective Date, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, taxes are assessed by the Property Tax Appraiser, MIND has the right to terminate this agreement without penalty by providing 90 days notice to the City at which point the City shall be solely responsible for such payment(s).

SECTION 21 FORCE MAJEURE.

No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, epidemics, landslides, lightning storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged and understood in circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure).

Neither party hereto shall be under any obligation to supply any service or services and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefore shall be prohibited or rationed by any Governmental Requirements. In the event of substantial damage to or destruction of the Facility by reason of fire, storm or other casualty or any eminent domain action or other regulatory action that in either case, shall render a substantial part of the Facility inoperable for a period of ninety (90) days or in MIND's reasonable opinion the Facility cannot longer be operated in a financially profitable manner as a result of the damages or action for a period of at least ninety (90) days from the happening of the fire, other casualty or regulatory action, either party may terminate this Agreement upon written notice to the other. Upon any such termination, the provisions of Section 31 shall apply; and provided City shall receive the entire amount of all insurance proceeds or eminent domain award as applicable.

SECTION 22. INSPECTION.

MIND agrees that the Facility may be inspected at any time upon reasonable notice by authorized representatives of the City, or any other State, County, Federal or municipal officer or agency having responsibilities for inspections of such operations and/or Facility.

SECTION 23. WAIVER OF INTERFERENCE.

MIND hereby waives all claims for compensation for loss or damage sustained by reasons of any interference with its operation and management of the Facility by any public agency or official as a result of their enforcement of any laws or ordinances or of any of the rights reserved to the City herein. Any such interference shall not relieve MIND from any obligation hereunder.

SECTION 24. NO LIENS.

MIND agrees that it will not suffer, or through its actions or anyone under its control or supervision, cause to be filed upon the Facility any lien or encumbrance of any kind. In the event any lien is filed, the MIND agrees to cause such lien to be discharged within ten (10) days therefrom, and in accordance with the applicable law and policy. If this is not accomplished, the City may automatically terminate this Agreement, without further notice to MIND.

SECTION 25. MIND EMPLOYEES, MANAGERS AND BOARD OF DIRECTORS.

1. The City and MIND recognize that in the performance of this Agreement, it shall be necessary for MIND to retain qualified individuals to effectively and optimize MIND's management and operation of the Facility. MIND shall select, train and employ at the Facility such number of employees as is necessary to appropriate for MIND to satisfy its responsibilities hereunder. MIND shall recruit employees consistent with standards employed at comparable first class facilities, and MIND shall have authority to hire, terminate and discipline any and all personnel employed by MIND working at the Facility. Any such personnel, whether employees, agents, independent contractors, volunteers, and/or others employed, retained, or otherwise engaged by MIND for such purposes shall not be deemed to be agents, employees, partners, joint ventures, or associates of the City, and shall not obtain any rights or benefits under the civil service or pension ordinances of the City or any rights generally afforded classified or unclassified employees of the City; however, they shall not be deemed entitled to the Florida Worker's Compensation benefits as employees of the City. Additionally, MIND, and/or its employees shall not have been convicted of any offense involving moral turpitude or felony. Failure to comply with this subsection shall constitute cause for termination of this Agreement.
2. MIND shall assign to the Facility a competent staff member experienced in the operations of similar facilities who will be located on-site with regular and posted hours during the Term. The staff member will be supervised by a general manager who is experienced in operating and managing similar facilities. The staff member shall be accessible to the City Manager at all reasonable times to discuss the management, operation, and maintenance of the Facility.

SECTION 26. NO IMPROPER USE.

MIND will not use, nor suffer or permit any person to use in any manner whatsoever, the Facility for any purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. MIND shall not use

the Facility for any unlawful purpose and shall comply with all laws, permitting, and licensing requirements now in force or hereafter adopted, applicable to the Facility or the activities, uses, and/or business(es) conducted on the Facility. MIND agrees not to knowingly use the Facility for, or to permit operation of any offensive or dangerous activity, nuisance or anything against public policy. Any criminal activity in the Facility knowingly caused by or knowingly permitted by MIND shall result in automatic termination of this Agreement. Except as may result from acts of force majeure, MIND agrees that it will not allow the Facility to become unoccupied or vacant. MIND shall take appropriate precautions to prevent fire on the Facility, maintaining existing fire detection devices and extinguishing equipment at all times. Fire detection devices and extinguishing equipment to be provided and maintained by the City.

SECTION 27. NO DANGEROUS MATERIALS.

MIND agrees not to use or permit in the Facility the storage of illuminating gas, oil lamps, turpentine, gasoline (except for small containers [5 gallons or less] for machinery), benzene, naphtha, or other similar substances, or explosives or any kind, or any substance or thing prohibited in the standards policies of fire insurance companies in the State of Florida.

SECTION 28. NO CLAIM AGAINST CITY OFFICERS, EMPLOYEES, INDIVIDUALS.

It is expressly understood and agreed by and between the parties hereto that all individuals, employees, officers, and agents of the City acting in a representative capacity and not for their own benefit; and that neither MIND nor its occupant shall have any claim against them or any of them as individuals in any event whatsoever in connection with any acts or omissions which are reasonably related to the performance of their duties.

SECTION 29. DEFAULT AND TERMINATION.

MIND's Default. The occurrence of any one or more of the events listed in sub-paragraphs 29.1 through 29.4 shall constitute an Event of Default by MIND.

1. The failure by MIND to make any payment required to be made by MIND as and when due, which continues for more than ten (10) days after written notice from City;
2. The failure or inability by MIND to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by MIND, other than as specified in other subparagraphs of this subsection 29.1, which continues for more than thirty (30) days after written notice from City Manager; provided, however, if the nature of the failure is such that more than such period is reasonably required for its cure, then MIND shall not be deemed to have committed an Event of Default if MIND commences the cure within such period and thereafter diligently pursues the cure to completion and actually completes the cure within an additional sixty (60) day period;

3. Except as permitted pursuant to Section 17 of this Agreement, the assignment, encumbrance, pledge, or transfer of this Agreement, whether voluntarily or by operation of law, or any subcontract of MIND's duties hereunder, which continues for more than fifteen (15) business days after written notice thereof from City Manager;
1. (i) The making by MIND of any general assignment for the benefit of creditors; (ii) the filing by or against MIND of a petition to have MIND adjudged a Chapter by operation of law, or any Code or to have debts discharged or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against MIND, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of MIND's assets located at the Facility or of MIND's interest in this Agreement, if possession is not restored to MIND within sixty (60) days; or (iv) the attachment, execution or other judicial seizure of substantially all of MIND's assets located at the Facility or of MIND's interest in this Agreement, where the seizure is not discharged within sixty (60) days. MIND's failure to qualify as a not-for profit organization pursuant to Section 501(c)3 of the Internal Revenue Code of 1986.
4. City Remedies. If an Event of Default by MIND occurs, then in addition to any other remedies available to City, City may exercise the following remedies:
- City may terminate this Agreement by written notice to MIND, in which case this Agreement shall terminate and MIND shall immediately surrender possession of the Facility to City. Upon termination, City shall be entitled to recover from MIND: (1) Operating Expenses that remain unpaid through the date of termination; (2) all other amounts that MIND is required to pay under this Agreement through the date of termination.
 - City may seek specific performance of any of MIND's obligations hereunder or seek injunctive relief.
 - City may exercise any other remedies available at law or in equity.
 - The various rights and remedies reserved to City in this Agreement or otherwise shall be cumulative and, to the extent otherwise provided by Florida law, City may pursue any or all of its rights and remedies at the same time.
5. MIND's Remedies. If an Event of Default by City occurs, then MIND may exercise either of the following remedies:
- MIND may terminate this Agreement by written notice to City, in which case this Agreement shall terminate and MIND shall immediately surrender possession of the Facility to City. Upon termination, MIND shall be entitled to recover from City all amounts owed by City to MIND as of the termination date and the provisions of Section 31 shall apply; or

Comment [Office1]: What is the definition of chapter in this section?

Comment [Office2]: We would like further definition on City default events including procedure on timely repairs with schedules.

6. Late Payments. Any payment owed to City or MIND under this Agreement including, without limitation, any other payment owed to City or MIND under this Agreement that is not received by City or MIND within ten (10) days following notice of such amount being due shall bear interest at the rate of 15% per annum ("Default Rate") from the date due until fully paid.
7. IN THE EVENT THAT MIND CEASES TO BE A NOT-FOR-PROFIT CORPORATION, THIS AGREEMENT SHALL BE AUTOMATICALLY TERMINATED.

SECTION 30. [INTENTIONALLY DELETED]

SECTION 31. TERMINATION.

Termination for Convenience by City. The City reserves and retains the right, at its sole option and discretion, to terminate this Agreement, without cause and without penalty, with regard to MIND's rights and responsibilities with respect to the operation, management, maintenance, promotion and marketing of the Facility, upon eighteen (18) months prior written notice to MIND.

1. Effect of Termination. In the event this Agreement expires or is terminated for any reason: (1) All Operating Expenses and all other obligations for the period up to the date of expiration or termination shall be paid using funds on deposit in the account(s) described in subsection 10.1 and to the extent such funds are not sufficient, MIND shall pay all such amounts from its own funds; (2) After all amounts referenced in subparagraph (1) have been paid, MIND may retain all remaining Operating Reserves (if any). Upon the expiration of this Agreement or a termination for any reason, all further obligations of the parties hereunder shall terminate except for the obligations which for all periods up to the date of expiration or termination and such other obligations as are stated to survive or be performed after such expiration or termination. All of the foregoing reimbursement and the payment obligations are to be made within thirty (30) days after the termination date. The provisions of this Section regarding the above reimbursement and payment obligations of the City shall survive the termination of this Agreement.
2. Surrender of Facility. Upon termination or expiration of this Agreement MIND shall surrender and vacate the Facility upon the effective date of such termination (or expiration). The Facility and all equipment and furnishings shall be returned to the City in a good and clean condition consistent with other similar first class facilities and in compliance with all Governmental Requirements, ordinary wear and tear, and casualty loss excepted.

SECTION 32. NOTICES.

All notices from the City to MIND shall be deemed duly served if mailed by registered or certified mail to MIND at the following address:

Miami New Drama
169 East Flagler Street, PH
Miami, FL 33131

All notices from MIND to the City shall be deemed duly served if mailed to:

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

With copies to:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Max Sklar, Tourism, Culture, and Economic Development Director

MIND and the City may change the above mailing addresses at any time upon giving the other party written notification. All notice under this Agreement must be in writing.

SECTION 33. NO DISCRIMINATION.

The MIND agrees that there shall be no discrimination as to race, color, national origin, religion, gender identity, sexual orientation, marital and familial status, or disability in the operations referred to by this Agreement, and further, there shall be no discrimination regarding any use, service, maintenance or operation of the Facility. All facilities located on the Facility shall be made available to the public, subject to the right of MIND to establish and enforce reasonable rules and regulations to provide for the safety, orderly operation and security of the facilities.

No Discrimination in Employment, Affirmative Action. In connection with the performance of work under this Agreement, MIND shall not refuse to hire, discharge, refuse to promote or demote, or to discriminate in matters of compensation against, any person otherwise qualified, solely because of race, color, national origin, religion, gender identity, sexual orientation.

SECTION 34 [INTENTIONALLY DELETED].

SECTION 35. EQUAL BENEFITS FOR DOMESTIC PARTNERS

This Agreement is subject to, and MIND shall be required to comply throughout the Term hereof with, the requirements of Section 2-373 of the City Code entitled, "Requirement for city contractors to provide equal benefits for domestic partners" (as same may be amended from time to time). The Agreement is deemed to be a "covered contract," as defined in Section 2-373(a)(6) of the City Code, and shall require MIND to provide its employees working pursuant to this Agreement (whether working within the City of Miami Beach city limits, or within the United States, but outside the City limits, if such employees are directly performing work pursuant to this Agreement) "Equal Benefits" (as defined in Section 2-373(a)(8) of the City Code) to its employees with spouses and its employees with "domestic partners" (as defined in Section 2-373(a)(7) of the City Code). Failure by MIND to comply with the requirements of Section 2-373 of the City Code (as same may be amended from time to time) shall be deemed to be a material breach of this Agreement which may result in termination of the Agreement, with all monies due or to become due under the Agreement to be returned by the City. The City may also pursue any and all remedies at law or in equity for such breach. Failure to comply with Section 2-373 may also subject MIND to debarment, in accordance with the procedures provided in Sections 2-397 through 2-406 of the City Code.

SECTION 36. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement only inasmuch as the City can place a limit on its liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$4025,000. MIND hereby expresses his willingness to enter into this Agreement with MIND's recovery from the City for any damage or loss for breach of contract to be limited to a maximum amount of \$4025,000, less the amount of all funds actually paid by the City to MIND pursuant to this Agreement, but only to the extent the amount is paid in connection with the breach, not all payments.

Accordingly, and notwithstanding any other term or condition of this Agreement, MIND hereby agrees that the City shall not be liable to the MIND for damages in an amount in excess of \$25,000, which amount shall be reduced by the amount actually paid by the City to MIND pursuant to this Agreement, for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes.

SECTION 37. NOT A LEASE.

It is expressly understood and agreed that no part, parcel, building, structure, equipment or space is leased to MIND; that this Agreement is a management agreement and not a lease; and that MIND's right to operate and manage the Facility shall continue only so long as the MIND complies with the undertakings, provisions, agreements, stipulations and conditions of this Agreement.

SECTION 38. MISCELLANEOUS

1. Venue/Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and procedural, without regard to principals of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND MIND EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.
2. No Partnership or Joint Venture. Nothing herein shall be intended or shall be construed in any way to create or establish the relationship of partner or a joint venture between the City and MIND. None of the officers, agents or employees of MIND shall be or be deemed to be employees of the City for any purpose whatsoever.
3. Entire Agreement. This Agreement and all Exhibits attached hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, proposals or other expressions of intent with respect thereto. The Exhibits attached hereto are incorporated into and made a part of this Agreement. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to bind the parties hereto with respect to the subject matter hereof.
4. Written Amendments. This Agreement shall not be altered, modified or amended in whole or in part, except in writing executed by each of the parties hereto.
5. Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

This Agreement and all rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective permitted successors and permitted assigns.

This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other

person or entity.

6. Section Headings and Defined Terms. The headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original copy of this Agreement, and all of which when taken together, shall be deemed to constitute but one and the same agreement.

7. Severability. The invalidity or unenforceability of any particular provision or part of any provision, of this Agreement shall not affect the other provisions or parts hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.
8. Non-Waiver. A failure by either party to take any action with respect to any default or violation by the other of any provisions, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuing or repetitive or the original violation or default.
9. Main Representations and Warranties.

The City represents, warrants, and covenants to MIND the following: (i) City has full legal right, power and authority to enter into and perform its obligations hereunder; and (ii) this Agreement has been duly executed and delivered by the City and constitutes a valid and binding obligation of the City, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

MIND represents and warrants to the City the following: (i) MIND has full legal right, power and authority to enter into and perform its obligations hereunder, and (ii) this Agreement has been duly executed and delivered by MIND and constitutes a valid and binding obligation of MIND, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally or by general equitable principles.

10. Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of Florida, without giving effect to otherwise applicable principles of conflicts of law.

39. MIND'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

Pursuant to Section 119.0701 of the Florida Statutes, if MIND meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Concessionaire shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service;
- b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and
- d) Meet all requirements for retaining public records and transfer to the City, at no City cost, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of MIND upon termination of this Agreement. Upon termination of this Agreement, the Concessionaire shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

For purposes of this Article, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

MIND failure to comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes shall be a breach of this Agreement.

In the event MIND does not comply with the public records disclosure requirement set forth in Section 119.0701 of the Florida Statutes, the City may, at the City's sole discretion, avail itself of the remedies set forth under this Agreement and available at law.

40. PROHIBITIONS REGARDING SALE OR USE OF EXPANDED POLYSTYRENE FOOD SERVICE ARTICLES.

Pursuant to Section 82-7 of the City Code, as may be amended from time to time, effective August 2, 2014, the City has prohibited the use of expanded polystyrene food service articles by City Contractors, in connection with any City contract, lease, concession agreement or Special event permit. Additionally, pursuant to Section 82-385 of the City Code, as may be amended from time to time, no polystyrene food service articles will be allowed in the right-of-way, and no polystyrene food service articles can be provided to sidewalk café patrons.

Expanded polystyrene is a petroleum byproduct commonly known as Styrofoam. Expanded polystyrene is more particularly defined as blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and produced by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead foam), injection molding, foam molding, and extrusion-foam molding (extruded foam polystyrene).

Expanded polystyrene food service articles means plates, bowls, cups, containers, lids, trays, coolers, ice chests, and all similar articles that consist of expanded polystyrene.

MIND agrees not to sell, provide food in, or offer the use of expanded polystyrene food service articles at the Facility or in connection with this Agreement. MIND shall ensure that all vendors operating at the Facility abide by the restrictions contained in this Section 25. A violation of this section shall be deemed a default under the terms of this Agreement. This subsection shall not apply to expanded polystyrene food service articles used for pre-packaged food that have been filled and sealed prior to receipt by the MIND or its vendor.

41. COCA-COLA:

The City has entered into an agreement with Coca-Cola Bottling, effective September 1, 2011 – September 1, 2021, to be the exclusive provider of non-alcoholic beverages and coffee products. MIND shall only sell Coca-Cola beverages as listed in the attached Exhibit “G” and as may be updated from time to time.

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DRAFT

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

Attest:

CITY OF MIAMI BEACH

Rafael Granado, City Clerk

Philip Levine, Mayor

STATE OF FLORIDA)

) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Mayor Philip Levine and Rafael Granado, City Clerk, or their attorneys respectively, on behalf of the CITY OF MIAMI BEACH, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this _____ day of _____, 2014.

Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

Attest: Miami New Drama

Secretary

Executive Director

Print Name

Print Name

STATE OF FLORIDA)

_____) SS:

COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____ on behalf of the Rhythms Foundation, Inc. known to me to be the persons described in and who executed the foregoing instrument and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 2014.

Notary Public, State of Florida at Large
Commission No.:
My Commission Expires:

EXHIBIT A
LEGAL DESCRIPTION OF THE FACILITY

TO BE UPDATED UPON COMPLETION OF A SURVEY.

LEGAL DESCRIPTION

EXHIBIT B
ANNUAL BENCHMARKS

- MIND will operate a minimum of 75 new events per year at the Facility
- These 150+ events will serve an anticipated 30,000+ visitors per year
- In addition to their own produced events, MIND will collaborate with other cultural and quality presenting organizations to develop consistent events at the Facility
- MIND will create and implement consistent marketing materials, including but not limited to public relations, social media campaigns, and paid marketing outreach, to ensure that both the Miami Beach community and South Florida residents in general are aware of programs taking place at the Facility. A detailed plan and budget illustrating marketing efforts will be submitted quarterly

DRAFT

**EXHIBIT C
CITY OF MIAMI BEACH
MINIMUM MAINTENANCE SPECIFICATIONS
FOR MAINTENANCE OF THE COLONY THEATRE**

These minimum operating and maintenance standards are intended to be considered as a whole and intended to provide an overall standard for the Facility. Individual discrepancies, as well as deviations, from any individual standard shall not be considered a default of the Agreement; it is the intention of the parties that this Exhibit is merely a guide and that MIND is only expected to use good faith efforts to endeavor to meet the standards set forth herein. In the event of a conflict between the terms or conditions of the Agreement and the terms or conditions of this Exhibit, the terms and conditions of the Agreement shall control.

PERSONNEL

MIND shall have the sole responsibility to recruit and employ a full-time general manager and any necessary administrative and accounting personnel that are responsible for the overall management and operation of the Facility.

MIND shall have the sole responsibility to recruit and employ sufficient personnel to maintain the following functions: general and event security; janitorial, housekeeping and cleaning for both event and non-event cleanup; painting and general overall maintenance of the Facility to ensure that the Facility is being maintained consistent with other world class facilities operated by MIND.

The City shall have the sole responsibility for maintenance of capital systems, electrical systems, plumbing, and air conditioner operation;

MIND shall have the sole responsibility to recruit and employ personnel as it deems necessary for the staging and coordination of Events and production.

MIND shall maintain personnel policies that assure employment practices do not discriminate on the basis of race, color, sex, military status, marital status, physical or mental disability, national origin, age, gender, or sexual preference.

GENERAL SECURITY

MIND shall provide for the overall security of the Facility, including during non-event hours.

EMERGENCY PROCEDURES

MIND shall assign an employee and a backup employee to act as an Emergency Liaison to the City. This individual will be required to use good faith efforts to attend any and all meetings, held by the City, that deal with emergency situations, such as extreme weather events, terrorist acts, etc. The Liaison will serve as the point of contact during any emergency crisis.

MIND shall develop and implement a Hurricane Preparedness Procedure, a copy of which shall be provided to the City.

JANITORIAL, CLEANING AND HOUSEKEEPING

The Facility shall be reasonably clean and stocked with supplies (i.e. toilet paper, soap, etc.) at all times. This includes general cleaning during non-event times, as well as during Events.

Restrooms are to be cleaned during Events and on a periodic basis during non-event times to assure that they are in a functional and reasonably sanitary condition.

MIND shall have the responsibility for Sanitation and Waste as it relates to emptying of the dumpster and servicing trash receptacles within the park area. The dumpster will be serviced at current service levels.

At MIND's responsibility, treatment for pests and rodents (except termites) shall occur on a quarterly basis as needed to prevent infestation or as required by applicable code.

Flooring shall be cleaned and polished on an as needed basis.

Windows shall be maintained in a reasonably clean condition and cleaned on an as needed basis.

Entrance doors and mirrors shall be maintained in a reasonably clean condition and cleaned on an as needed basis.

LANDSCAPING

The City shall maintain all exterior landscaping

EXTERIOR LIGHTING

The Facility shall remain illuminated regularly after dark. MIND shall maintain all exterior lighting, except for neon lighting.

EQUIPMENT MAINTENANCE AND GENERAL MAINTENANCE

Equipment shall be maintained in a good and workmanlike manner in order to maintain in full force and affect all dealer's and manufacturer's warranties. MIND shall develop an annual schedule for equipment inspection and preventive maintenance.

Upon termination, cancellation, and/or expiration of the Agreement, MIND shall provide all records maintained in accordance with Section 2.4. All existing warranties that are transferable will be transferred to the City.

MIND shall post and maintain, as required by any applicable governmental code and/or regulation, any and all required professional licenses, certifications, and/or permits.

The City shall maintain and inspect all building safety systems including but not limited to: smoke, fire, and CO detector systems, backup generator operation, emergency battery backup functions, emergency lighting, emergency egress, special needs and blackout preparedness equipment. All building safety systems shall be tested on at least an annual basis or as required by federal, state or local codes and regulations, and maintained in operating condition at all times.

The City shall develop and implement a plan for inspection and maintenance for the Facility's HVAC systems. This shall include inspection of all HVAC controls on a quarterly basis to verify proper setting and operation as well as any adjustments and/or maintenance that may be appropriate, including, but not limited to filter replacement, blower and/or heat exchanger, proper operation of air intakes/vents, fan units, ducts, etc.

MIND has the sole responsibility of maintaining the paint on the interior of the Facility.

**EXHIBIT D
MIND STANDARD AGREEMENT**

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EXHIBIT E
CITY OF MIAMI BEACH OWNED PROPERTY INCLUDED IN THE AGREEMENT

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EXHIBIT F
LIST OF CONTRACTED EVENTS

<u>EVENT</u>	<u>DATE</u>	<u>RECEIVED</u>	<u>DUE</u>
<u>Crophn's & Colitis Foundation</u>	<u>July 7, 2016</u>	<u>\$2,017.54</u>	<u>\$1517.54 6/10/16</u>
<u>Bon Ritmos</u>	<u>August 31, 2016</u>	<u>\$1,266.00</u>	<u>\$1767.26 7/29/16</u>
<u>Miami Hispanic Ballet</u>	<u>Sept 3-4, 2016</u>	<u>\$1,000</u>	<u>\$2765.40 7/29/16</u>
<u>Miami Lyric Opera</u>	<u>Sept. 8-10, 2016</u>	<u>\$500</u>	<u>Tickets</u>
<u>Inffinito 20th Annual Brazilian Film Fest.</u>	<u>Sept.20-24, 2016</u>	<u>\$8,227.46</u>	<u>\$7824.40 8/19/16</u>
<u>Virginia Mendez Come Dance</u>	<u>Sept. 27 &30, 2016</u>	<u>\$4,455.77</u>	<u>\$3955.77 8/26/16</u>
<u>Florida Opera Prima</u>	<u>Oct. 9 & 15, 2016</u>	<u>\$500</u>	<u>Pending Estimate</u>
<u>US Hispanic Circulo Creativo</u>	<u>Oct. 11-12, 2016</u>	<u>\$500</u>	<u>\$3976.80 7/7/16 \$3976.80 9/9/16</u>
<u>Miami Lyric Opera</u>	<u>Oct. 20, 22, 23, 2016</u>	<u>\$500</u>	<u>Tickets</u>
<u>Art Basel US Corp</u>	<u>Dec. 2, 2016</u>	<u>\$500</u>	<u>\$2044.85 11/4/16 \$2044.85 11/4/16</u>
<u>AIMM Higher In Motion Dance</u>	<u>Dec. 4, 2016</u>	<u>\$500</u>	<u>\$2271.70 9/2/16 \$2271.70 11/4/16</u>
<u>AEG Live</u>	<u>Dec. 8, 2016</u>	<u>\$800</u>	<u>Pending Estimate</u>
<u>Power Access, Inc.</u>	<u>Dec. 9 & 10, 2016</u>	<u>\$500</u>	<u>\$3709.18 7/8/16 \$3709.18 11/4/16</u>
<u>Nikisings, Inc.</u>	<u>Dec. 8, 2016</u>	<u>Due</u>	<u>Tickets</u>
<u>Dance NOW!</u>	<u>Dec. 15-16, 2016</u>	<u>\$500</u>	<u>\$2660.27 7/7/16 \$2160.27 11/11/16</u>
<u>Music Works</u>	<u>Jan. 10, 2017</u>	<u>-</u>	<u>\$1669.86 6/3/16 \$1169.86 12/9/16</u>
<u>20th Century Fox Television</u>	<u>Jan. 15, 2017</u>	<u>\$500</u>	<u>\$1395.97 8/12/16 \$1395.97 12/16/16</u>
<u>Music Works</u>	<u>Jan. 17, 2017</u>	<u>-</u>	<u>\$1973.70 6/3/16 \$1473.70 1/13/17</u>
<u>Young Patronage of The Opera</u>	<u>April 6-8, 2017</u>	<u>\$500</u>	<u>\$3559.04 10/7/16 \$3559.04 3/3/17</u>

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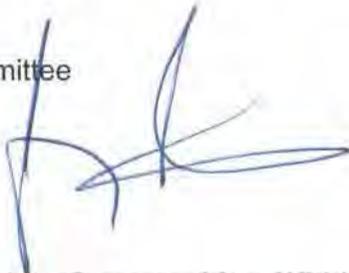
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MIAMI BEACH

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

COMMITTEE MEMORANDUM

TO: Finance & Citywide Projects Committee

FROM: Jimmy L. Morales, City Manager 

DATE: July 22, 2016

SUBJECT: **Discussion Regarding Advertising Opportunities Within Municipal Parking Garages And Not Visible From The Right-Of-Way**

INTRODUCTION

At the May 11, 2016 City Commission meeting, Commissioner John Elizabeth Alemán referred a discussion item to consider Advertising Opportunities Within Municipal Parking Garages And Not Visible From The Right-Of-Way.

BACKGROUND

On June 17, 2016, staff was charged with the task of researching the feasibility of advertising within the City's Municipal Parking Garages. If the City were to allow all of the recommended advertising locations within each of the 10 city owned parking garages, the City could potentially yield between \$75,000 and \$300,000 annually. Attached, please find a presentation that details the program along with our options for next steps.

CONCLUSION

Administration is seeking direction from the Finance and Citywide Projects Committee regarding this request

JML/

MIAMIBEACH

2016-2017

MIAMIBEACH

Marketing & Communications

July 22 Finance Committee

Discussion Regarding Advertising Opportunities
Within Municipal Parking Garages And Not
Visible From The Right-Of-Way

Advertising Opportunities

Staff explored different advertising opportunities inside the 10 City of Miami Beach parking garages.

Items required for an advertising program would include:

- Advertising account sales, management and billing
- Production
- Installation
- Maintenance of the advertising placed

An extensive survey per parking garage (G1 to G10) was conducted to determine the number of advertising opportunities within each as well as potential revenue.

Advertising opportunities include:

- Large Format Signs
- Gate Arm Signs
- Interior Elevator Signs (Framed)
- Exterior Elevator Signs (Framed)
- Interior / Exterior Elevator Wraps

2016-2017



WRAPS SIGN

2016-2017



2016-2017



2016-2017



Number of Advertising Opportunities per Garage

G1 - 7th St Collins	23
G2 - 12th St Drexel Ave	18
G3 - 13th St Collins	34
G4 - 16th St Collins	38
G5 - 17th St Pennsylvania Ave	36
G6 - 42nd St Sheridan Ave	22
G7 - City Hall	34
G8 - 5th St Alton	42
G9 - 17th St Pennsylvania Ave	29
G10 - 19th St Bay Road	19

Profitability and Program Management

Profitability

If the City were to allow all of the recommended advertising locations within each of the 10 city owned parking garages, the City could potentially yield between \$75,000 and \$300,000 annually.

Program Management

There are two options from program execution and management:

- **Option 1** – Manage the program in house which includes:
 - Securing Advertisers
 - Managing the Relationships
 - Billing
 - Production
 - Installation
 - Maintenance of the advertising placed

- **Option 2** – Contracting an outside company to manage the program and share the revenue which is on average a flat percentage (25%) of the gross revenues from the advertising placed in the interior of the parking garages.

Parking Garage	OPTION 1: Monthly Advertising Revenue Estimation	OPTION 1: Annual Advertising Estimation	OPTION 2: 25% (Monthly)	OPTION 2: Annual Revenue Sharing
G1 - 7th St Collins	\$3,000	\$36,000	\$750	\$9,000
G2 - 12th St Drexel Ave	\$1,250	\$15,000	\$312.50	\$3,750
G3 - 13th St Collins	\$2,000	\$24,000	\$500	6,000
G4 - 16th St Collins	3,000	\$36,000	\$750	\$9,000
G5 - 17th St Pennsylvania Ave	\$5,000	\$60,000	\$1,250	\$15,000
G6 - 42nd St Sheridan Ave	\$1,500	\$18,000	\$375	\$4,500
G7 - City Hall	\$2,000	\$24,000	\$500	\$6,000
G8 - 5th St Alton	\$4,000	\$48,000	\$1,000	12,000
G9 - 17th St Pennsylvania Ave	\$2,000	\$24,000	\$500	\$6,000
G10 - 19th St Bay Road	\$1,500	\$18,000	\$375	\$4,500
Total:	\$25,250	\$303,000	6,312.50	75,750