City Commission Meeting

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
April 22, 2009

Mayor Matti Herrera Bower
Vice-Mayor Edward L. Tobin
Commissioner Victor M. Diaz, Jr.
Commissioner Saul Gross
Commissioner Jerry Libbin
Commissioner Deede Weithorn
Commissioner Jonah Wolfson

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

*Visit us at **www.miamibeachfl.gov** for agendas and video "streaming" of City Commission Meetings.*

ATTENTION ALL LOBBYISTS

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

REGULAR AGENDA

R2 - Competitive Bid Reports

R2A Request For Approval To Award A Contract, Pursuant To Invitation To Bid No. 16-08/09, For The Construction Of The Historic City Of Miami Beach Right Of Way Infrastructure Improvements Project, Neighborhood No. 9A, City Center, Accepting The City Manager's Recommendation Relative To M. Vila And Associates, Inc., As The Lowest And Best Bidder, Authorizing The Administration To Engage In Value Engineering To Further Reduce The Cost And Time For Completion Of The Project; And Further Authorizing The Mayor And City Clerk To Execute An Agreement With M. Vila & Associates, Inc., In The Not To Exceed Amount Of $7,589,825.34, For The Construction Of The Project; With Previously Appropriated Funding Available From City Center RDA Fund 365, In The Amount Of $7,589,825.34, For Construction; And Approving Previously Appropriated Funding In The Amount Of $758,983, From City Center RDA Fund 365 For Construction Contingency. (Page 233)
(Capital Improvement Projects)

R2 - Competitive Bid Reports (Continued)

R2B Request For Approval To Award A Contract, Pursuant To Invitation To Bid No. 17-08/09, For The Construction Of The City Of Miami Beach Right Of Way Infrastructure Improvement Program, Neighborhood No. 12D/E/F, South Pointe Phase III, IV, And V, Accepting The City Manager's Recommendation Relative To Central Florida Equipment Rentals, Inc., As The Lowest And Best Bidder; Authorizing The Administration To Engage In Value Engineering To Further Reduce The Cost And Time For Completion Of Said Project; Further Authorizing The Mayor And City Clerk To Execute An Agreement With Central Florida Equipment Rentals, Inc., At A Not To Exceed Amount Of $10,512,055.85, For The Construction Of The Project; With Previously Appropriated Funding Available From South Pointe RDA Fund 379 In The Amount Of $323,325, And From South Pointe Capital Fund 389, In The Amount Of $10,188,730.85 For Construction; And Approving Previously Appropriated Funding In The Amount Of $1,051,205.59 From South Pointe Capital Fund 389 For Project Contingency. (Page 248)

(Capital Improvement Projects)

R5 - Ordinances

R5A An Ordinance Amending Section 2-22, Entitled "General Requirements," Of Division I, Entitled "Generally," Of Article III, Entitled "Agencies, Boards And Committees," Of Chapter 2 Entitled "Administration," Of The Miami Beach City Code To Require An Annual Reporting To The City Commission With Regard To City Agency, Board, And Committee Appointments And City Workforce Diversity Statistics; Providing For Repealer; Severability; Codification; And An Effective Date.
10:15 a.m. Second Reading Public Hearing (Page 270)

(Requested by Commissioner Victor M. Diaz, Jr./City Attorney's Office)
(First Reading on March 2, 2009)

R5B Green Building Ordinance
An Ordinance Amending The City Code Of The City Of Miami Beach, By Creating New Chapter 100, Entitled "Sustainability," By Creating New Article I, "Green Building Ordinance," Establishing Definitions, Standards, Procedures And Incentives Providing For Property Owner Voluntary Participation, And City Mandatory Participation, In The LEED Certification Program As Established By The U.S. Green Building Council Or Other Recognized Rating System, For New Construction Or Substantial Renovations As Provided In The Ordinance, Providing For A Bond To Guarantee Participation In The Program If A Property Owner Receives Incentives, And Procedures For Use Of The Bond For Failure To So Participate; Providing For Repealer; Severability; Codification; And An Effective Date. **10:20 a.m. Second Reading, Public Hearing** (Page 275)

(City Manager's Office)
(First Reading on March 18, 2009)

R5C An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2 Entitled "Officers, Employees And Agency Members," Section 2-459 Entitled "Certain Appearances Prohibited," By Amending Subsection (B) Thereof Establishing This Code Section's Exclusion For Lobbyists Who Represent Non-Profit Entities Without Special Compensation By Narrowing This Exclusion To Only Certain Representatives Of Non-Profit Entities; Providing For Repealer, Severability, Codification, And An Effective Date. **11:10 a.m. Second Reading, Public Hearing** (Page 308)

(Requested by Commissioner Victor M. Diaz, Jr.)
(First Reading on March 18, 2009)

R5 - Ordinances (Continued)

R5D An Ordinance Relating To The Jurisdiction Of The Special Master; Amending Chapter 30, "Code Enforcement," Article III, "Enforcement Procedure," Section 30-73, "Powers Of The Special Master," By Clarifying That The Special Master Lacks Jurisdiction Over Appeals From Or Challenges To Interpretations Or Actions Of The Building Official, Planning Director And Fire Marshal, Or Claims That An Act Of The City Is Unconstitutional, Which Are By Applicable Law Vested In Other Authorities, Providing For Repealer; Codification; Severability, Applicability And An Effective Date. **11:20 a.m. Second Reading, Public Hearing** (Page 314)

(City Attorney's Office)
(First Reading on February 25, 2009)

R5E An Ordinance Amending Chapter 70 Of The Miami Beach City Code Entitled "Miscellaneous Offenses"; By Amending Article III Entitled "Graffiti"; By Amending Division I, Entitled "Generally"; By Amending Section 70-121 Entitled "Reserved" To Provide Provisions Declaring Graffiti A Nuisance; By Amending Section 70-122 Entitled "Definitions" To Provide Additional And Amended Definitions Relative To Graffiti; By Amending Section 70-123 Entitled "Prohibitions" By Amending The Acts Prohibited And Amending Enforcement And Penalty Provisions; By Amending Section 70-124 Entitled "Possession Of Spray Paint And Markers" By Amending Enforcement And Penalty Provisions; By Amending And Renumbering Section 70-125 Entitled "Graffiti Declared A Nuisance" By Moving Said Section To Section 70-121; By Amending And Renumbering Section 70-126 Entitled "Responsibility Of Property Owner(s); Graffiti Removal And Notice" By Amending The Responsibilities Of Property Owners With Regard To The Removal Of Graffiti And Amending Enforcement Provisions; By Amending And Renumbering Section 70-127 Entitled "Appeal" By Providing For Penalty And Lien Provisions; By Amending And Renumbering Section 70-128 Entitled "Cost Of Graffiti Removal As Lien On Property, Collection; Foreclosure And Sale" By Amending City Lien Procedures; By Renumbering Section 70-129 Entitled "Interested Persons May Petition To Dispute Assessed Costs"; By Renumbering Sections 70-130 Through 70-145, Entitled "Reserved;" By Amending Division II Entitled "Spray Paint, Broad-Tipped Indelible Markers" By Amending Section 70-146, Entitled "Sale Prohibited," And Section 70-147, Entitled "Signs Required," By Adding Etching Acid To The Items Prohibited For Sale To Minors And Signage Requirements; By Amending Section 70-148, Entitled "Penalties; Procedures For Administration," By Amending The Enforcement And Penalty Provisions; Providing For Repealer; Severability; Codification; And An Effective Date. **11:30 a.m. Second Reading, Public Hearing** (Page 322)

(City Manager's Office)
(First Reading on March 18, 2009)

R5 - Ordinances (Continued)

R5F Amend "Standard Of Conduct" For Public Officers & Employees (Page 344)

1. An Ordinance Amending Miami Beach City Code Chapter 2, Article VII Thereof, By The Addition Of City Code Section 2-450.1 To Be Entitled "AC Weinstein Service Above Profit Act: Prohibited Employment Or Compensation Of Mayor And City Commissioners With City Vendors, Bidders Or Proposers," Prohibiting Said Elected Officials From Directly Or Indirectly Having An Employment Relationship With Or Receiving Compensation From Any City Vendor, Bidder Or Proposer, Prohibiting City Vendors, Bidders Or Proposers From Directly Or Indirectly Having An Employment Relationship With Or Providing Compensation To Any Member Of The City Commission; Establishing Definitions, Waiver Of Prohibition And Prospective Application; Providing For Repealer; Severability; Codification; And An Effective Date. **First Reading**

2. An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Section 2-458 Thereof Entitled "Supplemental Abstention And Disclosure Requirements" By Requiring Public Officers To Disclose Compensation Received By Public Officer And/Or Public Officer's Employer Or Firm Related To Subject Conflicting Relationship, Said Disclosures To Be Made From Three Years Preceding Original Date Of Election/Appointment Of Public Officer; Providing For Repealer; Severability; Codification; And An Effective Date. **First Reading**

(Requested by Commissioner Jonah Wolfson)
(Deferred from March 18, 2009)

R5G Lot Split Criteria

An Ordinance Amending City Code Chapter 118, "Administration And Review Procedures," Article VII, "Division Of Land/Lot Split," Section 118-321, "Purpose, Standards And Procedures," By Amending The Review Criteria For Requests For A Division Of Land/Lot Split To Include A Criterion That Considers The Impacts And Mitigation Of The Proposed Lot Split On The Architectural Significance Or Historic Value Of Existing Homes; Providing For Repealer, Severability, Codification And An Effective Date. **First Reading** (Page 350)

(Planning Department)

R5H Recusals And Absences For Land Use Board Members

An Ordinance Amending The Land Development Regulations Of The City Code By Amending Chapter 118, "Administrative And Review Procedures," Article II, "Boards," Division 2, "Planning Board," Section 118-52, "Meetings And Procedures;" Division 3, "Design Review Board," Section 118-74, "Removal;" Division 4, "Historic Preservation Board," Section 118-105, "Removal;" Division 5, "Board Of Adjustment," Section 118-133, "Removal," To Harmonize The Permitted Number Of Absences And Recusals For Land Use Board Members; Providing For Repealer; Codification; Severability And An Effective Date. **First Reading** (Page 358)

(Planning Department)

R5I Revisions To Single Family Ad Valorem Tax Exemptions

An Ordinance Amending The Land Development Regulations Of The Code Of The City Of Miami Beach, By Amending Chapter 118, "Administration And Review Procedures," Article X, "Historic Preservation," Division 5, "Single Family Ad Valorem Tax Exemption", Modifying The Requirements And Procedures For City Ad Valorem Tax Exemptions For Single Family Homes; Providing For Repealer, Codification, Severability And An Effective Date. **First Reading** (Page 370)

(Planning Department)

R5 - Ordinances (Continued)

R5J An Ordinance Amending Chapter 14 Of The City Code, Entitled "Building Regulations," By Amending Article II, Entitled "Construction Standards," By Amending Division 1, Entitled "Generally," By Amending Section 14-403, Entitled "Penalty For Violation Of Article," To Provide For The Enforcement Of Non-Functioning Wheelchair Lifts By Citation; And Amending Section 14-444, Entitled "Schedule Of Violation Fines," By Adding A Citation And Fine Schedule For The Enforcement Of Non-Functioning Wheelchair Lifts; Providing For Codification, Repealer, Severability, And An Effective Date. **First Reading** (Page 382)
(Building Department)

R5K An Ordinance Amending In Part Miami Beach City Code Chapter 2, Article VII, Division 5 Entitled "Campaign Finance Reform", Sections 2-487 Through And Including 2-490, By Prohibiting "Vendors" And "Real Estate Developers" From Soliciting Campaign Contributions For Candidates For The Office Of Mayor Or Commissioner, Expanding Upon The Definitions Of "Vendor" And "Real Estate Developer" And Conforming As Housekeeping Matter Certain Language To Existing Text; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading** (Page 394)
(Requested by Commissioner Saul Gross/City Attorney's Office)

R5L An Ordinance Amending Chapter 2, Article III, Of The Miami Beach City Code, Entitled "Agencies, Boards And Committees," By Creating Division 32, Entitled "Gay, Lesbian, Bisexual And Transgender (GLBT) Community Relations Committee," And Sections 2-190.144 Through 2-190.147 Thereto; And Providing For Codification, Repealer, Severability, And An Effective Date. **First Reading** (Page 404)
(Requested by Mayor Matti Herrera Bower/City Attorney's Office)

R7 - Resolutions

R7A A Resolution [Granting Or Denying] An Appeal Request By 1100 West Properties, LLC Of A Design Review Board Decision Pertaining To DRB File No. 20181, The Mondrian Hotel.
10:30 a.m. Public Hearing (Page 409)
(Planning Department)
(Continued from February 25, 2009)

R7B A Resolution Approving On Second Reading (And Final Approval), A Lease Agreement Between The City And Moon Thai South Beach, Inc. (Moon Thai), For The Lease Of Approximately 2216 Square Feet Of City Owned Property, Located At 22 Washington Avenue, Miami Beach, Florida, For The Purpose Of An Outdoor Café Associated With The Restaurant To Be Operated By Moon Thai At 816 Commerce Street, Which Is Directly Adjacent To And West Of The Subject City Property; Said Lease Having An Initial Term Of Five Years, With An Option To Renew For Four Years And 364 Days, At The City's Sole Discretion; Waiving By 5/7ths Vote, The Competitive Bidding And Appraisal Requirements, As Required By Section 82-39 Of The Miami Beach City Code. **11:00 a.m. Second Reading, Public Hearing** (Page 458)
(Real Estate, Housing & Community Development)

R7 - Resolutions (Continued)

R7C A Resolution Approving On First Reading, A Lease Agreement Between The City And Damian J. Gallo & Associates, Inc. (D/B/A Permit Doctor), For Use Of 1,802.89 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 2 (A/K/A 767 17th Street), Miami Beach, Florida; Said Lease Having An Initial Term Of Three Years, With An Additional Three Year Renewal Term, At The City's Sole Discretion; Waiving By 5/7ths Vote, The Competitive Bidding And Appraisal Requirements, As Required By Section 82-39 Of The Miami Beach City Code; Further Setting A Public Hearing On May 13, 2009, For The Second Reading (And Final Approval) Of The Lease Agreement. **First Reading** (Page 492)

(Real Estate, Housing & Community Development)

R7D A Resolution Approving On Second And Final Reading, In Accordance With The Requirements Of Sections 163.3220 – 163.3243, Florida Statutes, Also Referred To As The "Florida Local Government Development Act", A Second Addendum ("Second Addendum") To The Development Agreement Between The City Of Miami Beach ("City") And The New World Symphony ("NWS"), Dated January 5, 2004 (The Development Agreement), As Amended By That Certain First Addendum To Development Agreement, Dated February 20, 2007 (The First Addendum) (Collectively, The January 5, 2004 Development Agreement And The First Addendum May Also Collectively Be Referred To As The "NWS Development Agreement"); Said Second Addendum Providing For The Following: 1) Approval Of The Final Garage Budget, In The Amount Of $17,085,000 And Also Amending The Definition Of Garage Costs From $15,210,135 To $17,085,000 (Subject To Further Conditions As More Specifically Set Forth In The Second Addendum; 2) Amending The Design-To Park Project Budget From $14,960,000, To $13,085,000; And 3) Amending The Definition Of "Garage."
2:30 a.m. Second Reading Public Hearing (Page 502)

(City Manager's Office)
(First Reading Public Hearing on March 18, 2009)

R7E A Resolution Approving And Authorizing The Mayor And City Clerk To Execute Amendment No. 2, To The Pre-Construction Services Agreement With KVC Constructors, Inc., Dated December 6, 2006, In Accordance With Resolution No. 2006-26416 For The Scott Rakow Youth Center, In The Negotiated Guaranteed Maximum Price (GMP) Amount Of $4,565,666 Plus An Owner's Project Contingency Of $228,283; With Previously Appropriated Funding In The Amount Of $3,550,666 From Pay-As-You-Go Fund 302 For Construction, $850,000 From County G.O. Bond Fund 390 For Construction, $165,000 In IBLA Default In Fund 301 For Construction, And $228,283 From The Quality Of Life Resort Tax 1% Fund 161 For Contingency For The Phase Ii Remodeling And Renovation Of The Facility.
(Page 578)

(Capital Improvement Projects)

R9 - New Business and Commission Requests

R9A Board And Committee Appointments. (Page 615)
(City Clerk's Office)

R9A1 Board And Committee Appointments - City Commission Appointments. (Page 621)
(City Clerk's Office)

R9B1 Dr. Stanley Sutnick Citizen's Forum. (1:30 p.m.) (Page 645)
R9B2 Dr. Stanley Sutnick Citizen's Forum. (5:30 p.m.)

R9C Discussion Regarding A Consideration To Request A New RFP For The Parking Contract Held By Impark. (Page 647)
(Requested by Commissioner Jerry Libbin)

R9D Discussion Regarding A Status Report On The Citywide WiFi. (Page 659)
(Requested by Vice-Mayor Edward L. Tobin)

R9E Discussion Regarding A Status Report On Utility Undergrounding For Palm And Hibiscus Islands. (Page 661)
(Requested by Vice-Mayor Edward L. Tobin)

R9F Discussion Regarding A Status Report On City's Progress In Putting Its Checkbook On The City's Website. (Page 663)
(Requested by Vice-Mayor Edward L. Tobin)

R9G Discussion Regarding A Resolution Supporting House Bill 397 And Senate Bill 2012 Which Prohibit Discrimination Against Persons Based Upon Sexual Orientation, Gender Identity Or Expression, Pregnancy, And Familial Status Under The Florida Civil Rights Act Of 1992 And Thereby Creating A Prohibition Against Those Who Discriminate On These Impermissible Grounds; Directing The City Clerk To Transmit Certified Copies Of This Resolution To Governor Charlie Crist, The President Of The Florida Senate, And The Speaker Of The Florida House Of Representatives; And Directing The City Administration To Include The Support Of These Bills In Its 2009 Legislative Priorities. (Page 665)
(Requested by Commissioner Victor M. Diaz)

R9H Discussion Regarding A Resolution Supporting House Bill 413 And Senate Bill 500 Which Would Repeal The Restriction On Adoption By Homosexual Individuals; Directing The City Clerk To Transmit Certified Copies Of This Resolution To Governor Charlie Crist, The President Of The Florida Senate, And The Speaker Of The Florida House Of Representatives; And Directing The City Administration To Include The Support Of These Bills In Its 2009 Legislative Priorities. (Page 669)
(Requested by Commissioner Victor M. Diaz)

R9 - New Business and Commission Requests (Continued)

R9I Discussion Regarding Venetian Islands Neighborhood Improvement Project. (Page 671)
(Requested by Vice-Mayor Edward L. Tobin)

R9J Discussion Regarding A Request For A Special City Commission Meeting Re: Expansion Of Ethics Reform/Transparency In Government. (Page 673)
(Requested by Commissioner Victor M. Diaz/City Attorney's Office)

R9K Discussion Regarding A Resolution Urging The School District To Adopt Green Procurement Specifications For Cleaning Supplies. (Page 675)
(Requested by Commissioner Saul Gross)

R10 - City Attorney Reports

R10A Notice of Closed Executive Session. (Page 678)
Pursuant To Section 447.605, Florida Statutes, A Closed Executive Session Will Be Held During Recess Of The City Commission Meeting On Wednesday, April 22, 2009 In The City Manager's Large Conference Room, Fourth Floor, City Hall, For A Discussion Relative To Collective Bargaining.

Reports and Informational Items

A City Attorney's Status Report. (Page 681)
(City Attorney's Office)

B Parking Status Report – February 2009. (Page 691)
(Parking Department)

C Status Report On The Normandy Shores Golf Course Club House. (Page 715)
(Capital Improvement Projects)

D Status Report On Palm And Hibiscus Islands Underground Utilities Project. (Page 717)
(Capital Improvement Projects)

E Informational Report To The Mayor And City Commission, On Federal, State, Miami-Dade County, U.S. Communities, And All Existing City Contracts For Renewal Or Extensions In The Next 180 Days. (Page 723)
(Procurement)

F Non-City Entities Represented By City Commission:

1. Minutes From The Wolfsonian – Florida International University Advisory Board Meeting On December 2, 2008. (Page 725)
(Requested by Mayor Matti Herrera Bower)

2. Minutes From The Adrienne Arsht Center For The Performing Arts Of Miami-Dade County Meeting On January 27, 2009. (Page 733)
(Requested by Mayor Matti Herrera Bower)

End of Regular Agenda

MIAMIBEACH

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

HOW A PERSON MAY APPEAR BEFORE THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA

THE REGULARLY SCHEDULED MEETINGS OF THE CITY COMMISSION ARE ESTABLISHED BY RESOLUTION. SCHEDULED MEETING DATES ARE AVAILABLE ON THE CITY'S WEBSITE, DISPLAYED ON CABLE CHANNEL 77, AND ARE AVAILABLE IN THE CITY CLERK'S OFFICE. COMMISSION MEETINGS COMMENCE NO EARLIER THAN 9:00 A.M. GENERALLY THE CITY COMMISSION IS IN RECESS DURING THE MONTH OF AUGUST.

1. DR. STANLEY SUTNICK CITIZENS' FORUM will be held during the first Commission meeting each month. The Forum is split into two (2) sessions, 1:30 p.m. and 5:30 p.m., or as soon as possible thereafter, provided that the Commission Meeting has not already adjourned prior to the time set for either session of the Forum. In the event of adjournment prior to the Stanley Sutnick Citizens' Forum, notice will be posted on Cable Channel 77, and posted at City Hall. Approximately thirty (30) minutes will be allocated for each session, with individuals being limited to no more than three (3) minutes or for a time period established by the Mayor. No appointment or advance notification is needed in order to speak to the Commission during this Forum.

2. Prior to every Commission meeting, an Agenda and backup material are published by the Administration. Copies of the Agenda may be obtained at the City Clerk's Office on the Monday prior to the Commission regular meeting. The complete Agenda, including all backup material, is available for inspection beginning the Monday prior to the Commission meeting at the City Clerk's Office and at the following Miami Beach Branch Libraries: Main, North Shore, and South Shore. The information is also available on the City's website: www.miamibeachfl.gov the Friday prior to a Commission Meeting.

3. Any person requesting placement of an item on the Agenda must provide a written statement with his/her complete address and telephone number to the Office of the City Manager, 1700 Convention Center Drive, 4th Floor, Miami Beach, Fl 33139, briefly outlining the subject matter of the proposed presentation. In order to determine whether or not the request can be handled administratively, an appointment may be scheduled to discuss the matter with a member of the City Manager's staff. "Requests for Agenda Consideration" will not be placed on the Agenda until after Administrative staff review. Such review will ensure that the issue is germane to the City's business and has been addressed in sufficient detail so that the City Commission may be fully apprised. Such written requests must be received in the City Manager's Office no later than noon on Tuesday of the week prior to the scheduled Commission meeting to allow time for processing and inclusion in the Agenda package. Presenters will be allowed sufficient time, within the discretion of the Mayor, to make their presentations and will be limited to those subjects included in their written requests.

4. Once an Agenda for a Commission Meeting is published, persons wishing to speak on item(s) listed on the Agenda, other than public hearing items and the Dr. Stanley Sutnick Citizens Forum, should call or come to City Hall, Office of the City Clerk, 1700 Convention Center Drive, telephone 673-7411, before 5:00 p.m., no later than the day prior to the Commission meeting and give their name, the Agenda item to be discussed, and if known, the Agenda item number.

5. All persons who have been listed by the City Clerk to speak on the Agenda item in which they are specifically interested, and persons granted permission by the Mayor, will be allowed sufficient time, within the discretion of the Mayor, to present their views. When there are scheduled public hearings on an Agenda item, IT IS NOT necessary to register at the City Clerk's Office in advance of the meeting. All persons wishing to speak at a public hearing may do so and will be allowed sufficient time, within the discretion of the Mayor, to present their views.

6. If a person wishes to address the Commission on an emergency matter, which is not listed on the Agenda, there will be a period allocated at the commencement of the Commission Meeting when the Mayor calls for additions to, deletions from, or corrections to the Agenda. The decision as to whether or not the matter will be heard, and when it will be heard, is at the discretion of the Mayor. On the presentation of an emergency matter, the speaker's remarks must be concise and related to a specific item. Each speaker will be limited to three minutes, or for a longer or shorter period, at the discretion of the Mayor.

2009 Schedule of City of Miami Beach
City Commission and Redevelopment Agency (RDA) Meetings

Meetings begin at 9:00 a.m., and are held in the City Commission Chambers, Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida.

CITY COMMISSION MEETINGS	ALTERNATE MEETINGS
January 28 (Wednesday)	No alternate meeting scheduled
February 25 (Wednesday)	No alternate meeting scheduled
March 18 (Wednesday)	March 25 (Wednesday)
April 22 (Wednesday)	April 29 (Wednesday)
May 13 (Wednesday)	May 20 (Wednesday)
June 3 (Wednesday)	No alternate meeting scheduled
July 15 (Wednesday)	July 22 (Wednesday)
August - City Commission in Recess	
September 9 (Wednesday)	September 16 (Wednesday)
October 14 (Wednesday)	October 21 (Wednesday)
November 4* (Wednesday)	November 18* (Wednesday)
December 9 (Wednesday)	December 16 (Wednesday)

* Election related meeting

The "alternate" City Commission meeting dates have been reserved to give the Mayor and City Commission the flexibility to carry over a Commission Agenda item(s) to the "alternate" meeting date, if necessary. Any Agenda item(s) carried over will be posted on the City's website, aired on MBTV 77, or you may call the City Clerk's Office at 305-673-7411.

Dr. Stanley Sutnick Citizens' Forum will be held during the first Commission meeting each month. The Forum will be split into two (2) sessions, 1:30 p.m. and 5:30 p.m. Approximately thirty (30) minutes will be allocated per session for each of the subjects to be considered, with individuals being limited to no more than three (3) minutes. No appointment or advance notification is needed in order to speak to the Commission during the Forum.

MIAMIBEACH

CITY CLERK'S OFFICE
LOBBYISTS LIST REPORT

April 22, 2009

LOBBYIST NAME	RETAINED BY	DATE REGISTERED	DISCLOSURE
C7F Execute Agreement, Beachwalk North Extension Behind the W-Hotel, at 2201 Collins Ave			
Lucia Dougherty	2201 Collins Fee, LLC	12/10/2004	$465/hour
R7A 10:30 a.m. Grant Or Deny A DRB Decision re: The Mondrian Hotel.			
Russell Galbut	1100 W. Properties, LLC	01/23/2009	No extra comp
David Nevel	So. Beach Heights I, LLC	02/11/2009	$275-$300/hour
Alexander Tachmes	1100 W. Properties, LLC	11/03/2008	$400/hour
Don Washburn	1100 W. Properties, LLC	04/30/2007	$120/hour
R7D 2:30 a.m. 2nd Rdg, Approve Development Agreement w/ New World Symphony.			
Mark Alhadeff	New World Symphony	09/25/2006	$240/hour
Patricia Welles	New World Symphony	09/25/2006	$400/hour
R9C Discuss: Request A New RFP For The Parking Contract Held By Impark. (Libbin)			
Herbert Anderson, Jr	Impark	03/25/2009	$0
Alfredo Balsera.	Imperial Parking	04/16/2009	$11,000
Mitchell Bierman	Impark	03/05/2009	$450/hour
Chester Escobar	Impark	03/05/2009	$0
Esteban Ferreiro	Brian May/ Floridian Partners, LLC	03/02/2009	$7,500 flat
Michael Hernandez	Imperial Parking	04/16/2009	$11,000
Christopher Johnson	Imperial Parking	03/18/2009	$0
Brian May	Imperial Parking	02/27/2008	$22,500 flat rate
Teye Kutasi	Floridian Partners	03/10/2009	$22,000 flat rate

Condensed Title:

Request for approval to award a Contract to M. Vila and Associates, Inc., pursuant to Invitation to Bid 16-08/09, for the Historic City Center Right of Way (ROW) Infrastructure Improvements Program-Bid Package 9A, in the not to exceed amount of $7,589,825.34, for construction of the Project, and approving a Construction Contingency in the amount of $758,983, with previously appropriated funding.

Key Intended Outcome Supported:

Ensure well maintained infrastructure.

Supporting Data (Surveys, Environmental Scan, etc.): According to the City's 2007 Community Satisfaction Survey, 48% and 37% of City residents and businesses respectively believe that the City's road conditions are is either "good" or "excellent."

Issue:

Shall the City Commission approve the award of the Contract?

Item Summary/Recommendation:

On February 5, 2009, Invitation to Bid (ITB) No. 16-08/09, was issued. A pre-bid conference was held on February 19, 2009. Bidsync issued bid notices to over 59 prospective bidders, and Bidnet issued bid notices to 48 prospective bidders. Additionally, the Procurement Division supplemented the notification listing to 74 additional prospective bidders. The notices resulted in the receipt of the ten (10) bids.

During the Technical Review Panel (TRP) interview process it became apparent that Downrite had not fully considered the cost of critical items included in the General Conditions of the Bid, such as, the construction staging area, provision of a Public Information Officer, construction sequencing, and the total linear footage (1000LF) of area that is permissible to be under construction at any given time. The TRP also noted that the Downrite representatives failed to identify the full-time Project Manager and Superintendent and were not prepared to successfully respond to the interview questions. In addition, Downrite admitted to not visiting the site prior to bidding the Project.

Based on the interviews pertaining to the scope of work and adequate project resourcing, it became apparent to the TRP, that Downrite had neither contemplated in their bid price, nor satisfactorily addressed the most critical aspects of the project scope of work and/or did not have the experience required to successfully execute a project in such highly dynamic, urbanized area. In considering the overall distribution of bid prices, the quality and adequacy of the interview responses, and relevant previous experience, at the conclusion of the interviews, the TRP unanimously recommended M. Vila and Associates as the lowest and best bidder. M. Vila's grand total lump sum bid of $7,589,825.34, is the second lowest bid; $650,951.24 higher than the lowest bid.

The TRP determined that M. Vila was better prepared during interviews by providing a shorter time for completing the Project (16-18 months versus 22-24 months); identifying a staging area; having all necessary equipment, including a vac-truck needed to keep the work area clean; working within 500 linear feet at a time, therefore maintaining one lane of roadway open for traffic; and demonstrating a willingness to work around the City's busy event schedule. M. Vila is a state-certified general contracting firm with over 30 years of experience. Notable projects are the Sunset Drive Improvements for the City of South Miami and the recently completed Village of Key Biscayne's Crandon Blvd. Master Plan Phases 2 & 3.

APPROVE THE AWARD OF CONTRACT AND AUTHORIZE VALUE ENGINEERING.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
	1	$7,589,825	365-2616-069357 Construction	
	2	$758,983	365-2616-000356 Contingency	
OBPI	Total	**$8,348,808**		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Gus Lopez Ext. 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
GL_____ FB_____	TH_____ PDW_____	JMG_____

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MIAMIBEACH

AGENDA ITEM R2A
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **REQUEST FOR APPROVAL TO AWARD A CONTRACT, PURSUANT TO INVITATION TO BID NO. 16-08/09, FOR THE CONSTRUCTION OF THE HISTORIC CITY OF MIAMI BEACH RIGHT OF WAY INFRASTRUCTURE IMPROVEMENTS PROJECT, NEIGHBORHOOD NO. 9A, CITY CENTER, ACCEPTING THE CITY MANAGER'S RECOMMENDATION RELATIVE TO M. VILA AND ASSOCIATES, INC., AS THE LOWEST AND BEST BIDDER, AUTHORIZING THE ADMINISTRATION TO ENGAGE IN VALUE ENGINEERING TO FURTHER REDUCE THE COST AND TIME FOR COMPLETION OF THE PROJECT; AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH M.VILA & ASSOCIATES, INC., IN THE NOT TO EXCEED AMOUNT OF $7,589,825.34, FOR THE CONSTRUCTION OF THE PROJECT; WITH PREVIOUSLY APPROPRIATED FUNDING AVAILABLE FROM CITY CENTER RDA FUND 365, IN THE AMOUNT OF $7,589,825.34, FOR CONSTRUCTION; AND APPROVING PREVIOUSLY APPROPRIATED FUNDING IN THE AMOUNT OF $758,983, FROM CITY CENTER RDA FUND 365 FOR CONSTRUCTION CONTINGENCY.**

ADMINISTRATION RECOMMENDATION

Approve the Award of Contract.

KEY INTENDED OUTCOME SUPPORTED

Ensure well-maintained infrastructure.

FUNDING

Previously appropriated funds for this project, through the Fiscal Year 2008-2009 Capital Budget, are available in the amounts of $12,295,057, for construction and $1,510,000 for Contingency; for a total project budget appropriated amount of $13,805,057. Funds to award the construction contract and a 10% Contingency totaling $8,348,808 will be allocated as follows:

Construction:

$7,589,825	City Center RDA Fund	365-2616-069357

Contingency:

$758,983	City Center RDA Fund	365-2616-000356

ANALYSIS

On October 19, 2005, the City Commission approved the Basis of Design Report (BODR), completed and submitted by Chen and Associates (Chen) for the City Center Right-of-Way Infrastructure Improvements Project, Neighborhood 9A (the "Project"). This BODR was the culmination of a comprehensive planning effort that included input from and reviews by residents, various City Departments, and the Historic Preservation Board (HPB). The Project limits are bounded by Lincoln Road to the south, 21st Street to the north, Washington Avenue on the west, and Collins Avenue on the east.

The Project is part of the greater City Center improvements, which are divided into three (3) bid packages due to the overall size of the project and the extensive work to be constructed - Bid Packages 9A, 9B, and 9C. Bid Package A includes most of the stormwater drainage system improvements. Bid package 9B covers the work between Alton Road and Washington Avenue, from 16th Street to Dade Boulevard, excluding the Palm View neighborhood located west of Meridian Avenue and north of 17th Street. Bid Package 9C, contains the commercial area on Lincoln Road between Washington Avenue and Collins Avenue. This contract award will only cover the Bid Package 9A Project.

The scope of the Project is limited to the City right-of-way and includes improvements to the stormwater collection and disposal system, water distribution system, roadway milling and resurfacing, and streetscape enhancements, additional landscaping and irrigation, traffic calming installations such as bump-outs and pedestrian crosswalks, traffic signs and pavement markings, additional pedestrian lighting, and enhanced pedestrian linkages.

On April 15, 2008, the 100% Construction Documents, as well as an estimate of probable construction costs for the Project were submitted to City staff for review. The permitting process, which is now complete, includes the submission of permit applications to various agencies having jurisdiction, including the Miami-Dade County Department of Health (DOH), Miami-Dade County Water and Sewer Department (WASD), Miami-Dade County Public Works Department -Traffic Engineering Division, Miami-Dade County Department of Environmental Resources Management (DERM), the Florida Department of Transportation (FDOT), and the City of Miami Beach Public Works Department.

The Project's General Conditions and Specifications allow the contractor to perform work in alternate streets as long as at least one (1) lane of traffic is kept operational in the streets in the work areas to allow traffic to flow during construction. If at any time traffic must be restricted completely due to construction installations, then the Contractor must perform the work promptly and the street where work is being performed must be opened daily at the end of the construction activities. If longer periods are required, the Contractor must then request permission from the Contract Administrator and the Public Works Department and submit an appropriate Maintenance of Traffic (MOT) request.

These restrictions are part of the City's effort to ensure that the impact to residents of any neighborhood is managed and controlled reasonably. The construction of infrastructure in residential areas is by nature quite intrusive and the City makes every effort to reduce this intrusiveness, while providing an environment for contractors where work can be performed effectively, efficiently, and as economically as possible, and at the same time respect the needs of the neighborhood residents. This approach allows the contractors to price and plan their work properly while taking into consideration the impact of construction to the citizens.

The Bid informed all bidders that the project shall be substantially completed within six hundred and sixty (660) calendar days from the issuance of the second Notice to Proceed (NTP), and completed

and ready for final payment within sixty (60) calendar days from the date certified by the Consultant as the date of Substantial Completion.

BID PROCESS

On February 5, 2009, Invitation to Bid (ITB) No. 16-08/09, was issued. A pre-bid conference was held on February 19, 2009. Two (2) Addenda were issued to provide additional information and to respond to all questions submitted by the prospective bidders, thus extending the bid opening due date from March 11 to March 16, 2009. A total of ten (10) contractors responded, and their base bid totals, including Alternates, ranged from $6,938,874 to $11,370,000 (see tabulated results on page four (4) of this memo).

Bidsync issued bid notices to over 59 prospective bidders, and Bidnet issued bid notices to 48 prospective bidders. Additionally, the Procurement Division supplemented the notification listing and sent the bid notification to other Contractor listings, Blue Book Online, and other construction related websites; thus inviting 74 additional prospective bidders. The notices resulted in the receipt of ten (10) bids from the following contractors:

- Central Florida Equipment Rental, Inc.
- Downrite Engineering Corp.
- Giannetti Contractors
- Horizon Contractors, Inc.
- Lanzo Construction
- M. Vila and Associates
- Man-Con, Inc.
- Ric-Man Construction
- Ric-Man International, Inc.
- Unitech Builders, Inc.

On March 25, 2009, the Technical Review Panel (TRP), a representative from Hazen and Sawyer, the City's Right-of-Way Program Manager, and a representative from Chen and Associates, the Design Engineer of Record (EOR), convened to review the bids submitted for the City Center Right-of-Way Infrastructure Improvements Project, Neighborhood 9A. The TRP consisted of the following individuals:

- Ricardo Guzman, Senior Planner
- Mike Alvarez, Assistant Public Works Department Director
- Mario Gonzalez-Pola, Sr. Capital Project Coordinator
- Carla Dixon, Capital Project Coordinator
- Olivia Almagro-Johnson, Community Information Coordinator

The TRP was also provided with Performance Evaluation Surveys (PES) received from clients of the Contractors that offered feedback on each contracting firm, as well as their proposed Project Manager to be assigned to the Project. Each Contractor participated in a thirty (30) to sixty (60) minute Question and Answer (Q&A) session (see "Attachment A" for technical questions asked of all bidders).

The TRP based its recommendation on the following evaluation criteria:

- **(15 points)** Risk Assessment Plan (RAP)/Value Added Submittal (VAS) - A Preliminary Project Schedule was attached to the RAP/ VAS. The description for the risks identified in the RAPs, had no additional cost or time associated with them, but are risks that the contractor will try to minimize. The VAS identified opportunities to

add value to the project, as well as the corresponding cost and schedule impact

- **(5 points)** Past Performance based on number and quality of the Performance Evaluation Surveys received
- **(20 points)** Qualifications and Experience of Contractor's Team and Interview of Key personnel
- **(60 points)** Base Bid plus Alternates Price

The TRP, City's Right-of-Way Program Manager, and the EOR, performed an extensive review of the bids received which chronicled the history and past performance of the contracting firms. In addition, the PES completed by previous clients were reviewed and evaluated.

The following table provides the bid tabulation results for the bidders ("Attachment B" provides comprehensive bid tabulation):

ITB 16-08/09 Bid Tabulation	
Company	Grand Total Lump Sum
Downrite Engineering	$ 6,938,874.10
M. Vila & Associates	$ 7,589,825.34
Horizon Contractors	$ 7,834,231.10
Ric-Man International	$ 8,289,005.93
Unitech Builders, Inc.	$ 8,430,187.60
Central Florida Equip.	$ 9,452,868.62
Ric-Man Construction	$ 10,059,718.00
Man-Con	$ 10,410,619.00
Lanzo Construction	$ 10,501,033.70
Giannetti Contractors	$ 11,370,000.00

ADD ALTERNATES:

The unit price breakdown form and instructions to bidders, informed all bidders that the cost component of award will be based on the total lump sum base bid amount plus allowances, plus none, any or all alternates which will be selected at the City's sole discretion and based on funding availability and in order of priority.

Based on funding availability, the Grand Total Lump Sum includes the Base Lump Sum, Allowances, and the following Add Alternates:

- Add Alternate No. 1, for the additional water mains:
  17th Street between Washington Avenue and Collins Avenue
  18th Street between Washington Avenue and Collins Avenue
  19th Street between Washington Avenue and Collins Avenue
  Park Avenue between 19th and 21st Street
  Liberty Avenue between 19th and 21st Street
- Add Alternate No. 2, for providing Staging
- Add Alternate No. 3 is a requirement of the Contract, to provide Public Information/Liaison Services. The Contractor will procure the services of a Public Relations Firm to provide labor, supplies, and essential communications as may be required for the fulfillment of the intent of the public information/liaison phase of the Work. The goal of these services shall be to allow the Contractor to keep stakeholders (City representatives, property owners, and residents) affected by the work scheduled to

be performed, informed prior to, during, and after the Contractor's implementation of the infrastructure work. The Contractor will develop and implement an effective and successful public information/liaison program to ensure that, working in concert with City representatives, all required authorizations/releases are received from affected property owners and to follow-up with stakeholders on any required warranty work and/or complaint resolution that may result from the Work, until resolved by the Contractor.

- Add Alternate No. 4, for the additional isolation valves at all crosses and tees.

TECHNICAL REVIEW PANEL:

It was the consensus of the TRP that the successful bidder's proposal must have considered the challenges inherent to conducting heavy construction activities within a highly urbanized, historic/ residential district, and areas that experience high demands from tourism as well as special events. The panel was interested to learn about bidders' experience in similar size and scope projects.

Following review of the package and interview of the Downrite team, the panel determined that it could not rank Downrite as the top-ranked bidder for a number of reasons, even though they submitted the lowest bid amount. During the interview process, Downrite indicated that they had not considered in their price several critical Construction and General Conditions requirements of the Invitation to Bid Package, such as:

- During the interviews, the TRP clarified the City's intent to all bidders regarding the limitations on work zone to be under construction at one time. It was made clear to all bidders that the construction work zone would be limited to a maximum of 1,000 lineal feet, allowing the contractor to work to 500-foot blocks separated by one roadway. All bidders with the exception of Downrite acknowledged that they could perform the work within the City's work zone limitations for their bid amount. Downrite stated that their bid was based on the assumption of being allowed to perform work on a minimum 1,500 consecutive linear feet at a time. They also stated that if restricted to 1,000 lineal feet they would have to demobilize and re-mobilize their crews through out the duration of the project. Based on this information, Downrite's incorrect assumption that they could work (traffic closures and impact entrances to properties) about three blocks at a time compared to the City's maximum of about two blocks at a time would have reduced their construction cost, resulting in a lower bid. Downrite's planned construction schedule would also have been extended to accommodate the unplanned demobilizations / remobilizations along with their associated cost impacts.
- The contract requires a full-time public information / liaison services through a public relations firm. When questioned, Downrite representatives were totally unfamiliar with this requirement and further stated that the public information / liaison function would be performed in-house by their project manager and foreman. The City's past experience with ROW construction, particularly in a dense, urban environment has demonstrated that an effective and successful public information / liaison program warrants a full-time, on-site, public information officer (PIO).
- The contract requires that the successful bidder make arrangements to provide, at its own cost, a staging / lay-down site for storage of construction equipment and materials. During the interview, Downrite representatives could not provide specific information about their plans, nor location, for a staging site.
- The contract requires that the contractor install all underground piping, such as water mains and storm water lines in the dry. This requires the installation of a well-point system to pump the underground water so pipes and other underground structures can be installed in a dry trench. This process is time consuming and costly. Downrite

representatives could not confirm if their proposal included a well-point system for de-watering.

In general, during the interview, the assigned Downrite project team (project manager and superintendent) displayed a general lack of familiarity with the contract requirements, and when asked, stated that they had been recently been brought on board. During the interview process, Downrite admitted to not visiting the site prior to bidding the Project; consequently they were also not familiar with the neighborhood, and general project area.

Based on the interview (see Attachment A for interview questions), pertaining to the scope of work and adequate resources, it became apparent to the TRP, that Downrite had neither contemplated within their bid price, nor satisfactorily addressed, the most critical aspects of the project scope of work. It was also apparent that their assigned project team did not have the knowledge of the project requirements, nor were they able to intelligently address the various elements of their bid proposal. Of the eight companies interviewed, Downrite was rankest the lowest by TRP.

At the conclusion of the interviews, the TRP unanimously recommended the award of a $7,589,825.34 contract to M. Vila and Associates, Inc. (M. Vila) as the lowest and best bidder. M. Vila submitted the second lowest bid; $650,951.24 higher than the lowest bid.

The TRP determined that M. Vila was better prepared and familiar with the Contract requirements by their ability to provide a shorter time for completing the Project (16-18 months versus 22-24 months); identifying a staging area; having all necessary equipment, including a vac-truck needed to keep the work area clean; restricting their work zone to the maximum of 1,000 lineal feet at time, consisting of two 500 lineal feet blocks, separated by one roadway as specified by the City, maintaining one lane of roadway open for traffic and demonstrating a willingness to work around the City's busy special events schedule.

M. Vila and Associates, Inc.

M. Vila is a state-certified general contracting firm with over 30 years of experience. Notable projects completed are the Sunset Drive Improvements for the City of South Miami and the Village of Key Biscayne's Crandon Boulevard Master Plan Phases 2 & 3. Work at Crandon Park was completed while maintaining two-way traffic along Crandon Blvd, as well as all pedestrian traffic

During construction M.Vila's similar projects are attached and labeled as "Attachment C".

Miguel A. Vila, Vice-President, Quality Control Manager and Senior Project Manager, has over ten years experience in the public sector construction. In addition to project management activities, he also takes part in all of M. Vila's projects' value engineering, scheduling, cost estimating, option analysis, design-build projects and quality control.

CITY MANAGER'S REVIEW

After considering the review and recommendation of City staff, the City Manager exercised his due diligence and recommends to the Mayor and City Commission the award of a contract to M. Vila and Associates, Inc.

It should be noted that the City's regular process of considering the price for projects and its standard process for bidding construction projects has resulted in a price that is reflective of the current market. At present, it appears that the market is very competitive and that the City will continue to receive bids that are lower than those received in the past year or so. The public procurement process, which is an open and competitive, transparent process, has again served the City to provide a competitive price for this project, as it has in the past, with a bid price that is almost $5.5 million lower than the preliminary project budget.

LOWEST AND BEST BID

Section 2-369 of the Miami Beach City Code states that the "City Commission shall award the contract to the lowest and best bidder. In determining the lowest and best bidder, **in addition to price,** there shall be considered the following:

a. The ability, capacity and skill of the bidder to perform the Contract.

b. Whether the bidder can perform the Contract within the time specified, without delay or interference.

c. The character, integrity, reputation, judgment, experience and efficiency of the bidder.

d. The quality of performance of previous contracts.

e. The previous and existing compliance by the bidder with laws and ordinances relating to the Contract.

The City Code recognizes the potential risks associated with the award of contracts based solely on low bid. The risks include:

- Winning bids may be unrealistically low, which can result in a sacrifice of quality through corner-cutting measures, or through the use of cheaper building materials, potentially increasing repair maintenance and replacement cost of components over time
- An increase of contractor change order submittals
- A more antagonistic relationship between the contractor and the owner
- When lowest price is the driving factor and no other information is considered, the contractors will install the cheapest easiest system requiring the lowest skill level
- Less incentive for the contractor to minimize the owner's risk
- On low bid, low margin projects, contractors often treat the project as a "filler project", by moving labor and equipment resources from other higher margin projects, instead of fully dedicating the resources to the low bid project
- Lack of understanding and subsequent compliance with contract mandated restrictions regarding impact to adjacent residents and businesses

The City's performance-based process requires responders to bids, proposals, or requests for qualifications, to provide not only the usual materials and the qualifications of the firm typically required in standard procurement, but to also provide a risk management plan, performance surveys from past clients, and additional past performance information on the specific project team and key members of the responder's proposed team such as the project manager, superintendent, and critical sub-contractors with experience on similar projects. The key members of the prospective responders' teams are extensively interviewed during the bid evaluation process.

As part of their submittal, responders are required to arrange for previous clients to forward, directly to the City, performance evaluation surveys that rate the firm and its project manager/superintendent on performance-specific areas such as:

- Ability to manage project cost (minimize change orders)
- Ability to maintain project schedule, and
- Performance in finalizing project punch list items and expediting project close-out.

In addition, responders are required to submit a Risk Assessment / Value-Added Plan (RAVA) that is also used as one of the key evaluation criteria during the selection process. The RAVA offers the firm the opportunity to demonstrate it's familiarity with all project aspects by their thoroughness in: identifying potential or actual project risks that they may not directly control; outlining how they would support the client in minimizing those risks; and their ability to identify opportunities where the contractor can add value to the project in terms of costs, time and quality. This method has provided the City with an opportunity to select high-performing contractors that, to date, are delivering projects on schedule and within budget.

CONCLUSION

Based on the analysis of the bids received, the Administration is requesting approval to award a contract, pursuant to Invitation to Bid No. 16-08/09, for the construction of the Historic City of Miami Beach Right-of-Way Infrastructure Improvements Project, Neighborhood No. 9A, City Center, accepting the City Manager's recommendation relative to M. Vila and Associates, Inc., as the lowest and best bidder, authorizing the Administration to engage in Value Engineering to further reduce the cost and time for completion of the Project; and further authorizing the Mayor and City Clerk to execute an Agreement with M.Vila & Associates, Inc., in the not to exceed amount of $7,589,825.34, for the construction of the Project; with previously appropriated funding available from City Center RDA Fund 365, in the amount of $7,589,825.34, for Construction; and approving previously appropriated funding in the amount of $758,983, from City Center RDA Fund 365 for Construction Contingency.

JMG/TH/GL/FHB/CD

ATTACHMENTS

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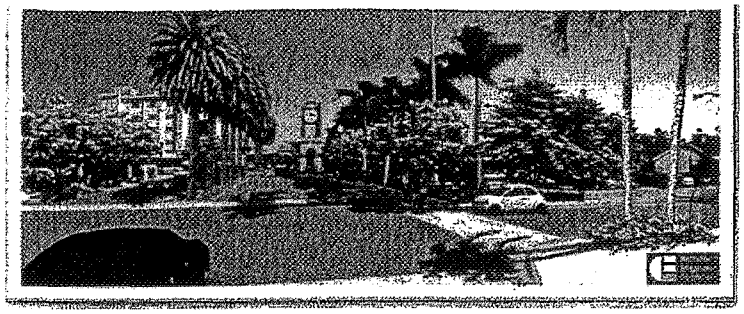
ATTACHMENT A – TRP INTERVIEW QUESTIONS TO BIDDERS

	ISSUES TO ADDRESS FOR City Center 9A
	Sequence of the Work
1	Spec Section 01010 Art.1.06 D-4 allows for 25% of all roadways to be under construction (~2500 L.F. +/-) This full length can only be implemented with two crews and a minimum separation requirement of two streets in either direction. However, it **is the City's intent to restrict construction to a maximum of 1000 L.F. with two crews. What impact does this have on the Contractor and its proposed bid, if any?**
2	Substantial completion is defined as all work completed to the first lift of asphalt. The Contractor must achieve substantial completion with a work area before it can be releases to other work areas. See s Section 01010 Art. 1.06 D and Section 01010 Art. 1.06 E. Has the Contractor taken this into account in its proposed phasing plan?
	Staging/Storage/Construction Office
1	Bid Alternate 2 requires that the Contractor make provisions for its own staging/storage areas, as none are being made available by the City, and materials cannot be strung out along the ROW, except for those that are to be installed within 1 to 2 weeks of placement. In addition, in case of a remote staging area selection by the Contractor, all costs for transportation of materials / equipment are assumed in the Bid Price for Alternate 2 .
2	The Project area is tight on available parking and residents use the majority. What is the Contractor's plan for staging worker parking?
3	s 01026 Art. 1.02 J and Section 01590 requires the Contractor to provide a field office within 0.5 miles of the project limits.
4	The Contractor must to coordinate with CIP and the Parking Department to "bag" parking meters and otherwise coordinate clear work areas - as residents will otherwise park within active work zones. How does the Contractor typically approach this situation?
	Traffic/pedestrian access)
1	How is the Contractor planning to maintain access to businesses and residents of the area when work is active within their ROWs? s Section 01010 Art 1.06 D s 01550 1.02 A
2	Is the Contractor planning to plate and/or backfilling excavations and re-open ROWs at the end of each day? s Section 01010 -1.06D9
	Dewatering / Stormwater Management
1	Spec Section 02140 requires all underground installations in a "dry" condition, costs of which are included in the base bid. Did the Contractor comply with this requirement?
2	Spec 01010-1.10A requires that all below grade work must be inspected before it is backfilled. Has Contractor planned to comply with this within its base bid?
3	s 01530 Art. 1.01A,B and C requires that the Contractor contact and coordinate all existing below grade utility locations with the respective utility owners, and then make provisions to support, relocate as necessary to avoid conflicts with proposed utilities. How doe the Contractor plan on addressing this requirement.
4	How will existing stormwater systems storm systems be maintained in service during construction? s 02200 Art. 1.09B
5	What are the contracts thoughts regarding well installation in close proximity to private structures and potential damage? Rotary Drill in lieu of Pile Driving?
6	Does the Contractor plan to close any roadways during construction? If so, how will the Contractor provide access to the affected residents?
	Unsuitable Material
1	Removal and disposal of unsuitable soil is included in the base scope of this project? s Section 01010 Art. 1.04 B. has the Contractor assumed compliance with this requirement in its base bid.
	Hurricane Preparedness
1	All storm preparedness requirements are included in the Base Bid. No additional payment will be made for such. Has the Contractor complied with this requirements? Section 01545
	Paving
1	What is the Contractor proposing as a temporary resurfacing approach? See s Section 01530 Art. 1.04 B
	Public Information Officer)
1	What are the Contractor's plans for a Public Information officer?
	Site Maintenance
1	How is the Contractor planning to comply with the site cleanliness, dirt, dust, rubbish, dust control? Section 01710 Art. 3.01
	Electrical Work
1	Are all FPL Service Point connection costs included in the base bid? Section 01600 - Drawings E-00 Note 11
	Water Services
1	Where water mains are being replaced, all water services to the meter box, including review and replacement of the meter, and meter box are included in the scope of the Project, whether shown or not on the documents. Has the Contractor made provisions for this requirement in its base bid?
	General
1	The City typically stops all construction Projects during the Holiday season. Has the Contractor planned on complying with this requirement?

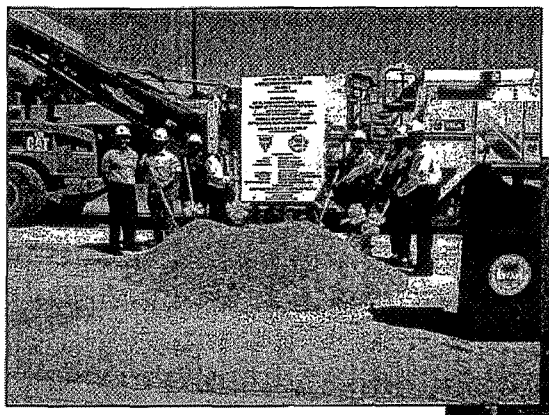
ATTACHMENT B – COMPREHENSIVE BID TABULATION

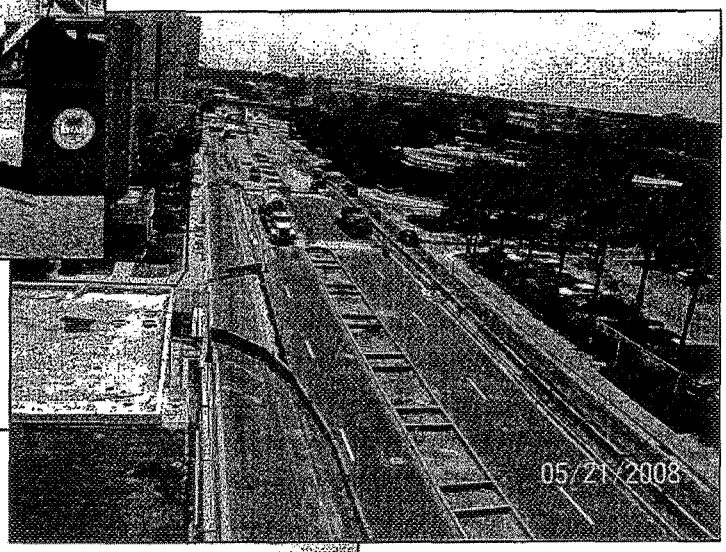
	Company Name	Lump Sum Base Bid	Allowances	Total Lump Sum Base Bid	Alternate 1	Alternate 2	Alternate 3	Alternate 4	Grand Total Lump Sum
1	Downrite Engineering	$ 6,026,403.10	$ 370,025.00	$ 6,396,428.10	$ 110,120.00	$ 5,000.00	$ 100,000.00	$ 1,200.00	$ 6,938,874.10
2	M. Vila and Associates	$ 7,017,080.53	$ 370,025.00	$ 7,387,105.53	$ 170,031.81	$ 625.00	$ 30,000.00	$ 2,063.00	$ 7,589,825.34
3	Horizon	$ 7,202,621.10	$ 370,025.00	$ 7,572,646.10	$ 131,085.00	$ 6,000.00	$ 120,000.00	$ 4,500.00	$ 7,834,231.10
4	Ric-Man International	$ 7,392,607.15	$ 370,025.00	$ 7,762,632.15	$ 336,773.78	$ 120,000.00	$ 60,000.00	$ 9,600.00	$ 8,289,005.93
5	Unitech Builders	$ 7,847,098.60	$ 370,025.00	$ 8,217,123.60	$ 81,564.00	$ 50,000.00	$ 80,000.00	$ 1,500.00	$ 8,430,187.60
6	Central Florida Equipment	$ 8,494,361.62	$ 370,025.00	$ 8,864,386.62	$ 491,042.00	$ 55,440.00	$ 22,000.00	$ 20,000.00	$ 9,452,868.62
7	Ric Man Construction	$ 8,779,247.90	$ 370,025.00	$ 9,149,272.90	$ 486,944.00	$ 192,000.00	$ 160,000.00	$ 71,500.00	$ 10,059,718.00
8	Man Con	$ 9,645,219.00	$ 370,025.00	$ 10,015,244.00	$ 141,862.00	$ 109,992.00	$ 120,000.00	$ 23,520.00	$ 10,410,619.00
9	Lanzo Construction	$ 9,786,228.70	$ 370,025.00	$ 10,156,253.70	$ 174,780.00	$ 75,000.00	$ 75,000.00	$ 20,000.00	$ 10,501,033.70
10	Giannetti Contractors	$ 9,985,165.00	$ 370,025.00	$ 10,355,190.00	$ 436,950.00	$ 75,000.00	$ 300,000.00	$ 202,860.00	$ 11,370,000.00

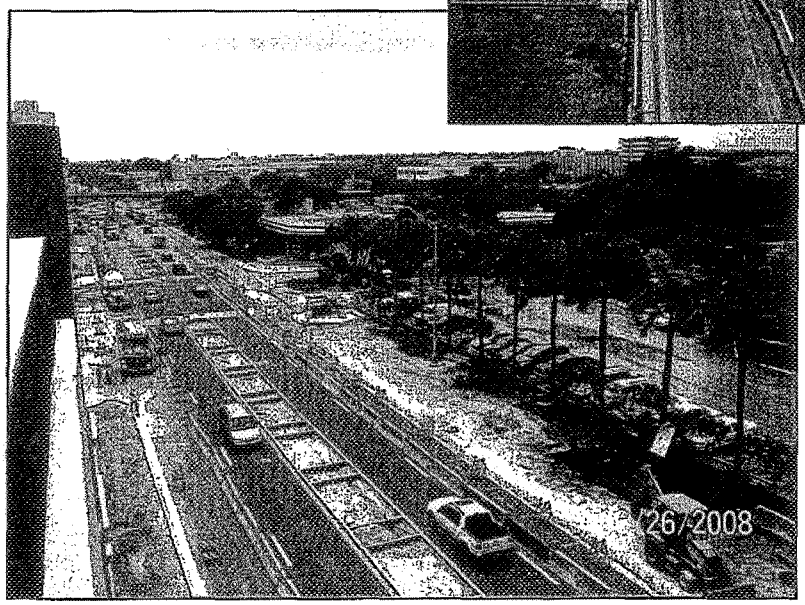
ATTACHMENT C – M. VILA AND ASSOCIATES, INC. SIMILAR PROJECTS

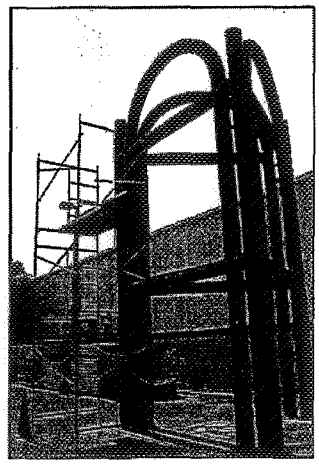


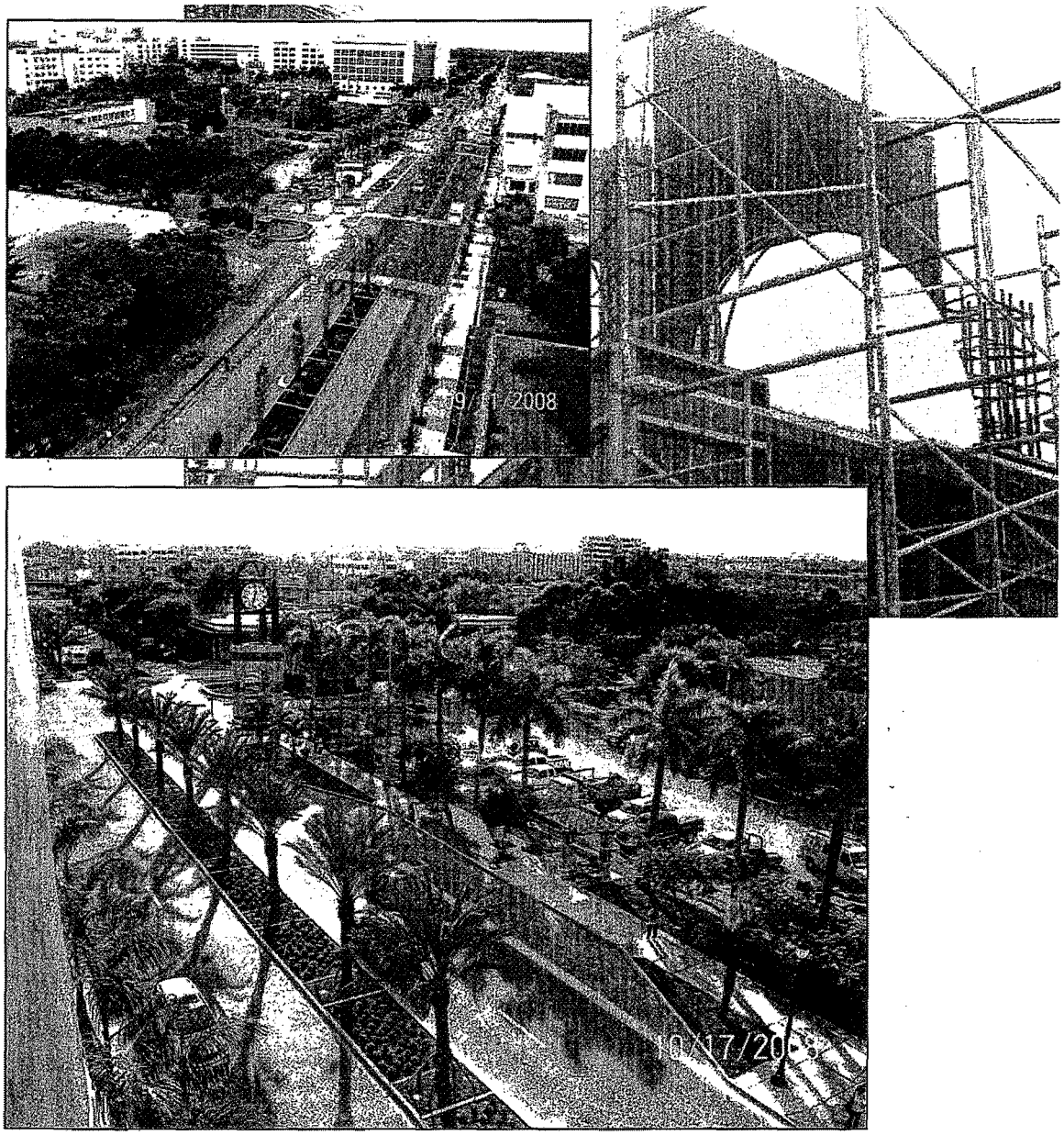
Sunset Drive Improvements
City of South Miami





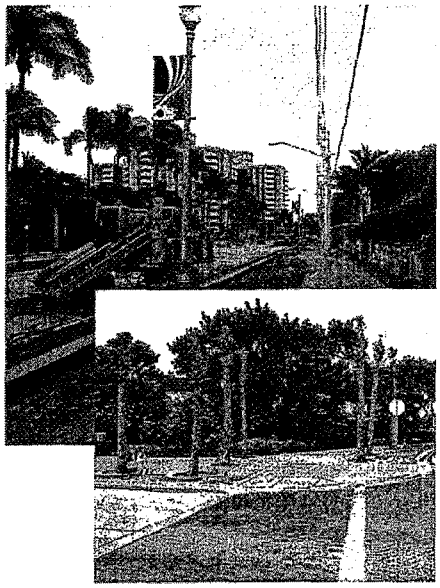


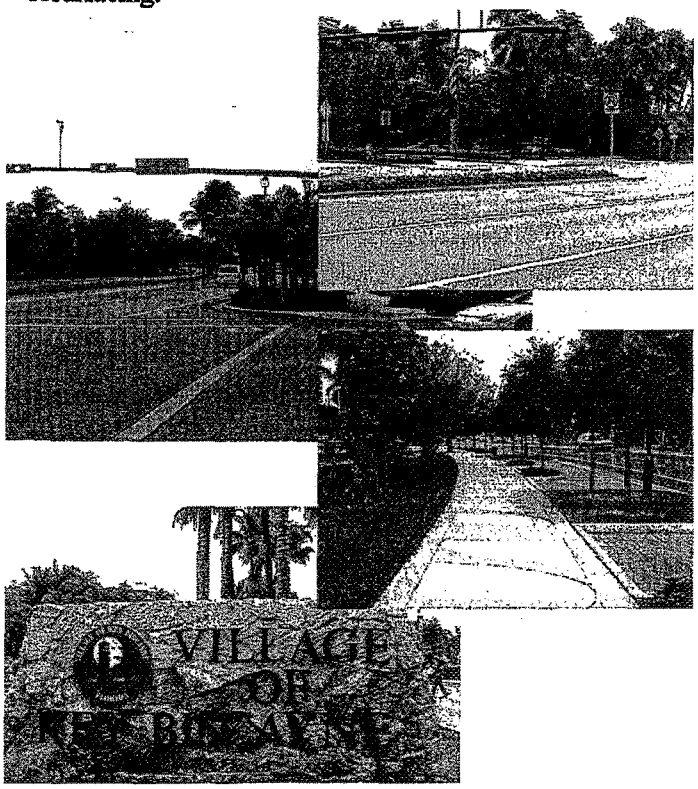




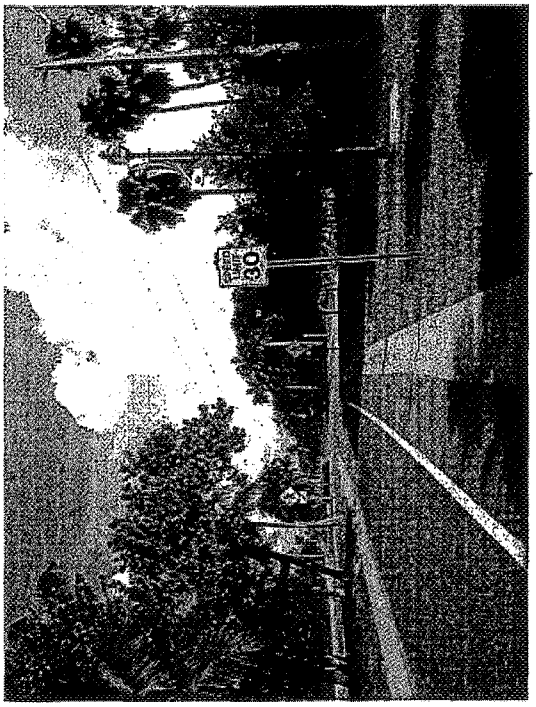
VILA
GENERAL ENGINEERING CONTRACTORS
BUILDING TOMORROW'S ROADS TODAY

M. Vila & Associates, Inc. was selected to be the General Contractor for the completion of the Village of Key Biscayne's Crandon Boulevard Master Plan Phases 2 & 3. The firm's scope of work included the demolition and reconstruction of all existing sidewalks and curb & gutter (using new decorative concrete designs, shapes and colors), drainage enhancements, water & sewer installations, lighting enhancements, landscaping and irrigation enhancements, intersection reconstruction, roadway widening and milling and resurfacing.





All work was completed while maintaining two way traffic each way along Crandon Boulevard, as well as maintaining all Pedestrian Traffic during construction. Construction was undertaken at an utmost quality requirement directly supervised by the Village Manager and Mayor. The project team consiste of many different entities all tasked at maintaining the overall Master Plan for this beautification project.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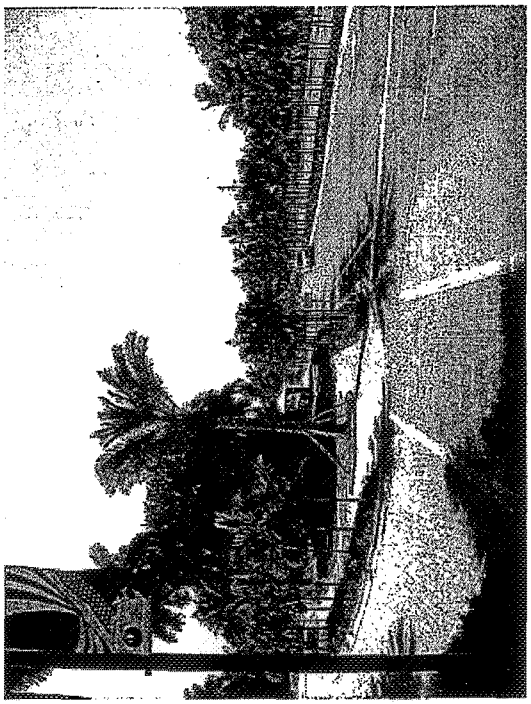

Condensed Title:

Request For Approval To Award A Contract, Pursuant To Invitation To Bid No. 17-08/09, For The Construction Of The City Of Miami Beach Right-Of-Way Infrastructure Improvement Program, Neighborhood No. 12D/E/F, South Pointe Phase III, IV, And V, Accepting The City Manager's Recommendation Relative To Central Florida Equipment Rentals, Inc.; Further Authorizing The Mayor And City Clerk To Execute An Agreement With Central Florida Equipment Rentals, Inc., At A Not To Exceed Amount Of $10,512,055.85, For The Construction Of The Project; With Previously Appropriated Funding.

Key Intended Outcome Supported:

Ensure well maintained infrastructure.

Supporting Data (Surveys, Environmental Scan, etc.): The 2007 Community Satisfaction Survey indicated that 82% to 85% of recently completed South Pointe and South Beach area Capital Improvement Projects were ranked as good or excellent by residents. Completing this Project will add to the needed upgrades in this area and improve overall rating.

Issue:

Shall the City Commission approve the award of the Contract?

Item Summary/Recommendation:

On February 2, 2009, Invitation to Bid (the "ITB") No. 17-08/09, was issued, resulting in the receipt of the seven (7) responsive bids. The Technical Review Panel (TRP), as well as support staff from the City's Program Manager, Hazen and Sawyer, the Design Engineer of Record (EOR), Chen and Associates, convened and performed an extensive review and evaluation of the materials submitted as part of the bid packages including, the Performance Evaluation Surveys (PES) completed by the bidders' previous clients, and the Risk Assessment Plans and Value Added Submittals. In addition, the TRP interviewed the respective bidders' Project Manager, Site Superintendent and other key personnel. Following review of the package and interview of the HCI team the panel determined that it could not rank HCI as the top-ranked, even though they submitted the lowest bid amount, because: a) HCI submitted a proposed price increase of $1.8 million; b) Extremely low allocated amount for general conditions; and c) proposing same project manager as in three other active projects. Although Central Florida Equipment Rentals Inc., had the second lowest bid price, the TRP recommended Ric-Man International, Inc., for award of the contract due to their overall strength, Risk Assessment Plan, Past Performance Surveys, their presentation and interview of key personnel, and demonstrated past performance in similar neighborhoods. Based on the interviews, it became apparent to the panel, that some of the bidders had neither contemplated in their bid price, nor satisfactorily addressed the most critical aspects of the project scope of work and/or did not have the experience required to successfully execute a project in such highly dynamic, urbanized area. In considering the overall distribution of bid prices, the quality and adequacy of the interview responses; and relevant previous experience; the TRP unanimously recommended Ric-Man as the lowest and best bidder.

After considering the review and recommendation of City staff, the City Manager exercised his due diligence and recommends to the Mayor and City Commission not to award a contract to Ric-man International, Inc., and instead to award a contract to Central Florida Equipment Rentals, Inc., in a grand total lump sum bid amount of $ 10,512,055.85.

APPROVE THE AWARD OF CONTRACT AND AUTHORIZE VALUE ENGINEERING.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:		Amount	Account	Approved
	1	$323,325.00	379-2333-069357 Construction	
	2	$10,188,730.85	389-2333-069357 Construction	
	3	$1,051,25.59	389-2333-000356 Contingency	
OBPI	Total	$11,563,261.44		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Gus Lopez Ext. 6641

Sign-Offs:

Department Director	Assistant City Manager	City Manager
GL_____ FHB_____	TH_____ PDW_____	JMG_____

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MIAMIBEACH

AGENDA ITEM R2B
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **REQUEST FOR APPROVAL TO AWARD A CONTRACT, PURSUANT TO INVITATION TO BID NO. 17-08/09, FOR THE CONSTRUCTION OF THE CITY OF MIAMI BEACH RIGHT OF WAY INFRASTRUCTURE IMPROVEMENT PROGRAM, NEIGHBORHOOD NO. 12D/E/F, SOUTH POINTE PHASE III, IV, AND V, ACCEPTING THE CITY MANAGER'S RECOMMENDATION RELATIVE TO CENTRAL FLORIDA EQUIPMENT RENTALS, INC., AS THE LOWEST AND BEST BIDDER; AUTHORIZING THE ADMINISTRATION TO ENGAGE IN VALUE ENGINEERING TO FURTHER REDUCE THE COST AND TIME FOR COMPLETION OF SAID PROJECT; FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH CENTRAL FLORIDA EQUIPMENT RENTALS, INC., AT A NOT TO EXCEED AMOUNT OF $10,512,055.85, FOR THE CONSTRUCTION OF THE PROJECT; WITH PREVIOUSLY APPROPRIATED FUNDING AVAILABLE FROM SOUTH POINTE RDA FUND 379 IN THE AMOUNT OF $323,325, AND FROM SOUTH POINTE CAPITAL FUND 389, IN THE AMOUNT OF $10,188,730.85 FOR CONSTRUCTION; AND APPROVING PREVIOUSLY APPROPRIATED FUNDING IN THE AMOUNT OF $1,051,205.59 FROM SOUTH POINTE CAPITAL FUND 389 FOR PROJECT CONTINGENCY.**

ADMINISTRATION RECOMMENDATION

Recommends not to award a contract to Ric-man International, Inc., and instead to award a contract to Central Florida Equipment Rentals, Inc.

KEY INTENDED OUTCOME

Ensure well-maintained infrastructure.

FUNDING

Previously appropriated funds for this project, through the Fiscal Year 2008-2009 Capital Budget, are available in the amounts of $18,354,846 for Construction and $1,845,453 for Contingency; for a total project budget appropriated amount of $20,200,299. Funds to award the construction contract and a 10% Contingency totaling $11,563,261.44 will be allocated as follows:

Construction:

$323,325.00	South Pointe RDA Fund	379-2333-069357
$10,188,730.85	South Pointe Capital Fund	389-2333-069357
$10,512,055.85	**Total**	

Contingency:

$1,051,205.59	South Pointe Capital Fund	389-2333-000356

ANALYSIS

On April 11, 2006, the City Commission approved the Basis of Design Report (BODR), completed and submitted by Chen and Associates (Chen) for the South Pointe RDA Phase III IV and V Project. This BODR was the culmination of a comprehensive planning effort that included input from and reviews by residents, various City Departments, and the Design Review Board (DRB).

The Project limits in general are bounded by Washington Avenue, 5th Street, Ocean Drive, South Pointe Drive, Jefferson Avenue, Alton Road, and 1st Street. The Streets that will be improved include:

- Collins Avenue, between 5th Street and South Pointe Drive
- Collins Court, between 5th Street and South Pointe Drive
- Ocean Drive, between 5th Street and South Pointe Drive
- Ocean Court, between 5th Street and South Pointe Drive
- 4th Street, between Washington Avenue and Ocean Drive
- 2nd Street, between Washington Avenue and Ocean Drive
- 1st Street, between Washington Avenue and Ocean Drive
- South Pointe Drive
- Jefferson Avenue, between South Pointe Drive and 1st Street
- Alton Road south of 5th Street
- Biscayne Court
- Commerce Street
- Commerce Court

The South Pointe Phase III IV and V Project area is zoned primarily as Residential, Low, Medium and High Density (RPS-1, RPS-2, RPS-3, RPS-4); is bordered by Commercial Intensive Phased Bayside (C-PS-4), and some Government Use (GU) areas.

The Project Scope of Work includes improvements to the stormwater collection and disposal system, including construction of sixteen (16) gravity wells; water distribution system upgrades, roadway milling and resurfacing, streetscape enhancements such as additional landscaping, irrigation and up-lighting, traffic calming installations such as bulb outs and mid-block crosswalks, signage and pavement markings, additional pedestrian lighting, and enhanced pedestrian linkages.

On September 5, 2008, 100% Contract Documents, including an estimate of probable construction costs for the Project were submitted to City staff for review. The permitting process, which is now complete, includes the submission of permit applications to various agencies having jurisdiction, including the Miami-Dade County Department of Health (DOH), Miami-Dade County Water and Sewer Department (M-DWASD), Miami-Dade County Public Works Department -Traffic Engineering Division, Miami-Dade County Department of Environmental Resources Management (DERM), Florida Department of Environmental Protection (FDEP), the Florida Department of Transportation (FDOT), and the City's Public Works Department.

BID PROCESS

On February 2, 2009, Invitation to Bid (the "ITB") No. 17-08/09, was issued, and a Pre-Bid Conference was held on February 10, 2009. Four (4) Addenda were issued to provide additional information and to respond to all questions submitted by the prospective bidders, thus extending the bid opening due date from March 3, to March 13, 2009.

Bidsync and Bidnet issued bid notices to over 63 and 50 prospective bidders respectively. Additionally, the Procurement Division supplemented this listing and sent the bid notification to local contractors via e-mail; thus inviting 42 additional prospective bidders. The notices resulted in the receipt of seven (7) bids from the following companies:

- Central Florida Equipment Rentals, Inc.
- Horizon Contractors, Inc.
- Man Con, Inc.
- MCM, Inc.
- Ric-Man Construction, Inc.
- Ric-Man International, Inc.
- Unitech Builders Corp.

On March 26, 2009, the Technical Review Panel (TRP), as well as support staff from the City's Program Manager, Hazen and Sawyer, the Design Engineer of Record (EOR), Chen and Associates, convened to review, evaluate and rank the bids submitted for the Project. The TRP consisted of the following individuals:

- Fernando Vazquez, P.E., City Engineer
- John Oldenburg, Assistant Director of Parks
- Mario Gonzalez-Pola, Sr. Capital Projects Coordinator
- Carla Dixon, Capital Projects Coordinator
- Olivia Almagro-Johnson, Community Information Coordinator

All responsive bidders were asked to make available for an interview, their respective Project Manager, Site Superintendent and other key personnel. Man Con Inc. (the highest bidder) declined to participate in the interview process. Although Man Con, Inc. did not participate in the interview process, the TRP ranked them based on the available information. The TRP members were provided with Performance Evaluation Surveys received from clients of the seven (7) Contractors, regarding the past performance of the firm and of their proposed Project Manager to be assigned to the Project.

The TRP, City's Program Manager, and Chen and Associates (Chen), performed an extensive review of the materials submitted as part of the bid packages. In addition, the Performance Evaluation Surveys (PES) completed by the bidders' previous clients, as well as the Risk Assessment Plans and Value Added Submittals, were reviewed and evaluated. Each Contractor was interviewed by the TRP. A list of questions asked during the interviews is attached (Attachment B).

The TRP based its recommendation on the following factors:

1) Risk Assessment Plan (RAP)/Value Added Submittal (VAS). A Preliminary Project Schedule was attached to the RAP/ VAS. The description for the risks identified in the RAPs had no additional cost or time associated with them, but are risks that the contractor will try to minimize. The VAS identified opportunities to add value to the Project, as well as the corresponding cost and schedule impact **(15 points)**.

2) Past Performance - based on number and quality of the Performance Evaluation Surveys received **(5 points)**.

3) Presentation and Interview of key personnel **(20 points)**.

4) Cost Component - based on TOTAL LUMP SUM BASE BID AMOUNT plus Allowances, plus none, any or all Alternates which may be selected at the City's sole discretion and based on funding availability. **(60 points)**.

<u>The Grand Total Lump Sum Bid Amount includes the Lump Sum Base Bid, plus Allowances, and the following Add Alternates:</u>

- Add Alternate No. 1, to provide a construction staging area.

- Add Alternate No. 2, to provide Public Information/Liaison Services. The Contractor will procure the services of a Public Relations Firm to provide labor, supplies, and essential communications as may be required for the fulfillment of the intent of the public information/liaison phase of the Work. The goal of these services shall be to allow the Contractor to keep stakeholders (City representatives, property owners, and

residents) affected by the work scheduled to be performed, informed prior to, during, and after the Contractor's implementation of the infrastructure work. The Contractor will develop and implement an effective and successful public information/liaison program to ensure that, working in concert with City representatives, all required authorizations/releases are received from affected property owners and to follow-up with stakeholders on any required warranty work and/or complaint resolution that may result from the Work, until resolved by the Contractor.

- Additive Alternate No. 3, to provide the additional isolation valves at all crosses and tees.

The Bid informed all bidders that the project shall be substantially completed within six hundred and sixty (660) calendar days from the issuance of the second Notice to Proceed (NTP), and completed and ready for final payment within sixty (60) calendar days from the date certified by Consultant as the date of Substantial Completion.

The following table provides the bid tabulation results for all seven (7) bidders ("Attachment A" provides a comprehensive bid tabulation):

ITB 17-08/09 Bid Tabulation	
Company Name	**Grand Total Lump Sum**
Horizon Contractors, Inc.	*** $ 8,560,372.22**
Central Florida Equipment & Rentals, Inc.	**$ 10,512,055.85**
Ric-Man International, Inc.	**$ 11,151,947.74**
MCM	**$ 11,206,783.59**
Unitech Builders Corp.	**$ 12,036,053.08**
Ric-Man Construction, Inc.	**$ 14,555,870.71**
Man-Con, Inc.	**$ 15,984,027.40**

** Horizon, during its interview with the TRP, and in a subsequent letter to the Procurement Office, introduced a Change Proposal that they believed would be beneficial to the City which included removal of all existing asphalt pavement, repair any defective lime rock, reworking the entire existing lime rock base and paving 3-inches of asphalt (2-inches of S-I (Structural Asphalt) and 1-inch of SIII). The cost associated with Horizon's Change Proposal is $1,811,348.93. This amount would be in addition to their grand total lump sum for a grand total of $10,371,721.15. Horizon was informed during the interview process that the City could only consider or enter into discussions relative to value engineering with the successful bidder as approved by the City Commission. See attached letter dated April 6, 2009 (Attachment C).*

It was the consensus of the TRP that the successful bidder's proposal must have considered the challenges inherent to conducting heavy construction activities within a highly urbanized, commercial / residential district that also experiences high demands from tourism as well as special events. The panel was interested to learn about bidders' experience in similar size and scope projects.

Following review of the package and interview of the HCI team the panel determined that it could not rank HCI as the top-ranked, even though they submitted the lowest bid amount, for a number of reasons that included:

- HCI's introduction, during the interview, of a Change Proposal for an additional $1.8 million in project work scope that included the installation of 3" of asphalt. The Engineer of Record did not endorse this proposal. When HCI was asked if they had reviewed the roadway core sample reports that reflected asphalt thicknesses in excess of 3 inches, that were included as part of the ITB package, their project manager responded that he had not reviewed the data. The TRP also had a concern that HCI's may have "underbid" the project and this "Change Proposal" was an attempt to introduce an unnecessary increase in price to close the gap with the other amounts bid.

- A contract's "General Conditions" typically include mobilization, performance and payment bonds and insurance, survey and layout of site controls, management of traffic, and office staff and administrative expenses. HCI's amount for General Conditions within their bid price was approximately $536,000 to $1,705,000 below other bidders, or approximately 6% of their total price. As a point of reference, HCI's General Conditions for the Indian Creek Project was approximately 23%. This raises concerns as to whether HCI had adequately resourced the proposal with sufficient construction management and administrative resources to successfully manage a project of this nature, efficiently deal with construction issues and unforeseen conditions, and complete the project on time and within budget. The fact the HCI has assigned the same project manager to three additional concurrent projects serves to underscore the TRP's concerns that the project may be under-resourced and not receive the proper construction management to ensure its success.

- Their proposed project manager for this project is assigned to the Normandy Isle Neighborhood Project, currently under construction; and has also been assigned to the recently awarded South Point Phase II ROW Improvement and Indian Creek Water and Sewer Improvement Projects. It is critical that for a construction project of this nature, that there is a dedicated project manager in order to oversee the project progress on on-going basis and address unforeseen conditions in a timely and responsive manner as they arise.

In the case of Central Florida Equipment & Rentals Inc., which had the second lowest bid price, they received three third place overall rankings, and two fourth place overall rankings from the TRP. This compared to Ric-Man's three first place overall rankings and two second place overall rankings. Although Central Florida had the second lowest bid price, it was Ric-Man's overall strength in its submittal, risk assessment plan, and past performance surveys; their presentation and interview of key personnel; as well as it's demonstrated past performance in similar neighborhoods; that resulted in their higher overall ranking.

Based on the interviews (see Attachment B for interview questions), pertaining to the scope of work and adequate resources, it became apparent to the panel, that some of the bidders had neither contemplated in their bid price, nor satisfactorily addressed, the most critical aspects of the project scope of work and/or did not have the experience required to successfully execute a project in such highly dynamic, urbanized area. In considering the overall distribution of bid prices, the quality and adequacy of the interview responses; and relevant previous experience; the TRP recommended Ric-Man as the lowest and best bidder. Ric-Man's grand total lump sum bid is $ 11,151,947.74 which is the third lowest bid (Attachment A).

CITY MANAGER'S REVIEW

After considering the review and recommendation of City staff, the City Manager exercised his due diligence and recommends to the Mayor and City Commission the award of a contract to Central Florida Equipment Rentals, Inc., because in its review the City Manager could not find a significant difference between Ric-Man and Central Florida in their ability to perform the work; however, Central Florida Equipment Rental's bid is $639,891.89 lower than Ric-Man's bid.

It should be noted that the City's regular process of considering the price for projects and its standard process for bidding construction projects has resulted in a price that is reflective of the current market. At present, it appears that the market is very competitive and that the City will continue to receive bids that are lower than those received in the past year or so. The public procurement process, which is an open and competitive, transparent process, has again served the City to provide a competitive price for this project, as it has in the past, with a proposed project cost which is $8,637,037.56 lower than the budget.

Central Florida Equipment Rentals, Inc.
Central Florida Equipment was incorporated in 1977 and has been in business for 30 years. Central Florida Equipment holds the following licensing:

-State Florida Underground Utility Contractor: CU C041511
-Dade County Engineering Contractor # E – 308
-Dade County General Building
-Broward County Major Roads Contractor # 87-898
-State Florida Fire Protection Class V # 575528000195

Central Florida Equipment has experience in Plan Construction, Environmental Construction, Airport Construction, Pipeline and Utilities Construction, and Highway Construction. Projects that Central Florida and Equipment Rentals has completed within the past five years are Busway Extension South Phase II, Biscayne Boulevard from NE 37th to 67th Avenue, and Busway Extension North Phase I (see Attachment D for a List of Projects, Contracts in Progress and letter regarding projects completed within the past five years).

LOWEST AND BEST BID

Section 2-369 of the Miami Beach City Code states that the "City Commission shall award the contract to the lowest and best bidder. In determining the lowest and best bidder, **in addition to price,** there shall be considered the following:

a. The ability, capacity and skill of the bidder to perform the Contract.
b. Whether the bidder can perform the Contract within the time specified, without delay or interference.
c. The character, integrity, reputation, judgment, experience and efficiency of the bidder.
d. The quality of performance of previous contracts.
e. The previous and existing compliance by the bidder with laws and ordinances relating to the Contract.

The City Code recognizes the potential risks associated with the award of contracts based solely on low bid. The risks include:

- Winning bids may be unrealistically low, which can result in a sacrifice of quality through corner-cutting measures, or through the use of cheaper building materials, potentially increasing repair maintenance and replacement cost of components over time
- An increase of contractor change order submittals
- A more antagonistic relationship between the contractor and the owner

- When lowest price is the driving factor and no other information is considered, the contractors will install the cheapest easiest system requiring the lowest skill level
- Less incentive for the contractor to minimize the owner's risk
- On low bid, low margin projects, contractors often treat the project as a "filler project", by moving labor and equipment resources from other higher margin projects, instead of fully dedicating the resources to the low bid project
- Lack of understanding and subsequent compliance with contract mandated restrictions regarding impact to adjacent residents and businesses

The City's performance-based process requires responders to bids, proposals, or requests for qualifications, to provide not only the usual materials and the qualifications of the firm typically required in standard procurement, but to also provide a risk management plan, performance surveys from past clients, and additional past performance information on the specific project team and key members of the responder's proposed team such as the project manager, superintendent, and critical sub-contractors with experience on similar projects. The key members of the prospective responders' teams are extensively interviewed during the bid evaluation process.

As part of their submittal, responders are required to arrange for previous clients to forward, directly to the City, performance evaluation surveys that rate the firm and its project manager/superintendent on performance-specific areas such as:

- Ability to manage project cost (minimize change orders)
- Ability to maintain project schedule, and
- Performance in finalizing project punch list items and expediting project close-out.

In addition, responders are required to submit a Risk Assessment / Value-Added Plan (RAVA) that is also used as one of the key evaluation criteria during the selection process. The RAVA offers the firm the opportunity to demonstrate it's familiarity with all project aspects by their thoroughness in: identifying potential or actual project risks that they may not directly control; outlining how they would support the client in minimizing those risks; and their ability to identify opportunities where the contractor can add value to the project in terms of costs, time and quality. This method has provided the City with an opportunity to select high-performing contractors that, to date, are delivering projects on schedule and within budget.

CONCLUSION:

Based on the analysis of the bids received, the Administration is requesting approval to award a contract, pursuant to Invitation to Bid No.17-08/09, for the construction of the City of Miami Beach Right of Way Infrastructure Improvement Program, Neighborhood No. 12D/E/F, South Pointe Phase III, IV, and V, accepting the City Manager's recommendation relative to Central Florida Equipment Rentals, Inc., as the lowest and best bidder; authorizing the Administration to engage in value engineering to further reduce the cost and time for completion of said project; and further authorizing the Mayor and City Clerk to execute an agreement with Central Florida Equipment Rentals, Inc., at a not to exceed amount of $10,512,055.85, for the construction of the Project; with previously appropriated funding available from South Pointe RDA Fund 379 in the amount of $323,325, and from South Pointe Capital Fund 389, in the amount of $10,188,730.85 for Construction; and approving previously appropriated funding in the amount of $1,051,205.59 from South Pointe Capital Fund 389 for Project Contingency.

ATTACHMENTS

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"ATTACHMENT A"

BID TABULATION- ITB 17-08/09 SOUTH POINTE PHASE III, IV, V

Company Name	Total Lump Sum Base Bid (Includes Divisions 1, 2, 16 and allowances)	Alternate 1	Alternate 2	Alternate 3	Grand Total Lump Sum
1 HORIZON	**$8,338,672.22**	$20,000.00	$150,000.00	$51,700.00	**$8,560,372.22**
2 CENTRAL FLORIDA EQUIPMENT	**$10,369,055.85**	$75,000.00	$48,000.00	*$2,000.00 ** $20,000.00	**$10,512,055.85**
3 RIC-MAN INTERNATIONAL	*** $10,993,947.74 ** $10,933.947.74**	$114,000.00	$98,000.00	$6,000.00	**$11,151,947.74**
4 MCM	**$10,874,573.59**	$66,000.00	$264,190.00	$2,020.00	**$11,206,783.59**
5 UNITECH BUILDERS	**$11,856,553.08**	$93,000.00	$85,000.00	$1,500.00	*** $179,500.00 ** $12,036,053.08**
6 RIC-MAN CONSTRUCTION	**$13,547,953.71**	$213,120.00	$743,700.00	$51,097.00	**$14,555,870.71**
7 MAN-CON	**$15,597,627.40**	$110,000.00	$240,000.00	$36,400.00	**$15,984,027.40**

* Prices as submitted by bidder on Form 00408 Schedule of Prices Bid – Lump Sum Bid erroneously.
** Prices meant to be written on Form 00408 Schedule of Prices Bid – Lump Sum Bid. Grand Total Lump Sum accounts for these prices.

Central Florida Equipment: Bid form 00408 requested unit price ($2,000) Grand Total Lump Sum amount includes $20,000 for 10 units.

Ric-Man International: $10,993,947.74 is a typographical error, amount should read $10,933,947.74.

Unitech Builders: Grand total Lump Sum amount adds up alternates only. Grand Total Lump Sum including Total Lump Sum Base Bid is $12,036,053.08.

"ATTACHMENT B"

QUESTIONS ASKED DURING INTERVIEWS FOR ITB 17-08/09 SOUTH POINTE PHASE III, IV, V

Work Sequence

1 Specification Section 02200 3.04A and Addendum No. 1, Question No. 64 - States the maximum amount of open trench permitted in any one location shall be 300 feet, or the length necessary to accommodate the amount of pipe installed in a single day, whichever is greater. All trenches shall be fully backfilled at the end of each day or covered with plates. How will the Contractor accomplish this? Separate Crew?

2 Addendum No. 1, Revised Specification Section 01010 1.06 D - Requires that the project be completed in phased substantial completion which includes all work except last lift of asphalt. Phase I and Phase II shall commence concurrently and then there will be two separate work zones / crews - the water main crew until completion and the drainage / hardscape crew. Contractor must reach substantial completion on Phase II before proceeding to Phase III and on Phase III before proceeding to Phase IV.

Phase I - The work consists of all water main improvements within project boundaries. The Contractor shall commence the watermain work on Alton Road and then continue with the water main east of Washington Avenue. Phase I shall be substantially complete within 200 calendar days from the Notice to Proceed.

Phase II - The work consists of all remaining improvements on Alton Road, Commerce Street, Commerce Court and Biscayne Court. Work shall begin concurrently with Phase I. Phase II shall be substantially complete within 240 calendar days from the Notice to Proceed.

Phase III - The work consists of all improvements on Ocean Drive and Washington Avenue from 5th Street to 3rd Street (inclusive of 3rd Street). Phase III shall be substantially complete 310 calendar days after Phase II (within 550 calendar days from the Notice to Proceed).

Phase IV - The work consists of all improvements on Ocean Drive to Washington Avenue from south of 3rd Street to South Pointe Drive. Phase IV shall be substantially complete 110 calendar days after Phase III (within 660 calendar days from the Notice to Proceed).

Total Project duration is 720 Calendar days. Does the Contractor agree with the timeframe?

3 Specification Section 01010 1.06 B - What is the CONTRACTOR's plan for coordinating construction activities, tie-ins and with adjacent City projects - South Pointe Booster Pump Station & Force Main and South Pointe Phase II? What is the Contractor's proposed plan?

4 The hardscape drawings includes cross hatched areas which require coordination with the developers. The coordination and installation effort is included within the base bid. Has Contractor allowed this cost within his base bid?

Parking / Staging / Field Office

5 Bid Alternate No. 1 - The City is unable to provide a staging area for the Contractor. Where does the Contractor anticipate having his staging area?

6 Specification Section 01010 1.12 and 1.18 - Requires that no material may be stored in the public right-of-way without prior authorization by the City. It appears that only minimal storage will be allowed per the Specs. What is the Contractor's plan for material storage and equipment storage?

7 The South Pointe Phase III, IV & V project is a residential parking zone and metered parking area. Where does the Contractor anticipate using parking for their workers?

8 Specification Section 01590 - Specs requires a field office (RPR to have his office at Chen's office). Does the Contractor have a location in mind? What is the Contractor plan?

9 Contractor is to coordinate with CIP and the Parking Department to bag parking meters. How does the Contractor typically deal with this situation to minimize impact?

Project Controls

10 What provisions is the Contractor making to provide storefronts and businesses uninterrupted access for deliveries and pedestrian traffic purposes at all times?

11 Specification Section 01560 - Requires Temporary Controls to minimize impact to residents/businesses. What will the Contractor do to minimize impact? Watering? Street sweeping? How often? Anything else?

12 Does the Contractor plan to close any road? If yes, how will the Contractor provide access to residents' to their home?

13 How will the Contractor comply with the nightly restoration of the trench? Plating? Temp Asphalt? Etc?

14 Specification Section 01000 1.10 - Does Contractor understand that all below grade work must be reviewed before it is covered up by a qualified City representative? Any additional construction work in the weekends may require that the Contractor pay for the RPR's time?

15 How will the Contractor make sure that the installation of the wells does not impact existing structures due to the proximity to the street? Rotary Drill in lieu of Pile Driving?

16 The Contract Plans require that the new FPL Service Point connection include the costs for all equipment, material, and labor necessary for the hook up connection to the utility company.

Dewatering

17 Specification Section 02140 and Addendum No. 1, Question No. 18 - The City requires that all below grade improvements be installed in the dry. No additional payment for this item will considered.

18 How is the Contractor planning on maintaining existing stormwater system operations while under Construction to minimize the impact during a rain event?

Utilities

19 Specification Section 01530 1.05 D - Contractor's responsibility to coordinate identify and locate all utilities. (Ground Penetrating radar)

20 Alleyways are typically difficult to install due to the many utilities- Does the Contractor have alternate method for installing at the alleyways to minimize impact to existing utilities?

Unsuitable Material

21 Spec. Section 02222 3.01 - Unsuitable material removal and replacement is included in the base scope of the project. Also, where does the Contractor plan on storing the unsuitable material to dewater prior to disposal?

Public Information

22 Specification Section 01005 and Bid Alternate provides for the Public Information Officer. How does the Contractor plan to implement the PIO role? Door Hangers? Quarterly newsletters?

23 Specification Section 01010 1.06 D g - Contractor shall submit written request within 72 hours of all planned disruption to roadway, driveways and utilities. Also, the City's Fire Department, Police Department, and Post Office shall be notified with 14 days in advance of disruption. How will the Contractor accomplish this?

City Holidays, Special Events or Hurricanes

24 Specification Section 01545 - Storm preparedness is included in the base bid. Has the Contractor included cost for potential hurricane preparedness?

25 Spec Section 01010 1.06L - States that the 2010 Super Bowl festivities will be held in South Beach and there is a potential that the City requests that the Contractor leave for up to two weeks at no cost to the City. Did the Contractor include this cost within base bid?

26 The Holiday Season - What is the Contractor's Schedule during the Holidays? City expects that the Contractor will ramp down work and clean near holidays to minimize impact to the residents. Is this included within Contractor's bid?

ATTACHMENT C

HORIZON CONTRACTORS, INC.
8175 West 32nd Avenue, Suite #1, Hialeah, Florida 33018
Phone: (305) 828-2050 Fax: (305) 820-0905

Monday, April 06, 2009

Transmitted via Email: guslopez@miamibeachfl.gov

City of Miami Beach
Procurement Division
1700 Convention Center Drive
Miami Beach, FL 33139

Attn: Mr. Gus Lopez, CPPO
Procurement Director

Re: **Right of Way Infrastructure Improvements for Bid Package No. 12DEF: South Pointe Neighborhood - Phases III/IV/V - ITB # 17-08/09**
Value Engineering Change Proposal

Dear Mr. Lopez,

The above mentioned project plans and specifications have instructed all prospective contractors to price various scopes of work. All activities specified in the bid documents have been included in our submitted pricing.

At this time, Horizon Contractors, Inc. is respectfully submitting this Value Engineering Change Proposal for the aforementioned project.

The bid documents direct the prospective contractor to price out 2-inches of milling and resurfacing. In my professional opinion as a Professional Engineer and an Engineering Contractor, this is not in the best interest of the City of Miami Beach.

When changing profile grades within an existing street and not fully reconstructing the road, it is nearly impossible to quantify the amount of asphalt it will take in order to correct/level the road. Nevertheless, the prospective contractor in various locations throughout the project will end up milling into the existing base therefore compromising its integrity. In some areas the existing Limerock will need to be reworked to achieve proposed grades. In other areas an asphalt leveling course will be needed to achieve the same. Neither of these two activities is proposed by the Contract Documents. However, reworking the existing base and leveling the roadway with asphalt, are expensive activities and do not add any structural benefit, to the existing base because of the lack of uniformity of the asphalt (some areas will have more asphalt then others, increasing the potential of none homogeneous compaction throughout time).

On the other hand, after inspection of the asphalt to remain, I have observed rutting, cracking and pumping in the existing asphalt surface. These are typical signs that the existing asphalt pavement needs to be REPLACED rather than IMPROVED. Milling and resurfacing pavements that show these symptoms is a common error. Milling and resurfacing WILL NOT fix the problem. Since the defective asphalt will not be removed and replaced, in time, the rutting, cracking and pumping will reflect on the newly paved asphalt pavement.

Taking into consideration the facts above and the cores provided by the Engineer of Record showing an existing Lime Rock Base of between 8" – 12", **I proposed to Value Engineer the entire project changing the scope from Milling and Resurfacing 2" to Removal of all Existing Asphalt Pavement, Repair Any Defective Limerock, Reworking The Entire Existing Limerock Base and Paving 3-inches of Asphalt (2-inches of S-I (Structural Asphalt) & 1-inch of S-III). This design will actually improve the structural number of the existing pavement. This change will result in an increase to the contract of $1,811,348.93 resulting in a Total Lump Sum Base Bid Amount of $10,150,021.15 and a Grand Total Lump Sum Bid Amount of $10,371,721.15 and will not add any time to the completion of the project. Not only is this a superior pavement design but Horizon Contractors, Inc. will GAURANTEE NO CHANGE ORDERS, with respect to the roadway, as a result of the pavement design change.**

Please take notice that our proposed Grand Total Lump Sum Bid Amount, which proposes a much more costly pavement design and guarantees no change orders on the roadway portion of the project, is s $140,000 cheaper than the second place bidder and $780,000 cheaper than the bidder chosen by the committee.

I don't see why the City should not take advantage of the cost savings along with the benefit of a more structurally sound road.

If I may be of further assistance, please feel free to contact me.

Sincerely,
Horizon Contractors, Inc.

Joey Sanchez, P.E.
Vice President

ATTACHMENT D

ITB 17.08/09

EARTHWORK & ENGINEERING CONTRACTORS
A COMPLETE LINE OF EQUIPMENT RENTALS

9030 N.W. 97th Terrace, Medley, FL 33178
Tel: (305) 888-3344 Fax: (305) 888-9305

PROJECT EXPERIENCE - JOBS COMPLETED

Projects Completed - Year 2003			
PROJECT NAME	GENERAL CONTRACTOR:	CONTRACT AMOUNT:	OWNER OR ENGINEER:
Terra Beach C0670	GS2 Corp. 5996 SW 70 St Miami, FL 33143	$1,489,992.61	Terra Beachside Villas, LLC 5996 SW 70 St. Miami, FL 33143
MET 1 C0671	Bovis Lend Lease 80 SW 8th St., Ste 1800 Miami, FL 33130	$1,327,788.00	MDM Residences , LTD 9090 S. Dadeland Blvd., Ste 210 Miami, FL 33156
Asia C0675	N/A	$719,196.00	Swire Properties 501 Brickell Key Dr., Suite 600 Miami, FL 33131
Gables Marquis C0678	Coscan Construction, LLC 5555 Anglers, Ave., Suite 1A Ft.Lauderdale, FL 33312	$640,831.00	Gables Marquis, LLC 7284 W. Palmetto Park Rd., #106 Boca Raton, FL 33433
1060 Brickell C0683	Turner Construction Co. 1399 SW 1st Ave. Miami, FL 33130	$1,797,031.00	Imico Brickell, LLC 225 West 86 St. New York, NY 10024
Busway C0688	Central Florida Equipment Rentals 9030 NW 97th Terr. Medley, FL 33178	$36,593,271.00	Pistorino and Alam 29500 S. DIXIE HWY Homestead, FL 33030
900 Biscayne (Paving/Conc) C0693	Pavarini Construction Co 14750 NW 77th Ct. Suite 220 Miami Lakes, FL 33016	$155,315.00	900 Biscayne LLC 1200 Brickell Ave., Suite 1840 Miami, FL 33131
One Village Place C0701	Sikon Construction Corp. 7000 West Palmetto Park Rd., #203 Boca Raton, FL 33433	$1,035,664.00	Groves Properties Ltd 550 Biltmore Way, Suite 740 Coral Gables, FL 33134
St. Catherine's West C0708	Arellano Construction 7051 SW 12 ST. Miami, FL 33144	$323,318.93	Catholic Health Serv 4790 North State Rd. Lauderdale, FL 33319
NW Wellfield C0710	CFER	$12,337,219.66	MIAMI DADE WATER & SEWER 3575 So. Lejeune Rd. Miami, FL 33146
St. Catherine's Hospital C0716	Arellano Construction 7051 SW 12 ST. Miami, FL 33144	$726,025.00	Villa Maria Nursing & Rehab c/o Catholic Health Serv. 4790 N. State Rd 7 Lauderdale Lkes, FL 33319
Univ. Village Improv. C0720	N/A	$544,771.00	University of Miami Faciliteis Planning & Const 1535 Le Vante Ave., #205 Coral Gables, FL 33124-2820
SW 22 Terr. C0721	N/A	$35,000.00	Gables Marquis, LLC 7284 W. Palmetto Pk Rd. Suite 106 Boca Raton, FL 33433
Our Lady of Guadalupe C0722	Arrellano Construction 7051 SW 12 St. Miami, FL 33144	$1,035,073.00	Archdiocese of Miami 9401 Biscayne Blvd. 33138

Snapper Creek Marina C0724	CFER	$565,329.00	Snapper Creek Lakes Club 11190 Snapper Creek Rd. Miami, FL 33156
UM Watermain C0726	Arellano Construction 7051 SW 12 ST. Miami, FL 33144	$544,871.00	University of Miami 1535 Levante Ave., Ste 205 Coral Gables, FL 33146

Projects Completed - Year 2007

PROJECT NAME	GENERAL CONTRACTOR:	CONTRACT AMOUNT:	OWNER OR ENGINEER:
US Courthouse C0610	Dick Corp. 400 N. Miami Ave. Miami, FL 33128	$3,602,937.00	General Serv. Admin 75 Spring St. Suite 200 Atlanta, GA 30303
Performing Arts Center C0592	N/A	$2,710,556.00	Performing Arts 1300 Biscayne Blvd. Miami, FL
Fairfield at Dadeland C0624	N/A	$1,852,740.00	Fairfield at Dadeland 7350 SW 89 St., 1st Floor Miami, FL 33156
Metropolis @ Dadeland C0653	Turner Construction Co. 1399 SW 1st Ave. Miami, FL 33130	$564,185.00	Tgerra-ADI Int'l Dadeland, LLC 1200 Brickell Ave, Ste 1840 Miami, FL 33131
MIC Terminal C0659	Turner Construction Co. 1399 SW 1st Ave. Miami, FL 33130	$9,349,878.00	FDOT 1000 NW 111 Ave. Miami, FL 33172
OBR C0667	KVC 9499 NE 2 Ave Suite 205 Miami Shores, FL 33138 305-777-0757	$735,045.00	OBR Limited, LP 4833 Collins Ave. Miami Beach, FL 33140
Charles Garage C0668	KVC 9499 NE 2 Ave Suite 205 Miami Shores, FL 33138 305-777-0757	$855,192.00	FRU Management Inc. 4333 Collins Ave. Executive Office Miami Beach, FL 33140
Alaqua Cond. C0673	DH Griffin Construction 6434 North West 5th Way Fort Lauderdale, FL 33309	$537,557.00	GDC Avenel Bay, LLC 245 Saw Mill Rd, 2nd Floor Hawthorne, NY 10532
Riverfront C0679	N/A	$826,605.00	Neo Epoch 1, LTD 3375 SW 3 Ave. Miami, FL 33145
Il Lugano C0685	Suffolk Construction Co., Inc 515 North Flager Dr, 5th Floor West Palm Beach, FL 33401	$972,144.00	Il Lugano, LLC 3428 North Ocean Blvd. Fort Lauderdale, FL 33308
SR-5 C0686	Central Florida Equipment Rentals 9030 NW 97th Terr. Medley, FL 33178	$13,875,409.00	FDOT - District 6 1000 N.W. 111th Avenue Miami, FL 33172 305-470-5367
Peninsula II C0691	Gryphon Construction 2200 NE 143rd St., Suite 200 North Miami, FL 33181	$961,418.48	Aventura Land Holding 321 E. Hillsboro Blvd. Deerfield, FL 33441
RREEF Distribution Center C0696	Butters Construction 1096 East Newport Center, Ste 100 Deefield Beach, FL 33442	$2,949,701.80	CLP Industrial Properties 875 N. Michigan Ave., 41st Floor Chicago, IL 60611
Miami Dade Parks C0703	Central Florida Equipment Rentals 9030 NW 97th Terr Medley, FL 33178	$824,402.70	Miami Dade Parks & Recreation 11395SW 79 St. Miami, FL 33173

163rd Street Wharf C0715	Fortune Development & Const 17070 Collins Ave. Suite 250 Sunny Isles Beach, FL 33160	$191,251.00	City of Sunny Isles 18070 Collins Ave. Suite 250 Sunny Isles Beach, FL 33160
ORCA Fire Hydrants 2 C0718	Ocean Reef Club 31 Ocean Drive Suite C300 Key Largo, FL 33037 305 367-5837	$87,415.00	Ocean Reef Club 31 Ocean Drive Suite C300 Key Largo, FL 33037 305 367-5837
Performing Arts Ctr C0719	Performing Arts Center 240 NE 13th St. Miami, FL 33132	$38,500.00	Miami Dade County Board 111 NW 1st St., Suite 320 Miami, FL 33128

Projects Completed - Year 2016

PROJECT NAME	GENERAL CONTRACTOR:	CONTRACT AMOUNT:	OWNER OR ENGINEER:
POM Project 16 C0648	The Haskell Co 920 North America Way Miami, FL 33132	$4,024,587.00	Port Of Miami 1007 N America Way, #301 Miami, FL 33132
POM Termiani D&E C649	CG Chase Construction Co. 900 Port Blvd. Miami, FL 33132	$514,258.00	City of Miami Dept of Public Works 444 SW 2nd Ave. Miami, FL 33130
Project #17 C0657	The Haskell Co 920 North America Way Miami, FL 33132	$738,885.00	Port Of Miami 1007 N America Way, #301 Miami, FL 33132
POM Proj #26 C0662	The Haskell Co 920 North America Way Miami, FL 33132	$55,732.00	Port Of Miami 1007 N America Way, #301 Miami, FL 33132
POM Wharf 67 C0665	Belfour Beatty Construction 6100 Blue Lagoon Dr., Suite 180 Miami, FL 33126	$4,381,022.11	Miami Dade County 1015 North America Way Miami, FL 33132
Carrillon II C0669	Bovis Lend Lease 80 SW 8 St., Suite 120 Miami, FL 33130	$247,565.00	Carillon South 400 Arthur Godfrey Rd., Suite 200 Miami Beach, FL 33140
Opera Tower C0677	Beauchamp Construction Co. 247 Minorca Ave. Coral Gables, Fl 33134	$326,101.00	Opera Towers, LLC 100 South Biscayne Blvd, Suite 1100 Miami, FL 33131
FIU Law School C0682	Turner Construction Co. 1399 SW 1st Ave. Miami, FL 33130	$1,257,439.00	FIU University Park Miami, FL 33199
Municipal Parking Garage C0689	KVC 9499 NE 2 Ave Suite 205 Miami Shores, FL 33138 305-777-0757	$240,117.91	Goodwill Ind. Of So. FL 2121 NW 21 St. Miami, FL 33142
Young Circle C0690	James B. Pirtle 4740 DAVIE ROAD Davie, FL 33314	$407,591.29	City of Hollywood 2600 Hollywood Blvd. Hollywood, FL 33020
Gold Coast C0694	Butters Construction 6820 LYONS TECHNOLOGY CIRCLE Suite 100 Coconut Creek, FL 954 312-2409	$828,623.00	Butters Real Estate 4811 Lyons Technology Parkway Suite 6 Coconut Creek, FL 33073
US 1 BINGO C0695	CFER	$35,626.00	GameWorld 2124 Hilton Dr. Gainsville, FL 30501
Infinity @ Brickell C0699	Colonial Development 515 E LAS OLAS BLVD. SUITE 1050 FT.LAUDERDALE, FL 33301 954 524-0607	$75,800.00	Infinity @ Brickell, LLC 515 East Las Olas Blvd, Suite 1050 Ft.Lauderdale, FL 33301

So. Miami Dade Storm Water C0700	Miami Dade County Board of County Commissioners 111 NW 1st Street, Suite 1510 Miami, FL 33128	$2,954,282.35	Miami Dade County Board of County Commissioners 111 NW 1st Street, Suite 1510 Miami, FL 33128
ORCA C0705	CFER	$71,952.00	OCEAN REEF COMMUNITY
Young Woman's Acad C0706	KVC 9499 NE 2 Ave Suite 205 Miami Shores, FL 33138 305-777-0757	$441,392.59	1150 Assoc. Ltd 1836 West 23 St. Miami Beach, FL 33140
St. Catherine C0707	Arrellano Construction 7051 SW 12 ST. Miami,Fl 33144	$323,318.93	Carillon So. Joint Venture, LLC c/o WSG Dev. Co. 400 Arthur Godfrey Rd, Suite 200 Miami Beach, FL 33140

Projects Completed - Year 2006

PROJECT NAME	GENERAL CONTRACTOR:	CONTRACT AMOUNT:	OWNER OR ENGINEER:
Busway North C0623	Miami Dade County Board of County Commissioners 111 NW 1st Street, Suite 1510 Miami, FL 33128 Maria Cerna 305-375-4583	$19,492,582.14	Miami Dade County Board of County Commissioners 111 NW 1st Street Miami, FL 33128 305-375-1293
Graybar Electric C0656	Ryan Companies US, Inc 50 South Tenth Str., Suite 300 Minneapolis, MN 55403 612-492-4000 Anthony Johnson	$435,037.39	Graybar Electric 34 N. Meramec Ave. St.Louis, MO 63105
Capri Resorts C0661	Centex Rooney Constr 7901 SW 6 Ct. Plantation, FL 33324 954.585.4260	$124,300.00	Capri Resorts 550 South Federal Highway Fort.Lauderdale, FL 33301
Homeastead Speedway C0663	NATC 1801 W Internation Speedway Building 1A Daytona Beach, FL 32114 386-947-6723	$5,089,431.45	Homestead Miami Motor Sports 1 Speedway Blvd. Homestead, FL 33035 305-230-5225
Il Lugano C0664	Harrison Beauchamp Const. 247 Minorca Ave. Coral Gables, FL 33134	$393,525.50	Il Lugano, LLC 3428 North Ocean Blvd. Ft.Lauderdale. FL 33308
Uptown Lofts C0666	KVC Constructors 9499 NE 2 Ave Suite 205 Miami Shores, FL 33138 305-777-0757	$278,636.92	Uptown Lofts, LLC 1789 SW 3 Ave Miami, FL 33134
FIU C0672	Turner Construction Co. 1399 SW 1st Ave. Miami, FL 33130	$316,598.00	FIU University Park Miami, FL 33199
Carillon II C0680	Bovis Lend Lease 80 SW 8 St., Suite 120 Miami, FL 33130	$248,500.00	Carillon South 400 Arthur Godfrey Rd., Suite 200 Miami Beach, FL 33140
900 Biscayne Blvd C0684	900 Biscayne LLC 1200 Brickell Ave., Suite 1840 Miami, FL 33131	$30,372.00	Pavarini Construction Co 14750 NE 77 Ct. Suite 220 Miami Lakes, FL 33016 786-777-0059 Maria Nevares
Metro Zoo Bird Holding C0687	Florida Lemark 11402 NW 41 St., Ste 218 Doral, FL 33178	$12,250.00	Zoogical Society of FL 12400 SW 152 St. Miami, FL 33177

CENTRAL FLORIDA EQUIPMENT RENTALS, INC.
CONTRACTS IN PROGRESS
2/9/2009

JOB No.		Owner	Phone	Current Contract $	Original Contract $	Completion Date	% Complete
704	Infinity	Infinity at Brickell, LLC	305.769.3777	$ 1,381,048	$ 868,460		94%
711	MIA Tract One	Miami Dade Aviation	305.876.7922	$ 17,512,490	$ 17,512,490	01/31/09	57%
712	Jade Ocean	Fortune Ocean, LLP	305.531.1000	$ 1,535,927	$ 1,470,000	01/31/09	92%
713	W Hotel	2201 Collins, LLC	786.871.2152	$ 2,746,828	$ 2,390,000	04/30/09	81%
729	Harding Ave.	FDOT	305.299.2422	$ 2,697,736	$ 2,697,736	06/30/09	31%
731	Imperial Point	North Broward Hospital	305.994.9901	$ 994,581	$ 985,000	03/31/09	63%
732	South Dade Child	Spec Ops	954.474.0775	$ 108,063	$ 102,030	03/31/09	54%
733	Ft. Lauderdale Airport	Broward County Aviation	954.359.6100	$ 25,406,106	$ 25,406,106	12/31/09	9%
734	S805 SDWWTP	Miami Dade Water and Sewer	305.325.1930	$ 5,542,948	$ 5,542,948	05/30/09	46%
736	FIU W1 Bldg	Florida International University	305.348.2161	$ 219,825	$ 219,825	04/30/09	31%
737	MCH Parking	Miami Children's Hospital	305.666.6511	$ 172,732	$ 171,125	04/30/09	0%
739	Baker Concrete	Baker Concrete		$ 304,760	$ 304,760	06/30/09	0%
740	Lenox Improv.	City of Miami Beach	305.673.7000	$ 837,860	$ 837,860	06/30/09	0%
741	Imperial Point Emerg	North Broward Hospital	305.994.9901	$ 859,400	$ 859,400	05/30/09	9%
742	5th & Alton	AR & J Sobe		$ 630,000	$ 630,000	05/30/09	0%
743	Publix	Pirtle Constr	954.343.5938	$ 940,000	$ 940,000	12/31/09	0%
				$ 56,937,236	$ 56,497,260		

Central Florida Equipment Rentals Inc.

EARTHWORK AND ENGINEERING CONTRACTORS
A COMPLETE LINE OF EQUIPMENT RENTALS

March 19, 2009

City of Miami Beach
Procurement Division
1700 Convention Center Drive
Miami, Fl. 33139

Fax 786-394-4003
Pages (2)

Attention: Gus Lopez, CPPO

RE: **(ITB) NO. 17-08/09 ROW INSFRASTRUCTURE IMPROVEMENTS FOR BID PACKAGE 12DEF SOUTH POINTE NEIGHBORHOOD PHASES III/IV/V**

Dear Mr. Lopez,

In response to your letter dated March 19, 2009, below please find the additional information you requested.

Projects completed within the past 5 years:

Busway Extension South Phase II at Florida City, contract amount $36 million, completed in 2008; scope included both new construction and reconstruction of existing traffic lanes including storm drainage, water and sewer main replacement, bus shelters, concrete work, landscape, signalization and lighting work Owner Miami-Dade County

SR5 Biscayne Blvd. from NE 37th to 67th avenue, contract amount $14 million, completed in 2007; scope included reconstruction and widening of Biscayne Blvd; storm drainage and wells, water and sewer main and lateral replacement, concrete work, landscape, signalization and lighting work Owner Florida Department of Transportation.

Busway Extension North Phase I at Florida City, contract amount $19.5 million, completed in 2005; scope included both new construction and reconstruction of existing traffic lanes including storm drainage, water and sewer main replacement, bus shelters, concrete work, landscape, signalization and lighting work Owner: Miami-Dade County

CFE is currently finishing Harding Avenue, contract amount $2.7 million, completion in June 2009; scope includes installation of storm drainage piping, wells and pumps; concrete work and landscape and street reconstruction. Owner: Florida Department of Transportation and City of Surfside.

9030 N.W. 97 Terrace • Medley, Florida 33178 • Telephone: (305) 888-3344 • Fax: (305) 887-7804

Central Florida Equipment Rentals Inc.

Central Florida Equipment currently has a $118 million FDOT bidding capacity, holds an underground and excavation license since 1988. Segments of our company brochure attached for your perusal.

Please call me if you need additional information.

Sincerely,

Ernest J. Duffoo, P.E.
Project Manager

cc: File: B 8245
BB (CFE)

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MIAMIBEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: **MAYOR MATTI HERRERA BOWER**
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JORGE M. GONZALEZ

SECOND READING

FROM: **CITY ATTORNEY JOSE SMITH**

DATE: **April 22, 2009**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SECTION 2-22, ENTITLED "GENERAL REQUIREMENTS," OF DIVISION I, ENTITLED "GENERALLY," OF ARTICLE III, ENTITLED "AGENCIES, BOARDS AND COMMITTEES," OF CHAPTER 2 ENTITLED "ADMINISTRATION," OF THE MIAMI BEACH CITY CODE TO REQUIRE AN ANNUAL REPORTING TO THE CITY COMMISSION WITH REGARD TO CITY AGENCY, BOARD, AND COMMITTEE APPOINTMENTS AND CITY WORKFORCE DIVERSITY STATISTICS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

Pursuant to the request of Commissioner Victor M. Diaz, Jr., the attached Ordinance is submitted for consideration by the Mayor and City Commission for Second Reading.

F:\atto\TURN\COMMMEMO\Amending Sec 2-22 General Requirements.doc

Agenda Item R5A
Date 4-22-09

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SECTION 2-22, ENTITLED "GENERAL REQUIREMENTS," OF DIVISION I, ENTITLED "GENERALLY," OF ARTICLE III, ENTITLED "AGENCIES, BOARDS AND COMMITTEES," OF CHAPTER 2 ENTITLED "ADMINISTRATION," OF THE MIAMI BEACH CITY CODE TO REQUIRE AN ANNUAL REPORTING TO THE CITY COMMISSION WITH REGARD TO CITY AGENCY, BOARD, AND COMMITTEE APPOINTMENTS AND CITY WORKFORCE DIVERSITY STATISTICS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, "diversity" refers to the existence of many unique individuals in the community that may include people of differing genders, cultures, ethnic groups, backgrounds, sexual orientations, gender identities, national origins, and other characteristics that make them who they are; and

WHEREAS, cities are ideally structured to address issues associated with inclusion of people of diverse backgrounds, such as increasing the participation of people of diverse backgrounds on citizen boards and commissions, increasing access to public services and employment, and constructing democratic, efficient, and equitable governance structures; and

WHEREAS, people of diverse backgrounds have historically faced barriers to full participation in the democratic process and in the opportunities for employment and public services offered by cities; and

WHEREAS, in order to chart the progress of the City in fostering and promoting more democratic governance structures which reflect the diversity of the community, the City of Miami Beach wishes to monitor, on an annual basis, the progress of the City in affording opportunities for people of diverse backgrounds to participate on its agencies, boards, and committees.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1.

That Section 2-22, entitled "General requirements," of Division 1, entitled "Generally," of Article III, entitled "Agencies, Boards and Committees," of the Miami Beach City Code is hereby amended as follows:

CHAPTER 2

ADMINISTRATION

* * *

ARTICLE III. Agencies, Boards and Committees

DIVISION 1. Generally

* * *

Sec. 2-22. General requirements.

Except as otherwise specifically provided:

* * *

(19) The city manager, or the city clerk, shall annually prepare and present a report to the city commission tracking and identifying the city's diversity statistics. The report shall include the city's diversity statistics relating to individual commissioner agency, board, and committee appointments, city commission agency, board, and committee appointments, and city workforce diversity statistics.

SECTION 2. Repealer.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. Severability.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. Codification.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. **Effective Date.**

This Ordinance shall take effect the _____ day of _____, 2009.

PASSED and **ADOPTED** this _____ day of _____, 2009.

ATTEST:

_____
Matti Herrera Bower
Mayor

_____
Robert Parcher
City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 1/22/09
Date

Underline denotes additions

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CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

MIAMIBEACH

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, April 22, 2009,** to consider the following:

10:15 a.m.

An Ordinance Amending Section 2-22, Entitled "General Requirements," Of Division I, Entitled "Generally," Of Article III, Entitled "Agencies, Boards And Committees," Of Chapter 2 Entitled "Administration," Of The Miami Beach City Code To Require An Annual Reporting To The City Commission With Regard To City Agency, Board, And Committee Appointments And City Workforce Diversity Statistics.

Inquiries may be directed to the City Attorney's Office at (305) 673- 7470.

10:20 a.m.

An Ordinance Amending The City Code Of The City Of Miami Beach, By Creating New Chapter 100, Entitled "Sustainability," By Creating New Article I, "Green Building Ordinance," Establishing Definitions, Standards, Procedures And Incentives Providing For Property Owner Voluntary Participation, And City Mandatory Participation, In The LEED Certification Program As Established By The U.S. Green Building Council Or Other Recognized Rating System, For New Construction Or Substantial Renovations As Provided In The Ordinance, Providing For A Bond To Guarantee Participation In The Program If A Property Owner Receives Incentives, And Procedures For Use Of The Bond For Failure To So Participate.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

11:10 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2 Entitled "Officers, Employees And Agency Members," Section 2-459 Entitled "Certain Appearances Prohibited," By Amending Subsection (B) Thereof Establishing This Code Section's Exclusion For Lobbyists Who Represent Non-Profit Entities Without Special Compensation By Narrowing This Exclusion To Only Certain Representatives Of Non-Profit Entities.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

11:20 a.m.

An Ordinance Relating To The Jurisdiction Of The Special Master; Amending Chapter 30, "Code Enforcement," Article III, "Enforcement Procedure," Section 30-73, "Powers Of The Special Master," By Clarifying That The Special Master Lacks Jurisdiction Over Appeals From Or Challenges To Interpretations Or Actions Of The Building Official, Planning Director And Fire Marshal, Or Claims That An Act Of The City Is Unconstitutional, Which Are By Applicable Law Vested In Other Authorities.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

11:30 a.m.

An Ordinance Amending Chapter 70 Of The Miami Beach City Code Entitled "Miscellaneous Offenses"; By Amending Article III Entitled "Graffiti"; By Amending Division I, Entitled "Generally"; By Amending Section 70-121 Entitled "Reserved" To Provide Provisions Declaring Graffiti A Nuisance; By Amending Section 70-122 Entitled "Definitions" To Provide Additional And Amended Definitions Relative To Graffiti; By Amending Section 70-123 Entitled "Prohibitions" By Amending The Acts Prohibited And Amending Enforcement And Penalty Provisions; By Amending Section 70-124 Entitled "Possession Of Spray Paint And Markers" By Amending Enforcement And Penalty Provisions; By Amending And Renumbering Section 70-125 Entitled "Graffiti Declared A Nuisance" By Moving Said Section To Section 70-121; By Amending And Renumbering Section 70-126 Entitled "Responsibility Of Property Owner(s); Graffiti Removal And Notice" By Amending The Responsibilities Of Property Owners With Regard To The Removal Of Graffiti And Amending Enforcement Provisions; By Amending And Renumbering Section 70-127 Entitled "Appeal" By Providing For Penalty And Lien Provisions; By Amending And Renumbering Section 70-128 Entitled "Cost Of Graffiti Removal As Lien On Property, Collection; Foreclosure And Sale" By Amending City Lien Procedures; By Renumbering Section 70-129 Entitled "Interested Persons May Petition To Dispute Assessed Costs"; By Renumbering Sections 70-130 Through 70-145, Entitled "Reserved;" By Amending Division II Entitled "Spray Paint, Broad-Tipped Indelible Markers" By Amending Section 70-146, Entitled "Sale Prohibited," And Section 70-147, Entitled "Signs Required," By Adding Etching Acid To The Items Prohibited For Sale To Minors And Signage Requirements; By Amending Section 70-148, Entitled "Penalties; Procedures For Administration," By Amending The Enforcement And Penalty Provisions.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

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

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

Ad #530

Condensed Title:

An Ordinance establishing definitions, standards, procedures and incentives providing for property owner voluntary participation, and City mandatory participation, in the LEED Certification Program as established by the U.S. Green Building Council.

Key Intended Outcome Supported:

Enhance the Environmental Sustainability of the Community.

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

Issue:

Shall the Mayor and City Commission approve the Ordinance?

Item Summary/Recommendation:

SECOND READING/PUBLIC HEARING

The attached Ordinance proposes a Leadership in Energy and Environment Design (LEED) system for buildings in the City of Miami Beach. LEED is a building rating system which recognizes and encourages sustainable/green building and development practices. The LEED rating and certification system is intended to enhance energy conservation, encourage reuse and use of recycled materials and encourage operating practices that are environmentally friendly.

The LEED building rating system was developed by the United States Green Building Council (USGBC) in 1998.

The Ordinance would establish a voluntary LEED Building Rating System for private development.

The Ordinance language mirrors an existing requirement in Section 255.2575, Florida Statutes (2008) for City buildings that all new municipal buildings for which design began after July 1, 2008 be LEED certified.

The Ordinance provides for incentives both in terms of the time associated with processing an application for green buildings in the City's permitting review and approval process, and also potentially financial incentives.

The LEED certification process for construction is a recognized and objective tool to assess a project's compliance with established enhanced environmental practices. Buildings that are LEED certified are ultimately more friendly to the environment and in the long-term will benefit the overall environmental health of the community through energy waste, and water consumption reduction. As there is typically a reduction in operating expenses associated with LEED certified buildings, the investment in a building to have an achieved LEED certification is also recovered. Through the provision of both time and possibly monetary incentives, the recommended model for the City of a voluntary program is a good starting point for City engagement in environmentally enhanced buildings.

Advisory Board Recommendation:

N/A

Financial Information:

OBPI	Total		

Fiscal Impact: Limited to the appropriation, if any, in a fiscal year per the City Commission approval in the budget process.

City Clerk's Office Legislative Tracking:

Robert C. Middaugh, Assistant City Manager

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

AGENDA ITEM R5B
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

SECOND READING PUBLIC HEARING

DATE: April 22, 2009

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE CITY CODE OF THE CITY OF MIAMI BEACH, BY CREATING NEW CHAPTER 100, ENTITLED "SUSTAINABILITY," BY CREATING NEW ARTICLE I, "GREEN BUILDING ORDINANCE," ESTABLISHING DEFINITIONS, STANDARDS, PROCEDURES AND INCENTIVES PROVIDING FOR PROPERTY OWNER VOLUNTARY PARTICIPATION, AND CITY MANDATORY PARTICIPATION, IN THE LEED CERTIFICATION PROGRAM AS ESTABLISHED BY THE U.S. GREEN BUILDING COUNCIL OR OTHER RECOGNIZED RATING SYSTEM, FOR NEW CONSTRUCTION OR SUBSTANTIAL RENOVATIONS AS PROVIDED IN THE ORDINANCE, PROVIDING FOR A BOND TO GUARANTEE PARTICIPATION IN THE PROGRAM IF A PROPERTY OWNER RECEIVES INCENTIVES, AND PROCEDURES FOR USE OF THE BOND FOR FAILURE TO SO PARTICIPATE; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Approve the Ordinance.

BACKGROUND

The attached Ordinance proposes adopting a Leadership in Energy and Environment Design (LEED) system for buildings in the City of Miami Beach. LEED is a building rating system which recognizes and encourages sustainable/green building development, construction and management practices. The LEED rating and certification system is intended to enhance energy conservation, encourage use of recycled materials and encourage operating practices that are environmentally friendly.

The LEED building rating system was developed by the United States Green Building Council (USGBC) in 1998 and has systematically evolved and improved to an internationally recognized standard to encourage and assess the actual performance of green building development.

The USGBC is a national organization of volunteers founded to represent the building industry on environmental building matters. Information about the USGBC is found in Exhibit 1.

In order to participate in the LEED Building Rating System, a building owner must make an application to the USGBC for participation. The applicant pays a registration and review fee of approximately $3,000.00 to the USGBC for the assessment of the building project and the certification completed at the end of the project. The LEED Building Rating System is organized around six different areas for which a building can achieve points toward a certification. LEED certification comes in basic certification, silver, gold and platinum levels.

The six project areas are found in the project checklist, Exhibit 2. This exhibit depicts the points associated with the rating areas of: sustainable site, water efficiency, energy and the atmosphere, material and resources, indoor environmental quality, and innovation and design processes. In the ranking process, a total of 69 points is the maximum that can be achieved and the minimum to achieve the silver level is 33 points.

Each project is reviewed by the USGBC to determine which of the credits or project points are appropriate and achievable for the specific building. These agreed upon credit and point areas are then pursued by the builder/developer in the design, construction and management phases. At the conclusion of the building process and the actual commencement of operation of the building, the building is reassessed by the USGBC (or a certified reviewer on its behalf) to determine if the points and credit areas have actually been accomplished.

As the project checklist indicates, there are a number of different possible credits within the general rating areas of the LEED certification. For example: in the area of sustainable sites there are fourteen (14) possible points that can be achieved by a building/development. Generally, each specific credit area within the more general rating area provides a builder/developer several different methods to achieve the credit and earn the appropriate point. Exhibit 3 indicates one (1) typical credit area, storm water design, that illustrates two (2) different options for a building/developer to achieve the credit associated within this specific area. The credit criteria are very specific as to how the credit is calculated and the nature of the documentation that is required in order for the builder/developer to achieve compliance for this particular credit.

Achieving compliance with LEED standards typically costs a builder/developer more than ordinary design and construction. While there is no precise measurement, industry estimates are that 5% to 7% in additional costs may be experienced in making a building LEED certified. By the same token, buildings that are LEED certified typically consume less energy and therefore over time are less expensive to operate than conventional construction.

LEED Ordinance Overview

The attached Ordinance would establish a voluntary LEED Building Rating System for private development. While mandatory LEED participation was discussed by the Land Use and Development Committee, it was determined that the initial effort of the City would be more positive and less complicated if a voluntary participation based system was implemented.

As the system is voluntary there is no minimum building size for which the LEED program would be made available. Any building project, residential or commercial, substantial renovation or new construction would be eligible to participate in the LEED certification process. The voluntary approach is more expansive and more inclusive of a range of

buildings in the City than a mandatory program would allow. In a mandatory participation approach typically single family residences and smaller projects are excluded because of the costs of compliance and/or participation. In the voluntary model each building/developer can determine if they wish to participate as their specific project allows.

The Ordinance language mirrors an existing requirement in Section 255.2575, Florida Statutes (2008) for City buildings that all new municipal buildings for which design began after July 1, 2008 be LEED certified. LEED certification for substantial renovations of municipal buildings is not required by statute and thus not part of the Ordinance.

A modification made by the City Commission at 1st Reading was to change the level of LEED certification from the lowest certified level, to the second or silver certification level.

The key to the City's LEED Ordinance and its success on a voluntary basis is found in the different incentives that are built into the Ordinance. The Ordinance provides for incentives both in terms of the time associated with processing an application for green buildings in the City's permitting review and approval process, and also potentially financial incentives. Each of these two incentive areas will be addressed separately.

LEED Time Incentives

The LEED Ordinance anticipates that individuals who elect to participate in the program will be eligible to have prioritized review in the Building development permitting process. This was a change made by the City Commission at 1st Reading of the LEED Ordinance. The original Ordinance created a priority review through the entire Land Use Board approval process. By providing this prioritization during the review process, any particular project may save weeks in processing time as opposed to traditional processing in the queue with other projects and developments.

In order to ensure that this time incentive is not abused, the Ordinance also requires that in order to receive incentives each building/developer post a bond. The bond is intended to ensure that a project does not take advantage of the time incentive or the financial incentive, if appropriate, and then fail to achieve the LEED certification at the end of the process.

The Land Use and Development Committee discussed at some length the appropriate level of bond amount in order to assure that the incentives offered are not abused. Initial drafts of the Ordinance contained a percentage of construction (3% for example). At the 1st Reading, the City Commission agreed that a 1% of construction cost bond would be appropriate, which is reflected now in the Ordinance.

LEED Financial Incentives

The attached Ordinance also makes provisions for a financial incentive associated with achieving the LEED certification. A variety of different options were discussed by the Land Use and Development Committee and the Administration. No consensus was achieved by the Land Use and Development Committee and the Administration was asked to propose a model which could be discussed at the full Commission level.

Original discussions revolved around either providing a rebate of some percent of the building permit fees and/or creating a fund through a surcharge mechanism from which a financial incentive could be provided to a builder/developer. In the Administration's assessment of the use of building fees, it has been deemed that a rebate of those fees is not allowed to achieve an incentive as anticipated in the LEED program. Building fees are specifically earmarked to provide payment to the City for services directly related to the building inspection and review process. LEED, while a worthy and desirable community goal, is not an eligible subject matter for use of building permit fees as it would require one project to subsidize another project.

The idea of imposing a surcharge fee on the building process was also discarded by the Administration as unfeasible, as it would be difficult to document the basis for the fee. The economic disincentive associated with a surcharge was not seen as desirable, particularly in these economic conditions.

The Ordinance proposes a model which is intended to specifically limit the City's exposure for annual expenditures in achieving the goals associated with the LEED Ordinance. The City Commission, by annual resolution in the budget process, would appropriate a precise amount of funds that would be allocated and available for financial incentives for projects that achieve a LEED Certification. As such, the specific financial impact of the Ordinance is established and known by the City Commission in each budget cycle. As the level of annual expenditure is proposed to be reviewed and assessed in the budget cycle, the City Commission also has the opportunity of comparing the priority of a LEED incentive expenditure with other priorities which will be contained in the annual budget.

The financial incentives shown in the ordinance are intended to help offset the cost of application and review for LEED certification and a percentage of added costs incurred in building to LEED standards.

Application and review costs for LEED certification are approximately $3,000 per project. This is inclusive of the registration design and construction review costs that are charged by the USBGC.

Projects that pursue LEED certification typically incur an increase in construction costs of 5-7%. In order to help offset some of this incremental cost increase, a grant of up to 5% of the added cost is suggested. For a project costing $3.5 million, the cost of LEED certification may be approximately $200,000. With the financial incentive of 5%, the project would be eligible to receive $10,000 as a cost offset. When added to the application and review incentive, the project ($3.5 million construction cost example) would be eligible to receive $13,000.

It is also suggested that a maximum incentive of 20% of the total annual appropriation be established for any one project. This limit would ensure that no one project would consume the resources available in a given year.

It is important to note that in the event the City Commission does not choose to allocate the monetary resources in a fiscal year, the LEED certification and incentive process can still function solely on the basis of the time incentive that is provided within the Ordinance. While the financial incentive is also helpful, as indicated earlier, for buildings that do become LEED certified, over the long term operational expenses are typically less than normal buildings and the investment costs associated with accomplishing a LEED certification will be earned back over time.

In this and perhaps several fiscal years, it may be unrealistic to expect to be able to allocate funds to the LEED program financial incentives. As energy and environmental related grant funds become available in the future, that may be the best or a more likely source of funds for the program. The current economic stimulus package anticipates some funding for energy conservation and green related projects. While the initial round of funding is intended to be used quickly, subsequent funding rounds may be available for the City to secure funds for the financial component of the LEED incentives.

Other Implementation Issues

The Administration has reviewed the implementation of this Ordinance, and believes that there are only incremental costs associated with implementation. The building development

review process functions largely the same in a LEED eligible project in terms of the amount of time or attention that is paid to the project by the Administrative staff. The amount of design and plan review and building inspection remains relatively unchanged for a LEED project.

One item, which is a cost of implementation and required in the Ordinance, is to have qualified staff in the Building, Planning and Public Works Departments to assess and to assist with the project developments. This is an incremental and annual cost. To date the Building Department has already has four (4) people in training, one of which has been LEED accredited. The Public Works Department has two (2) persons undergoing the training and the Planning Department is anticipated to have staff trained in the near future.

CONCLUSION

The LEED certification process for construction is a recognized and objective tool to assess a project's compliance with established enhanced environmental practices. Buildings that are LEED certified are ultimately more friendly to the environment and in the long-term will benefit the overall environmental health of the community through energy, waste, and water consumption reductions. As there is typically a reduction in operating expenses associated with LEED certified buildings, the investment in a building to have an achieved LEED certification is also recovered. Through the provision of both time and possibly monetary incentives, the recommended model for the City of a voluntary program is a good starting point for City engagement in environmentally enhanced buildings. At some point in the future, the City Commission may wish to consider making the program mandatory as sustainable development practices become more wide spread and easier to achieve. The Administration recommends approval of the Ordinance.

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Attachments

GREEN BUILDING ORDINANCE

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE CITY CODE OF THE CITY OF MIAMI BEACH, BY CREATING NEW CHAPTER 100, ENTITLED "SUSTAINABILITY," BY CREATING NEW ARTICLE I, "GREEN BUILDING ORDINANCE," ESTABLISHING DEFINITIONS, STANDARDS, PROCEDURES AND INCENTIVES PROVIDING FOR PROPERTY OWNER VOLUNTARY PARTICIPATION, AND CITY MANDATORY PARTICIPATION, IN THE LEED CERTIFICATION PROGRAM AS ESTABLISHED BY THE U.S. GREEN BUILDING COUNCIL OR OTHER RECOGNIZED RATING SYSTEM, FOR NEW CONSTRUCTION OR SUBSTANTIAL RENOVATIONS AS PROVIDED IN THE ORDINANCE, PROVIDING FOR A BOND TO GUARANTEE PARTICIPATION IN THE PROGRAM IF A PROPERTY OWNER RECEIVES INCENTIVES, AND PROCEDURES FOR USE OF THE BOND FOR FAILURE TO SO PARTICIPATE; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, a green building, also known as a sustainable building, is a structure that is designed, built, renovated, operated, or reused in an ecological and resource-efficient manner; and

WHEREAS, the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, developed by the U.S. Green Building Council ("USGBC") provides standards for environmentally sustainable construction; and

WHEREAS, since its inception in 1998, LEED has grown to encompass over 14,000 projects in 50 U.S. States and 30 countries covering 1.062 billion square feet (99 km^2) of development area; and

WHEREAS, the hallmark of LEED is that it is an open and transparent process where the technical criteria proposed by the LEED committees are publicly reviewed for approval by the more than 10,000 membership organizations that currently constitute the USGBC; and

WHEREAS, the USGBC reports the following benefits of green building construction:

Environmental benefits: enhances and protects ecosystems and biodiversity, improves air and water quality, reduces solid wastes, conserves natural resources; and

Economic benefits: Reduces operating costs, enhances asset value and profits, improves employee productivity and satisfaction, optimizes life-cycle economic performance; and

Health and community benefits: improves air, thermal, and acoustic environments, enhances occupant comfort and health, minimizes strain on local infrastructure, and contributes to overall quality of life; and

WHEREAS, the City Commission has determined that due to the benefits determined by the USGBC above and otherwise documented by that organization, it is in the public health, safety and welfare of the citizens, residents and workers in Miami Beach to provide an incentive program for private new construction and substantial renovations, and a mandatory program for City-owned new construction, as provided below; and

WHEREAS, the Florida Legislature has also imposed a mandatory requirement for LEED or similar certification for municipal buildings the architectural plans for which are commenced after July 1, 2008, in section 255.2575, Florida Statutes; and

WHEREAS, this ordinance is hereby adopted to initiate such LEED program for the reasons herein stated.

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

SECTION 1. That City Code Chapter 100, entitled "Sustainability," Article I, "Green Building Ordinance," is hereby created as follows:

Chapter 100
Sustainability

Article I. Green Building Ordinance.

Sec. 100-1. Definitions.
The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning, or as may be amended from time to time.

Building means any structure having a roof supported by columns or walls for the shelter or enclosure of persons or property and includes the word structure and includes any part thereof.

City means City of Miami Beach.

Construction means any project associated with the creation, development, or erection of any building eligible for the program.

Current means the standard in place at the time a program participant submits a project application form with the City.

Green Building means a building whose design, construction and operation promote the preservation of resources and environmentally sensitive construction practices, systems and materials. In making the determination of whether a structure is a green building, the City shall rely on the review, evaluation and registration, certificate and/or verification of the design by U.S. Green Building Council, or other recognized green building rating system approved by resolution of the City Commission, subject to the requirements of this ordinance.

Green Building Program means the program outlined in this ordinance for obtaining incentives for green buildings and developments.

Green Development means the use of sustainable building and development planning methods utilized in a way that result in minimum impact on natural resources, energy consumption, use of water, use of raw materials and waste generation, thereby affording inhabitants a potentially higher quality of life.

LEED means Leadership in Energy and Environmental Design (LEED) Green Building Rating System, developed by the U.S. Green Building Council, or other recognized green building rating system approved by resolution of the City Commission.

Participant means private property owners.

Private means property not owned by the City or any of its related agencies.

Program means the City's Green Building Program.

Program Certification means the final designation awarded to a program participant for satisfying all requirements associated with the program for a particular project.

Program Participant means any person or entity seeking program certification for a particular project.

Project means any construction associated with the creation, development, or erection of any building eligible for the program.

Project Application Form means the form submitted to the City indicating that a program participant is interested in participating in the program for a particular project.

Structure means anything constructed or erected, the use of which requires permanent location on the ground. Among other things, structures include buildings or any parts thereof, walls, fences, parking garages, parking lots, signs and screen enclosures.

Sub-program means any area of construction covered by the program.

Substantial Renovation means a renovation at a cost exceeding 50 percent of the value of the building as determined by the building official.

Sustainable Construction means the process of environmentally sensitive, resource efficient site selection, preparation, design, construction, and operation of buildings.

Any word not defined herein shall be construed as provided in section 114-1 of this Code, or in the Florida Building Code, if provided therein, and if in conflict, the most restrictive shall apply.

Sec. 100-2. Purpose and intent.
The purpose of this ordinance is to establish and promote programs and procedures that will help the City become a more sustainable community. This program shall define and establish new environmental goals and standards for a LEED certification-based Green Building Program with incentives. This program will promote economic and environmental health in the City, through sustainable and environmentally friendly ~~the~~ design and construction.

Sec. 100-3. Government leadership.
To demonstrate the City's commitment to a Green Building Program, the City shall comply with the Green Building Program established in this Article for all government buildings when new construction as provided for in this ordinance occurs.

Sec. 100-4. Designation of responsibility for administration and implementation.
The program shall be administered by the City Manager or designee, who shall be responsible for:

(a) Funding administration of the City's Green Building Program through annual funds budgeted and appropriated by the City Commission;
(b) Marketing the program to the community by any reasonably effective means, including but not limited to press releases, television advertising, or advertising in electronic or print mailers;
(c) Developing any appropriate or necessary application procedures, including but not limited to, the program application form;
(d) Writing policies and procedures for staff implementation of the Green Building Program;
(e) Providing and implementing an incentive award as herein provided to any program participant who has committed to and/or successfully satisfied the requirements associated with that program; and
(f) Resolving disputes that may arise from implementing the program.

Sec. 100-5. Green building program applicability.
This program shall be voluntary for all private buildings involving new construction or substantial renovation. This program shall be mandatory for City-

owned buildings involving new construction and the architectural plans for which were commenced after July 1, 2008.

Sec 100-6. Green building standards.
In addition to the Florida Building Code's minimum standards, the Program shall be administered using the then current standards developed by the U.S. Green Building Council ("USGBC"). These standards shall apply to each sub-program as follows.

(a) New buildings: The program participant shall satisfy all of the requirements associated with the then current USGBC LEED SILVER certification for New Construction or derived USGBC LEED rating system (e.g., LEED for Schools, LEED for Health Care) program; and
(b) Renovation of existing buildings: The program participant shall satisfy all of the requirements associated with the then current USBGC LEED SILVER certification for Existing Buildings, Maintenance & Operations, or derived USGBC LEED rating system (e.g., LEED for Schools, LEED for Health Care) program.

If there is a conflict between the USGBC standards and the Florida Building Code ("FBC") or Florida Fire Prevention Code ("FFPC"), the FBC and FFPC take precedence.

Sec. 100-7. Incentives and bond requirement.
(a) The program shall consist of the following incentives designed to reward owners for green building.

(i) Building permit applications for a green building project submitted or resubmitted for review shall be given priority review over projects that are not green building projects by the City's departments reviewing such applications

(ii) All building inspections requested for green building projects shall be given priority over projects that are not green building projects; and

(iii) Subject to, and within the limits of funds appropriated annually by resolution of the City Commission for the purposes set forth herein, owners or developers of green buildings shall receive a refund of the actual application and review fees for Green Building Program certification and an amount not greater than five (5) per cent of the incremental cost of making the building compliant with LEED SILVER standards, or alternatively twenty (20) per cent of the annual allocation, whichever is less, within 180 days of proof of certification by USGBC being submitted in writing to the City. The actual amount of financial incentives to which the applicant might qualify for shall be estimated at the time of issuance of the building permit for the qualifying project, and held in reserve. The final financial incentives shall be calculated at the time of LEED certification.

(b) In addition to the foregoing, the City shall provide the following marketing incentives:

(i) Allowing a plaque not to exceed two square feet to be attached to the building designating a project under the program, subject to the review and approval of the City Manager or designee and the Planning Department; such

plaque shall be treated as a governmental information sign exempt from permitting but subject to other regulations, as provided in section 138-4(1), City Code;

(ii) The inclusion of program participants on a city webpage dedicated to the program;

(iii) Press releases; and

(iv) An award called the "Green Building Award" to be awarded annually to one program participant in each sub-program (e.g., new construction and renovation).

(c) Prior to filing an application for building permit, or any award of incentives, the participant shall register their intent with the USGBC for LEED certification and obtain in writing a proposed checklist of certification points that may be attainable for the project. The participant shall then be required to attend a pre-application meeting with the City Manager or designee for the purpose of a review of the proposed certification checklist and detail of proposed credits for certification and incentives. The checklist and certification details shall be confirmed in writing by the applicant to the City Manager or designee, on forms established by the City, and through a covenant, recorded in the public records, form approved by the City Attorney, between the property owner and the City that the proposed manner of compliance with LEED certification as provided by the program guidelines, policies and procedures will be incorporated into the development and maintained unless released by the City as provided for in the covenant. The participant will provide a performance bond or other security, in a form approved by the City Attorney, as follows:

i. The bond or security shall be in an amount equal to one (1) per cent of the value of the proposed construction as determined by the building official;

ii. The bond or security shall be submitted at the time of filing of any application for review of the project by a City board or department, if the applicant seeks any of the incentives provided in subparagraph (a) above;

iii. This bond or security shall be subject to call by the City 180 days from issuance of the certificate of occupancy or certificate of completion, whichever occurs first, if LEED certification has not been achieved by that time. Reasonable extensions of time may be granted by the City Manager or designee;

iv. The applicant may request that up to 75% of the bond or security be released to the applicant for the purpose of completing improvements necessary for LEED certification, if a good faith effort towards completion is shown, and reasonable assurance provided on the success of plans to complete the LEED certification process, and a failure to complete the improvements is proven to the City Manager or designee was no fault of the property owner, or for other good cause shown;

v. If the applicant takes advantage of any of the incentives provided for herein, and fails to complete LEED certification as committed to, then the City Manager or designee, in his or her sole discretion, shall deem such bond or security forfeited to the city as a contribution to the funding of the City's Green Building Program, designated to fund the LEED program objectives as provided for herein, or any other lawful governmental purpose identified by the City Commission; and

vi. If the project receives LEED certification prior to the expiration of the 180 day period provided for above, or extensions of time granted by the Manager or designee, and the bond has not been forfeited as provided above, then the bond may be released following submittal to the City of written proof of LEED certification by the USGBC.

Sec. 100-8. Certification.
The project shall be subject to certification by a qualified independent third party who has been trained and certified as a LEED green building certifier. For the purpose of this section of the program, "third party" means any person or entity authorized according to the requirements of the standards in this Article for a particular project.

Sec. 100-9. Education and training.
(a) The City shall conduct at least one training workshop per year for the purpose of educating potential or current program participants about the program.

(b) The City shall encourage not less than two members each of the building, planning department and public works staff to attend at least 8 hours of green building training a year.

Sec. 100-10. Index and report.
The City Manager shall annually analyze and report to the City Commission on the satisfaction of the Green Building Program's goals and objectives as outlined in this Article.

Sec. 100-11. Program review.
(a) Staff review. The City shall provide for a review of the program to determine the need for changes in the program to increase its effectiveness.
(b) Frequency. The program shall be subject to review one year after the effective date of this ordinance and thereafter at a frequency of not less than once per year.
(c) Purpose. The purpose of reviewing the program includes but is not limited to updating program standards and incentives, recommending program or marketing changes, reviewing suggestions made by program participants, and annually awarding the green building awards of the program.

SECTION 2. Repealer.
All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 3. Codification.
It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be

renumbered or relettered to accomplish such intention; and that the word "ordinance" may be changed to "section" or other appropriate word.

SECTION 4. Severability.
If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. Effective Date.
This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 2009.

_____

MAYOR

ATTEST:

_____
CITY CLERK

First Reading:
Second Reading:

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ City Attorney 4/14/09 Date

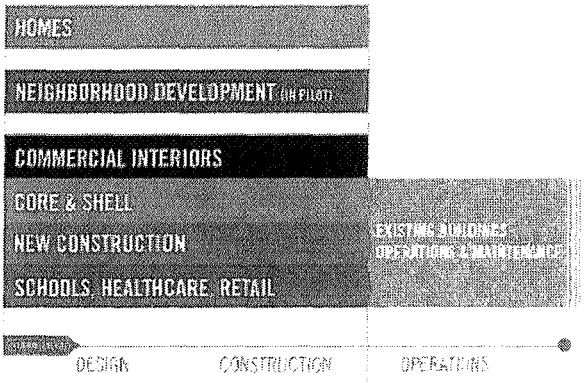
Underscore denotes new language
~~Strikethrough~~ denotes deleted language

F:\atto\HELG\Ordinances\Green\2009\Green Building ordinance 04102009.doc

LEED Rating Systems

What is LEED®?

The Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ encourages and accelerates global adoption of sustainable green building and development practices through the creation and implementation of universally understood and accepted tools and performance criteria.



LEED is a third-party certification program and the nationally accepted benchmark for the design, construction and operation of high performance green buildings. LEED gives building owners and operators the tools they need to have an immediate and measurable impact on their buildings' performance. LEED promotes a whole-building approach to sustainability by recognizing performance in five key areas of human and environmental health: sustainable site development, water savings, energy efficiency, materials selection and indoor environmental quality.

Who uses LEED?

Architects, real estate professionals, facility managers, engineers, interior designers, landscape architects, construction managers, lenders and government officials all use LEED to help transform the built environment to sustainability. State and local governments across the country are adopting LEED for public-owned and public-funded buildings; there are LEED initiatives in federal agencies, including the Departments of Defense, Agriculture, Energy, and State; and LEED projects are in progress in 41 different countries, including Canada, Brazil, Mexico and India.

How is LEED Developed?

LEED Rating Systems are developed through an open, consensus-based process led by LEED committees. Each volunteer committee is composed of a diverse group of practitioners and experts representing a cross-section of the building and construction industry. The key elements of USGBC's consensus process include a balanced and transparent committee structure, technical advisory groups that ensure scientific consistency and rigor, opportunities for stakeholder comment and review, member ballot of new rating systems, and a fair and open appeals process.

LEED Rating Systems

New Construction
LEED for New Construction and Major Renovations is designed to guide and distinguish high-performance commercial and institutional projects.

Existing Buildings: Operations & Maintenance
LEED for Existing Buildings: Operations & Maintenance provides a benchmark for building owners and operators to measure operations, improvements and maintenance.

Commercial Interiors
LEED for Commercial Interiors is a benchmark for the tenant improvement market that gives the power to make sustainable choices to tenants and designers.

Core & Shell
LEED for Core & Shell aids designers, builders, developers and new building owners in implementing sustainable design for new core and shell construction.

Schools
LEED for Schools recognizes the unique nature of the design and construction of K-12 schools and addresses the specific needs of school spaces.

Retail
LEED for Retail recognizes the unique nature of retail design and construction projects and addresses the specific needs of retail spaces.

Healthcare
LEED for Healthcare promotes sustainable planning, design and construction for high-performance healthcare facilities.

Homes
LEED for Homes promotes the design and construction of high-performance green homes.

Neighborhood Development
LEED for Neighborhood Development integrates the principles of smart growth, urbanism and green building into the first national program for neighborhood design.

LEED Rating System Drafts
Review and comment on proposed final drafts of new and updated LEED Rating Systems.

LEED Frequently Asked Questions
This is a great resource for first time LEED users and experienced project team members alike.

EXHIBIT 1

The U.S. Green Building Council (USGBC) is a 501(c)(3) nonprofit membership organization with a vision of a sustainable built environment within a generation. Its membership includes corporations, builders, universities, government agencies, and other nonprofit organizations. USGBC is dedicated to expanding green building practices and education, and its LEED® (Leadership in Energy and Environmental Design) Green Building Rating System™.

The Leadership in Energy and Environmental Design (LEED) Green Building Rating System is a voluntary, consensus-based national rating system for developing high-performance, sustainable buildings. LEED addresses all building types and emphasizes state-of-the-art strategies in five areas: sustainable site development, water savings, energy efficiency, materials and resources selection, and indoor environmental quality.

LEED Accredited Professionals (LEED APs) have demonstrated a thorough understanding of green building techniques, the LEED Green Building Rating System, and the certification process. The LEED AP program is administered by the Green Building Certification Institute (GBCI), which was established with the support of USGBC to allow for objective, balanced management of the credentialing program.

Introduction

I. Why Make Your Building Green?

The environmental impact of the building design, construction and operation industry is significant. Buildings annually consume more than 30% of the total energy and more than 60% of the electricity used in the U.S. Each day five billion gallons of potable water is used soley to flush toilets. A typical North American commercial construction project generates up to 2.5 pounds of solid waste per square foot of completed floor space. Development shifts land usage away from natural, biologically-diverse habitats to hardscape that is impervious and devoid of biodiversity. The far reaching influence of the built environment necessitates action to reduce its impact.

Green building practices can substantially reduce or eliminate negative environmental impacts and improve existing unsustainable design, construction and operational practices. As an added benefit, green design measures reduce operating costs, enhance building marketability, increase worker productivity, and reduce potential liability resulting from indoor air quality problems. For example, energy efficiency measures have reduced operating expenses of the Denver Dry Goods building by approximately $75,000 per year. Students in day-lit schools in North Carolina consistently score higher on tests than students in schools using conventional lighting fixtures. Studies of workers in green buildings reported productivity gains of up to 16%, including reductions in absenteeism and improved work quality, based on "people-friendly" green design. At a grocery store in Spokane, Washington, waste management costs were reduced by 56% and 48 tons of waste was recycled during construction. In other words, green design has environmental, economic and social elements that benefit all building stakeholders, including owners, occupants and the general public.

II. LEED® Green Building Rating System

A. History of LEED®

The first LEED (Leadership in Energy and Environmental Design) Pilot Project Program following the formation of the U.S. Green Building Council (USGBC) in 1993, the membership quickly realized that a priority for the sustainable building industry was to have a system to define and measure "green buildings." The USGBC began to research existing green building metrics and rating systems. Less than a year after formation, the membership followed up on the initial findings with the establishment of a committee to focus solely on this topic. The diverse initial composition of the committee included architects, realtors, a building owner, a lawyer, an environmentalist and industry representatives. This cross section of people and professions added a richness and depth both to the process and to the ultimate product.

The first LEED Pilot Project Program, also referred to as LEED Version 1.0, was launched at the USGBC Membership Summit in August 1998. After extensive modifications, the LEED Green Building Rating System Version 2.0 was released in March 2000. This rating system is now called the LEED Green Building Rating System for New Commercial Construction and Major Renovations, or LEED for New Construction.

As LEED has evolved and matured, the program has undertaken new initiatives. In addition to a rating system specifically devoted to building operational and

LEED for New Construction is part of the growing portfolio of rating system products serving specific market sectors.

B. Features of LEED®

The LEED Green Building Rating System is a voluntary, consensus-based, market-driven building rating system based on existing proven technology. It evaluates environmental performance from a whole building perspective over a building's life cycle, providing a definitive standard for what constitutes a "green building." The development of the LEED Green Building Rating System was initiated by the USGBC Membership, representing all segments of the building industry and has been open to public scrutiny.

The rating system is organized into five environmental categories: Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, and Indoor Environmental Quality. An additional category, Innovation & Design Process, addresses sustainable building expertise as well as design measures not covered under the five environmental categories.

LEED is a measurement system designed for rating new and existing commercial, institutional and residential buildings. It is based on accepted energy and environmental principles and strikes a balance between known established practices and emerging concepts.

It is a performance-oriented system where credits are earned for satisfying criterion designed to address specific environmental impacts inherent in the design, construction and operations and maintenance of buildings. Different levels of green building certification are awarded based on the total credits earned. The system is designed to be comprehensive in scope, yet simple in operation.

C. The Future of LEED

The green design field is growing and changing daily. New technologies and products are coming into the marketplace and innovative designs are proving their effectiveness. Therefore, the Rating System and the Reference Guide will evolve as well. Teams wishing to certify with LEED should note that they will need to comply with the version of the rating system that is current at the time of their registration.

USGBC will highlight new developments on its Web site on a continuous basis at www.usgbc.org.

III. LEED for New Construction Overview and Process

The LEED Green Building Rating System for New Construction and Major Renovation (formerly referred to as LEED-NC) provides a set of performance standards for certifying the design and construction phases of commercial, institutional buildings, and high-rise residential buildings. The specific credits in the rating system provide guidelines for the design and construction of buildings of all sizes in both the public and private sectors. The intent of LEED for New Construction is to assist in the creation of high performance, healthful, durable, affordable and environmentally sound commercial and institutional buildings.

LEED for New Construction addresses:

- ❑ Sustainable Sites
- ❑ Water Efficiency
- ❑ Energy & Atmosphere
- ❑ Materials & Resources
- ❑ Indoor Environmental Quality
- ❑ Innovation in Design

A. When to Use LEED for New Construction

LEED for New Construction was designed primarily for new commercial office buildings, but it has been applied to many other building types by LEED

practitioners. All commercial buildings, as defined by standard building codes, are eligible for certification as a LEED for New Construction building. Commercial occupancies include (but are not limited to) offices, retail and service establishments, institutional buildings (libraries, schools, museums, churches, etc.), hotels and residential buildings of four or more habitable stories.

LEED for New Construction addresses design and construction activities for both new buildings and major renovations of existing buildings. The LEED Green Building Rating System for Existing Buildings is designed to address operational and maintenance issues of working buildings. Therefore, if you are performing a major renovation on an existing building, LEED for New Construction is the most appropriate rating system for your project. If however, your project scope does not involve significant design and construction activities and focuses more on O&M activities, LEED for Existing Buildings is the most appropriate tool for your project. As a general rule of thumb, a major renovation involves elements of major HVAC renovation, significant envelope modifications and major interior rehabilitation.

Many projects will cleanly and clearly fit the defined scope of only one LEED Rating System product. For other projects, two or more LEED Rating System products may be applicable. USGBC encourages the project team to tally a potential point total using the Rating System checklists for all possibilities. The project is a viable candidate for LEED certification if it can meet all prerequisites and achieve the minimum points required in a given Rating System. If more than one Rating System applies, then it is up to the project team to decide which one to pursue. For assistance in choosing the most appropriate LEED Rating System, please e-mail leedinfo@usgbc.org.

B. LEED for New Construction Registration

Project teams interested in obtaining LEED Certification for their project must first register this intent with USGBC. Projects can be registered on the USGBC Web site (www.usgbc.org) in the LEED section, under Register Your Project. The Web site includes information on registration costs for USGBC member companies as well as non-members. Registration is an important step that establishes contact with USGBC and provides access to LEED-Online software tool, errata, critical communications and other essential information.

About LEED-Online

As of January 2006, project teams pursuing LEED for New Construction certification under Version 2.2 are required to use LEED-Online, which enables teams to submit 100% of their documentation online in an easy-to-use format. LEED-Online stores all LEED information, resources, and support in one centralized location. LEED-Online enables team members to upload credit templates, track Credit Interpretation Requests (CIRs), manage key project details, contact customer service, and communicate with reviewers throughout the design and construction reviews.

C. Credit Interpretation Rulings

In some cases, the design team may encounter challenges in applying a LEED for New Construction prerequisite or credit to their particular project. These difficulties arise from instances where the Reference Guide does not sufficiently address a specific issue or there is a special conflict that requires resolution. To address such issues, the USGBC has established the LEED for New Construction Version 2.2 Credit Interpretation Ruling (CIR) process (separate from the CIR page for version 2.0 and 2.1 CIRs). See the LEED for New Construction section of the USGBC Web site for more information

at www.usgbc.org. Credit rulings posted after the registration date may be applied by the project team at their choosing (exception: the project's own CIRs must always be adhered to).

The Credit Interpretation process is summarized as follows:

1. Project teams should review the CIR webpage to read previously posted credit interpretation requests and USGBC responses. Many questions can be resolved by reviewing existing CIRs and the Reference Guide. Note that CIRs for other rating systems (LEED for Existing Buildings, LEED for Commercial Interiors and past versions of LEED for New Construction) are not necessarily applicable.
2. If no existing Credit Interpretation Rulings are relevant to the project, the LEED project team should submit an on-line credit interpretation request. The description of the challenge encountered by the project team should be brief but explicit; should be based on prerequisite or credit information found in the Rating System and Reference Guide; and should place a special emphasis on the Intent of the prerequisite or credit. If possible, the project team should offer potential solutions to the problem and solicit approval or rejection of their proposed interpretation. Follow the detailed instructions in the "CIR Guidelines" document available on the CIR Web page in the LEED section of the USGBC Web site.
3. USGBC will rule on your request electronically according to the posted schedule, either through a posting on the CIR Page or via e-mail correspondence.

D. LEED for New Construction Application

Once a project is registered, the project design team begins to collect information and perform calculations to satisfy the prerequisite and credit submittal requirements. Since submittal documentation should be gathered throughout design and construction, it is helpful to designate a LEED team leader who is responsible for managing the compilation of this information by the project team. Use the LEED-Online Submittal Templates that are provided through the LEED project resources Web page located in the LEED section of the USGBC Web site. These templates contain embedded calculators, and are instrumental in documenting fulfillment of credit requirements and prompting for correct and complete supporting information.

Two-Phase Application

A new feature of LEED for New Construction v2.2 is the option of splitting a certification application into two phases. Rather than submitting all documentation for a project at the end of the construction phase, project teams will be able to submit designated "design phase credits" at the end of the design phase for review by USGBC. Design phase credits are those credits that USGBC can reasonably adjudicate based on design phase documentation. For example, if a project site meets the LEED for New Construction Sustainable Sites Credit 3: Brownfield Redevelopment Requirements, USGBC can assess the likelihood of the project achieving this credit prior to the completion of construction. It is important to remember that LEED credit is not awarded at the design review stage. Project teams are notified of the likelihood that their project will achieve a LEED credit if construction is executed in accordance with design phase plans. Projects must submit verification that design elements were implemented as planned after completion of construction. A list of the potential design phase credits can be found in the LEED section of the USGBC Web site. Project teams are allotted one design phase review. At the completion of construction, the balance of attempted credits, verification of design

phase credits, and additional documentation for any design phase credits that has changed since the design phase review are documented and submitted for USGBC review. See below for more details regarding the two-phase review.

E. Review and Certification

To earn LEED for New Construction certification, the applicant project must satisfy all of the prerequisites and a minimum number of points to attain the established LEED for New Construction project ratings as listed below. Having satisfied the basic prerequisites of the program, applicant projects are then rated according to their degree of compliance within the rating system. All projects will need to comply with the version of LEED for New Construction that is current at the time of project registration.

Design Phase Review

Once USGBC has received your complete design phase application and the design phase fee (which is a portion of the total certification fee), the USGBC will formally rule on your application by designating each attempted credit as either Anticipated or Denied. No certification award will be given at this time, nor will any credits be awarded. This process serves to allow project teams the opportunity to assess the likelihood of credit achievement, and requires follow through to ensure the design is executed in the construction phase according to design specifications.

Construction Phase Review

At the completion of construction, the project team will submit all attempted credits for review. If the project team had elected to have a design phase review and any of the design phase Anticipated credits have changed, additional documentation must be submitted to substantiate continued compliance with credit requirements. For design phase Anticipated credits that have not substantively changed, the project team must submit a verification that the design has been executed per requirements in the construction phase. Once USGBC has received the complete application and fee (the remainder of the total certification fee, if a design review has been conducted), the USGBC will formally rule on your full application. All applicant-verified design phase credits that were designated as Anticipated and have not changed since the design phase review will be declared as Achieved. All other credits will be designated as either Achieved or Denied.

Appeals

Appeals may be filed either after the design phase review or the final review. Please see the LEED Certification Process section (http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1497) of the USGBC Web site for more information on appeals.

Fees

Certification fee information can be found at the LEED Register your project page of the web site: http://www.usgbc.org/DisplayPage.aspx?CMSPageID=65&. USGBC will acknowledge receipt of your application and proceed with application review when all project documentation has been submitted.

The LEED for New Construction ratings are awarded according to the following scale—

- ❑ Certified 26-32 points
- ❑ Silver 33-38 points
- ❑ Gold 39-51 points
- ❑ Platinum 52-69 points

USGBC will recognize buildings that achieve one of these rating levels with a formal letter of certification and a mountable plaque.

F. Updates & Errata

This is the second edition of the LEED for New Construction Version 2.2 Reference Guide, dated September 2006. As LEED for New Construction continues

to improve and evolve, updates and errata will be made available to substitute and augment the current material. USGBC cannot be held liable for any criteria set forth herein, which may not be applicable to later versions of LEED for New Construction. Updates and addenda will be accumulated between revisions and will be formally incorporated in major revisions. In the interim between major revisions, USGBC may use its consensus process to clarify criteria.

When a project registers for certification, the prerequisites, credits, errata, and credit rulings current at the time of project registration will continue to guide the project throughout its certification process.

IV. LEED for New Construction Version 2.2 Reference Guide

The LEED for New Construction v2.2 Reference Guide is a supporting document to the LEED Green Building Rating System. The Guide is intended to assist project teams in understanding LEED for New Construction criteria and the benefits of complying with each criterion. The Guide includes examples of strategies that can be used in each category, case studies of buildings that have implemented these strategies successfully, and additional resources that will provide more information. The guide does not provide an exhaustive list of strategies for meeting the criteria as subsequent strategies will be developed and employed by designers that satisfy the Intent of each credit. Nor does it provide all of the information that design teams need to determine the applicability of a credit to their project.

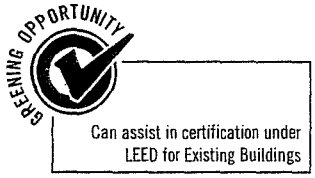
Prerequisite and Credit Format

Each prerequisite and credit is organized in a standardized format for simplicity and quick reference. The first section summarizes the key points regarding the measure and includes the Intent, Requirements, and some Potential Technologies & Strategies for achieving the credit. The subsequent sections provide supportive information to help interpret the measure, examples, and links to various resources.

If your project team encounters an out-of-date web link in the Reference Guide, please go to the root Web site, which should take the form of www.organization.com with no additional text following. Then you may be able to navigate through the Web site to find the referenced document. Please contact the USGBC at (202) 828-7422 if you are unable to locate a resource.

Greening Opportunity Icon

Throughout this Reference Guide, you will see this icon:



This icon will assist projects that are proceeding with the intention of certifying with LEED for Existing Buildings, following their LEED for New Construction certification. It identifies credits that involve measures that are significantly more cost-effective and convenient to implement during design and construction than they are during the operation of the building. These credits are—

SSc 2:	Development Density & Community Connectivity
SSc 4.1:	Alternative Transportation: Public Transportation Access
EAc 1:	Optimize Energy Performance
EAc 3:	Enhanced Commissioning
EAc 5:	Measurement & Verification
MRc 4:	Recycled Content
MRc 5:	Regional Materials
MRc 6:	Rapidly Renewable Materials

MRc 7: Certified Wood

EQc 1: Outdoor Air Delivery Monitoring

EQc 6.2: Controllability of Systems: Thermal Comfort

EQc 7: Thermal Comfort

EQc 8: Daylight and Views

Project Checklist

Sustainable Sites — 14 Possible Points

Prereq 1	**Construction Activity Pollution Prevention**	Required
Credit 1	**Site Selection**	1
Credit 2	**Development Density & Community Connectivity**	1
Credit 3	**Brownfield Redevelopment**	1
Credit 4.1	**Alternative Transportation**, Public Transportation Access	1
Credit 4.2	**Alternative Transportation**, Bicycle Storage & Changing Rooms	1
Credit 4.3	**Alternative Transportation**, Low Emitting & Fuel Efficient Vehicles	1
Credit 4.4	**Alternative Transportation**, Parking Capacity	1
Credit 5.1	**Site Development**, Protect or Restore Habitat	1
Credit 5.2	**Site Development**, Maximize Open Space	1
Credit 6.1	**Stormwater Design**, Quantity Control	1
Credit 6.2	**Stormwater Design**, Quality Control	1
Credit 7.1	**Heat Island Effect**, Non-Roof	1
Credit 7.2	**Heat Island Effect**, Roof	1
Credit 8	**Light Pollution Reduction**	1

Water Efficiency — 5 Possible Points

Credit 1.1	**Water Efficient Landscaping**, Reduce by 50%	1
Credit 1.2	**Water Efficient Landscaping**, No Potable Use or No Irrigation	1
Credit 2	**Innovative Wastewater Technologies**	1
Credit 3.1	**Water Use Reduction**, 20% Reduction	1
Credit 3.2	**Water Use Reduction**, 30% Reduction	1

Energy & Atmosphere — 17 Possible Points

Prereq 1	**Fundamental Commissioning of the Building Energy Systems**	Required
Prereq 2	**Minimum Energy Performance**	Required
Prereq 3	**Fundamental Refrigerant Management**	Required
Credit 1	**Optimize Energy Performance**	1–10
Credit 2	**On-Site Renewable Energy**	1–3
Credit 3	**Enhanced Commissioning**	1
Credit 4	**Enhanced Refrigerant Management**	1
Credit 5	**Measurement & Verification**	1
Credit 6	**Green Power**	1

Materials & Resources — 13 Possible Points

Prereq 1	**Storage & Collection of Recyclables**	Required
Credit 1.1	**Building Reuse**, Maintain 75% of Existing Walls, Floors & Roof	1
Credit 1.2	**Building Reuse**, Maintain 95% of Existing Walls, Floors & Roof	1
Credit 1.3	**Building Reuse**, Maintain 50% of Interior Non-Structural Elements	1
Credit 2.1	**Construction Waste Management**, Divert 50% from Disposal	1

EXHIBIT 2

(2)

Credit 2.2	**Construction Waste Management**, Divert 75% from Disposal	1
Credit 3.1	**Materials Reuse**, 5%	1
Credit 3.2	**Materials Reuse**, 10%	1
Credit 4.1	**Recycled Content**, 10% (post-consumer + 1/2 pre-consumer)	1
Credit 4.2	**Recycled Content**, 20% (post-consumer + 1/2 pre-consumer)	1
Credit 5.1	**Regional Materials**, 10% Extracted, Processed & Manufactured Regionally	1
Credit 5.2	**Regional Materials**, 20% Extracted, Processed & Manufactured Regionally	1
Credit 6	**Rapidly Renewable Materials**	1
Credit 7	**Certified Wood**	1

Indoor Environmental Quality — 15 Possible Points

Prereq 1	**Minimum IAQ Performance**	Required
Prereq 2	**Environmental Tobacco Smoke (ETS) Control**	Required
Credit 1	**Outdoor Air Delivery Monitoring**	1
Credit 2	**Increased Ventilation**	1
Credit 3.1	**Construction IAQ Management Plan**, During Construction	1
Credit 3.2	**Construction IAQ Management Plan**, Before Occupancy	1
Credit 4.1	**Low-Emitting Materials**, Adhesives & Sealants	1
Credit 4.2	**Low-Emitting Materials**, Paints & Coatings	1
Credit 4.3	**Low-Emitting Materials**, Carpet Systems	1
Credit 4.4	**Low-Emitting Materials**, Composite Wood & Agrifiber Products	1
Credit 5	**Indoor Chemical & Pollutant Source Control**	1
Credit 6.1	**Controllability of Systems**, Lighting	1
Credit 6.2	**Controllability of Systems**, Thermal Comfort	1
Credit 7.1	**Thermal Comfort**, Design	1
Credit 7.2	**Thermal Comfort**, Verification	1
Credit 8.1	**Daylight & Views**, Daylight 75% of Spaces	1
Credit 8.2	**Daylight & Views**, Views for 90% of Spaces	1

Innovation & Design Process — 5 Possible Points

Credit 1.1	**Innovation in Design**	1
Credit 1.2	**Innovation in Design**	1
Credit 1.3	**Innovation in Design**	1
Credit 1.4	**Innovation in Design**	1
Credit 2	**LEED Accredited Professional**	1

Project Totals — 69 Possible Points

Certified 26–32 points ▪ **Silver** 33–38 points ▪ **Gold** 39–51 points ▪ **Platinum** 52–69 points

SS	WE	EA	MR	EQ	ID
Credit 6.1					

1 Point

Stormwater Design

Quantity Control

Intent

Limit disruption of natural hydrology by reducing impervious cover, increasing on-site infiltration, and managing stormwater runoff.

Requirements

OPTION 1 — EXISTING IMPERVIOUSNESS IS LESS THAN OR EQUAL TO 50%

Implement a stormwater management plan that prevents the post-development peak discharge rate and quantity from exceeding the pre-development peak discharge rate and quantity for the one- and two-year, 24-hour design storms.

OR

Implement a stormwater management plan that protects receiving stream channels from excessive erosion by implementing a stream channel protection strategy and quantity control strategies.

OR

OPTION 2 — EXISTING IMPERVIOUSNESS IS GREATER THAN 50%

Implement a stormwater management plan that results in a 25% decrease in the volume of stormwater runoff from the two-year, 24-hour design storm.

Potential Technologies & Strategies

Design the project site to maintain natural stormwater flows by promoting infiltration. Specify vegetated roofs, pervious paving, and other measures to minimize impervious surfaces. Reuse stormwater volumes generated for non-potable uses such as landscape irrigation, toilet and urinal flushing and custodial uses.

EXHIBIT 3

Summary of Referenced Standard

There is no standard referenced for this credit.

Approach and Implementation

The approach to this credit may vary significantly depending on the condition of the project site at the beginning of the project. If the project is being constructed on a largely undeveloped site, the goal is to preserve stormwater flows and design the project to respond to the natural soil conditions, habitat, and rainfall characteristics. If the project is a redevelopment of a previously developed site, the goal is typically to improve stormwater management in a way that restores the natural functions of the site to the maximum extent practicable.

The approach to this credit also varies dramatically between different regions and climate zones. The strategies employed in an urban environment where water is discharged to concrete channels and then the ocean are different from the strategies employed at an inland site that discharges to a small stream and lake system.

The most effective method to minimize stormwater runoff volume is to reduce the amount of impervious area. By reducing impervious area, stormwater infrastructure can be minimized or deleted from the project. Strategies to minimize or mitigate impervious surfaces may include:

- ❑ Smaller building footprint
- ❑ Pervious paving materials
- ❑ Stormwater harvesting for reuse in irrigation and/or buildings
- ❑ Green roofs
- ❑ Bioswales/vegetated filter strips
- ❑ Retention ponds
- ❑ Clustering development to reduce paved surfaces (roads, sidewalks, etc.)

Guidelines for Capturing and Reusing Stormwater Runoff

Stormwater captured (or harvested) in cisterns, rain barrels, or other devices, is a primary source of water in many parts of the world. Stormwater should not be used for potable needs if there are sources available that pose less risk to public health. However, harvested stormwater may be used to reduce potable water needs for uses such as landscape irrigation, fire suppression, toilet and urinal flushing, and custodial uses.

Storage and reuse techniques range from small-scale systems (e.g., rain barrels) to underground cisterns that may hold large volumes of water. Whether large or small, stormwater harvesting system designs should consider the following:

1. Water need for the intended use—how will the harvested water be used and when will it be needed? For example, if the water is used to irrigate landscaping for four summer months, the amount of water needed and the how often the storage unit will refill must be considered. Usage requirements and the expected volume and frequency of rainfall must be determined.
2. Drawdown—storage system design must provide for the use or release of water between storm events for the design storage volume to be available.
3. Drainage Area—the size and nature (e.g., percent imperviousness) of the area draining to the storage system determines how much runoff will be available for harvesting.
4. Conveyance System—reused stormwater and graywater systems must not be connected to other domestic or commercial potable water systems. Pipes and storage units should be clearly marked (e.g., "Caution: Reclaimed Water, Do Not Drink").
5. Pretreatment—screens or filters may be used to remove debris and sedi-

ment from runoff and to minimize pollutants.

6. Pressurization—uses for harvested rainwater may require pressurization. For example, most irrigation systems require a water pressure of at least 15 psi to function properly. Stored water has a pressure of 0.43 psi per foot of water elevation, and the water pressure at the bottom of a ten-foot vault would be 4.3 psi (10 ft. x 0.43 psi). Pressurization (e.g., a pump, pressure tank and filter) costs more and creates a more useable system.

The amount of runoff reduced by a stormwater harvesting system may be considered equal to its storage volume. However, volume calculations must also consider how often the system is emptied and the interval between storm events.

Example:

Rainwater will be harvested from a 10,000 sq.ft. roof (100% imperviousness). The system will be designed to capture the runoff from 90% of the average annual rainfall (1 inch of rainfall for humid watersheds). The volume of the proposed storage system is the amount of runoff captured (Vr), which is calculated below in **Equation 1**:

Other design considerations – tank must be emptied before subsequent storm events. Use a tank that is 10 ft x 10 ft x 8 ft deep – Total storage volume (V_s) = 800 cu.ft. Using a design storm interval of three days (72 hours), the drawdown rate (Q_r) is calculated below in **Equation 2**:

In this example, the captured rain must be drained within 3 days or at a minimum rate of 1.4 gpm for the tank to be emptied for the next storm.

Different municipalities, state and local governments have various design requirements for capturing and reuse of stormwater runoff. These requirements range from where stormwater may be captured and used to length of time stormwater can be held in a cistern, to the type of water treatment required before reuse. Designers should check with the governing administrative authority to determine parameters which will affect collection, use, and distribution of captured stormwater.

Calculations

There are two compliance paths for this credit—one for largely undeveloped sites and one for largely developed sites.

Option 1—Existing Imperviousness Is Less Than Or Equal To 50% (Largely Undeveloped Sites)

Option 1-a: Discharge Rate and Quantity

Determine the pre-development discharge rate and quantity for the project. These values are typically calculated by the civil engineer using the surface characteristics of the site and data on storm event frequency, intensity and duration. Calculate

Equation 1

$$V_r = \frac{(P)(R_v)(A)}{12'} = \frac{(1')(0.95)(10{,}000\ SF)}{12'} = 791.67\ CF\ (5{,}922\ gal)$$

Where, $R_v = 0.05 + (0.009)(I) = 0.05 + (0.009)(100) = 0.95$
R_v = Volumetric Runoff Coefficient
I = Percent Imperviousness

Equation Source: 2000 Maryland Stormwater Design Manual, Vol. I & II (MDE, 2000)

Equation 2

$$Q_r = 800\,c.f. / 259{,}200\ sec = 0.003\ cfs\ or\ 1.37\ gpm$$

rate and quantity for the one-year and two-year, 24-hour design storms.

Determine the post-development discharge rate and quantity for the project consistent with the pre-development calculations. The post-development rate AND quantity must be equal to or less than the pre-development values to earn this credit.

Option 1-b: Stream Channel Protection

Describe the project site conditions, the measures taken, and controls implemented as part of the project scope that prevent excessive stream velocities and the associated erosion. Include in the description numerical values for pre-development and post-development conditions to demonstrate that the rate and quantity of stormwater runoff in the post-development condition are below critical values for the relevant receiving waterways.

Option 2—Existing Imperviousness Is Greater Than 50% (Largely Developed Sites)

Determine the pre-development discharge rate and quantity for the project. These values are typically calculated by the civil engineer using the surface characteristics of the site and data on storm event frequency, intensity, and duration. Calculate rate and quantity for the one-year and two-year, 24-hour design storms.

Determine the post-development discharge rate and quantity for the project consistent with the pre-development calculations. The post-development rate AND quantity must be at least 25% less than the pre-development values to earn this credit.

Exemplary Performance

There is no exemplary performance point available for this credit.

Submittal Documentation

This credit is submitted as part of the **Design Submittal**.

The following project data and calculation information is required to document credit compliance using the v2.2 Submittal Templates:

Option 1

- ❑ Provide the pre-development site runoff rate (cfs).
- ❑ Provide the pre-development site runoff quantity (cf).
- ❑ Provide the post-development site runoff rate (cfs).
- ❑ Provide the post-development site runoff quantity (cf).

OR

- ❑ Provide a narrative describing the project site conditions, measures taken, and controls implemented to prevent excessive stream velocities and associated erosion.

Figure 1 (Source Figure 1.4), excerpted from the Maryland Stormwater Design Manual, diagrams the potential increases in critical discharge rate from development.

Option 2

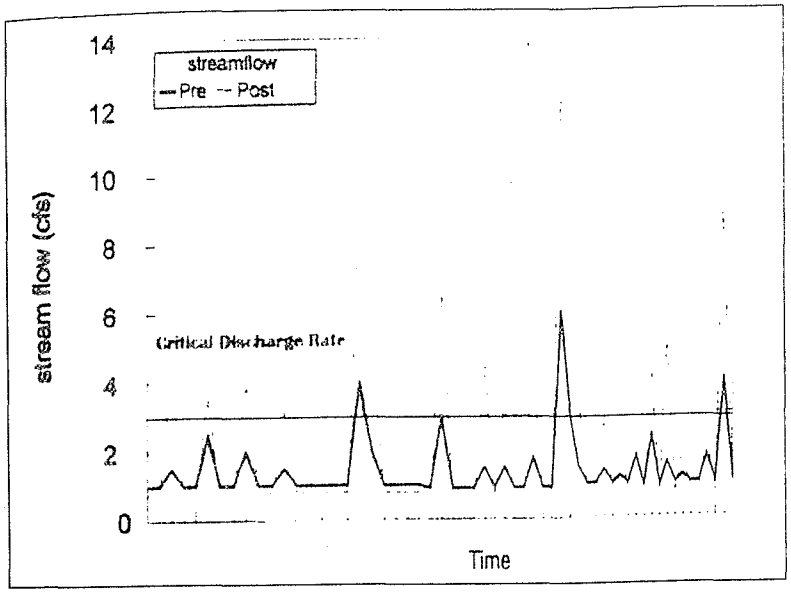
- ❑ Provide the pre-development site runoff rate (cfs).
- ❑ Provide the pre-development site runoff quantity (cf).
- ❑ Provide the post-development site runoff rate (cfs).
- ❑ Provide the post-development site runoff quantity (cf).

Considerations

Environmental Issues

The intent of this credit is to limit the disruption of the natural stormwater flows that results from development. Undevel-

Figure 1: Increased Frequency of Flows Greater than the Critical Discharge Rate in a Stream Channel after Development



oped land has a certain capacity to absorb rainfall in the soils, vegetation and trees. Clearing of vegetation and/or construction of impervious surfaces (i.e., roads, parking lots and buildings) reduce the capacity of the land to absorb rainfall and increase the amount of stormwater runoff.

As areas are constructed and urbanized, surface permeability is reduced, resulting in increased stormwater runoff volumes that are transported via urban infrastructure (e.g., gutters, pipes and sewers) to receiving waters. These stormwater volumes contain sediment and other contaminants that have a negative impact on water quality, navigation and recreation. Furthermore, conveyance and treatment of stormwater volumes requires significant municipal infrastructure and maintenance. Reducing the generation of stormwater volumes helps maintain the natural aquifer recharge cycle and assist in restoring depleted stream base flows. In addition, stormwater volumes do not have to be conveyed to receiving waters by the municipality, and receiving waters are not impacted.

The geometry and health of streams is closely linked to stormwater runoff velocities and volumes. Increases in the frequency and magnitude of stormwater runoff due to development can cause increased bankfull events. As a result, the stream bed and banks are exposed to highly erosive flows more frequently and for longer periods. The resultant impacts may include channel-widening or down-cutting or both.

Figures 2 and 3 (Source Figures 1.1 and 1.2), excerpted from the Maryland Stormwater Design Manual show the impact of development of stormwater flows and the increase in the volumetric runoff coefficient as a function of site imperviousness.

Economic Issues

If natural drainage systems are designed and implemented at the beginning of site planning, they can be integrated economically into the overall development. Water detention and retention features require cost for design, installation and maintenance. However, these features can also add significant value as site amenities if planned early in the design. Smaller stormwater collection and treatment systems lessen the burden on municipalities for maintenance and repair, resulting in a more affordable and stable tax base.

Figure 2: Water Balance at a Developed and Undeveloped Site (Source: Schueler, 1987)

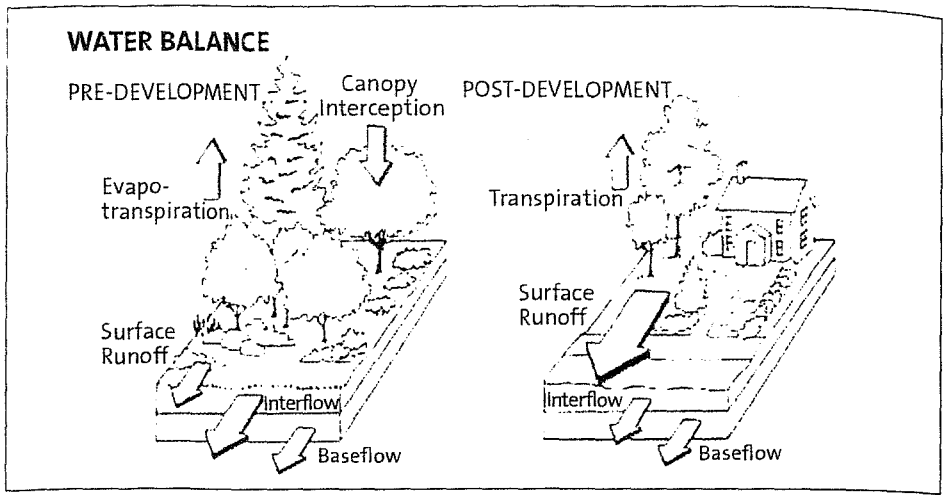
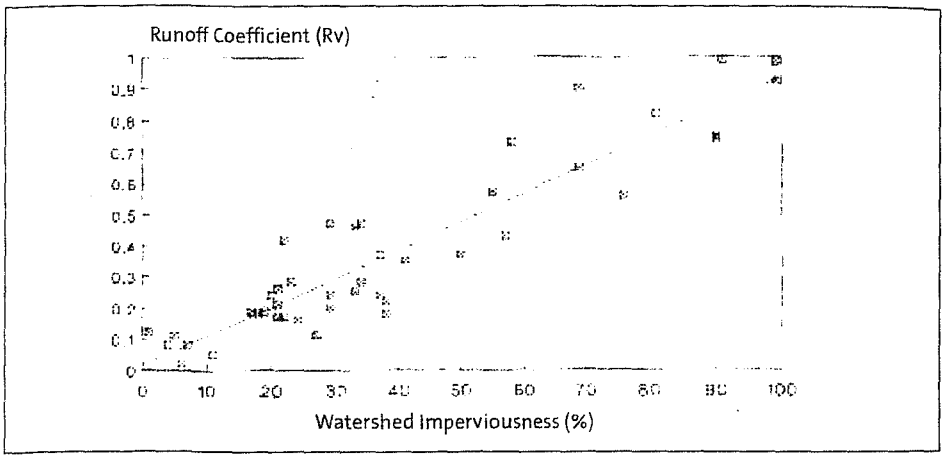


Figure 3: Relationship Between Impervious Cover and the Volumetric Runoff Coefficient (Source: Schueler, 1987)



Synergies and Trade-Offs

Stormwater runoff is affected significantly by site topography, site design, and especially quantity of impervious surface area to support transportation amenity design. It may be possible to reuse stormwater for non-potable water purposes such as flushing urinals and toilets, custodial applications, and building equipment uses. It is helpful to perform a water balance to determine the estimated volumes of water available for reuse. Stormwater runoff volumes can also be reduced by designing the building with underground parking, a strategy that also reduces heat island effects. Pervious paving systems usually have a limit on transportation loads and may pose problems for wheelchair accessibility and stroller mobility. If stormwater volumes are treated on site, additional site area may need to be disturbed to construct treatment ponds or underground facilities. Application of green roofs reduces stormwater volumes that may be intended for collection and reuse for non-potable applications.

Resources

Web Sites

Please see the USGBC Web site at www.usgbc.org/resources for more specific resources on materials sources and other technical information.

Stormwater Best Management Practice Design Guide, EPA/600/R-04/121A, September 2004.

www.epa.gov/ORD/NRMRL/pubs/600r04121/600r04121a.pdf

Maryland Stormwater Design Manual

www.mde.state.md.us/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.asp

Definitions

Impervious Surfaces promote runoff of precipitation volumes instead of infiltration into the subsurface. The imperviousness or degree of runoff potential can be estimated for different surface materials.

Stormwater Runoff consists of water volumes that are created during precipitation events and flow over surfaces into sewer systems or receiving waters. All precipitation waters that leave project site boundaries on the surface are considered to be stormwater runoff volumes.

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

MIAMIBEACH

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, April 22, 2009,** to consider the following:

10:15 a.m.

An Ordinance Amending Section 2-22, Entitled "General Requirements," Of Division I, Entitled "Generally," Of Article III, Entitled "Agencies, Boards And Committees," Of Chapter 2 Entitled "Administration," Of The Miami Beach City Code To Require An Annual Reporting To The City Commission With Regard To City Agency, Board, And Committee Appointments And City Workforce Diversity Statistics.

Inquiries may be directed to the City Attorney's Office at (305) 673- 7470.

10:20 a.m.

An Ordinance Amending The City Code Of The City Of Miami Beach, By Creating New Chapter 100, Entitled "Sustainability," By Creating New Article I, "Green Building Ordinance," Establishing Definitions, Standards, Procedures And Incentives Providing For Property Owner Voluntary Participation, And City Mandatory Participation, In The LEED Certification Program As Established By The U.S. Green Building Council Or Other Recognized Rating System, For New Construction Or Substantial Renovations As Provided In The Ordinance, Providing For A Bond To Guarantee Participation In The Program If A Property Owner Receives Incentives, And Procedures For Use Of The Bond For Failure To So Participate.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

11:10 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2 Entitled "Officers, Employees And Agency Members," Section 2-459 Entitled "Certain Appearances Prohibited," By Amending Subsection (B) Thereof Establishing This Code Section's Exclusion For Lobbyists Who Represent Non-Profit Entities Without Special Compensation By Narrowing This Exclusion To Only Certain Representatives Of Non-Profit Entities.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

11:20 a.m.

An Ordinance Relating To The Jurisdiction Of The Special Master; Amending Chapter 30, "Code Enforcement," Article III, "Enforcement Procedure," Section 30-73, "Powers Of The Special Master," By Clarifying That The Special Master Lacks Jurisdiction Over Appeals From Or Challenges To Interpretations Or Actions Of The Building Official, Planning Director And Fire Marshal, Or Claims That An Act Of The City Is Unconstitutional, Which Are By Applicable Law Vested In Other Authorities.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

11:30 a.m.

An Ordinance Amending Chapter 70 Of The Miami Beach City Code Entitled "Miscellaneous Offenses"; By Amending Article III Entitled "Graffiti"; By Amending Division I, Entitled "Generally"; By Amending Section 70-121 Entitled "Reserved" To Provide Provisions Declaring Graffiti A Nuisance; By Amending Section 70-122 Entitled "Definitions" To Provide Additional And Amended Definitions Relative To Graffiti; By Amending Section 70-123 Entitled "Prohibitions" By Amending The Acts Prohibited And Amending Enforcement And Penalty Provisions; By Amending Section 70-124 Entitled "Possession Of Spray Paint And Markers" By Amending Enforcement And Penalty Provisions; By Amending And Renumbering Section 70-125 Entitled "Graffiti Declared A Nuisance" By Moving Said Section To Section 70-121; By Amending And Renumbering Section 70-126 Entitled "Responsibility Of Property Owner(s); Graffiti Removal And Notice" By Amending The Responsibilities Of Property Owners With Regard To The Removal Of Graffiti And Amending Enforcement Provisions; By Amending And Renumbering Section 70-127 Entitled "Appeal" By Providing For Penalty And Lien Provisions; By Amending And Renumbering Section 70-128 Entitled "Cost Of Graffiti Removal As Lien On Property, Collection; Foreclosure And Sale" By Amending City Lien Procedures; By Renumbering Section 70-129 Entitled "Interested Persons May Petition To Dispute Assessed Costs"; By Renumbering Sections 70-130 Through 70-145, Entitled "Reserved;" By Amending Division II Entitled "Spray Paint, Broad-Tipped Indelible Markers" By Amending Section 70-146, Entitled "Sale Prohibited," And Section 70-147, Entitled "Signs Required," By Adding Etching Acid To The Items Prohibited For Sale To Minors And Signage Requirements; By Amending Section 70-148, Entitled "Penalties; Procedures For Administration," By Amending The Enforcement And Penalty Provisions.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

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

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

Ad #530

MIAMIBEACH

OFFICE OF THE CITY ATTORNEY
JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: **Mayor Matti Herrera Bower**
Members of the City Commission
City Manager Jorge Gonzalez

SECOND READING

FROM: **Jose Smith**
City Attorney

DATE: **April 22, 2009**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 2 ENTITLED "OFFICERS, EMPLOYEES AND AGENCY MEMBERS," SECTION 2-459 ENTITLED "CERTAIN APPEARANCES PROHIBITED," BY AMENDING SUBSECTION (b) THEREOF ESTABLISHING THIS CODE SECTION'S EXCLUSION FOR LOBBYISTS WHO REPRESENT NON-PROFIT ENTITIES WITHOUT SPECIAL COMPENSATION BY NARROWING THIS EXCLUSION TO ONLY CERTAIN REPRESENTATIVES OF NON-PROFIT ENTITIES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Pursuant to the request of Commissioner Victor Diaz and as recommended by the Neighborhood/Community Affairs Committee at its March 11, 2009 meeting, the attached Ordinance reflects proposed amendments to Miami Beach City Code section 2-459 "Certain Appearances Prohibited"—this section of the City Code presently prohibits City Agency members from directly or indirectly lobbying City personnel, with the sole exception being when a person lobbies on behalf of a non-profit entity without special compensation. The subject amendments will amend this exception as follows, with limited applicability to City Agencies which are standing in nature:

--**direct lobbying by city agency members** shall only be permitted when the agency member is affiliated with a non-profit entity in a capacity other than as a *managerial employee* (as said term is specifically defined in Ordinance);

--**indirect lobbying by an associate of a city agency member** shall only be permitted when:

1. the agency member is affiliated with the non-profit in a capacity other than managerial employee and the associate who is lobbying on behalf of that non-profit does so without special compensation for that appearance; or
2. the agency member is a managerial employee of the non-profit and the associate who is lobbying for that entity is affiliated with it in a capacity other than as a managerial employee.

These amendments shall apply prospectively, to those city agency members appointed/elected or reappointed/reelected subsequent to the effective date of the attached Ordinance. This Ordinance was approved by the City Commission on First Reading on March 18, 2009, and is now presented to the City Commission on second and final reading.

Agenda Item R5C
Date 4-22-09

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 2 ENTITLED "OFFICERS, EMPLOYEES AND AGENCY MEMBERS," SECTION 2-459 ENTITLED "CERTAIN APPEARANCES PROHIBITED," BY AMENDING SUBSECTION (b) THEREOF ESTABLISHING THIS CODE SECTION'S EXCLUSION FOR LOBBYISTS WHO REPRESENT NON-PROFIT ENTITIES WITHOUT SPECIAL COMPENSATION BY NARROWING THIS EXCLUSION TO ONLY CERTAIN REPRESENTATIVES OF NON-PROFIT ENTITIES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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

SECTION 1. That Miami Beach City Code Chapter 2, Article VII, Division 2 entitled "Officers Employees and Agency Members," Section 2-459 thereof entitled "Certain Appearances Prohibited," is hereby amended to read as follows:

Sec. 2-459. Certain appearances prohibited.

(a) No member of a city board, agency or committee or a member of any board, agency or committee created hereafter which is designated as a board, agency or committee subject to the purview of this section shall:
(1) Either directly or through an associate, appear, represent or act on behalf of a third person before the city commission or any city agency with respect to any agency action sought by the third person.
(2) Either directly or through an associate be engaged as a lobbyist for and on behalf of a third person with respect to any official action by any public officer sought by such third person.

(b) *Definitions.* As used in this section, the following definitions shall apply:
Agency means any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature.

Associate means any person or entity engaged in or carrying on a business enterprise with a city agency member as a partner, joint venturer, or co-corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange or co-owner of property. Associate shall further include a business affiliation with a city agency member where an "employee" or "of counsel" relationship exists.

Lobbyist means all persons, firms, or corporations employed or retained, whether paid or not, by a principal who seeks to encourage the passage, defeat, or modification(s) of any of the following: (1) ordinance, resolution, action or decision of any commissioner; (2) any action, decision, or recommendation of any city board or committee; or (3) any action, decision or recommendation of the city manager, deputy city manager, assistant city managers, all department heads, all division heads, city attorney, chief deputy city attorney, deputy city attorneys, and/or all assistant city attorneys (except when such personnel are acting in

connection with administrative hearings) during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the city commission or a city agency. "Lobbyist," as defined above, specifically includes the principal, as described above, as well as any agent, attorney, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, attorney, officer or employee.

1) For purposes of this section, and with limited applicability to those Agencies that are not standing in nature, "lobbyist" shall exclude any person who only appears as a representative of a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.
2) For purposes of this section, and with limited applicability to those Agencies that are standing in nature:
    a) lobbying by a board, agency or committee member shall be permitted when such person is affiliated with a not for profit corporation or entity (such as a charitable organization, a neighborhood or homeowner association, a local chamber of commerce or a trade association or trade union) in a capacity other than as a managerial employee and appears as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.
    b) lobbying by the associate of a board, agency or committee member shall be permitted:
        (i) when a board, agency or committee member is affiliated with a not for profit corporation or entity in a capacity other than as a managerial employee, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item.
        (ii) when a board, agency or committee member is a managerial employee of a not for profit corporation or entity, and the subject associate is appearing as a representative of that particular not for profit corporation or entity without special compensation or reimbursement for the appearance, whether direct, indirect or contingent, to express support of or opposition to any item and is affiliated with said not for profit corporation or entity in a capacity other than as a managerial employee.
    c) The term "*managerial employee*" shall mean any employee of a non-profit corporation or entity who has supervision and operational responsibilities/control of all or some departments of said entity.

Public officer means any person elected or appointed to hold office in the city, as a member of an agency which shall include an advisory body.

SECTION 2. The amendments set forth above shall apply to those board, agency or committee members elected or appointed/re-elected or re-appointed subsequent to the effective date of this Ordinance.

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict or otherwise redundant herewith, be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect the _____ day of _____, 2009.

PASSED and ADOPTED this _____ day of _____, 2009.

ATTEST:

_____
Matti Herrera Bower
Mayor

_____
Robert Parcher
City Clerk

(Requested by Commissioner Victor Diaz and recommended by the Neighborhood/Community Affairs Committee.)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 3/12/09 Date

F:\atto\OLIJ\ORDINANCES\Certain Appearances Prohibited 03-09.doc

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

MIAMIBEACH

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11:30 a.m.

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Inquiries may be directed to the City Manager's Office at (305) 673-7010.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

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

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

Ad #530

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MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jose Smith, City Attorney

CC: Jorge M. Gonzalez, City Manager

Second Reading – Public Hearing

DATE: April 22, 2009

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RELATING TO THE JURISDICTION OF THE SPECIAL MASTER; AMENDING CHAPTER 30, "CODE ENFORCEMENT," ARTICLE III, "ENFORCEMENT PROCEDURE," SECTION 30-73, "POWERS OF THE SPECIAL MASTER," BY CLARIFYING THAT THE SPECIAL MASTER LACKS JURISDICTION OVER APPEALS FROM OR CHALLENGES TO INTERPRETATIONS OR ACTIONS OF THE BUILDING OFFICIAL, PLANNING DIRECTOR AND FIRE MARSHAL, OR CLAIMS THAT AN ACT OF THE CITY IS UNCONSTITUTIONAL, WHICH ARE BY APPLICABLE LAW VESTED IN OTHER AUTHORITIES, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY, APPLICABILITY AND AN EFFECTIVE DATE.**

RECOMMENDATION

The City Attorney recommends that the City Commission open and continue this item to allow further discussion at the Land Use and Development Committee.

STATUS

The City Commission approved this ordinance on first reading at its meeting of February 25, 2009, and referred it to the Land Use and Development Committee. At its April 6, 2009 meeting, the Land Use Committee discussed the ordinance, and requested that it be amended to remove the "Applicability" clause, and that it be returned to the Land Use Committee at its May meeting for further discussion.

BACKGROUND

Questions have been raised concerning the jurisdiction of the City's special masters over decisions of the Planning Director, Building Official, Fire Marshal, and over claims that prosecutions of certain code violations are unconstitutional.

Review of the decisions by these municipal officials is vested in other bodies - - specifically, appeals from decisions of the Planning Director are properly directed to the City's Board of Adjustment (per City Code section 118-136); appeals from

Agenda Item R5D

Date 4-22-09

decisions of the Building Official are properly directed to the Miami-Dade County Board of Rules and Appeals (per Code of Miami-Dade County, section 8-4(d)(1)); and appeals from decisions of the Fire Marshal are properly directed to the Miami-Dade County Fire Prevention and Safety Appeals Board (per Code of Miami-Dade County, section 14-46(D)(1)).

Further, a claim that a decision or action by any city official is unconstitutional is properly made in circuit court, and thus is not properly before a special master. *See Kuvin v. City of Coral Gables*, ___ So.2d ___, 2007 WL 2376654, at footnote 5 (Fla. 3d DCA 2007) (filing complaint in circuit court to challenge adjudication by city hearing officer of code violation for parking pickup truck in residential driveway "is the appropriate means to challenge the validity of an allegedly unconstitutional city ordinance because the hearing officer has no authority over that question."); *see also Miami-Dade County v. Omnipoint Holdings, Inc.,* 863 So.2d 195 (Fla. 2003) ("The constitutionality of the ordinance [governing unusual uses, modifications of prior approvals, and nonuse variances] must be determined in original proceedings before the circuit court"); *Gulf Pines Memorial Park, Inc., v. Oaklawn Memorial Park, Inc.*, 361 So.2d 695 (Fla. 1978) (failure to seek administrative review of cemetery license could not be used to avoid circuit court jurisdiction over constitutional issues, because "the administrative hearing officer lacks jurisdiction to consider constitutional issues."); *E.T. Legg & Co., v. Franza*, 383 So.2d 962 (Fla. 4th DCA 1980) (administrative hearing officer could not pass on constitutional issues raised by DOT enforcement of sign regulations in city).

Generally, special master review of code violations (to "exhaust administrative remedies") must precede the filing of an appeal to these other boards, or a complaint in circuit court. However, these appeals or complaint are not a substitute for seeking review by a special master of a notice of violation if the alleged violator claims its actions did not constitute a violation of applicable law. Persons or entities receiving notices of violations may seek special master review, and then a stay of proceedings before the special master, if they choose to pursue appeals to these other boards or file a complaint in circuit court as provided for above.

The City Attorney proposes that the City Commission adopt an ordinance clarifying the jurisdiction of the special masters, to provide notice to persons considering becoming involved in, or involved in the Special Master process, of what the already applicable law is. The City Attorney has consulted with the Chief Special Master, who concurs in the proposal.

The ordinance proposed on second reading includes additional language that clarifies that the special master retains jurisdiction in areas conferred upon the special masters by applicable law, which includes but is not limited to review of notices of violations of the City Code, and applicable building codes, land development regulations and fire codes. And as explained above, the ordinance on second reading removes the "Applicability" provision, making applicability

determined by applicable law.

FISCAL IMPACT

In accordance with Charter section 5.02, which requires that the "City of Miami Beach shall consider the long-term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Attorney has evaluated the long-term economic impact (at least 5 years) of this proposed legislative action, and determined that it is not expected to have any economic impact on the City.

CONCLUSION

The City Attorney recommends that the City Commission open and continue this item to allow further discussion at the Land Use and Development Committee.

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ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, RELATING TO THE JURISDICTION OF THE SPECIAL MASTER; AMENDING CHAPTER 30, "CODE ENFORCEMENT," ARTICLE III, "ENFORCEMENT PROCEDURE," SECTION 30-73, "POWERS OF THE SPECIAL MASTER," BY CLARIFYING THAT THE SPECIAL MASTER LACKS JURISDICTION OVER APPEALS FROM OR CHALLENGES TO INTERPRETATIONS OR ACTIONS OF THE BUILDING OFFICIAL, PLANNING DIRECTOR AND FIRE MARSHAL, OR CLAIMS THAT AN ACT OF THE CITY IS UNCONSTITUTIONAL, WHICH ARE BY APPLICABLE LAW VESTED IN OTHER AUTHORITIES, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY, APPLICABILITY, AND AN EFFECTIVE DATE.

WHEREAS, under City Code, section 118-136, the proper authority to hear appeals of or challenges to interpretations or actions of the Planning Director is the City's Board of Adjustment, which is authorized:

> To hear and decide appeals when it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations with the exception of appeals pursuant to section 118-197 [review of conditional use decisions] and section 118-262 [review of design review decisions]; and

WHEREAS, under the Code of Miami-Dade County, section 8-4(d)(1), the proper authority to hear appeals of or challenges to interpretations or actions of the Building Official is the Miami-Dade County Board of Rules and Appeals, which is authorized as follows:

> The Board of Rules and Appeals shall be the board of appeals for decisions of building officials throughout the incorporated and unincorporated areas of Miami-Dade County. The Board shall hear all appeals from the decisions of the Building Official wherein such decision is on matters regulated by the Building Code from any person aggrieved thereby. Application for appeal shall be in writing and addressed to the Secretary of the Board. The Board shall have the power to affirm, modify or reverse the decision of the Building Official wherein such decision is on matters regulated by the Building Official; and

WHEREAS, under the Code of Miami-Dade County, section 14-46(D)(1), the proper authority to hear appeals of or challenges to interpretations or actions of the City's Fire Marshal is the Miami-Dade County Fire Prevention and Safety Appeals Board, which is authorized:

To exclusively hear and determine appeals by any person aggrieved by any action or decision of any fire official of any jurisdiction in Dade County, Florida, with respect to this article, the South Florida Fire Prevention Code, or any municipal ordinance, code, or regulation which regulates fire prevention or fire safety. Notwithstanding any provision of the Code of Metropolitan Dade County, Florida, the South Florida Fire Prevention Code, any municipal ordinance, or any other County ordinance, no other County or municipal officer, agent, employee or Board, except as provided for code enforcement by Chapter 162, Florida Statutes, or by Chapter 8CC of the Code of Metropolitan Dade County, Florida, may hear or determine any matter which the Dade County Fire Prevention and Safety Appeals Board has the power to hear and determine pursuant to this subsection; and

WHEREAS, under applicable Florida case law, the proper venue for claims or arguments that actions, decisions or interpretations of the City or its officials are unconstitutional on their face or as applied is properly in a court of competent jurisdiction; and

WHEREAS, based upon the foregoing, the City Commission adopts the following amendment to the City Code clarifying that the City's special masters lack jurisdiction over these claims, defenses or arguments.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE MAYOR AND MEMBERS OF THE COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION ONE. City Code Chapter 30, "Code Enforcement," Article III, "Enforcement Procedure," Section 30-73, "Powers of the special master," is hereby amended to read:

Sec. 30-73. Powers of the special master.

(a) Each special master shall have the power to:

(1) Adopt rules for the conduct of its hearings.

(2) Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by the police department or the sheriff.

(3) Subpoena evidence.

(4) Take testimony under oath.

(5) Issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance. In cases of repeat violations, if the special master finds that the violator's conduct is habitual or flagrant or amounts to a refusal to comply with prior orders, the special master may suspend the violator's certificate of use and/or business license for a period not to exceed six months.

(6) Assess and order the payment of civil penalties as proscribed herein.

(b) The jurisdiction of special masters shall not extend to appeals from or challenges to actions, decisions or interpretations by the building official, planning director or fire marshal of the codes or ordinances within their jurisdiction, or claims that actions, decisions or interpretations of the City or its officials or employees are unconstitutional. This subsection shall not affect jurisdiction conferred upon the special masters by applicable law, *which includes but is not limited to review of notices of violations of the City Code, and applicable building codes, land development regulations and fire codes.*

SECTION TWO. REPEALER. All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

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

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

SECTION FIVE. EFFECTIVE DATE. This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 2009.

ATTEST:

_____
MAYOR

_____
CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ 4/14/09
City Attorney Date

First Reading: February 25, 2009
Second Reading:
Language in *italics* added between first and second reading.

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CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

MIAMIBEACH

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, April 22, 2009,** to consider the following:

10:15 a.m.

An Ordinance Amending Section 2-22, Entitled "General Requirements," Of Division I, Entitled "Generally," Of Article III, Entitled "Agencies, Boards And Committees," Of Chapter 2 Entitled "Administration," Of The Miami Beach City Code To Require An Annual Reporting To The City Commission With Regard To City Agency, Board, And Committee Appointments And City Workforce Diversity Statistics.

Inquiries may be directed to the City Attorney's Office at (305) 673- 7470.

10:20 a.m.

An Ordinance Amending The City Code Of The City Of Miami Beach, By Creating New Chapter 100, Entitled "Sustainability," By Creating New Article I, "Green Building Ordinance," Establishing Definitions, Standards, Procedures And Incentives Providing For Property Owner Voluntary Participation, And City Mandatory Participation, In The LEED Certification Program As Established By The U.S. Green Building Council Or Other Recognized Rating System, For New Construction Or Substantial Renovations As Provided In The Ordinance, Providing For A Bond To Guarantee Participation In The Program If A Property Owner Receives Incentives, And Procedures For Use Of The Bond For Failure To So Participate.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

11:10 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2 Entitled "Officers, Employees And Agency Members," Section 2-459 Entitled "Certain Appearances Prohibited," By Amending Subsection (B) Thereof Establishing This Code Section's Exclusion For Lobbyists Who Represent Non-Profit Entities Without Special Compensation By Narrowing This Exclusion To Only Certain Representatives Of Non-Profit Entities.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

11:20 a.m.

An Ordinance Relating To The Jurisdiction Of The Special Master; Amending Chapter 30, "Code Enforcement," Article III, "Enforcement Procedure," Section 30-73, "Powers Of The Special Master," By Clarifying That The Special Master Lacks Jurisdiction Over Appeals From Or Challenges To Interpretations Or Actions Of The Building Official, Planning Director And Fire Marshal, Or Claims That An Act Of The City Is Unconstitutional, Which Are By Applicable Law Vested In Other Authorities.

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11:30 a.m.

An Ordinance Amending Chapter 70 Of The Miami Beach City Code Entitled "Miscellaneous Offenses"; By Amending Article III Entitled "Graffiti"; By Amending Division I, Entitled "Generally"; By Amending Section 70-121 Entitled "Reserved" To Provide Provisions Declaring Graffiti A Nuisance; By Amending Section 70-122 Entitled "Definitions" To Provide Additional And Amended Definitions Relative To Graffiti; By Amending Section 70-123 Entitled "Prohibitions" By Amending The Acts Prohibited And Amending Enforcement And Penalty Provisions; By Amending Section 70-124 Entitled "Possession Of Spray Paint And Markers" By Amending Enforcement And Penalty Provisions; By Amending And Renumbering Section 70-125 Entitled "Graffiti Declared A Nuisance" By Moving Said Section To Section 70-121; By Amending And Renumbering Section 70-126 Entitled "Responsibility Of Property Owner(s); Graffiti Removal And Notice" By Amending The Responsibilities Of Property Owners With Regard To The Removal Of Graffiti And Amending Enforcement Provisions; By Amending And Renumbering Section 70-127 Entitled "Appeal" By Providing For Penalty And Lien Provisions; By Amending And Renumbering Section 70-128 Entitled "Cost Of Graffiti Removal As Lien On Property, Collection; Foreclosure And Sale" By Amending City Lien Procedures; By Renumbering Section 70-129 Entitled "Interested Persons May Petition To Dispute Assessed Costs"; By Renumbering Sections 70-130 Through 70-145, Entitled "Reserved;" By Amending Division II Entitled "Spray Paint, Broad-Tipped Indelible Markers" By Amending Section 70-146, Entitled "Sale Prohibited," And Section 70-147, Entitled "Signs Required," By Adding Etching Acid To The Items Prohibited For Sale To Minors And Signage Requirements; By Amending Section 70-148, Entitled "Penalties; Procedures For Administration," By Amending The Enforcement And Penalty Provisions.

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INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

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Ad #530

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Condensed Title:

An Ordinance amending Chapter 70 of the Miami Beach City Code entitled "Miscellaneous Offenses" by amending Article III entitled "Graffiti."

Key Intended Outcome Supported:

Ensure Well Maintained Infrastructure; Ensure Compliance with Code Within Reasonable Time Frame; Improve Cleanliness of Miami Beach Rights of Way Especially in Business Areas; & Increase Resident Satisfaction With Level of Code Enforcement

Supporting Data (Surveys, Environmental Scan, etc.): 2008 Environmental Scan shows that the Number of Warnings for Property Maintenance Decreased by 39%; and that the Overall City Cleanliness Score has improved by 15.4% compared to the base 2005/06 year; The 2007 Community Survey Suggests that 61% of the City's residents are very satisfied or satisfied with the fairness and consistency of the enforcement of codes and ordinances in their neighborhoods; The same survey suggests that 61%of the City's residents and 52% of the City's Businesses rate cleanliness of streets in residential/business areas as good or excellent.

Issue:

Shall the Mayor and the City Commission Approve The Amendments to the Ordinance?

Item Summary/Recommendation:

SECOND READING

At the City Commission meetings on September 8, 2008 and October 7, 2008 discussion was held regarding the problem of graffiti in the City and the City's response to graffiti on public and private property. As discussed, unabated graffiti is a major concern, especially as it frequently triggers the "broken window" theory. In the broken window theory, it is believed that when behaviors such as graffiti or litter are left unabated, these issues trigger further acts of the same behavior or accelerates other acts of vandalism. At that time, Commissioner Jerry Libbin requested that the matter of amending the graffiti ordinance be referred to the Neighborhoods/Community Affairs Committee for discussion. At the Neighborhood/Community Affairs Committee Meeting on October 22, 2008, a further discussion occurred concerning the current situation with graffiti in the City, and the need to update the City's existing anti-graffiti ordinance. Of particular concern was what appeared to be a possible disconnect between the criminal cases opened by the Police Department, and City Code cases that would be handled by the Special Master. A draft ordinance was developed that addressed definitions, fines and penalties, including voluntary community service and restitution, reduced compliance periods, and provided for an easier means for graffiti to be remediated.

The ordinance was considered and approved on first reading at the March 18, 2009 Commission meeting, and a referral made to the NCAC for further discussion on the fines, as well as the remediation process for graffiti that is acid etched on glass . In the interim, the City Attorney's office also made other minor, non-substantive adjustments to the ordinance intended to provide further clarity. The proposed ordinance amendment is adjusted to reflect the comments from the Commission at the March 18th meeting and the direction of the NCAC at their April 15th meeting. The committee requested language that allowed for paint that substantially matched to be used (rather than an actual match), but could not agree on language relating to the abatement of acid etched graffiti. The Committee approved moving the ordinance to the Commission for second reading, and bringing back options for the remediation of graffiti that is acid etched on glass for potential amendments to the ordinance. The Committee also decided not to amend the ordinance to change compliance time from business to calendar days.

The proposed draft ordinance has been developed by the Administration together with the City Attorney's Office pursuant to the instruction by the Neighborhood/Community Affairs Committee. The amendments to the City's existing anti-graffiti ordinance provide updated definitions and modernized terminology as well as more effective fine and penalty schedules. The proposed changes provide for voluntary community service in the City and restitution to victims for code prosecutions in court, and provide the City with a means to recover unpaid fines.. The mentioned changes should make the City's endeavors to fight graffiti more effective. The Administration recommends approving the ordinance on second reading.

Advisory Board Recommendation:

Neighborhoods/Community Affairs Committee, 10/22/08; NCAC meeting on April 15, 2009.

Financial Information:

Source of Funds:		Amount	Account
	1		
OBPI	Total		

Financial Impact Summary: The proposed amendment includes fines and penalties that could produce revenues for the City. The change to a shorter timeframe for private property to remediate the graffiti prior to the City remediating the graffiti may result in an increase in the number of properties remediated by the City on behalf of private property owners. While there are provisions for liens to be attached to private property owners, the City will incur the hard costs (labor and paint) until such time as the reimbursement to the City is made. Additionally, the ordinance provides that penalties can include restitution to the victim, which would include the private property owner, or the public property owner (such as the City).

City Clerk's Office Legislative Tracking:

Hilda Fernandez, ACM

Sign-Offs:

Department Director	Assistant City Manager	City Manager

MIAMIBEACH

AGENDA ITEM RSE

DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SECOND READING

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE MIAMI BEACH CITY CODE ENTITLED "MISCELLANEOUS OFFENSES"; BY AMENDING ARTICLE III ENTITLED "GRAFFITI"; BY AMENDING DIVISION I, ENTITLED "GENERALLY"; BY AMENDING SECTION 70-121 ENTITLED "RESERVED" TO PROVIDE PROVISIONS DECLARING GRAFFITI A NUISANCE; BY AMENDING SECTION 70-122 ENTITLED "DEFINITIONS" TO PROVIDE ADDITIONAL AND AMENDED DEFINITIONS RELATIVE TO GRAFFITI; BY AMENDING SECTION 70-123 ENTITLED "PROHIBITIONS" BY AMENDING THE ACTS PROHIBITED AND AMENDING ENFORCEMENT AND PENALTY PROVISIONS; BY AMENDING SECTION 70-124 ENTITLED "POSSESSION OF SPRAY PAINT AND MARKERS" BY AMENDING ENFORCEMENT AND PENALTY PROVISIONS; BY AMENDING AND RENUMBERING SECTION 70-125 ENTITLED "GRAFFITI DECLARED A NUISANCE" BY MOVING SAID SECTION TO SECTION 70-121; BY AMENDING AND RENUMBERING SECTION 70-126 ENTITLED "RESPONSIBILITY OF PROPERTY OWNER(S); GRAFFITI REMOVAL AND NOTICE" BY AMENDING THE RESPONSIBILITIES OF PROPERTY OWNERS WITH REGARD TO THE REMOVAL OF GRAFFITI AND AMENDING ENFORCEMENT PROVISIONS; BY AMENDING AND RENUMBERING SECTION 70-127 ENTITLED "APPEAL" BY PROVIDING FOR PENALTY AND LIEN PROVISIONS; BY AMENDING AND RENUMBERING SECTION 70-128 ENTITLED "COST OF GRAFFITI REMOVAL AS LIEN ON PROPERTY, COLLECTION; FORECLOSURE AND SALE" BY AMENDING CITY LIEN PROCEDURES; BY RENUMBERING SECTION 70-129 ENTITLED "INTERESTED PERSONS MAY PETITION TO DISPUTE ASSESSED COSTS"; BY RENUMBERING SECTIONS 70-130 THROUGH 70-145, ENTITLED "RESERVED;" BY AMENDING DIVISION II ENTITLED "SPRAY PAINT, BROAD-TIPPED INDELIBLE MARKERS" BY AMENDING SECTION 70-146, ENTITLED "SALE PROHIBITED," AND SECTION 70-147, ENTITLED "SIGNS REQUIRED," BY ADDING ETCHING ACID TO THE ITEMS PROHIBITED FOR SALE TO MINORS AND SIGNAGE REQUIREMENTS; BY AMENDING SECTION 70-148, ENTITLED "PENALTIES; PROCEDURES FOR ADMINISTRATION," BY AMENDING THE ENFORCEMENT AND PENALTY PROVISIONS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Adopt the Ordinance on second reading.

BACKGROUND

Graffiti on private or public property is currently enforceable by City Code, Chapter 70 Article III. "Graffiti" (Section 70-122-129). This section also provides for fines and penalties for violators, as well as requirements or the abatement of graffiti by private property owners.

Section 70-126 describes the responsibility of property owners with regard to graffiti removal. As currently provided in the Code, commercial property owners must take corrective action within seven (7) business days from the receipt or delivery of a notice requiring corrective action; residential property owners must take corrective action within ten (10) business days from receipt or delivery of the notice. The Code Compliance Division issues notices to private property owners.

Under the current ordinance, the City waives permitting fees related to abating graffiti as long as the same color exterior paint is used and the existing paint complies with all city requirements. Currently, abatement requires the painting the entire wall and/or non-permanent structure defaced by graffiti, or pressure cleaning or using any other method that will successfully remove the graffiti from a wall and/or other non-permanent structure without causing damage. Under the current ordinance, the City can, upon the failure of the private property owner to abate the graffiti, enter the private property to address the nuisance. The private property owner is then billed for the expense associated with the abatement, and is provided an opportunity to appeal the costs billed for the abatement. This appeal is heard by the special master. Unpaid bills are deemed special assessment liens and are subject to foreclosure.

It is the City's responsibility to remove graffiti from public property. The Public Works Department dispatches staff to address public property graffiti including, occasionally, graffiti on public property that many not be under the City's direct jurisdiction (e.g., FDOT signs on the Julia Tuttle, County street traffic signs, etc.). Generally, public property graffiti is removed within 24 hours to 72 hours after it is reported to Public Works. However, it must be noted that it may take longer to remove after a major event weekend. A contract with a contractor to address private property graffiti that has not been abated following a violation notice and expiration of the time to clean the graffiti, was discontinued due to budget adjustments. However, historically, there has been a high rate of compliance with graffiti on private property.

ANALYSIS

At the City Commission meetings on September 8, 2008 and October 7, 2008, discussion was held regarding the problem of graffiti in the City and the City's response to graffiti on public and private property. As discussed, unabated graffiti is a major concern, especially as it frequently triggers the "broken window" theory. In the broken window theory, it is believed that when behaviors such as graffiti or litter are left unabated, these issues trigger further acts of the same behavior or accelerates other acts of vandalism. At that time, Commissioner Jerry Libbin requested that the matter of amending the graffiti ordinance be referred to the Neighborhoods/Community Affairs Committee for discussion.

At the Neighborhood/Community Affairs Committee Meeting on October 22, 2008, a further discussion was held concerning the current situation with graffiti in the City, as well as the need to update the City's existing anti-graffiti ordinance, especially to ensure better coordination between the City's police department and other enforcement agencies. Among the discussion items was the need to ensure that violators (persons caught in the act of placing graffiti) are assigned community service hours on Miami Beach.

The Committee instructed the Administration to make changes to the existing ordinance to among other things, update the definitions to reflect current trends in graffiti vandalism; amend the fine schedule for violators, including a requirement to perform community service within Miami Beach; and adjust the period for private property compliance, to ensure that private property graffiti was handled in a more timely manner.

While in the process of developing the proposed amendments to the ordinance, the City implemented certain internal changes to ensure a more timely response to graffiti. This included establishing a program, "T.A.G. – You're It!" designed to encourage residents, businesses and employees to notify the City when they see graffiti. An email (graffiti@miamibeachfl.gov) was activated to allow for easy reporting of incidences of graffiti. Reports are then evaluated to determine if they are public or private locations. For public locations, the Public Works Department is immediately dispatched to abate the nuisance, and information is shared with the Police Department to assist with any investigations and/or prosecutions. Private property graffiti cases are referred to Code Compliance for handling (and information also provided to Police). The Police Department's processes have also been adjusted to ensure that graffiti arrests are reported to Code Compliance, so that an accompanying Code Violation case can also be opened. This new internal process appears to have improved the routing of these cases, and as a result our response to this nuisance.

PROPOSED ORDINANCE AMENDMENT

As instructed by the Neighborhood/Community Affairs Committee, the Administration worked with the City Attorney's Office to propose amendments to the City's existing anti-graffiti legislation, and reviewed current programs and legislation in other metropolitan cities' (Chicago, Atlanta, Los Angeles and New York). The Administration has also considered the model ordinance developed by the International Municipal Lawyer Association (IMLA).

The ordinance was considered on first reading at the March 18, 2009 Commission meeting. To follow is the proposed ordinance amendment, adjusted to reflect the comments from the Commission at the March 18th meeting. Additionally, the Commission requested that the proposed ordinance amendment be referred to the Neighborhoods/Community Affairs Committee (NCAC) for the Committee's review of potential changes to the fine process relating to community service hours and to discuss the manner in which to address abatement for graffiti that is acid etched on glass. The item was considered at the NAC meeting of April 15, 2009. In the interim, the City Attorney's office also made other minor, non-substantive adjustments to the ordinance intended to provide further clarity. The below reflects these additions and deletions.

Updated definitions and modernized terminology

The proposed draft ordinance updates the definition of graffiti and makes it more comprehensive. The amended definition no longer limits graffiti to the vandalism on permanent structures, but covers all public and private properties, structures and fixtures. The amendment also provides an updated more comprehensive definition of graffiti implements, as it adds broad-tipped indelible marker, pen, aerosol paint container, gummed label, paint stick, graffiti stick, etching equipment, brush or any other type of device or, instrument, liquid, substance, or etching acid to the list of the items that can deface properties in the city. The proposed ordinance also incorporates the definition of etching acid which has been increasingly used in cities for graffiti vandalism. The ordinance defines minor as a person who has not attained the age of 18 years. As discussed at the NCAC, the definition of Code Compliance Officer has also been amended to include anyone hired by the City, or authorized, to enforce city codes and ordinances.

Section 70-123 (b)

This section was changed to reflect that the community service hours are voluntary, not required.

Amended fine and penalty schedules

In order to provide a more effective and quick mechanism for the enforcement of the City's anti-graffiti legislation, the Administration proposed a revised fine and penalty schedules for graffiti vandalism, possession of graffiti implements and sale of graffiti implements to minors, which are the three (3) types of violations that can occur under the ordinance. These schedules are as follows:

Fine and penalty schedule for graffiti vandalism

	Fine ($)
1st offense within a 12 month period:	250.00
2nd offense within a 12 month period:	500.00
3rd offense within a 12 month period:	1000.00

As an alternative means of enforcement, the City may take a violator to the Special Master, in which case fines may be imposed of up to $1,000.00 per day for a first offense, $5,000.00 per day for a second offense, and up to $15,000.00 per violation if the graffiti violation is irreparable or irreversible in nature.

Fine and penalty schedule for possession of graffiti implements

	Fine ($)
1st offense within a 12 month period:	125.00
2nd offense within a 12 month period:	250.00
3rd offense within a 12 month period:	500.00

Fine and penalty schedule for sale of graffiti implements to minors

	Fine ($)
1st offense within a 12 month period:	250.00
2nd offense within a 12 month period:	500.00

The proposed fine and penalty schedules are intended to serve as a deterrent to graffiti. As you will note, Section 70-123 (c) (2) provides that in addition to these fines and penalties, a court can also impose fines and penalties, as well as imprisonment for up to six months (as per state law). Direction from the Commission on these fine schedules is requested.

Community service

Pursuant to the instruction by the Neighborhood/Community Affairs Committee, the Administration was requested to incorporate mandatory community service hours as part of the fine and penalty provisions for violations of the City code. However, following review by the City Attorney's office, it was determined that a Special Master cannot impose community service hours. However, language in the ordinance provides that when any criminal case is filed for violations of the City Graffiti ordinance, the court can impose community service hours as an additional penalty, with a specific reference that the community service be graffiti remediation in the City. Additionally, we have included a provision that would allow a violator to voluntarily choose to serve community service in the City in lieu of payment of their fines for city code violations. At the first reading, it was recommended that the proposed service-in-lieu of payment schedule of one community service hour for every $25.00 of an imposed fine be changed to one community service hour (in the City) for every $5.00 of an imposed fine. The option to serve community service hours in lieu of paying the fine remains voluntary. Section 70-124 (d) was amended to reflect that it is a voluntary option that can be accepted by the Special Master.

Restitution

In order to provide compensation to the victims of graffiti vandalism, the proposed draft ordinance provides for restitution to the victim(s). However, the Special Master cannot order restitution; it must be ordered by a court.

Recovery of unpaid fines

In order to provide the City with an effective means to recover unpaid fines for graffiti vandalism and possession of graffiti implements, the proposed draft ordinance authorizes the City to either institute proceedings in a court to compel payment or to impose a lien that may lead to a property foreclosure. The proposed changes also envision revocation of an occupational license or certificate of use. Section 70-

123 (g) also clarifies that the parents or legal guardians of a minor will be jointly and severally liable with the minor for the payment of fines.

Adjusted period for private property compliance
The ordinance at first reading substituted the use of business days for compliance (abatement) with calendar days in order to require a much quicker time for graffiti removal from the private property, especially as this abatement period begins after there has been notice, which means the graffiti may be on the property for at least 20-30 days before the City can abate if the private property owner fails to do so. However, at the NCAC on April 15, 2009, it was requested that the compliance period be allowed to remain as business days instead of calendar days.

Process for Graffiti Abatement
The ordinance provides for more flexibility in the manner in which abatement occurs to allow for a much faster response to graffiti abatement. Section 70-125 (d) and (e) address this process, which currently includes the waiver of a painting permit when the painting is necessary to abate graffiti. Additionally, language has been incorporated in Section 70-125 (e) (1) that, instead of requiring the entire wall that has been "tagged" to be remediated as is currently required, only the "area" that has been defaced needs to be remediated. Additionally, at the request of the NCAC on April 15th, language has been added in 70-125 (d) and (e) (1) that the paint color used to abate the graffiti must substantially match the paint of the area that was defaced.

The Committee was presented with alternatives to address the abatement of acid etched graffiti on glass. The memo presented to Committee is attached for your reference (Attachment A). However, they did not conclude on this issue and referred this back to Committee with the intention that a new amendment to the ordinance would be prepared once consensus was reached on the best approach. The ordinance, as currently written, provides no direction on abating graffiti other than painted graffiti. As you will note, there are no penalty provisions included in the ordinance for the failure of the private property owner to remediate the graffiti, nor is one recommended.

FISCAL IMPACT
The proposed amendment includes additional fines and penalties that could produce revenues for the City. The change to a shorter timeframe for private property to remediate the graffiti prior to the City remediating the graffiti may result in an increase in the number of properties remediated by the City on behalf of private property owners. While there are provisions for liens to be attached to private property owners, the City will incur the hard costs (labor and paint) until such time as the reimbursement to the City is made. Additionally, the ordinance provides that penalties can include restitution to the victim, which would include the private property owner, or the public property owner (such as the City).

CONCLUSION
The proposed draft ordinance has been developed by the Administration together with the City Attorney's Office pursuant to the instruction by the Neighborhood/Community Affairs Committee. The amendments to the City's existing anti-graffiti ordinance provide updated definitions and modernized terminology as well as more effective fine and penalty schedules. The proposed changes add an option for voluntary community service in the City, and restitution for court prosecutions under the City Code; provide the City with a means to recover unpaid fines; and provide for easier means for property owners to abate graffiti on their property. The mentioned changes should make the City's endeavors to fight graffiti more effective. The staff will provide the NCAC with options to address graffiti that is acid etched on glass at the next Committee meeting for possible, future amendments to the ordinance.

JMG/HF/VJ

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ATTACHMENT A

MIAMIBEACH

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

COMMITTEE MEMORANDUM

TO: Members of the Neighborhoods/Community Affairs Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: April 15, 2009

SUBJECT: Additional Information re: Proposed Graffiti Ordinance

During the March 18, 2009 meeting, the City Commission referred the Graffiti Ordinance to the Neighborhoods/Committee Affairs for further discussion of several provisions of the proposed amendments, including the requirements for property owners that are the victims of graffiti that is acid etched on glass. Of specific concern was the cost associated with the replacement of glass that has been etched, as compared to the remediation of graffiti that requires painting. However, it is important to note that the cost of remediating painting, when it covers a large area, can be more costly than replacing a very small glass area.

Staff looked at possible options to address this concern, including options that would still achieve the primary goal of the City's graffiti remediation program, which is the removal of graffiti to prevent the perception that an area is un-kept, and prevent additional graffiti from occurring. Staff contacted their counterparts in the cities of Chicago, Atlanta and New York, as they are known to have graffiti remediation programs. The results of our inquiries on how the cities handle etched-glass graffiti are attached (Attachment A) for your reference. While we had hoped for some specific guidance and examples of how this is dealt with in these cities, it appears that the issue is not so wide spread to have created a need to develop an alternative solution.

POTENTIAL OPTIONS:

Several options for the committee's consideration are provided below. However, it is the administration's recommendation that any graffiti that includes obscene words or graphics must be removed or otherwise remediated within the allotted timeframes of the proposed ordinance amendment, regardless of the cost to the property owner. Options to be considered in other cases:

1) Requirement to replace the glass is tied to the size of the glass pane that is tagged. An assessment of the typical storefront pane sizes would have to be conducted to determine what typical pane sizes are in the city, as well as replacement costs for each size, and then options can be incorporated into the ordinance.

2) In addition to or in lieu of #1, require replacement depending on the percentage of the total glass surface that is etched. For example, for a glass pane that is 16 square feet, if more than 25% of the surface is etched the entire glass pane would have to be replaced; if less than 25% of the surface was damaged, then the entire pane would not have to be replaced unless the etching is obscene.

3) Provide additional time to replace etched glass than provided for remediation that only involves painting. This option could be used in partnership with option 2, providing the property owner that will be required to replace a glass pane with additional time (e.g. six months) to do so.

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ATTACHMENT A

CHICAGO:

- Legally the City can require property owners to remove acid etched glass
- The City is more lenient about demanding removal of glass due to its significant financial impact, mostly by allowing additional time to remediate
- The City uses protective film to protect glass on some of the City's properties

ATLANTA AND NEW YORK:

- Acid etching on glass has not yet been a major issue in these cities
- According to the City attorneys from both Atlanta and New York, acid etching on glass would be subject to the same removal requirements as any other type of graffiti

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE MIAMI BEACH CITY CODE ENTITLED "MISCELLANEOUS OFFENSES"; BY AMENDING ARTICLE III ENTITLED "GRAFFITI"; BY AMENDING DIVISION I, ENTITLED "GENERALLY"; BY AMENDING SECTION 70-121 ENTITLED "RESERVED" TO PROVIDE PROVISIONS DECLARING GRAFFITI A NUISANCE; BY AMENDING SECTION 70-122 ENTITLED "DEFINITIONS" TO PROVIDE ADDITIONAL AND AMENDED DEFINITIONS RELATIVE TO GRAFFITI; BY AMENDING SECTION 70-123 ENTITLED "PROHIBITIONS" BY AMENDING THE ACTS PROHIBITED AND AMENDING ENFORCEMENT AND PENALTY PROVISIONS; BY AMENDING SECTION 70-124 ENTITLED "POSSESSION OF SPRAY PAINT AND MARKERS" BY AMENDING ENFORCEMENT AND PENALTY PROVISIONS; BY AMENDING AND RENUMBERING SECTION 70-125 ENTITLED "GRAFFITI DECLARED A NUISANCE" BY MOVING SAID SECTION TO SECTION 70-121; BY AMENDING AND RENUMBERING SECTION 70-126 ENTITLED "RESPONSIBILITY OF PROPERTY OWNER(S); GRAFFITI REMOVAL AND NOTICE" BY AMENDING THE RESPONSIBILITIES OF PROPERTY OWNERS WITH REGARD TO THE REMOVAL OF GRAFFITI AND AMENDING ENFORCEMENT PROVISIONS; BY AMENDING AND RENUMBERING SECTION 70-127 ENTITLED "APPEAL" BY PROVIDING FOR PENALTY AND LIEN PROVISIONS; BY AMENDING AND RENUMBERING SECTION 70-128 ENTITLED "COST OF GRAFFITI REMOVAL AS LIEN ON PROPERTY, COLLECTION; FORECLOSURE AND SALE" BY AMENDING CITY LIEN PROCEDURES; BY RENUMBERING SECTION 70-129 ENTITLED "INTERESTED PERSONS MAY PETITION TO DISPUTE ASSESSED COSTS"; BY RENUMBERING SECTIONS 70-130 THROUGH 70-145, ENTITLED "RESERVED;" BY AMENDING DIVISION II ENTITLED "SPRAY PAINT, BROAD-TIPPED INDELIBLE MARKERS" BY AMENDING SECTION 70-146, ENTITLED "SALE PROHIBITED," AND SECTION 70-147, ENTITLED "SIGNS REQUIRED," BY ADDING ETCHING ACID TO THE ITEMS PROHIBITED FOR SALE TO MINORS AND SIGNAGE REQUIREMENTS; BY AMENDING SECTION 70-148, ENTITLED "PENALTIES; PROCEDURES FOR ADMINISTRATION," BY AMENDING THE ENFORCEMENT AND PENALTY PROVISIONS; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the immediate removal of graffiti is the most effective deterrent to its reoccurrence; and

WHEREAS, graffiti depreciates the value of the defaced property as well as the surrounding neighborhood; and

WHEREAS, the presence of graffiti etching acid on surfaces which come in contact with the public pose a health and safety risk; and

WHEREAS, the City recognizes the importance of preserving the City's aesthetic beauty and protecting the City's image and quality of life for its residents and visitors; and

WHEREAS, in order to preserve the integrity of the commercial and residential neighborhoods of the City, including its historically designated districts, and to protect the health, safety, and welfare of the general public, the Mayor and City Commission find that more stringent measures and updated terminology with regard to graffiti are needed in the City Code to serve and protect the best interests of the citizens of Miami Beach and to promote and maintain the aesthetic appearance of the City of Miami Beach, which is an internationally renowned tourist destination.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1.

That Article III, entitled "Graffiti," of Chapter 70 of the Miami Beach City Code, entitled "Miscellaneous Offenses," is hereby amended as follows:

CHAPTER 70

MISCELLANEOUS OFFENSES

* * *

ARTICLE III. GRAFFITI

DIVISION 1. GENERALLY

Sec. 70-121. ~~Reserved.~~ Graffiti declared a nuisance.

The creating or maintaining of the unauthorized application of paint, ink, chalk, dye, felt tip or indelible marker, or any non-water soluble substance, or the applying or affixing of other inscribed or engraved materials, including posters, placards, and flyers of any size and type, on public or private structures located on publicly or privately owned real property in the city is hereby declared to be nuisance.

Sec. 70-122. Definitions.

Unless it is apparent from the context that another meaning is intended, the following, when used in this article, shall have the meanings attributed to them by this section:

Abatement means the repair, rehabilitation, demolition or removal of a public nuisance.

~~*Bona fide evidence of majority* means a document issued by a federal, state, county, or municipal government or agency thereof, including but not limited to, a motor vehicle operator's license, or registration certificate issued under the Federal Selective Service Act, a passport, or an identification card issued to a member of the armed forces which identifies an individual and provides proof of the age of such individual.~~

Broad-tipped indelible marker means any indelible marker that is capable of leaving a mark that is not water soluble and which has a flat or angled writing surface one half (1/2) inch or greater.

City's agent means an independent contractor performing graffiti abatement for the city.

Code compliance officer means any designated employee or person hired by the city acting as an agent of the city whose duty it is, or who is authorized, to enforce codes and ordinances enacted or adopted by the city.

Commercial property means property that is used for business, commercial, or for-profit purposes. It shall be prima facie evidence that a property is commercial if it is located in a business, commercial, office, apartment, hotel or industrial zoning district. "Commercial property" shall include non-permanent structures such as trailers, dumpsters, traffic signs, barricades, utility poles, traffic signal boxes, and construction equipment. "Commercial property" shall not include: (1) single-family homes or residential property of three or less units; (2) property owned by governments; (3) property used for non-profit purposes by educational institutions, charities, or religious institutions.

Corrective action means an act required to remove or effectively obscure graffiti that is visible from the right-of-way.

Director means the director of the department designated by the city manager to enforce and administer this article or the director's designated representative.

Etching means the application of graffiti by using a hard or sharp object or etching acid on glass or on any other type of natural or human-made material or surface.

Etching acid means any liquid, substance, or chemical capable of etching, corroding, destroying, or leaving a permanent mark on any natural or human-made surface or material.

Graffiti means the unauthorized application or inscription of any word, figure, graphic design, marking, or defacement that is applied by etching or ~~of~~ paint, ink, chalk, dye, ~~felt-tip or~~ broad-tipped indelible marker, crayon or any non-water soluble substance, or by any graffiti implement, or by applying or affixing inscribed or engraved materials, including posters, placards and flyers of any size and type on public or private ~~permanent structures~~ property, structures, or fixtures located on publicly or privately owned real property within the city.

~~Marker~~ *Graffiti implement* means any ~~felt-tip or~~ broad-tipped indelible marker, ~~pen,~~ aerosol paint container, gummed label, paint stick, graffiti stick, etching equipment, brush or any other type of device ~~or~~, instrument, liquid, substance, or etching acid capable of leaving a visible mark on any natural or human-made surface or material. ~~or similar implement, which contains a~~

~~fluid which is not water soluble and which has a flat, angled, or rounded writing surface one-quarter inch or greater.~~

Minor means any person who has not attained the age of 18 years.

Non-commercial property means all property that is not included in the definition of commercial property in this section.

Non-permanent structures means trailers, dumpsters, traffic signs, barricades, utility poles, traffic signal boxes, and construction equipment.

Nuisance means anything injurious to health so as to interfere with the comfortable enjoyment of life or property, which nuisance affects at the same time an entire community or neighborhood, or any considerable numbers of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Owner means any and all persons with legal and/or equitable title to real property in the city as their names and addresses are shown upon the records of the Miami-Dade County Property Appraiser.

Public right-of-way means any road, parkway, alley, swale, sidewalk, baywalk, beachwalk, cutwalk, boardwalk, easement or other public way.

Supervising adult means an individual twenty-one (21) years of age or older who has been given responsibility by a minor's parents, legal guardian, or other lawful authority to supervise the minor.

Sec. 70-123. Prohibitions; enforcement; and penalties.

(a) *Prohibitions.* It shall be unlawful for any person to deface, destroy, or otherwise damage private or public property without the owner's consent, by or through the application of graffiti. In addition, a violation of Florida law prohibiting criminal mischief by the placement of graffiti shall be a violation of this section.

(b) ~~Any person violating this section shall be punished by a fine of up to $1,000.00 per day for a first violation, $5,000.00 per day per violation for a repeat violation, and up to $15,000.00 per violation if the court or a special master finds the violation to be irreparable or reversible in nature; or by imprisonment in accordance with the requirements of state law or both fine and imprisonment at the discretion of the court.~~

~~(1) In the case of a minor, the parents or legal guardian shall be jointly and severally liable with the minor for payment of all fines.~~

~~(2) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents or legal guardian's real property to include the fine and administrative costs.~~

~~(3) Upon an application and finding of indigence the court may decline to order fines against the minor or parents.~~

Enforcement by code compliance officer; notice of violation. If a code compliance officer finds a violation of this article, the officer shall issue a notice of violation to the violator as provided in chapter 30. The notice shall inform the violator of the nature of the violation, amount of fine and other penalties for which the violator may be liable, instructions and due date for paying the fine and completing the ~~required~~ voluntary community service, notice that the violation may be appealed by requesting an administrative hearing within 20 days after service of the notice of violation, and that failure to do so shall constitute an admission of the violations and waiver of the right to request a hearing.

(c) ~~In addition to any punishment listed in this section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offenses in the amount or manner determined by the court.~~

(1) ~~In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make such restitution.~~

Civil fines and penalties for violators. The following civil fines and penalties shall be imposed for each violation of this ~~article~~ section:

(a) First offense. . . $250.00.

(b) Second offense (within one year of the first offense) . . . $500.00.

(c) Third or more offenses (within one year of the first offense) . . . $1,000.00.

In lieu of a fine, the Special Master may accept voluntary community service removing graffiti in the City ~~may be served~~ equivalent to one hour of community service for each ~~$25.00~~ $5.00 of an imposed fine and voluntary restitution. If the community service is not completed and the restitution is not paid within 6 months of an adjudication of guilt, the fine shall be reinstated.

(2) *Criminal fines and penalties.* In addition to the above civil fines and penalties, a court may impose both civil fines and penalties, restitution, not less than 40 hours and, if possible, at least 100 hours of community service that involves the removal of graffiti in the city, and imprisonment for up to 6 months in accordance with the requirements of state law.

(d) ~~In addition to any punishment listed in this section, the court shall order any violator to perform monitored community service in the removal of graffiti.~~ *Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal.*

(1) A violator who has been served with a notice of violation shall elect either to:

a. pay the civil fine in the manner indicated on the notice; or

b. request an administrative hearing before a special master to appeal the notice of violation within 20 days of the issuance of the notice of violation.

(2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30 - 72 and 30 - 73.

(3) If the named violator after notice fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.

(4) As an alternative to the procedures set forth in (d)(1)-(3), the city may request an administrative hearing pursuant to sections 30-71 through 30-79 if the violation is irreparable or irreversible in nature. In such case, the fines and penalties in said sections shall apply.

(5) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

(e) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*

(1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.

(2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.

(f) *Injunctive relief; license or certificate of use revocation.* As an additional means of enforcement, the city may seek injunctive relief and/or revoke an occupational license/certificate of use as set forth in chapters 14 and 18 of this Code when there are more than three offenses by the same violator within one year of the first offense.

(g) *Liability of parents or legal guardians.* In the case of a minor, the parents or legal guardians shall be jointly and severally liable with the minor for the payment of all fines. Failure of the parents or legal guardian to pay any fines will result in the filing of a lien on the real property of the parents or legal guardians, which lien shall include all administrative costs.

Sec. 70-124. Possession of spray paint and broad-tipped indelible markers; enforcement; penalties.

(a) Possession of spray paint and broad-tipped indelible markers with intent to make graffiti is prohibited.

(b) Possession of spray paint and broad-tipped indelible markers by minors on public property is prohibited. No person under the age of 18 shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any public property, or right-of-way, except in the company of a supervising adult.

(c) Possession of spray paint and broad-tipped indelible markers by minors on private property is prohibited without the consent of the owner. No person under the age of 18 shall have in his or her possession any aerosol container of spray paint or broad-tipped indelible marker while on any private property unless the owner, agent, manager, or person(s) in possession of the property have knowledge of the minor's possession of the aerosol container or broad-tipped indelible marker and have consented to the minor's possession while on his or her property.

(d) ~~Any person violating this section shall be punished by a fine of up to $1,000.00 per day for a first violation, $5,000.00 per day per violation for a repeat violation, and up to $15,000.00 per violation if the court or a special master finds the violation to be irreparable or irreversible in nature.~~

~~(1) In the case of a minor, the parents or legal guardian shall be responsible for payment of all fines.~~

~~(2) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents' or legal guardian's real property to include the fine and administrative costs.~~

(1) *Civil fines and penalties for violators.* The following civil fines and penalties shall be imposed for each violation of this ~~article~~ section:

(a) First offense . . . $125.00.

(b) Second offense (within one year of the first offense) . . . $250.00.

(c) Third or more offenses (within one year of the first offense) . . . $500.00.

In lieu of a fine, the Special Master may accept voluntary community service removing graffiti in the city ~~may be served~~ equivalent to one hour of community service for each ~~$25.00~~ $5.00 of an imposed fine and voluntary restitution. If the community service is not completed and the restitution is not paid within 6 months of an adjudication of guilt, the fine shall be reinstated.

(2) *Criminal fines and penalties.* In addition to the above civil fines and penalties, a court may impose both civil fines and penalties, restitution, not less than 40 hours and, if possible, at least 100 hours of community service that involves the removal of graffiti in the city, and imprisonment for up to 6 months in accordance with the requirements of state law.

(e) *Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal.*

(1) A violator who has been served with a notice of violation shall elect either to:

a. pay the civil fine in the manner indicated on the notice; or

b. request an administrative hearing before a special master to appeal the notice of violation within 20 days of the issuance of the notice of violation.

(2) The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30 - 72 and 30 - 73.

(3) If the named violator after notice fails to pay the civil fine or fails to timely request an administrative hearing before a special master, the special master shall be informed of such failure by report from the code compliance officer. Failure of the named violator to appeal the decision of the code compliance officer within the prescribed time period shall constitute a waiver of the violator's right to administrative hearing before the special master. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.

(4) Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

(f) *Recovery of unpaid fines; unpaid fines to constitute a lien; foreclosure.*

(1) The city may institute proceedings in a court of competent jurisdiction to compel payment of civil fines.

(2) A certified copy of an order imposing a civil fine may be recorded in the public records and thereafter shall constitute a lien upon any other real or personal property owned by the violator; and it may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After two months from the filing of any lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.

(g) *Injunctive relief; license or certificate of use revocation.* As an additional means of enforcement, the city may seek injunctive relief and/or revoke an occupational license/certificate of use as set forth in chapters 14 and 18 of this Code when there are more than three offenses by the same violator within one year of the first offense.

(h) *Liability of parents or legal guardians.* In the case of a minor, the parents or legal guardians shall be jointly and severally liable with the minor for the payment of all fines. Failure of the parents or legal guardian to pay any fines will result in the filing of a lien on the real property of the parents or legal guardians, which lien shall include all administrative costs.

~~**Sec. 70-125. Graffiti declared a nuisance.**~~

~~The creating or maintaining of the unauthorized application of paint, ink, chalk, dye, felt tip or indelible marker, or any non-water soluble substance, or the applying or affixing of other inscribed or engraved materials, including posters, placards, and flyers of any size and type, on public or private structures located on publicly or privately owned real property in the city is hereby declared to be nuisance.~~

Sec. 70-126~~5~~. Responsibility of property owner(s) to remove graffiti; graffiti removal and notice~~.~~; enforcement.

(a) Maintenance or allowance of graffiti to exist for more than seven business days on a commercial property, or 10 business days on a residential property, is prohibited.

(b) Whenever the city becomes aware of the existence of graffiti on any property, a code compliance officer is authorized upon such discovery to give, or cause to be given, notice to take corrective action to the property owner or the property owner's agent or manager.

(1) Commercial property. For commercial property, the property owner or the property owner's agent or manager shall take corrective action within seven business days from the receipt or delivery of the notice referenced within this section.

(2) Non-commercial property. For non-commercial property, the property owner, or property owner's agent shall take corrective action within 10 business days from the receipt or delivery of the notice referenced within this section.

(c) Such notice shall be given by certified mail, return receipt requested; or by hand delivery by code compliance officer to the owner of record of the property described as recorded in the current county tax rolls. Mailed notice shall be deemed complete and sufficient notice when so deposited in the United States mail with proper postage prepaid.

(d) The city shall waive painting permit requirements for abating graffiti, subject to the use of the same, or substantially same, colored exterior paint, provided that the existing paint complies with all city requirements.

(e) Graffiti abatement shall consist of:

(1) Painting of the entire ~~wall, and/or non-permanent structure~~ ~~surface~~ area defaced by graffiti with paint matching, or substantially matching, the permitted paint color on the surface, regardless of whether the city has temporarily abated the graffiti with a different paint color.

(2) Pressure-cleaning or cleaning by any other method that will successfully remove graffiti from ~~a wall, and/or non-permanent structure,~~ the ~~surface~~ area defaced by the graffiti without causing damage.

(f) The property owner is responsible for ensuring compliance with sections 142–1191 through 142–1193 of the City Code and a violation of this section shall be enforced pursuant to sections 114-7 through 114-8.

Sec. 70-12~~7~~6. Appeal.

(a) A property owner who has been served with the notice set forth in section 70-12~~6~~5 shall elect either to:

(1) Remove or cause to remove the graffiti within the time specified on the notice; or

(2) Request an administrative hearing before the special master to appeal the determination of the inspector which resulted in the issuance of the notice.

(b) An appeal for an administrative hearing shall be held before the special master and shall be accomplished by filing a request in writing to set the hearing for review and mailed to the code compliance officer or designee, not later than two business days after the service of the notice. The remainder of the appeal procedures, and penalty and lien provisions, will be in accordance with sections 30-72 through 30-79 of the Code.

Sec. 70-128~~8~~7. Cost of graffiti removal as lien on property; collection~~,~~ foreclosure and sale.

(a) Upon failure of the owner of the property to remedy the conditions existing in violation of section 70-123, the code compliance officer shall proceed to have such condition remedied by the city and/or city agent in an effort to abate the nuisance.

(b) City employees and/or the city's agents may enter upon private property to abate the nuisance pursuant to the provisions of this article. No person shall obstruct, impede, or interfere with any city employee and/or city's agent whenever said person is engaged in the work of graffiti abatement pursuant to this article, or in performing any necessary act preliminary to or incidental to such work as authorized or directed pursuant to this article.

(c) Following corrective action taken by the city or city's agent, the code compliance officer shall proceed to have all cost incurred thereof to be and become a lien against such property thirty (30) days after notice of completion of work by the city if such costs remain unpaid. Said lien shall be of equal dignity with a lien for special assessments, and with the same penalties and with the same rights of collection, foreclosure, sale and forfeiture provided for special assessment liens. ~~The cost chargeable to the owner shall not exceed the amount of cost as set forth in the notice served to the property owner or owners required herein under section 70-126.~~

Sec. 70-129~~8~~8. Interested persons may petition to dispute assessed costs.

(a) Any person owning property which has been found to be in violation of this article, and upon which remedial work by the city has been done shall have the right, at any time within 30 days after notice of completion of work under this article, to present to the city clerk a sworn petition stating his or her interest in the property and alleging that in the opinion of the petitioner, the cost of the work exceeds the actual cost thereof or is otherwise erroneous.

(b) Such petition shall be presented to the special master for consideration. The special master may fix and confirm the amount to be charged based on the information presented.

Secs. 70-130~~2~~9--70-145. Reserved.

DIVISION 2. SALE OF SPRAY PAINT, BROAD-TIPPED INDELIBLE MARKERS, ETCHING-ACID.

Sec. 70-146. Sale prohibited.

It shall be unlawful for any person to sell, barter, exchange or otherwise transfer any aerosol containers of spray paint ~~or~~, any broad-tipped indelible marker, or etching acid to any person under the age of 18 years.

Sec. 70-147. Signs required.

Every person who owns, conducts, operates or manages a retail commercial establishment selling aerosol containers of spray paint ~~or~~, broad-tipped indelible markers, or etching acid shall:

(1) Place a sign in clear public view at or near the display of such products stating:

> Graffiti is a crime. Any person defacing real or personal property not his own with paint or any other liquid or device is guilty of a crime punishable by imprisonment for up to six months, with ~~a~~ fines up to $1,000.00, or up to $15,000.00 if the violation is irreparable or irreversible in nature, restitution, and a minimum of 100 hours of community service in the city.

(2) Place a sign in the direct view of such persons responsible for accepting customer payment for aerosol containers of spray paint, ~~or~~ broad-tipped indelible markers, or etching acid stating:

> It is a violation of the law punishable by a civil fine of $~~100.00~~ 250.00 for a first offense to sell aerosol containers of spray paint, ~~or~~ broad-tipped indelible markers, or etching acid to persons under 18 years of age.

(3) Store or cause such aerosol containers, ~~or~~ broad-tipped indelible marker ~~pens~~, or etching acid to be stored either in the direct line of sight from the cash register work station or any other work station normally continuously occupied while the store is open, or in a place not accessible to the public in the regular course of business without employee assistance, pending legal sale or disposition of such ~~marker pens or paint containers~~ items.

Sec. 70-148. Penalties; procedures for administration.

(a) Violation of this division shall result in a civil penalty of $~~100.00~~ 250.00 for a first offense and $~~200.00~~ 500.00 for all subsequent offenses within 12 months of a prior offense. When three such offenses occur within any calendar year at a commercial establishment, that establishment shall be subject to an injunction from a court of competent jurisdiction forbidding the sale of aerosol containers of spray paint, ~~and~~ broad-tipped indelible markers, and etching acid for a period of two years.

(b) Procedures for enforcement, appeals, and collection of fines by the city shall be as provided in ~~sub~~sections ~~70-6(c) and (d)~~ 30-71 through 30-79.

Secs. 70-149--70-180. Reserved.

SECTION 2. Repealer.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. Severability.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. Codification.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the

Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. Effective Date.

This Ordinance shall take effect the _____ day of _____, 2009.

PASSED and **ADOPTED** this _____ day of _____, 2009.

ATTEST:

_____
Matti Herrera Bower
Mayor

_____
Robert Parcher
City Clerk

Underline denotes additions
~~Strike through~~ denotes deletions
Shading denotes amendments subsequent to the Neighborhoods/Community Affairs Committee Meetings

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
CITY ATTORNEY 4/16/08
DATE

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CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

MIAMIBEACH

NOTICE IS HEREBY given that second readings and public hearings will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, April 22, 2009,** to consider the following:

10:15 a.m.

An Ordinance Amending Section 2-22, Entitled "General Requirements," Of Division I, Entitled "Generally," Of Article III, Entitled "Agencies, Boards And Committees," Of Chapter 2 Entitled "Administration," Of The Miami Beach City Code To Require An Annual Reporting To The City Commission With Regard To City Agency, Board, And Committee Appointments And City Workforce Diversity Statistics.

Inquiries may be directed to the City Attorney's Office at (305) 673- 7470.

10:20 a.m.

An Ordinance Amending The City Code Of The City Of Miami Beach, By Creating New Chapter 100, Entitled "Sustainability," By Creating New Article I, "Green Building Ordinance," Establishing Definitions, Standards, Procedures And Incentives Providing For Property Owner Voluntary Participation, And City Mandatory Participation, In The LEED Certification Program As Established By The U.S. Green Building Council Or Other Recognized Rating System, For New Construction Or Substantial Renovations As Provided In The Ordinance, Providing For A Bond To Guarantee Participation In The Program If A Property Owner Receives Incentives, And Procedures For Use Of The Bond For Failure To So Participate.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

11:10 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 2 Entitled "Officers, Employees And Agency Members," Section 2-459 Entitled "Certain Appearances Prohibited," By Amending Subsection (B) Thereof Establishing This Code Section's Exclusion For Lobbyists Who Represent Non-Profit Entities Without Special Compensation By Narrowing This Exclusion To Only Certain Representatives Of Non-Profit Entities.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

11:20 a.m.

An Ordinance Relating To The Jurisdiction Of The Special Master; Amending Chapter 30, "Code Enforcement," Article III, "Enforcement Procedure," Section 30-73, "Powers Of The Special Master," By Clarifying That The Special Master Lacks Jurisdiction Over Appeals From Or Challenges To Interpretations Or Actions Of The Building Official, Planning Director And Fire Marshal, Or Claims That An Act Of The City Is Unconstitutional, Which Are By Applicable Law Vested In Other Authorities.

Inquiries may be directed to the City Attorney's Office at (305) 673-7470.

11:30 a.m.

An Ordinance Amending Chapter 70 Of The Miami Beach City Code Entitled "Miscellaneous Offenses"; By Amending Article III Entitled "Graffiti"; By Amending Division I, Entitled "Generally"; By Amending Section 70-121 Entitled "Reserved" To Provide Provisions Declaring Graffiti A Nuisance; By Amending Section 70-122 Entitled "Definitions" To Provide Additional And Amended Definitions Relative To Graffiti; By Amending Section 70-123 Entitled "Prohibitions" By Amending The Acts Prohibited And Amending Enforcement And Penalty Provisions; By Amending Section 70-124 Entitled "Possession Of Spray Paint And Markers" By Amending Enforcement And Penalty Provisions; By Amending And Renumbering Section 70-125 Entitled "Graffiti Declared A Nuisance" By Moving Said Section To Section 70-121; By Amending And Renumbering Section 70-126 Entitled "Responsibility Of Property Owner(s); Graffiti Removal And Notice" By Amending The Responsibilities Of Property Owners With Regard To The Removal Of Graffiti And Amending Enforcement Provisions; By Amending And Renumbering Section 70-127 Entitled "Appeal" By Providing For Penalty And Lien Provisions; By Amending And Renumbering Section 70-128 Entitled "Cost Of Graffiti Removal As Lien On Property, Collection; Foreclosure And Sale" By Amending City Lien Procedures; By Renumbering Section 70-129 Entitled "Interested Persons May Petition To Dispute Assessed Costs"; By Renumbering Sections 70-130 Through 70-145, Entitled "Reserved;" By Amending Division II Entitled "Spray Paint, Broad-Tipped Indelible Markers" By Amending Section 70-146, Entitled "Sale Prohibited," And Section 70-147, Entitled "Signs Required," By Adding Etching Acid To The Items Prohibited For Sale To Minors And Signage Requirements; By Amending Section 70-148, Entitled "Penalties; Procedures For Administration," By Amending The Enforcement And Penalty Provisions.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

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

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

Ad #530

MIAMIBEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

FIRST READING

TO: **Mayor Matti Herrera Bower**
Members of the City Commission
City Manager Jorge Gonzalez

FROM: **Jose Smith**
City Attorney

DATE: **April 22, 2009**

SUBJECT: **AN ORDINANCE AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII THEREOF, BY THE ADDITION OF CITY CODE SECTION 2-450.1 TO BE ENTITLED "AC WEINSTEIN SERVICE ABOVE PROFIT ACT: PROHIBITED EMPLOYMENT OR COMPENSATION OF MAYOR AND CITY COMMISSIONERS WITH CITY VENDORS, BIDDERS OR PROPOSERS," PROHIBITING SAID ELECTED OFFICIALS FROM DIRECTLY OR INDIRECTLY HAVING AN EMPLOYMENT RELATIONSHIP WITH OR RECEIVING COMPENSATION FROM ANY CITY VENDOR, BIDDER OR PROPOSER, PROHIBITING CITY VENDORS, BIDDERS OR PROPOSERS FROM DIRECTLY OR INDIRECTLY HAVING AN EMPLOYMENT RELATIONSHIP WITH OR PROVIDING COMPENSATION TO ANY MEMBER OF THE CITY COMMISSION; ESTABLISHING DEFINITIONS, WAIVER OF PROHIBITION AND PROSPECTIVE APPLICATION; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

AN ORDINANCE AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, SECTION 2-458 THEREOF ENTITLED "SUPPLEMENTAL ABSTENTION AND DISCLOSURE REQUIREMENTS" BY REQUIRING PUBLIC OFFICERS TO DISCLOSE COMPENSATION RECEIVED BY PUBLIC OFFICER AND/OR PUBLIC OFFICER'S EMPLOYER OR FIRM RELATED TO SUBJECT CONFLICTING RELATIONSHIP, SAID DISCLOSURES TO BE MADE FROM THREE YEARS PRECEDING ORIGINAL DATE OF ELECTION/APPOINTMENT OF PUBLIC OFFICER; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

Pursuant to the request of Commissioner Jonah Wolfson, the attached two ordinances being presented on first reading have been drafted for the purpose of amending Miami Beach City Code Chapter 2, Article VII "Standards of Conduct" for public officers and employees in the City of Miami Beach.

Specifically, these measures seek to strengthen the City's ethics laws by:
-- absolutely prohibiting members of the Miami Beach City Commission from either directly or indirectly having an employment relationship with or receiving compensation from any City vendor, bidder or proposer; and
-- requiring a public official to state in a conflict of interest disclosure memorandum any actual or contingent compensation or consideration received by said official or official's employer or firm in certain instances.

Agenda Item RSF
Date 4-22-09

FIRST READING

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII THEREOF, BY THE ADDITION OF CITY CODE SECTION 2-450.1 TO BE ENTITLED "AC WEINSTEIN SERVICE ABOVE PROFIT ACT: PROHIBITED EMPLOYMENT OR COMPENSATION OF MAYOR AND CITY COMMISSIONERS WITH CITY VENDORS, BIDDERS OR PROPOSERS," PROHIBITING SAID ELECTED OFFICIALS FROM DIRECTLY OR INDIRECTLY HAVING AN EMPLOYMENT RELATIONSHIP WITH OR RECEIVING COMPENSATION FROM ANY CITY VENDOR, BIDDER OR PROPOSER, PROHIBITING CITY VENDORS, BIDDERS OR PROPOSERS FROM DIRECTLY OR INDIRECTLY HAVING AN EMPLOYMENT RELATIONSHIP WITH OR PROVIDING COMPENSATION TO ANY MEMBER OF THE CITY COMMISSION; ESTABLISHING DEFINITIONS, WAIVER OF PROHIBITION AND PROSPECTIVE APPLICATION; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

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

SECTION 1. That Miami Beach City Code Chapter 2, Article VII thereof, is hereby amended by the addition of the following Section 2-450.1 entitled "AC Weinstein Service Above Profit Act: Prohibited Employment for Compensation of Mayor and City Commissioners with city vendors, bidders or proposers," said section to read as follows:

Sec. 2-450.1. AC Weinstein Service Above Profit Act: Prohibited Employment or Compensation of Mayor and City Commissioners with city vendors, bidders or proposers.

No member of the Miami Beach City Commission shall either directly or indirectly be employed by or receive compensation from any city vendor, bidder or proposer. Nor shall any city vendor, proposer or bidder either directly or indirectly employ or provide compensation to a member of the Miami Beach City Commission. Commencing on the effective date of this ordinance, all proposed city contracts, purchase orders, standing orders, direct payments, as well as requests for proposals (RFP), requests for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the city, shall incorporate this section so as to notify potential vendors, bidders and proposers of the proscriptions embodied herein.

A. For purposes of this section, the following definitions shall apply:

1. The term "indirectly" shall mean those events in which the elected official is an employee, associate, and/or partner of, or possesses an ownership interest of 10% or greater in, a business entity that has a contractual relationship with a city vendor, proposer or bidder.

2. The term "associate" shall mean an employee, of counsel, partner, joint venturer, or owner of or possessing an ownership interest of 10% or greater in the subject business entity.

3. The term "vendor" shall mean a person and/or entity who has been selected by the city as the successful contractor on a present or pending solicitation for goods, equipment or services, or has been approved by the city on a present or pending award for goods, equipment or services prior to or upon execution of a contract, purchase order, standing order, direct payment or purchasing card payment.

a) "Vendor" shall include natural persons and/or entities that hold a controlling financial interest in a vendor entity as well as any partner or joint venturer of a vendor entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm. The term "firm" shall mean a corporation, partnership, business trust or any legal entity other than a natural person.

b) For purposes of this section, the term "services" shall mean the rendering by a vendor through competitive bidding or otherwise, of labor, professional and/or consulting services to the city.

c) For purposes of this section, "vendor" status shall terminate upon completion of the agreement for the provision of goods, equipment or services.

4. The term "bidder or proposer" shall mean a person and/or entity who has submitted a response to a city solicitation (whether competitively bid or otherwise) for goods, equipment or services. For purposes of this section only, any bidder or proposer will be treated the same as a vendor.

B. Any person can initiate a Complaint against the alleged violator in the Circuit Court of Miami-Dade County or the Miami-Dade County Commission on Ethics and Public Trust. Upon a finding of a violation of this Section:

1. the subject vendor's contract with the city shall be terminated, subject to waiver provisions below.

2. the subject bidder/proposer's response to city solicitation shall be disqualified, subject to waiver provisions below.

3. the vendor and commissioner shall each be subject to a civil penalty not to exceed $10,000.00.

4. the prevailing party shall be entitled to an award of attorneys fees and costs as provided by law.

C. *Waiver of prohibition.*

1. *Conditions for waiver.* The requirements of this section may be waived by a five-sevenths vote for a particular transaction by City Commission vote after public hearing upon finding that:

a) The goods, equipment or services to be involved in the proposed transaction are unique and the city cannot avail itself of such goods, equipment or services without entering into a transaction which would violate this section but for waiver of its requirements; or

b) The business entity involved in the proposed transaction is the sole source of supply as determined by the city's procurement director in accordance with procedures established in subsection 2-367(c) of this Code; or

c) An emergency contract (as authorized by the city manager pursuant to section 2-396 of this Code) must be made in order to protect the health, safety or welfare of the citizens of the city, as determined by a five-sevenths vote of the City Commission; or

d) A contract for the provision of goods, equipment or services exists which, if terminated by the city, would be adverse to the best economic interests of the city.

2. *Conditions for limited waiver.* Notwithstanding the denial by the City Commission of a waiver request regarding an existing contract per subsection C(1)(d) above, upon a five-sevenths vote of the City Commission at a public hearing, a limited waiver may be granted on an existing contract upon a finding that in order to protect the health, safety and welfare

of the citizens of the city, continuation of said contract for a limited period of time (not to exceed six months) is necessary in order for the city to obtain a replacement vendor.

3. *Full disclosure.* Any grant of waiver by the commission must be supported with a full disclosure by the affected City Commission member of the subject conflicting employment/contractual relationship.

D. *Applicability.*
This section shall be applied prospectively.

E. *Exceptions.*
This section shall not apply to preclude any governmental entity from being a vendor, bidder or proposer with the City of Miami Beach or affect any member of the Commission's employment with a governmental entity that is or may become a vendor, bidder or proposer to the city.

SECTION 2. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days from passage thereof.

PASSED and **ADOPTED** this ___ day of _____, 2009.

ATTEST:

_____
Matti Herrera Bower
Mayor

_____
Robert Parcher, City Clerk

Requested by Commissioner Jonah Wolfson

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

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4/15/09
City Attorney Date

FIRST READING

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, SECTION 2-458 THEREOF ENTITLED "SUPPLEMENTAL ABSTENTION AND DISCLOSURE REQUIREMENTS" BY REQUIRING PUBLIC OFFICERS TO DISCLOSE COMPENSATION RECEIVED BY PUBLIC OFFICER AND/OR PUBLIC OFFICER'S EMPLOYER OR FIRM RELATED TO SUBJECT CONFLICTING RELATIONSHIP, SAID DISCLOSURES TO BE MADE FROM THREE YEARS PRECEDING ORIGINAL DATE OF ELECTION/APPOINTMENT OF PUBLIC OFFICER; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

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

SECTION 1. That Miami Beach City Code Chapter 2, Article VII, Section 2-458 thereof entitled: "Supplemental Abstention and Disclosure Requirements," is hereby amended to read as follows:

Sec. 2-458. Supplemental Abstention and Disclosure Requirements.

In addition to those conflict of interest abstention and disclosure requirements currently required by state and/or county law, the following requirements shall also apply to public officers:

(1) A public officer with a conflict of interest on a particular matter is prohibited from participating in that matter. "Participation" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.

(2) Written disclosures of conflict of interest shall contain the full nature of the conflict at issue, including but not limited to names of individuals whose relationship with the officer results in the subject conflict as well as any actual or contingent compensation or consideration provided or to be provided the officer and/or the officer's employer or firm from 3 years preceding the officer's date of election or appointment to the present date in relation to the subject conflicting relationship, and all material facts relevant to the conflict issue. The written memorandum disclosing conflict of interest shall be stated into the record before any discussion begins on the subject agenda item. This written disclosure memorandum must be filed regardless of whether the officer possessing the conflict was in attendance or not during consideration of the subject item. The requirements set forth in this Section shall apply to all written disclosure memorandums filed by a public officer since his/her election or appointment to public office in the City of Miami Beach -- public officers are thereby afforded 30 days from

[adoption date of this Ordinance] to supplement any previously-filed memorandum for purposes of complying with the disclosure mandates herein.

(3) "Public officer" includes any person presently serving who has been elected or appointed to hold office in any agency.

(4) "Agency" shall mean any board, commission, committee or authority of the city, whether advisory, ad hoc or standing in nature.

* * *

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days from passage thereof.

PASSED and **ADOPTED** this _____ day of _____ 2009.

ATTEST:

_____
Matti Herrera Bower
Mayor

_____
Robert Parcher, City Clerk

Requested by Commissioner Jonah Wolfson

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/15/09 Date

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Condensed Title:

An Ordinance proposing an amendment to Section 118-321 adding a criterion to the Lot Split review that would authorize the Planning Board to require full or partial retention if an existing structure within the parcel is deemed architecturally significant.

Key Intended Outcome Supported:

Not Applicable - Regulatory

Supporting Data (Surveys, Environmental Scan, etc
Not Applicable - Regulatory

Issue:

Should the City Commission adopt the proposed ordinance which would grant the authority to the Planning Board to require the retention of a structure that is determined to be architecturally significant when reviewing lot split applications.

Item Summary/Recommendation:

FIRST READING

This ordinance gives the authority to the Planning Board to require the partial or full retention of a structure if determined to be architecturally significant when reviewing an application requesting to divide a property. The determination of architectural significance is pursuant to the process under Section 142-108(a) of the City Code

The Administration recommends that the City Commission approve the ordinance on first reading and set a second reading public hearing for the May 13, 2009 meeting.

Advisory Board Recommendation:

At the March 24, 2009 meeting the Planning Board by a vote of 5-0 (two members absent) recommended adoption of the proposed ordinance.

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:
In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action and determined that the proposed Ordinance is administrative in nature and is not expected to have any fiscal impact upon the resources of the City.

City Clerk's Office Legislative Tracking:

Jorge Gomez or Mercy Lamazares

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

AGENDA ITEM R5G
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009 **First Reading**

SUBJECT: Lot Split Criteria

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH AMENDING CITY CODE CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE VII, "DIVISION OF LAND/LOT SPLIT," SECTION 118-321, "PURPOSE, STANDARDS AND PROCEDURES," BY AMENDING THE REVIEW CRITERIA FOR REQUESTS FOR A DIVISION OF LAND/LOT SPLIT TO INCLUDE A CRITERION THAT CONSIDERS THE IMPACTS AND MITIGATION OF THE PROPOSED LOT SPLIT ON THE ARCHITECTURAL SIGNIFICANCE OR HISTORIC VALUE OF EXISTING HOMES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission approve the ordinance on first reading and set a second reading public hearing for the May 13, 2009 meeting.

BACKGROUND

At the February 25, 2009 meeting, the City Commission referred an ordinance that would amend the review criteria for lot splits which would add a new criterion to the review guidelines for lot splits. The criterion reviews whether the proposed lot split adversely affects architecturally significant or historic homes, and grants the authority to the Board to require the full or partial retention of structures constructed prior to 1942.

ANALYSIS

In all cases when a lot split application is submitted, staff is mindful to review whether there is an existing home being retained as a result of the lot split, and whether the home is an architecturally significant structure built prior to 1942. In making recommendations, it has been a matter of practice that staff recommends as a condition that the architecturally significance of the existing home be determined by the historic preservation staff.

The addition of this new review criterion grants the authority on to the Planning Board to review whether the proposed lot split adversely affects architecturally significant or historic

homes, and if so, how the adverse effects will be mitigated and to require the full or partial retention of structures constructed prior to 1942 and determined to be architecturally significant.

The Land Use and Development Committee reviewed the proposed ordinance and recommended the referral to the Planning Board for its input and recommendation.

PLANNING BOARD ACTION

At the March 24, 2009 meeting the Planning Board recommended that the City Commission adopt the proposed ordinance by a vote of 5-0 (two members absent).

FISCAL IMPACT

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action and determined that the proposed Ordinance is administrative in nature and is not expected to have any fiscal impact upon the resources of the City.

CONCLUSION

The Administration recommends that the City Commission approve the ordinance on first reading and set a second reading public hearing for the May 13, 2009 meeting.

Pursuant to Section 118-164 of the City Code, when a request to amend the Land Development Regulations does not change the actual list of permitted, conditional or prohibited uses in a zoning category the proposed ordinance may be read by title or in full on at least two separate days and shall, at least ten days prior to adoption, be noticed once in a newspaper of general circulation in the city. The notice of proposed enactment shall state the date, time and place of the meeting; the title of the proposed ordinance; and the place or places within the city where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Immediately following the public hearing at the second reading, the City Commission may adopt the ordinance. An affirmative vote of five-sevenths of all members of the City Commission shall be necessary in order to enact any amendment to the Land Development Regulations.

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ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH AMENDING CITY CODE CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE VII, "DIVISION OF LAND/LOT SPLIT," SECTION 118-321, "PURPOSE, STANDARDS AND PROCEDURES," BY AMENDING THE REVIEW CRITERIA FOR REQUESTS FOR A DIVISION OF LAND/LOT SPLIT TO INCLUDE A CRITERION THAT CONSIDERS THE IMPACTS AND MITIGATION OF THE PROPOSED LOT SPLIT ON THE ARCHITECTURAL SIGNIFICANCE OR HISTORIC VALUE OF EXISTING HOMES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, review criteria are necessary for the proper review and evaluation by the Planning Board for the requests to divide or split a parcel of land; and

WHEREAS, new construction that is compatible with the prevailing character of existing residential neighborhoods should be encouraged and promoted; and

WHEREAS, the City of Miami Beach places a strong emphasis on the retention and preservation of existing, architecturally significant single family homes; and

WHEREAS, the Mayor and City Commission deem it appropriate to protect the significant architectural history, existing building scale, and unique character of the single family residential neighborhoods in Miami Beach; and

WHEREAS, the amendment set forth below is necessary to accomplish all of the above objectives.

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

Section 1. That City Code Chapter 118, "Administration and Review Procedures," Article VII, "Division of Land/Lot Split," Section 118-321, "Purpose, Standards and Procedure," is hereby amended as follows:

* * *

B. Review criteria. In reviewing an application for the division of lot and lot split, the Planning Board shall apply the following criteria:

(1) Whether the lots that would be created are divided in such a manner that they are in compliance with the regulations of these land development regulations.

(2) Whether the building site that would be created would be equal to or larger than the majority of the existing building sites, or the most common existing lot size, and of the same character as the surrounding area.

(3) Whether the scale of any proposed new construction is compatible with the as-built character of the surrounding area, or creates adverse impacts on the surrounding area; and if so, how the adverse impacts will be mitigated. To determine whether this criterion is satisfied, the applicant shall submit massing and scale studies reflecting structures and uses that would be permitted under the land development regulations as a result of the proposed lot split, even if the applicant presently has no specific plans for construction.

(4) Whether the building site that would be created would result in existing structures becoming nonconforming as they relate to setbacks and other applicable regulations of these land development regulations, and how the resulting nonconformities will be mitigated.

(5) Whether the building site that would be created would be free of encroachments from abutting buildable sites.

(6) Whether the proposed lot split adversely affects architecturally significant or historic homes, and if so, how the adverse effects will be mitigated. The Board shall have the authority to require the full or partial retention of structures constructed prior to 1942 and determined by the Planning Director or designee to be architecturally significant under section 142-108 (a).

Section 2. Repealer.

All ordinances or parts of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

Section 3. Codification.

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

Section 4. Severability.

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

Section 5. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this _____ day of _____, 2009.

_____
MAYOR

ATTEST:

_____
CITY CLERK

First Reading:
Second Reading:

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ 4/8/09
City Attorney Date

Verified by: _____
Jorge G. Gomez, AICP
Planning Director

Underscore denotes new language

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Condensed Title:

An Ordinance proposing an amendment to Chapter 118 in order to harmonize the permitted number of absences and recusals for land use board members.

Key Intended Outcome Supported:

Not Applicable - Regulatory

Supporting Data (Surveys, Environmental Scan, etc
Not Applicable - Regulatory

Issue:

Should the City Commission adopt the proposed ordinance which would limit the number of recusals for all four land use board members to three per calendar year, and to define what constitutes an absence.

Item Summary/Recommendation:

FIRST READING

This ordinance will harmonize the permitted number recusals for land use board members to three per calendar year and defines an absence as missing more than 50% of scheduled items (instead of 30%) unless the member attended 70% of the duration of time of the meeting's agenda.

The Administration recommends that the City Commission approve the ordinance on first reading and set a second reading public hearing for the May 13, 2009 meeting.

Advisory Board Recommendation:

At the January 27, 2009 meeting the Planning Board by a unanimous vote (7-0) recommended adoption of an ordinance that would allow land use board members seven (7) recusals in a calendar year.

At the March 2, 2009 meeting, the Committee reviewed the proposed ordinance as suggested by the Planning Board and made the following changes: the number of recusals should be three per year for all four Land Use Boards, and absences are to be defined as missing more than 50% of scheduled items (instead of 30%) unless the member attended 70% of the duration of time of the meeting's agenda. The attached ordinance reflects the changes made by the Committee.

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:
In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action and determined that the proposed Ordinance is administrative in nature and is not expected to have any fiscal impact upon the resources of the City.

City Clerk's Office Legislative Tracking:

Jorge Gomez or Mercy Lamazares

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

AGENDA ITEM R5H
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009 **First Reading**

SUBJECT: Recusals and absences for Land Use Board members

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE TO HARMONIZE THE PERMITTED NUMBER OF ABSENCES AND RECUSALS FOR LAND USE BOARD MEMBERS, BY AMENDING CHAPTER 118, ADMINISTRATIVE AND REVIEW PROCEDURES, ARTICLE II, BOARDS, DIVISION 2, PLANNING BOARD, SECTION 118-52, MEETINGS AND PROCEDURES; DIVISION 3, DESIGN REVIEW BOARD, SECTION 118-74, REMOVAL; DIVISION 4, HISTORIC PRESERVATION BOARD, SECTION 118-105, REMOVAL; DIVISION 5, BOARD OF ADJUSTMENT, SECTION 118-133, REMOVAL, PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City commission approve the ordinance on first reading and set a second reading public hearing for the May 13, 2009 meeting.

BACKGROUND

The Planning Board requested that staff look into the matter of the number of recusals that would constitute an automatic removal of a land use board member; and also review how an absence from a meeting is defined. The Planning Board also requested that staff research the City Code in order to harmonize this matter for the four land use boards.

ANALYSIS

The land use boards are tasked with the regulation of land development in very specific realms; however there are commonalities in their duties to review the applications submitted to them. As shown in the chart below, the number of recusals within a period of a calendar year varies from four for the Planning Board and the Board of Adjustment, to five for the Historic Preservation Board, to seven for the Design Review Board. The proposed ordinance reviewed by the Planning Board would harmonize the number of recusals for all four boards to seven in a calendar year.

Development Boards – Comparison

Board	Appointment	Removal
Planning Board	Seven, appointed with the concurrence of at least four votes of the city commission.	Missing 33 percent of the regularly scheduled meetings per calendar, or **abstains on four** different applications within a period of one year.
Design Review	Same as above	Miss 33% of the regularly scheduled meetings per calendar year or **abstains on seven different applications** within a calendar year.
Historic Preservation	Same as above	Missing 33 percent of the regularly scheduled meetings per calendar year or **abstains five times** within one year.
Board of Adjustment	Seven members appointed by a **five-sevenths** vote of the city commission.	Missing 33 percent of the regularly scheduled meetings per calendar year or **abstains** on **four different** applications within one year

A review of the number of recusals by land use board members during the 2007 and 2008 calendar years is shown in the table below:

	Planning board	Design Review Board	Historic Preservation Board	Board of Adjustment
2007	one member - one time	one member - four times; one member two times	four members - one time each	two members - three times each
2008	three members - three times each; two members - two times each	None	one member - one time	one member - three times; one member - four times

As can be seen on the table, pursuant to current regulations, two members of the Board of Adjustment came close to being removed in 2007. In 2008, three members of the Planning Board and one member of the Board Adjustment came close to removal, while one member of the Board of Adjustment was automatically removed.

The proposed amending ordinance also addresses the definition of what constitutes an absence. Currently an absence is defined as missing more than 30 percent of the scheduled matters on that meeting's agenda, with the exception of the Historic Preservation Board which does not have such definition.

For example, a meeting that has 10 items scheduled on its agenda and lasts 5 hours, but a member leaves at hour four, and during those four hours only 6 items have been reviewed, that person has missed 40% of the scheduled items, and therefore, by the current definition, that person is absent. In this regard, the proposed ordinance would consider a dual criterion for this definition - if the member misses 30 percent of the scheduled matters, but has been present at the meeting for 70% of the duration of time, it would not count as an absence. In fairness to members of all the land use boards, some items take extremely long time for discussion and final action, and although this does not happen regularly, prior commitments or emergencies do happen; if a member has been present at a meeting 70% of the duration, that member should get credit for his/her attendance. In trying to clarify the definition of an

absence, staff looked for guidance in Section 2-22 of the City Code, which lists general requirements for Agencies, Boards and Committees, and one of those is "Attendance shall be recorded when an individual arrives within 30 minutes of the scheduled meeting time and remains for at least 70 percent of the meeting."

The Planning Board also directed staff to research the City Code to find where the different discrepancies and language originated. The following is a synopsis of the findings:

Conflicts of interest

The Planning Board, Historic Preservation Board and the Board of Adjustment use similar language to that contained in Section 2-22 (16) of the City Code. The Design Review Board (DRB) section contains different language and in this regard, staff is including an amendment to the language so that it the same as the other land use boards.

Removal of board members

Ordinance No. 94-2923 included the removal of a Design Review Board member in the event that the member is absent from 3 regular meetings, or is absent from 3 workshop meetings or recused from voting due to a conflict of interest on 7 different applications in a calendar year. The ordinance also defined an absence as missing 30% of the scheduled matters on the agenda, and that if removal for these reasons, a member could not be reappointed for at least one year.

The amendments above were requested by the Planning Board in order to encourage improved attendance and ensure that the process was not bogged down due to excessive conflicts of interest.

Ordinance No. 95-3025 provides for removal of a Board of Adjustment member in the event that the member is absent from 3 regular meetings, or is absent from 3 workshop meetings or recused from voting due to a conflict of interest on 4 different applications in a calendar year. The ordinance also defined an absence as missing 30% of the scheduled matters on the agenda, and that if removal for these reasons, a member could not be reappointed for at least one year.

The amendments above were requested by the Planning Board in order to encourage improved attendance and ensure that the process was not bogged down due to excessive conflicts of interest and to make the removal of members more consistent.

A separate ordinance – *Ordinance No. 95-3026* – created the same regulation for the Planning Board.

Ordinance No. 99-3168 provided for automatic removal of an agency, board or committee member failing to attend 33% of the regularly scheduled meetings per calendar year in Section 2-22(9) of the City Code.

Ordinance No. 99-3225 codified in the Land Development Regulations of the City Code, the automatic removal of a land use board member using the same formula that was included in Section 2-22 of the City Code.

Number of recusals (abstentions)

Section 2-22, "General requirements," subsection (16) partially states: "The issue of conflict of interest/abstention impairs an individual's ability to be an effective member of an agency, board or committee." Based on this statement in the City Code and past legislation, it has been envisioned that attendance and ensuring that the process is not bogged down due to excessive conflicts of interest is of utmost importance to the City Commission.

PLANNING BOARD ACTION

At the January 27, 2009 meeting, the Planning Board recommended adoption of the proposed ordinance by a vote of 7-0. The proposed ordinance harmonizes the number of recusals permitted during a calendar to seven (7) before the mandatory removal of a land use board member while at the same time clarifies the definition of what constitutes an absence.

LAND USE AND DEVELOPMENT COMMITTEE

At the March 2, 2009 meeting, the Committee reviewed the proposed ordinance as suggested by the Planning Board and made the following changes: the number of recusals should be three per year for all four Land Use Boards, and absences are to be defined as missing more than 50% of scheduled items (instead of 30%) unless the member attended 70% of the duration of time of the meeting's agenda. The attached ordinance reflects the changes made by the Committee.

FISCAL IMPACT

In accordance with Charter Section 5.02, which requires that the "City of Miami Beach shall consider the long term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long term economic impact (at least 5 years) of this proposed legislative action and determined that the proposed Ordinance is administrative in nature and is not expected to have any fiscal impact upon the resources of the City.

CONCLUSION

The Administration recommends that the City Commission approved the proposed ordinance on first reading and set a second reading public hearing for the May 13, 2009 meeting.

Pursuant to Section 118-164 of the City Code, when a request to amend the Land Development Regulations does not change the actual list of permitted, conditional or prohibited uses in a zoning category the proposed ordinance may be read by title or in full on at least two separate days and shall, at least ten days prior to adoption, be noticed once in a newspaper of general circulation in the city. The notice of proposed enactment shall state the date, time and place of the meeting; the title of the proposed ordinance; and the place or places within the city where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Immediately following the public hearing at the second reading, the City Commission may adopt the ordinance. An affirmative vote of five-sevenths of all members of the city

commission shall be necessary in order to enact any amendment to the Land Development Regulations.

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ORDINANCE NO._____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY CODE BY AMENDING CHAPTER 118, "ADMINISTRATIVE AND REVIEW PROCEDURES," ARTICLE II, "BOARDS," DIVISION 2, "PLANNING BOARD," SECTION 118-52, "MEETINGS AND PROCEDURES;" DIVISION 3, "DESIGN REVIEW BOARD," SECTION 118-74, "REMOVAL;" DIVISION 4, "HISTORIC PRESERVATION BOARD," SECTION 118-105, "REMOVAL;" DIVISION 5, "BOARD OF ADJUSTMENT," SECTION 118-133, "REMOVAL," TO HARMONIZE THE PERMITTED NUMBER OF ABSENCES AND RECUSALS FOR LAND USE BOARD MEMBERS; PROVIDING FOR REPEALER; CODIFICATION; SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations of the City Code provide for the automatic removal of members of the four land use boards namely, the Planning Board, the Board of Adjustment, the Historic Preservation Board, and the Design Review Board after a certain number of absences and recusals in a calendar year; and

WHEREAS, the number of recusals within a calendar year varies among the four land use boards; and

WHEREAS, the definition of what constitutes an absence should be clarified with regard to the number of items on an agenda and the time a member remains in attendance; and

WHEREAS, it is desirable to harmonize these provisions for these land use boards; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

Section 1. That Chapter 118, "Administration and Review Procedures," Division 2, "Planning Board," Section 118-52, "Meetings and Procedures," is hereby amended as follows:

Section 118-52. Meetings and procedures.

* * *

(f) Removal of board members. In the event that any member of the board fails to attend 33 percent of the regularly scheduled meetings per calendar year (to calculate the number of absences under the 33 percent formula, 0.4 or less rounds down to the next whole number and 0.5 or more rounds up to the next whole number), or abstains from voting on a matter before the board due to a conflict of interest on ~~four~~ (3) three different applications within a period of one year, such member shall cease to be a member of the board. For purposes of this section, an absence from a meeting shall be defined as missing more than ~~30~~ (50%) fifty percent of the scheduled matters ~~on~~ unless the member attended 70 percent of the duration of time of that meeting's agenda. A person who has ceased to be a member of the board due to absences or conflicts of interest shall not be reappointed to the board for a period of one year from the date of his/her removal.

Section 2. That Chapter 118, "Administration and Review Procedures," Division 3, "Design Review Board," Section 118-74, "Removal," is hereby amended as follows:

Section 118-74. Removal.

(a) ~~Removal of appointed members shall be by the city manager for cause.~~ Removal of a design review board member shall be mandatory when that member:

(1) Fails to attend 33 percent of the regularly scheduled meetings per calendar year (to calculate the number of absences under the 33 percent formula, 0.4 or less rounds down to the next whole number and 0.5 or more rounds up to the next whole number); or

(2) Abstains from voting due to a conflict of interest on ~~(7) seven~~ (3) three different applications within a calendar year.

~~All members shall disclose any conflicts on that meeting's agenda.~~ For purposes of this section, an absence from a meeting shall be defined as missing ~~30~~ (50%) fifty percent of the scheduled matters ~~on~~ unless the member attended 70 percent of the duration of time of that meeting's agenda. A member who is removed shall not be reappointed to membership on the board for at least one year from the date of removal.

Section 3. That Chapter 118, "Administration and Review Procedures," Division 4, "Historic Preservation Board," Section 118-53, "Composition," is hereby amended as follows:

Section 118-105. Removal.

In the event any member of the historic preservation board fails to attend 33 percent of the regularly scheduled meetings per calendar year (to calculate the number of absences under the 33 percent formula, 0.4 or less rounds down to the next whole number and 0.5 or more rounds up to the next whole number), or abstains from voting on a matter before the historic preservation board due to a conflict of interest ~~five~~ (3) three times within a period of one year, such member shall cease to be a member of the board. For purposes of this section, an absence from a meeting shall be defined as missing (50%) percent of the scheduled matters unless the member attended 70 percent of the duration of time of that meeting's agenda. However, abstentions for reason of conflict for matters relating to amendment of the historic properties database shall not be counted for this purpose.

Section 4. That Chapter 118, "Administration and Review Procedures," Division 5, "Board of Adjustment," Section 118-133, "Removal," is hereby amended as follows:

Section 118-133. Removal.

In the event that any member of the board of adjustment fails to attend 33 percent of the regularly scheduled meetings per calendar year (to calculate the number of absences under the 33 percent formula, 0.4 or less rounds down to the next whole number and 0.5 or more rounds up to the next whole number), or abstains from voting on a matter before the board due to a conflict of interest on ~~four~~ (3) three different applications within a period of one year, such member shall cease to be a member of the board. For purposes of this section, an absence from a meeting shall be defined as missing ~~30~~ (50%) fifty percent of the scheduled matters ~~on~~ unless the member attended 70 percent of the duration of time of that meeting's agenda. A person who has ceased to be a member of the board due to absences or conflicts of interest shall not be reappointed to the board for a period of one year from the date of his/her removal.

Section 5. Repealer.

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

Section 6. Codification.

It is the intention of the City Commission, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Code of the City of Miami Beach as amended; that the sections of this ordinance may be

renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section" or other appropriate word.

Section 7. Severability.

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

Section 8. Effective Date.

This Ordinance shall take effect ten days following adoption.

PASSED and **ADOPTED** this ____day of _____, 2009.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM AND LANGUAGE
& FOR EXECUTION

_____ 4/9/09
City Attorney Date

First Reading:
Second Reading:

Verified by: _____
Jorge G. Gomez, AICP
Planning Director

Underscore denotes new language.
~~Strikethrough~~ denotes deleted language.

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Condensed Title:

An Ordinance amendment to the Land Development Regulations of the City Code modifying the procedures for single family ad valorem tax exemptions.

Key Intended Outcome Supported:

Satisfaction with neighborhood character

Supporting Data (Surveys, Environmental Scan, etc
Satisfaction with compatibility of new construction

Issue:

Should the City Commission amend the requirements and procedures for the completion of work approved to a single family ad valorem tax exemption.

Item Summary/Recommendation:

APPROVE ON FIRST READING AND SCHEDULE A SECOND READING PUBLIC HEARING

The subject Ordinance is sponsored by the Historic Preservation Board and would clarify and tighten the procedures and requirements for completing all required work, approved pursuant to a request for a single family ad valorem tax exemption.

The Administration recommends that the City Commission approve the Ordinance on First Reading and schedule a Second Reading Public Hearing.

Advisory Board Recommendation:

On October 14, 2008, the Historic Preservation Board recommended approval of the proposed Ordinance Amendment.

On March 2, 2009, the Land Use and Development Committee transmitted the proposed Ordinance to the Planning Board with a favorable recommendation.

On March 24, 2009, the Planning Board transmitted the subject Ordinance to the City Commission with a favorable recommendation

Financial Information:

Source of Funds:		Amount	Account
	1		
	2		
	3		
OBPI	Total		

Financial Impact Summary:
The proposed Ordinance is not expected to have any fiscal impact upon the resources of the City.

City Clerk's Office Legislative Tracking:

Jorge Gomez or Thomas Mooney

Sign-Offs:

Department Director	Assistant City Manager	City Manager

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MIAMIBEACH

AGENDA ITEM R5I
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **PROPOSED ORDINANCE DEALING WITH REVISIONS TO SINGLE FAMILY AD VALOREM TAX EXEMPTIONS**

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE X, "HISTORIC PRESERVATION," DIVISION 5, "SINGLE FAMILY AD VALOREM TAX EXEMPTION", MODIFYING THE REQUIREMENTS AND PROCEDURES FOR CITY AD VALOREM TAX EXEMPTIONS FOR SINGLE FAMILY HOMES; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

ADMINISTRATION RECOMMENDATION

Adopt the Ordinance on First Reading and schedule a Second Reading Public Hearing.

BACKGROUND

In 2004 the City Commission created a City Ad Valorem Tax Exemption program for historic single family residences, as part of an overall strategy to provide tangible alternatives to the demolition of architecturally significant single family homes. The Tax Exemption program has established a framework for single family home owners to be able to abate any increase in property taxes that result from the restoration and renovation of an eligible single family home, for a fixed period of ten (10) years. To date, seven (7) single family homes have received Commission approval for an Ad Valorem Tax Exemption.

The existing Ad Valorem Exemption Ordinance specifies that all required work, approved pursuant to a Tax Exemption application, shall be completed within two years following the date of approval by the City Commission. The Historic Preservation Board may extend the time for completion of the required work for a period not to exceed two (2) years. Additionally, the Tax Exemption is automatically revoked if the property owner does not submit a final request for a review of the completed work within two years following the date of approval by the City Commission. This requirement was included in the Ordinance in order to ensure that an approved application would be diligently pursued in terms of obtaining all required building permits, as well as commencing and completing the work on site.

ANALYSIS

Recently, two (2) separately approved Ad Valorem Tax Exemption applications ran into problems completing the required work within the 2 year timeframe mandated by current code. These applicants purposefully sought historic designation of their respective residences and utilized the Ad Valorem Tax Exemption process as intended by the Ordinance, as an incentive to preserve the original structures. Due to the highly detailed restoration and the complexity of the new additions in the applications, the construction process took longer than the two years required by the Code. Further, due to the unfamiliarity with the tax exemption process, in each case the deadline for the final inspection was missed unintentionally by the applicant, thereby causing the automatic revocation of the approval.

In both of these instances, the applicants had been diligently proceeding with construction on site and had already obtained a number of progress inspections from the Building Department. In light of these circumstances, the Historic Preservation Board, pursuant to Section 118-564(c) of the City Code, approved separate requests by the applicants to waive the mandatory 2-year completion date requirements.

In order to address this issue in a more comprehensive manner, an amendment to Section 118-609 of the City Code, pertaining to the 'Completion of Work' portion of the Ad Valorem Tax Exemption process, has been proposed by the Historic Preservation Board. Specifically, the proposed amendment would require that all required work be completed within 30 months (instead of 2 years) following the date of approval by the City Commission, unless extended by the Historic Preservation Board. The reason for the proposed increase in time from 24 to 30 months is so that the ad valorem work schedule will better coincide with the building permit timeframes permitted under the Certificate of Appropriateness process. However, instead of being 'automatically revoked' if the work is not completed or a request for review is not submitted, the following benchmarks are proposed:

1. The Ad Valorem Tax Exemption approval would 'expire' if the building permit issued for the approved work should expire or become null and void, for any reason, or if a full building permit for the approved work is not issued within the timeframes specified under the corresponding certificate of appropriateness.

2. The Ad Valorem Tax Exemption approval would be 'suspended' if the building permit is issued, but the property owner fails to submit a final request for review of the completed work within thirty (30) months following the date of approval by the city commission. This 'suspension' may be lifted if the Historic Preservation Board approves a request for an extension of time, in accordance with the requirements of the Code.

3. A second extension, not to exceed two (2) additional years, may be considered by the Historic Preservation Board if a valid full building permit for the improvements approved by the City Commission is active and the applicant submits a request in writing to the planning department prior to the expiration of the first extension. The Planning Board recommends that the request for this extension of time mirror the timeframes of the first extension request (90 days).

4. If an extension of time request is denied, the 'suspension' would become a permanent revocation of the approved Ad Valorem Tax Exemption.

5. The failure to complete all required work within the timeframes mandated under an approved extension of time shall result in a permanent revocation of the approval for the ad valorem tax exemption.

BOARD AND COMMITTEE REVIEW

On October 14, 2008, the Historic Preservation Board reviewed the subject Ordinance and recommended approval.

On December 10, 2008, the City Commission referred the Ordinance to the Land Use and Development Committee. On March 2, 2009, the Land Use and Development Committee transmitted the proposed Ordinance to the Planning Board with a favorable recommendation.

On March 24, 2009, the Planning Board transmitted the subject Ordinance to the City Commission with a favorable recommendation. The Planning Board also recommended that the ordinance be slightly modified, so that the timeframes for applying for a second extension of time to complete the required work would be consistent with the timeframes required for the first extension of time request.

FISCAL IMPACT

In accordance with Charter section 5.02, which requires that the "City of Miami Beach shall consider the long-term economic impact (at least 5 years) of proposed legislative actions," this shall confirm that the City Administration evaluated the long-term economic impact (at least 5 years) of this proposed legislative action, and determined that there will be no long term economic consequences as a result of the proposed Ordinance Amendment. Specifically, the subject Ordinance merely amends limited portions of the technical procedures already in place for completing approved work.

For informational purposes, please see the attached spread sheet detailing the current status and economic impact of single family homes approved for City of Miami Beach Ad Valorem Tax Exemption.

CONCLUSION

The Administration recommends that the Mayor and City Commission approve the subject Ordinance on First Reading and schedule a Second Reading public hearing on May 13, 2009.

JMG\TH\JGG\TRM
Attachments

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Status and Economic Impact of Approved Ad Valorem Tax Exemptions

Address	Approved by CC	Building Permit issued	Construction Status	Estimated Annual Tax Exemption Value*	Actual Annual Tax Exemption Value	Cummulative 10 Year Tax Exemption Value
3156 Royal Palm Avenue	February 14, 2007	September 16, 2004	Complete	$2,000	$2,337	$23,370
5645 North Bay Road	February 8, 2006	September 17, 2004	Complete	$3,550	$3,918	$39,180
2535 Lake Avenue	September 8, 2005	March 2, 2006	Complete	$3,320	TBD	
55 Palm Avene	February 8, 2006	May 26, 2006	Near Completion	$4,460		
3190 Royal Palm Avenue	October 17, 2007	February 12, 2008	Near Completion	$391		
841 19th Street	September 5, 2007	March 18, 2008	Under Construction	$765		
603 E. Dilido Drive	February 14, 2007	January 26, 2007	Under Construction	$550		

* Please note that the revenue implication calculation provided is a rough approximation. It assumes that the Miami-Dade County Property Appraiser's Office will not reduce the actual square footage of the additions to adjusted square footage. It assumes that the City's millage rate, the building market value, as well as the building class and grade value will remain the same. It is also based solely on the estimated value of the new additions and not to any repairs to the historic residence. This calculation is a rough estimate of the revenue implication to the City due to many variables.

COMPARISON OF EXISTING PROCESS AND PROPOSED MODIFICATIONS

Current Process for Approved Work:	**Proposed** Process for Approved Work:
• The Ad Valorem Tax Exemption application is automatically revoked if the property owner does not submit a final request for review of the completed work within two years following the date of approval by the city commission.	• The Ad Valorem Tax Exemption approval will expire if: i. The Building Permit issued for the approved work expires or become null and void, for any reason, or ii. if a full building permit for the approved work is not issued within the timeframes specified under the corresponding certificate of appropriateness. The Ad Valorem Tax Exemption approval will be suspended if the Building Permit is issued for the approved work, but the property owner fails to submit a final request for review of completed work within 30 months following the date of approval by the City Commission.
• The Historic Preservation Board may extend the time for completion of the approved work for a period not to exceed two (2) years, or such lesser time as may be prescribed by the Board. However, such request must be filed within the 2 year approval window, or else the application would not be eligible for an extension of time as the Tax Exemption would be revoked. The current Code has no provisions for an expired or inactive Building Permit associated with the approved work.	• The Historic Preservation Board, 'for good cause shown', may extend the time for completion of the approved work for a period not to exceed two (2) years from the completion date in the original approval by the City Commission, or such lesser time as may be prescribed by the Board. Such extension of time is only applicable if: i. the corresponding Certificate of Appropriateness for the work approved by the City Commission is active; and ii. the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the completion deadline. If the Historic Preservation Board grants the extension of time, any suspension of the approval for the subject Ad Valorem Tax Exemption is lifted and all work is then required to be completed by the date mandated in the Historic Preservation Board Order granting the Extension of Time. A second extension, not to exceed two (2) additional years, may be considered by the Historic Preservation Board if: i. a valid full building permit for the improvements approved by the City Commission is active; and ii. the applicant submits a request in writing to the planning department prior to the expiration of the first extension. The failure to complete all required work within the timeframes mandated under an approved extension of time shall result in a permanent revocation of the Ad Valorem Tax Exemption approval. If the Historic Preservation Board denies a request for an extension of time, any suspension shall become a permanent revocation of the Ad Valorem Tax Exemption approval.

Revisions to Single Family Ad Valorem Tax Exemption

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CODE OF THE CITY OF MIAMI BEACH, BY AMENDING CHAPTER 118, "ADMINISTRATION AND REVIEW PROCEDURES," ARTICLE X, "HISTORIC PRESERVATION," DIVISION 5, "SINGLE FAMILY AD VALOREM TAX EXEMPTION", MODIFYING THE REQUIREMENTS AND PROCEDURES FOR CITY AD VALOREM TAX EXEMPTIONS FOR SINGLE FAMILY HOMES; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the citizens of Florida have amended the Florida Constitution, Article VII, Section 3(e), to authorize counties and municipalities to allow certain tax exemptions for historic properties;

WHEREAS, the Florida legislature has enacted Sections 196.1997 and 196.1998, Florida Statutes, to govern the allowance of such exemptions;

WHEREAS, the City Commission has deemed it in the best interest and welfare of the City to have incentives for the retention and preservation of architecturally and historically significant single family homes in Miami Beach; and

WHERAS, the City Commission and the Historic Preservation Board have deemed it necessary to have a City Ad Valorem Tax Exemption process for architecturally and historically significant single family homes in Miami Beach in order to promote their preservation and protection; and

WHEREAS, the City of Miami Beach Historic Preservation and Planning Boards strongly endorse the proposed amendments to the Historic Preservation Section of the Code; and

WHEREAS, the amendments set forth below are necessary to accomplish all of the above objectives.

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

SECTION 1.

That Chapter 118, "Administration And Review Procedures," Article X, "Historic Preservation," of the Land Development Regulations of the Code of the City of Miami

Beach, Florida is hereby amended as follows:

DIVISION 5. SINGLE FAMILY AD VALOREM TAX EXEMPTION

* * *

Sec. 118-609. Completion of work.

(a) An applicant must complete all work within ~~two years~~ thirty months following the date of approval by the city commission. An ~~application~~ approval for ad valorem tax exemption shall ~~be automatically revoked~~ expire if the building permit for the approved work is not issued within the timeframes specified under the corresponding certificate of appropriateness, or if a full building permit issued for the approved work should expire or become null and void, for any reason. The approval for ad valorem tax exemption shall be suspended if such permit is issued but ~~if~~ the property owner has not submitted a final request for review of completed work within ~~two years~~ thirty months following the date of approval by the city commission.

(b) The historic preservation board, for good cause shown, may extend the time for completion of a substantial improvement for a period not to exceed two (2) years from the completion date in the original approval by the city commission, or such lesser time as may be prescribed by the board. Such extension shall only be considered by the board if the corresponding certificate of appropriateness for the improvements approved by the city commission is active and the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the completion deadline. If the board grants the extension of time request, any suspension of the approval for ad valorem tax exemption shall be lifted and all work shall be completed by the date mandated in the board order. A second extension, not to exceed two (2) additional years, may be considered by the board if a valid full building permit for the improvements approved by the city commission is active and the applicant submits a request in writing to the planning department no later than 90 calendar days after the expiration of the completion deadline specified in the first extension. The failure to complete all required work within the timeframes mandated under an approved extension of time shall result in a permanent revocation of the approval for the ad valorem tax exemption. If the board denies a request for an extension of time, any suspension shall become a permanent revocation of the approval for ad valorem tax exemption.

(c) A request for review of completed work shall be submitted to the planning department. The planning director, or designee, shall conduct a review to determine whether or not the completed improvements are in compliance with the work approved by the city commission, including approved amendments, if any.

(d) If the planning director, or designee, determines that the work is in compliance with the plans approved pursuant to city commission approval of the tax exemption, the final request for review of completed work shall be approved and issued in writing to the applicant. The city reserves the right to inspect the completed work to verify such compliance.

(e) If the planning director, or designee determines that the work as completed is not in

compliance with the plans approved pursuant to city commission approval of the tax exemption, the applicant shall be advised that the final request for review of completed work has been denied. Such denial shall be in writing and provide a written summary of the reasons for the determination, including recommendations to the applicant concerning the changes to the proposed work necessary to bring it into compliance with the approved plans. The applicant may file an appeal of the decision of the planning director, or designee, within 15 days of such decision. The appeal shall be in writing and shall be to the historic preservation board and shall set forth the factual and legal bases for the appeal.

SECTION 2. CODIFICATION.

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

SECTION 3. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY.

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

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED AND ADOPTED this _____ day of _____, 2009.

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/14/09
Date

First Reading: April 22, 2009
Second Reading:

Verified by: _____
Jorge G. Gomez, AICP
Planning Director

Underscore denotes new language
04/14/2009

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Condensed Title:

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 14 OF THE CITY CODE, ENTITLED "BUILDING REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "CONSTRUCTION STANDARDS," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 14-403, ENTITLED "PENALTY FOR VIOLATION OF ARTICLE," TO PROVIDE FOR THE ENFORCEMENT OF NON-FUNCTIONING WHEELCHAIR LIFTS BY CITATION; AND AMENDING SECTION 14-444, ENTITLED "SCHEDULE OF VIOLATION FINES," BY ADDING A CITATION AND FINE SCHEDULE FOR THE ENFORCEMENT OF NON-FUNCTIONING WHEELCHAIR LIFTS; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

Key Intended Outcome Supported:

- Increase Resident Satisfaction With Level of Code Enforcement
- Ensure Compliance with Code Within Reasonable Time Frame

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

Environmental Scan of 2008 Shows That the Number of Warnings for Property Maintenance Decreased by 39%; 2007 Community Survey Suggests that 61% of the City's residents are very satisfied or satisfied with the fairness and consistency of the enforcement of codes and ordinances in their neighborhoods.

Issue:

Shall the Mayor and the City Commission Approve The Amendments to the Ordinance?

Item Summary/Recommendation:

FIRST READING

At the Neighborhood/Community Affairs Meeting on Wednesday, March 26, 2008 a discussion was held concerning wheelchair lift maintenance and its impact on the public building and Group R buildings' accessibility for disabled and elderly residents. It was mentioned that wheelchair lifts and single elevators in multi-story buildings require special attention by both property owners and the City's regulatory agencies. They are used by disabled or elderly persons to gain access to public buildings and residential Group R buildings. In a situation where a building has only one elevator, it is crucial that service is not interrupted for any substantial period of time as certain individuals are not capable of negotiating the stairs and will be confined to their apartment or unit without elevator service.

The Committee instructed the Administration to draft an ordinance, which will change the enforcement mechanism pertaining to wheelchair lifts and single elevators, and to present it to full City Commission for approval.

The Commission discussed the proposed ordinance at the October 7, 2008 meeting. After initial discussion, the draft ordinance was referred to the Land Use and Development Committee (LUDC) for further consideration. At the subsequent LUDC meetings held on October 27, 2008, December 15, 2008 and April 6, 2009 the ordinance has been discussed, limited in scope to wheelchair lifts and referred to full Commission for approval

The proposed amendments are intended to increase compliance to the ADA lifts requirements by providing for the implementation of the following schedule of violation fines:

1st offense within a moving 12 month period:	Written warning with explanation of rule
2nd offense within a moving 12 month period:	Citation of $250.00
3rd offense within a moving 12 month period:	Citation of $500.00
4th offense within a moving 12 month period:	Citation of $1,000.00
5th offense within a moving 12 month period:	Citation of $2,000.00
6th offense within a moving 12 month period:	Suspension of buildings occupational license pursuant to Chapter 102, City Code

The Administration recommends adopting the ordinance on the first reading.

Advisory Board Recommendation:

The Land Use and Development Committee met on April 6, 2009, and recommended this item to the City Commission.

Financial Information:

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

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Sign-Offs:

Department Director	City Manager
AR	JMG

MIAMIBEACH

AGENDA ITEM R5J

DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

FIRST READING

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 14 OF THE CITY CODE, ENTITLED "BUILDING REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "CONSTRUCTION STANDARDS," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 14-403, ENTITLED "PENALTY FOR VIOLATION OF ARTICLE," TO PROVIDE FOR THE ENFORCEMENT OF NON-FUNCTIONING WHEELCHAIR LIFTS BY CITATION; AND AMENDING SECTION 14-444, ENTITLED "SCHEDULE OF VIOLATION FINES," BY ADDING A CITATION AND FINE SCHEDULE FOR THE ENFORCEMENT OF NON-FUNCTIONING WHEELCHAIR LIFTS; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.**

ADMINISTRATION RECOMMENDATION

Adopt the Ordinance.

BACKGROUND

At the Neighborhood/Community Affairs Committee meeting on Wednesday, March 26, 2008 a discussion was held concerning wheelchair lift maintenance and its impact on the public building and Group R buildings' accessibility for disabled and elderly residents. It was mentioned that wheelchair lifts and single elevators in multi-story buildings require special attention by both property owners and the City's regulatory agencies.

They are used by disabled or elderly persons to gain access to public buildings and residential buildings. In a situation where a building has only one elevator, it is crucial that service is not interrupted for any substantial period of time as certain individuals are not capable of negotiating the stairs and will be confined to their apartment or unit without elevator service.

The City receives an average of 2-3 calls per week from individuals who cannot buy groceries or go to their doctor because of a non-functioning elevator in their building.

The Neighborhood/Community Affairs Committee instructed the Administration to draft an ordinance, which will change the enforcement mechanism in the City Code pertaining to wheelchair lifts and single elevators, and to present it to full City Commission for approval. The Committee also approved a motion to refer this item to the City Commission.

The Commission discussed the proposed ordinance at the October 7, 2008 meeting. Although, initially the Commission considered approving the ordinance, after Commissioner Libbin

expressed his concerns regarding the possible financial burden that the ordinance might place on condominiums, the Commission decided to refer the item to the Land Use and Development Committee (LUDC).

At the LUDC meeting on October 27, 2008, Alex Rey, Building Director, provided an overview on the number of buildings with potential wheelchair lifts and single elevator issues and analysis on how many buildings would have been fined if the proposed ordinance had been in place over the preceding year. The LUDC decided to limit the scope to wheelchair lifts only and to bring back the ordinance to the Committee for further consideration.

At the LUDC meeting on December 15, 2008, the LUDC members further considered the proposed ordinance that excluded single elevators and focused on wheelchair lifts. Mr. Frank Del Vecchio voiced his concerns regarding legal validity of the proposed ordinance. Upon his request, the Committee deferred the item for a future LUDC meeting and instructed the Legal Department to work with Mr. Del Vecchio on the legal issues.

At LUDC meeting on April 6, 2009, Alex Rey, Building Director, presented the draft ordinance that has been updated by the Legal Department. The Committee supported the ordinance and referred the item to the full Commission for approval

LEGAL REQUIREMENTS

The wheelchair lifts are governed by Florida Statutes, the Florida Building Code and the Florida Fire Prevention Code. Fla. Stat. § 553.513 (Attached) is clear that the City is without authority to adopt its own rules regarding wheelchair lifts; those standards are preempted to the State and expressly supersedes any county or municipal ordinance on the subject. The Miami-Dade Building Code Compliance concurred that neither the City nor the County could establish different maintenance standards for wheelchair lifts.

The Statute does permit municipalities and counties to provide their own enforcement mechanisms.

PROPOSAL

The process of issuing a regular notice of violation and then proceeding through the Special Master process takes too much time for the repair to be effected. Therefore, it is proposed that a citation system be created for wheelchair lifts to achieve property owner compliance, as follows:

1st offense within a moving 12 month period:	Written warning with explanation of rule
2nd offense within a moving 12 month period:	Citation of $250.00
3rd offense within a moving 12 month period:	Citation of $500.00
4th offense within a moving 12 month period:	Citation of $1,000.00
5th offense within a moving 12 month period:	Citation of $2,000.00
6th offense within a moving 12 month period:	Suspension of buildings business license receipt pursuant to Chapter 102, City Code

The enforcing agency would be the Building Department's Elevator Section. The implementation of the citation system requires a City Commission revision to the City Code, Chapter 14 and there would be some discretion allowed for repairs that could not be completed within 24 hours.

In those instances, the property owner would be required to submit a letter of intent with a plan of corrective action to be approved by the Elevator Section of the Building Department. Any grace period, given at the sole discretion of the Chief of the Elevator Section, would override the citation system. The certificate of corrective action would be required to be posted in the certificate frame near the wheelchair lift unit itself to better apprise the building residents, guests and invitees of the process of repair.

Property owners will be able to appeal fines by filing a written request for an administrative hearing with the clerk of the special master within ten (10) days after service of the notice of violation. Failure to do so will constitute an admission of the violation and waiver of the right to a hearing, and unpaid fines will result in the imposition of liens which may be foreclosed by the city. The citation will also inform the violator that repeat violations of this Section will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restriction on certificate of use, or accessory use, and/or injunctive proceedings as provided by law.

The Elevator Section will provide a standard notification letter to all relevant buildings informing them about the changes in the enforcement mechanism pertaining to proper maintenance of wheelchair lifts.

CONCLUSION

The proposed amendments to the Elevator Section of the City Code pertaining to wheelchair lifts addresses the concerns of public building and Group R buildings' accessibility for disabled and elderly residents. The proposed amendments are intended to increase compliance to wheelchair lifts requirement through establishing a more effective enforcement mechanism. The Administration recommends that the Mayor and City Commission approve the ordinance on the first reading.

JMG/AR/VJ

ORDINANCE NO: _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 14 OF THE CITY CODE, ENTITLED "BUILDING REGULATIONS," BY AMENDING ARTICLE II, ENTITLED "CONSTRUCTION STANDARDS," BY AMENDING DIVISION 1, ENTITLED "GENERALLY," BY AMENDING SECTION 14-403, ENTITLED "PENALTY FOR VIOLATION OF ARTICLE," TO PROVIDE FOR THE ENFORCEMENT OF NON-FUNCTIONING WHEELCHAIR LIFTS BY CITATION; AND AMENDING SECTION 14-444, ENTITLED "SCHEDULE OF VIOLATION FINES," BY ADDING A CITATION AND FINE SCHEDULE FOR THE ENFORCEMENT OF NON-FUNCTIONING WHEELCHAIR LIFTS; PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, properly functioning wheelchair lifts and stairway chairlifts are essential for the health, safety and welfare of the physically handicapped, including visitors and tourists patronizing the City's restaurants and hotels; and

WHEREAS, a property owner has the statutory obligation to maintain the functional operation of a wheelchair lift for which a certificate of operation has been issued pursuant to Florida Statutes Section 399.02 (5) (b); and

WHEREAS, non-functioning wheelchair lifts have been a topic of concern within the City of Miami Beach and have recently been the subject of discussion to address modified enforcement and legislative solutions; and

WHEREAS, it is crucial that service is not interrupted for any substantial period of time, as certain individuals are not capable of negotiating a staircase and will be confined to their apartment or unit without wheelchair lift service; and

WHEREAS, the City's current means of enforcement include issuing a regular notice of violation and proceeding through the Special Master process to achieve compliance; and

WHEREAS, a citation and fine schedule will provide for a stronger means of enforcement, with the first offense triggering a moving 12-month cycle of enforcement; and

WHEREAS, the purpose of providing the citation and fine schedule is to obtain compliance with non-functioning wheelchair lifts in the City before imposing fines and other penalties.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:
SECTION 1.

Chapter 14, Article 2, Section 14-403 of the Miami Beach City Code is hereby amended as follows:

Sec. 14-403. PENALTY FOR VIOLATION OF ARTICLE.

(a) Any person who shall violate or fail to comply with any of the provisions of this article or with any of the requirements of this article, shall be brought before the special master of the city. The special master may assess a fine and impose a lien to the maximum allowed by city ordinance and state law; or, in the alternative, the violation may be brought to the county court. Each day such violation shall be permitted to exist shall constitute a separate offense. The owner of any building or premises, or part thereof, where anything in violation of this article shall be placed or shall exist, and any person employed in connection therewith and who has assisted in the commission of any such violation may be guilty of a separate offense and upon conviction fined as provided in this section.

(b) Any person who shall violate or fail to comply with any of the provisions of this article or with any of the requirements thereof shall be subject to a delinquency penalty as specified in appendix A.

(c) A special master, appointed as provided in article II of chapter 30 may either revoke or temporarily suspend the business license of any person in accordance with the procedures set forth in chapters 18 and 102 of this Code when it is determined that the licensee is conducting business from premises that do not possess a valid and current certificate of occupancy and/or certificate of use as may be required by city or county laws.
(Ord. No. 2002-3360, § 1, 4-10-02)

(d) <u>For violations of Section 553.509, Florida Statutes, which pertain to the requirement to provide vertical accessibility under the "Florida Americans with Disabilities Act," in buildings without an active wheelchair lift, a Certified Elevator Inspector employed by the City of Miami Beach Elevator Safety Section may issue a citation in the manner provided in Section 14-442 (b). The schedule of violation fines shall be set forth in Section 14-444 hereof.</u>

<u>The citation may be appealed by filing a written request for an administrative hearing with the clerk of the special master within ten (10) days after service of the notice of violation. Failure to do so shall constitute an admission of the violation and waiver of the right to a hearing, and unpaid fines will result in the imposition of liens which may be foreclosed by the city. The citation shall also inform the violator that repeat violations of this Section will result in the imposition of larger fines and may also result in revocation, suspension, or the imposition of restriction on certificate of use, or accessory use, and/or injunctive proceedings</u>

as provided by law.

SECTION 2.

Chapter 14, Article 2, Section 14-444 of the Miami Beach City Code is hereby amended as follows:

The following fines shall apply to the citation of building violations as provided in Sections 14-403 and 14-442:

Miami-Dade County Code Violations

TABLE INSET:

Section	Violation	Fine
MC 2-103.21	Use of fire hydrant without permit	$200.00
MC 2-103.21	Use of fire hydrant without meter	100.00
MC 10-3(a)	No certificate of competency as a master, contractor, subcontractor or qualifying agent	500.00
MC 10-3(a)	No certificate of competency as a journeyman, maintenance person, installer or other similar tradesman	200.00
MC 10-22(a)	Contracting for work outside the scope of certificate of competency	500.00
MC 10-22(b)	Abandonment of job	500.00
MC 10-22(g)	Failure to fulfill contractual obligations	500.00
MC 10-22(h)(1)	Aiding and abetting a person not holding a certificate	500.00
MC 10-22(h)(2)	Allowing a certificate to be used by an unauthorized person	500.00
MC 10-22(h)(3)	Failure of permit holder to supervise, direct and control a job	500.00
MC 10-22(h)(4)	Subcontracting work to a person not holding a certificate	500.00
MC 10-22(i)	Failure to supervise, direct and control all work	500.00
MC 10-22.1(a)	Working outside the scope of the certificate or acting as a contractor	500.00

MC 10-22.1(b)	Departure from or disregard of plans or specifications without consent of the qualifying agent	500.00
MC 10-22.1(d)(1)	Aiding or abetting any person not holding a certificate of competency	500.00
MC 14-58	Violation of standards adopted by this chapter	100.00
MC 14-62	Refusal to allow inspection	100.00
MC 24-11(1)	Prohibitions against water discharge. It shall be unlawful for any person to throw, drain, run or otherwise discharge into any of the waters of county, or to cause, permit or suffer to be thrown, run, drained or allowed to seep or otherwise be discharged into such water any organic or inorganic water	500.00
MC 24-11(3)	Discharges affecting water quality. It shall be unlawful for any person to discharge sewage, industrial wastes, cooling water and solid wastes or any other wastes into the waters of this county, including but not limited to surface water, tidal salt water estuaries or groundwater	500.00
MC 24-11(9)(a)(1)(2)	Sewer discharge limitations. It shall be unlawful for any person to throw, drain, run or otherwise discharge into a sewer designed to carry stormwater, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharge into such sewer	500.00
	All other violations of chapter 10, Miami-Dade County Municipal Code	200.00

Florida Building Code Violations

TABLE INSET:

Section	Violation	Fine
Chapter 8 Miami-Dade County Municipal Code	Failure to maintain a building or structure in a safe condition; failure to maintain devices or safeguards in good working order	$100.00
Chapter 8 Miami-Dade County Municipal Code	Failure to remove debris, equipment, sheds or materials	100.00
Chapter 8 Miami-Dade County Municipal Code	Failure to secure buildings and equipment	100.00

Chapter 8 Miami-Dade County Municipal Code	Failure to comply with lawful stop work order	500.00
Florida Building Code, Building 104.6.2	Failure to obtain a permit	100.00
Florida Building Code, Building 105.5	Failure to display a permit card	50.00
Florida Building Code, Building 105.6	Failure to obtain mandatory inspection	250.00
Florida Building Code, Building 106.3	Unlawfully connecting utility service	500.00
Florida Building Code, Building, Chapter 11	Failure to provide required accessibility in compliance with the Florida Americans with Disabilities Accessibility Implementation Act	50.00
Florida Building Code, Building 3303.2	Exceeding allowable obstruction of the public right-of-way with construction and/or demolition	50.00
Florida Building Code, Building 3302	Allowing materials to obstruct fire hydrant, fire alarm box, manhole, catchbasin and restriction of water flow to gutters	50.00
Florida Building Code, Building 3305.3	Failure to provide temporary sidewalk which is properly guarded and not less than four feet wide	50.00
Florida Building Code, Building 3301.2	Illegal obstruction of an alley or portion thereof in connection with construction or demolition	50.00
Florida Building Code, Building 3301.2	Failure to protect sidewalks and pavements from damage incidental to construction work	50.00
Florida Building Code, Building 3304.1	Failure to provide sidewalk and shed	50.00
Florida Building Code, Building 3305.1	Failure to provide construction fence	50.00

Florida Building Code, Building 3301.2	Failure to prevent the falling of paint or debris over public sidewalks or other places of public use	50.00
Florida Building Code, Building 105.3	Failure to obtain boiler inspections	100.00
Florida Building Code, Plumbing	Unlawful discharge of rainwater or other liquid wastes or allowing same to be disposed onto or across public property or sidewalk	50.00
	All other violations of the Florida Building Code and Miami-Dade County Municipal Code	100.00

Florida Building Code, Building, Fire Protection Code Life Safety Code Violations

TABLE INSET:

Section	Violation	Fine
NFPA 101	Any violation of the Life Safety Code	$200.00

Florida Statutes Violations

TABLE INSET:

Chapter	Violation	Fine
553.509	Failure to maintain a functioning wheelchair lift -1st Offense within a moving 12 month period	Written warning with explanation of rule
553.509	Failure to maintain a functioning wheelchair lift - 2nd Offense within a moving 12 month period	$250.00
553.509	Failure to maintain a functioning wheelchair lift - 3rd Offense within a moving 12 month period	$500.00
553.509	Failure to maintain a functioning wheelchair lift - 4th Offense within a moving 12 month period	$1,000.00
553.509	Failure to maintain a functioning wheelchair lift - 5th Offense within a moving 12 month period	$2,000.00
553.509	Failure to maintain a functioning wheelchair lift - 6th Offense within a moving 12 month period	Suspension of business occupational license pursuant to Chapter 102, City code

553	Any other violation of accessibility requirements under Chapter 553 not listed in this section	$500.00

(Ord. No. 2002-3360, § 1, 4-10-02)

SECTION 3. REPEALER

All ordinances or part of ordinances and all section and parts of sections in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 5. CODIFICATION

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

SECTION 6 EFFECTIVE DATE

This Ordinance shall take effect on the _____ day of _____, 2008.

PASSED and ADOPTED this _____ day of _____, 2008

ATTEST:

_____ _____

CITY CLERK **MAYOR**

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/14/08 Date

MIAMIBEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: Honorable Mayor Matti Herrera Bower
Members of the City Commission
Jorge Gonzalez, City Manager

FROM: Jose Smith, City Attorney

DATE: April 22, 2009

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING IN PART MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 5 ENTITLED "CAMPAIGN FINANCE REFORM", SECTIONS 2-487 THROUGH AND INCLUDING 2-490, BY PROHIBITING "VENDORS" AND "REAL ESTATE DEVELOPERS" FROM SOLICITING CAMPAIGN CONTRIBUTIONS FOR CANDIDATES FOR THE OFFICE OF MAYOR OR COMMISSIONER, EXPANDING UPON THE DEFINITIONS OF "VENDOR" AND "REAL ESTATE DEVELOPER" AND CONFORMING AS HOUSEKEEPING MATTER CERTAIN LANGUAGE TO EXISTING TEXT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

Pursuant to the request of Commissioner Saul Gross, the attached ordinance has been drafted for the purpose of amending the Miami Beach City Code provisions governing "Campaign Finance Reform", codified in Chapter 2, Article VII, Division 5. Specifically, the proposed amendments will accomplish the following:

--expand upon the definitions of "vendor" and "real estate developer" so as to include managing agents of the vendor, senior proposal team members, certain subcontractors of the vendor, as well as persons and/or entities subject to receipt of contingent compensation in the event of award of contract/approval of land use relief;
--extend the existing prohibition on the soliciting of campaign contributions (presently applicable to lobbyists for vendors and lobbyists for real estate developers) to vendors and real estate developers; and
--conform, as a housekeeping matter, certain language to existing text.

The attached ordinance is thus ready for City Commission review.

Agenda Item R5K
Date 4-22-09

FIRST READING

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING IN PART MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 5 ENTITLED "CAMPAIGN FINANCE REFORM", SECTIONS 2-487 THROUGH AND INCLUDING 2-490, BY PROHIBITING "VENDORS" AND "REAL ESTATE DEVELOPERS" FROM SOLICITING CAMPAIGN CONTRIBUTIONS FOR CANDIDATES FOR THE OFFICE OF MAYOR OR COMMISSIONER, EXPANDING UPON THE DEFINITIONS OF "VENDOR" AND "REAL ESTATE DEVELOPER" AND CONFORMING AS HOUSEKEEPING MATTER CERTAIN LANGUAGE TO EXISTING TEXT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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

SECTION 1. That Miami Beach City Code Chapter 2, Article VII, Division 5 entitled "Campaign Finance Reform", Sections 2-487 through and including 2-2-490, is hereby amended in part to read as follows:

DIVISION 5. CAMPAIGN FINANCE REFORM

Sec. 2-487. Prohibited campaign contributions by vendors.

A. General.

(1) (a) No vendor shall solicit for or give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. Commencing on the effective date of this ordinance, all proposed city contracts, purchase orders, standing orders, direct payments, as well as requests for proposals (RFP), requests for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the city, shall incorporate this section so as to notify potential vendors of the proscription embodied herein.
(b) No candidate or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution directly or indirectly from a vendor. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the procurement division's city records (including City of Miami Beach website) to verify the vendor status of any potential donor.

(2) A fine of up to $500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving or depositing a contribution in violation of this section

shall constitute a separate violation. All contributions deposited by a candidate in violation of this section shall be forfeited to the city's general revenue fund.

(3) (a) Disqualification from serving as vendor.

1. A person or entity other than a vendor who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from serving as a vendor with the city.

2. i. A vendor who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified from serving as a vendor with the city for a period of 12 months from a final finding of violation, or from action on a waiver request by the Miami Beach City Commission (per subsection B herein below) in the event a waiver of said violation is sought.

ii. In the event such waiver request for a particular transaction is granted, the affected vendor shall nonetheless be disqualified from serving as a vendor with the city as to all other vendor projects for the stated 12-month period. In the event such waiver request is denied for a particular transaction, the 12-month disqualification period shall apply to both the particular transaction which was the subject of the waiver request, as well as all other vendor projects during that 12-month period.

(b) Definition. For purposes of this section, the term "disqualified" shall be defined to include:

1. Termination of a donor/vendor's existing contract with the city, subject to the waiver provisions of subsections B(1)(d) and B(2) herein; and

2. Disqualification of a donor's response to solicitation requests for prospective vendor contracts with the city, subject to the waiver provisions of subsections B(1)(a), (b) and (c) herein.

(4) As used in this section:

(a) 1. A "vendor" is a person and/or entity who has been selected by the city as the successful contractor on a present or pending solicitation for goods, equipment or services, or has been approved by the city on a present or pending award for goods, equipment or services prior to or upon execution of a contract, purchase order, standing order, direct payment or purchasing card payment. The term "vendor" shall not include those persons and/or entities who provide goods, equipment or services not exceeding $10,000.00 in a City of Miami Beach fiscal year wherein city commission action is not required.

2. "Vendor" shall include:

i. ~~n~~Natural persons and/or entities who are:

a) managing agents of the subject vendor entity;

b) senior proposal team members of the subject city contract; and/or

c) subcontractors of the subject vendor entity who provide goods equipment or services exceeding 5% in value of vendor's contract with the City;

ii. Natural person and/or entities who hold a controlling financial interest in a vendor entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm. The term "firm" shall mean a

corporation, partnership, business trust or any legal entity other than a natural person;

iii. Natural persons and/or entities who are subject to receiving compensation directly and exclusively contingent upon the award of the subject city contract; and

iii. Any managing agent of a non-profit vendor entity.

3. For purposes of this section, "vendor" status shall terminate upon completion of the agreement for the provision of goods, equipment or services.

(b) For purposes of this section~~,~~ :

1. ~~t~~The term "services" shall mean the rendering by a vendor through competitive bidding or otherwise, of labor, professional and/or consulting services to the city.

2. The term "managing agent" shall mean any individual(s) who has primary supervision or operational responsibilities or control of all or some departments of the subject vendor entity.

(c) The term "contribution" shall have the meaning ascribed to such term in F.S. ch. 106, as amended and supplemented (copies available in city clerks office).

B. *Waiver of prohibition.*

(1) *Conditions for waiver.* The requirements of this section may be waived by a five-sevenths vote for a particular transaction by city commission vote after public hearing upon finding that:

(a) The goods, equipment or services to be involved in the proposed transaction are unique and the city cannot avail itself of such goods, equipment or services without entering into a transaction which would violate this section but for waiver of its requirements; or

(b) The business entity involved in the proposed transaction is the sole source of supply as determined by the city's procurement director in accordance with procedures established in subsection 2-367(c) of this Code; or

(c) An emergency contract (as authorized by the city manager pursuant to section 2-396 of this Code) must be made in order to protect the health, safety or welfare of the citizens of the city, as determined by a five-sevenths vote of the city commission; or

(d) A contract for the provision of goods, equipment or services exists which, if terminated by the city, would be adverse to the best economic interests of the city.

(2) *Conditions for limited waiver.* Notwithstanding the denial by the city commission of a waiver request regarding an existing contract per subsection B(1)(d) above, upon a five-sevenths vote of the city commission at a public hearing, a limited waiver may be granted on an existing contract upon a finding that in order to protect the health, safety and welfare of the citizens of the city, continuation of said contract for a limited period of time (not to exceed six months) is necessary in order for the city to obtain a replacement vendor.

(3) *Full disclosure.* Any grant of waiver by the city commission must be supported with a full disclosure of the subject campaign contribution.

C. *Applicability.* This section shall be applicable only to prospective transactions, and the city commission may in no case ratify a transaction entered into in violation of this section.

Sec. 2-488. Prohibited campaign contributions by lobbyists on procurement issues.

(1) No lobbyist on a present or pending solicitation for goods, equipment or services or on a present or pending award for goods, equipment or services prior to or upon execution of a contract, purchase order, standing order, direct payment, or purchasing card payment shall solicit for or give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. The term "lobbyist" shall not include those individuals who lobby on behalf of persons and/or entities in connection with their provision of goods, equipments or services not exceeding $10,000.00 in a City of Miami Beach fiscal year wherein city commission action is not required.

(a) Commencing on the effective date of this ordinance, all proposed city contracts, purchase orders, standing orders, direct payments, as well as requests for proposals (RFP), requests for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the city, shall incorporate this section so as to notify lobbyists of the proscription embodied herein.

(b) No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution directly or indirectly from a lobbyist subject to the provisions of this ordinance. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the city clerk's records to verify the lobbyist status of any potential donor.

(2) (a) A person other than a lobbyist on a procurement issue as set forth in subsection (1) above, who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from lobbying the city commission in connection with a present or pending bid for goods, equipment or services or on a present or pending award for goods, equipment or services.

(b) A lobbyist on a procurement issue as set forth in subsection (1) above, who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified from lobbying the city commission in connection with a present or pending bid for goods, equipment or services or on a present or pending award for goods, equipment or services for a period of 12 months from a final finding of violation.

(3) A fine of up to $500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving or depositing a contribution in violation of this section shall constitute a separate violation. All contributions ~~received~~ deposited by a candidate in violation of this section shall be forfeited to the city's general revenue fund.

(4) The term "contribution" shall have the meaning ascribed to such term in F.S. Ch. 106, as amended and supplemented.

Sec. 2-489. Prohibited campaign contributions by real estate developers.

A. General.

(1) (a) No real estate developer shall solicit for or give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. Commencing on ~~the~~ February 15, 2003, all applications for development agreements and for changes in zoning map designation as well as future land use map changes shall incorporate this section so as to notify potential real estate developers of the proscription embodied herein.
(b) No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution directly or indirectly from a real estate developer. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the city planning department's records (including city of Miami Beach website) to verify the real estate developer status of any potential donor.

(2) A fine of up to $500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving or depositing a contribution in violation of this section shall constitute a separate violation. All contributions deposited by a candidate in violation of this section shall be forfeited to the city's general revenue fund.

(3) (a) A person or entity other than a real estate developer who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from becoming a real estate developer.
(b) 1. A real estate developer who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified from becoming a real estate developer for a period of 12 months from a final finding of violation, or from action on a waiver request by the Miami Beach City Commission in the event a waiver of said violation is sought.
2. In the event such waiver request for a particular real estate project and/or land use application is granted, the affected real estate developer shall nonetheless be disqualified from serving as a real estate developer with the city as to all other relevant real estate projects and/or applications for land use relief referred to in subsection A(4)(a)(1) below for the stated 12-month period. In the event such waiver request is denied for a particular real estate project and/or land use application, the 12-month disqualification period for the affected real estate developer shall apply to both the particular real estate project and/or land use application which was the subject of the waiver request, as well as all other relevant real estate projects and/or applications for land use relief referred to in subsection A(4)(a)(1) below during that 12-month period.
(c) A real estate developer shall not solicit for or make a contribution within 12 months after termination of its status as a real estate developer.

(4) As used in this section:
(a) 1. A "real estate developer" is a person and/or entity who has a pending application for a development agreement with the city or who is currently negotiating with the city for a development agreement, or, who has a present or pending application with the city for a change of zoning map designation or a change to the city's future land use map.

2. "Real estate developer" shall include natural persons and/or entities who hold a controlling financial interest in a real estate developer entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of ten percent or more of the outstanding capital stock in any corporation or a direct or indirect interest of ten percent or more in a firm. The term "firm" shall mean a corporation, partnership, business trust or any legal entity other than a natural person~~.~~;

3. "Real estate developer" shall further include natural persons and/or entities who are subject to receiving compensation directly dependent/contingent upon the city's approval of the subject development agreement, application for change of zoning map or application for change of future land use map.

~~3~~ 4. For purposes of this section, "real estate developer" status shall terminate upon the final approval or disapproval by the city commission of the requested development agreement, and/or upon final approval or disapproval of the subject application for the land use relief, referred to in subsection (4)(a)1 above.

(b) The term "development agreement" shall have the meaning ascribed to such term in F.S. ch. 163, as amended and supplemented. For purposes of this section, the term "development agreement" shall include any amendments, extensions, modifications or clarifications thereto.

(c) The term "contribution" shall have the meaning ascribed to such term in F.S. ch. 106, as amended and supplemented.

B. *Conditions for waiver of prohibition.* The requirements of this section may be waived by a five-sevenths vote for a particular real estate project and/or land use application by city commission vote after public hearing upon finding that such waiver would be in the best interest of the city.

Any grant of waiver by the city commission must be supported with a full disclosure of the subject campaign contribution.

C. *Applicability.* This section shall be applicable only to prospective real estate projects and/or applications for land use relief, and the city commission may in no case ratify a development agreement and/or application for land use relief entered into in violation of this section.

Sec. 2-490. Prohibited campaign contributions by lobbyists on real estate development issues.

(1) No lobbyist on a pending application for a development agreement with the city, or application for change of zoning map designation or change to the city's future land use map shall solicit for or give a campaign contribution directly or indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner.

(a) Commencing on the effective date of this ordinance, all applications for development agreements and for changes in zoning map designation or future land use map changes, shall incorporate this section so as to notify affected lobbyists of the proscription embodied herein.

(b) No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, shall deposit into such candidate's campaign account any campaign contribution directly or indirectly from a lobbyist subject to the provisions of this section. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the city clerk's and planning department's records to verify the lobbyist status of any potential donor.

(2) (a) A person other than a lobbyist on a real estate development issue as set forth in subsection (1) above, who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from lobbying the city commission in connection with a present development agreement, in connection with a development agreement that is currently being negotiated, or in connection with a present or pending application with the city for a change of zoning map designation or a change to the city's future land use map.
(b) A lobbyist on a real estate development issue as set forth in subsection (1) above, who directly or indirectly solicits for or makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified from lobbying the city commission in connection with a present development agreement, in connection with a development agreement that is currently being negotiated, or in connection with a present or pending application with the city for a change of zoning map designation or a change to the city's future land use map for a period of 12 months from a final finding of violation.

(3) A fine of up to $500.00 shall be imposed on every person who violates this section. Each act of soliciting, giving or depositing a contribution in violation of this section shall constitute a separate violation. All contributions ~~received~~ deposited by a candidate in violation of this section shall be forfeited to the city's general revenue fund.

(4) The term "contribution" shall have the meaning ascribed to such term in F.S. ch. 106, as amended and supplemented.

(5) The term "development agreement" shall have the meaning ascribed to such term in F.S. ch. 163, as amended and supplemented.

(6) The term "lobbyist" as used herein shall exclude any person who only appears as a representative of a nonprofit corporation or entity, without special compensation or reimbursement for the appearance, whether direct or indirect, to express his/her support of or opposition to the subject item.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect the _____ day of _____, 2009.

PASSED and ADOPTED this _____ day of _____, 2009.

ATTEST:

_____
Matti Herrera Bower
Mayor

_____
Robert Parcher
City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/15/09
Date

Requested by Commissioner Saul Gross

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MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

COMMISSION MEMORANDUM

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

FROM: Jose Smith, City Attorney

CC: Jorge Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: An Ordinance Approving, on First Reading, the Creation of the "Gay, Lesbian, Bisexual and Transgender (GLBT) Community Relations Committee" as a Standing City Committee

The Mayor's Gay Business Development Committee is an ad hoc City committee which was created to provide the City Commission with recommendations on initiatives to be implemented and supported by the City regarding a variety of issues to ensure the welfare and future of the Miami Beach GLBT Community.

Because City ad hoc committees have a limited duration, at its regular meeting on February 24, 2009 the GLBT Ad Hoc Committee unanimously voted to recommend and request that the Mayor and City commission create a permanent standing City committee in its stead, to be known as the "Gay, Lesbian, Bisexual and Transgender (GLBT) Community Relations Committee". The mission statement of the GLBT Community Relations Committee would continue the work of the former ad hoc committee.

At its meeting on April 15, 2009, the City's Neighborhoods/Community Affairs Committee considered the aforestated request, and recommended the creation of a standing committee. Accordingly, pursuant to the directive of the Neighborhoods/Community Affairs Committee, the City Attorney's Office has drafted the attached Ordinance.

The Neighborhoods/Community Affairs Committee further express the sentiment that the City Commission consider and adopt the attached Ordinance, on First Reading, at its April 22, 2009 Meeting; particularly in light of the City of Miami Beach's first annual Gay Pride event, on April 18, 2009.

RJA/ed

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Agenda Item R5L

Date 4-22-09

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2, ARTICLE III, OF THE MIAMI BEACH CITY CODE, ENTITLED "AGENCIES, BOARDS AND COMMITTEES," BY CREATING DIVISION 32, ENTITLED "GAY, LESBIAN, BISEXUAL AND TRANSGENDER (GLBT) COMMUNITY RELATIONS COMMITTEE," AND SECTIONS 2-190.144 THROUGH 2-190.147 THERETO; AND PROVIDING FOR CODIFICATION, REPEALER, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the Mayor's Gay Business Development Committee (the GLBT Ad Hoc Committee) was created as an ad hoc committee whose mission statement is to provide the City Commission with recommendations on initiatives to be implemented and supported by the City regarding a variety of issues to ensure the welfare and future of the Miami Beach gay, lesbian, bisexual and transgender (GLBT) community; and

WHEREAS, since its first meeting on March 25, 2008, the GLBT Ad Hoc Committee has successfully addressed such issues as: introducing legislation, which was adopted by the City Commission, permitting the display of the Rainbow/Pride flag in the City of Miami Beach; supporting legislation, which was adopted by the City Commission, opposing the passage of Amendment 2 to the Florida Constitution; and assisting with the creation and coordination of the City's first ever annual Gay Pride event, which is currently scheduled to take place on April 18, 2009; and

WHEREAS, in furtherance of its mission statement, as set forth above, the GLBT Ad Hoc Committee has expressed an interest in continuing to explore and develop GLBT issues and initiatives for presentation to, and consideration by, the Mayor and City Commission, and continuing to ensure the well being and quality of life of the City's GLBT community (particularly, as most recently discussed by the Committee in its ongoing review and subsequent recommendations to the Mayor and City Commission as to the continued support, strengthening, and improvements to the City's anti-discrimination, domestic partnership, and equal benefits legislation); and

WHEREAS, at its regular meeting on February 24, 2009, the Committee unanimously passed a motion requesting that the Mayor and City Commission consider sunsetting the Mayor's (Ad Hoc) Gay Business Development Committee, and create a standing Committee in its stead, to be known as the City of Miami Beach Gay Lesbian Bisexual and Transgender Community Relations Committee (the GLBT Community Relations Committee), whose purpose and mission statement would be the same as the GLBT Ad Hoc Committee; and

WHEREAS, at its regular meeting on April 15, 2009, the City's Neighborhood/Community Affairs Committee endorsed the creation of a standing committee; and

WHEREAS, accordingly, it is hereby recommended that the Mayor's Gay Business Development Committee be sunsetted, and that a new standing City committee, to be known as the "Gay, Lesbian, Bisexual and Transgender (GLBT) Community Relations Committee," be

created for the purpose of continuing to recommend and develop initiatives in the City regarding a variety of issues ensuring the welfare and future of the Miami Beach GLBT Community.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH AS FOLLOWS:

Section 1.

That Chapter 2, Article III, of the Miami Beach City Code is hereby amended to create Division 32 thereof, and Sections 2-190.144 through 2-190.147 thereto, as follows:

DIVISION 31. GAY, LESBIAN, BISEXUAL AND TRANSGENDER (GLBT) COMMUNITY RELATIONS COMMITTEE

Section 2-190.144. Committee Purpose.

The purpose of the GLBT Community Relations Committee is to provide guidance and advice to the City Commission and the City Manager with recommendations on initiatives to be implemented and supported by the City regarding a variety of issues to ensure the welfare and future of the Miami Beach GLBT Community.

Section 2-190-145. Powers and Duties.

The Committee shall make advisory recommendations to the City Commission and the City Manager on initiatives to be implemented and supported by the City regarding a variety of issues to ensure the well being and quality of life of the Miami Beach GLBT Community.

Section 2-190-146. Composition.

The Committee shall consist of fifteen (15) voting members, with three (3) members to be directly appointed by the Mayor, and two (2) members to be directly appointed by each City Commissioner. Notwithstanding the preceding sentence, the initial membership of the Committee shall be comprised of those current members of the Mayor's Gay Business Development Committee, choosing to serve on the Committee, with any additional members (as required to complete the total number of members of the Committee) to be appointed at large by a majority vote of the City Commission.

Section 2-190-147. Supporting Departments.

The Office of the City Manager will provide staff support for the Committee. The City Attorney's Office shall serve as legal counsel to the Committee.

SECTION 3. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY

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

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect on the ____ day of _____, 2008; provided, however, that the Mayor's Gay Business Development Committee shall continue to exist and operate until such time as the initial members of the Gay, Lesbian, Bisexual and Transgender (GLBT) Community Relations Committee have been appointed, as provided herein.

PASSED and **ADOPTED this _____ day of _____, 2009.**

ATTEST:

_____
MAYOR

_____
CITY CLERK

F:\atto\AGUR\RESOS-ORD\GLBT Community Relations Committee Ordinance.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/16/09
Date

Condensed Title:

Pursuant to Miami Beach City Code Section 118-262, to review a Design Review Board decision (DRB File No. 20181) rendered on November 6, 2008, requested by 1100 West Properties, LLC.

Key Intended Outcome Supported:

Not Applicable

Issue:

Pursuant to Miami Beach City Code Section 118-262, the Appellant, 1100 West Properties, LLC, is requesting that the Mayor and City Commission review a decision of the Design Review Board pertaining to DRB File No. 20181.

Item Summary/Recommendation:

The Administration recommends that City Commission deny the appeal.

Advisory Board Recommendation:

The Design Review Board approved the subject application on November 4, 2008.

Financial Information:

Source of Funds:

OBPI

	Amount	Account	Approved
1			
2			
3			
4			
Total			

Financial Impact Summary:

The proposed Resolution is not expected to have any fiscal impact.

City Clerk's Office Legislative Tracking:

Jorge Gomez or Tom Mooney

Sign-Offs:

Department Director	Assistant City Manager	City Manager

T:\AGENDA\2009\April 22\Regular\DRB File No. 20181- SUM.doc

MIAMIBEACH

AGENDA ITEM R7A
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **A REQUEST BY 1100 WEST PROPERTIES, LLC TO REVIEW A DESIGN REVIEW BOARD DECISION PERTAINING TO DRB FILE NO. 20181.**

ADMINISTRATION RECOMMENDATION

Deny the Appeal.

BACKGROUND

Pursuant to City Code Section 118-262, 1100 West Properties, LLC, is requesting a review of the Design Review Board (DRB) decision rendered on November 6, 2008 (DRB File No. 20181) pertaining to a modification to the Consolidated Final Order for the development project at 1100 West Avenue.

The Design Review Section of the Miami Beach Code allows the applicant, or the City Manager on behalf of the City administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust to seek a review of any Design Review Board Order by the City Commission. For purposes of this section, "affected person" shall mean either (i) a person owning property within 375 feet of the applicant's project reviewed by the board, or (ii) a person that appeared before the Design Review Board (directly or represented by counsel), and whose appearance is confirmed in the record of the Design Review Board's public hearing(s) for such project.

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

In order to reverse, or remand for amendment, modification or rehearing any decision of the Design Review Board, the City Commission must find that the Design Review Board failed to:

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

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

Section 118-262(a) requires the appellant to file with the City Clerk a written transcript of the hearing before the Design Review Board two weeks before the scheduled public hearing on the appeal. The transcript and associated material were transmitted to the Mayor and City Commission.

ANALYSIS

On June 5, 2007, the applicant received final approval for a series of exterior modifications to an existing multi-family residential structure in conjunction with the conversion to a hotel use, including a comprehensive public bay walk condition. The public bay walk was voluntarily proffered by the applicant, in conjunction with a proposed dock expansion. Through discussions with City staff, the applicant agreed to alternatives to the bay walk as part of the dock expansion, if the dock expansion was not approved. These alternatives included a public baywalk immediately east of the property's seawall, and if that were not possible, improvements to the immediately adjacent 10th Street street end. This comprehensive public baywalk condition, and the alternatives, were confirmed in a recorded covenant, signed by the property owner and related parties, on November 29, 2007.

The project was issued permits in accordance with the June 5, 2007 Order of the Board and construction commenced. On November 4, 2008, the DRB considered a request by the applicant to amend its obligation to post a letter of credit, performance bond or similar instrument if it had not completed the public baywalk by the time it was ready for a TCO, partial CO or final CO for any work approved by the Board. The Board approved the reduction of the bond from 1 ½ times the cost of the public baywalk, plus design and permitting costs, to $800,000, which was also allowed to be posted into escrow with counsel for the applicant. This November 4, 2008 hearing solely considered this request to reduce or eliminate the bond requirement from the June 5, 2007 Order. These funds were posted pursuant to an escrow agreement executed November 24, 2008, in which the original DRB approval, as well as the applicant's agreement and obligation in the comprehensive baywalk condition, were reaffirmed.

The appellant now seeks to challenge the portion of the original baywalk condition approved June 5, 2007, obligating it to fund improvements to the 10th Street street end if both the baywalk as part of the dock expansion, and the baywalk immediately east of the seawall are not built.

The DRB's review of the original project and amendment were based upon the information and voluntary proffer submitted by the applicant, and the Board had before it the recommendations for approval with proposed conditions presented by its professional staff in the form of a comprehensive staff report.

A review of the transcripts for the November 4, 2008 Design Review Board hearing on this matter indicates that the DRB observed the essential requirements of law, made its determinations based on substantial and competent evidence, and afforded all parties involved due process. Additionally, the Board held a public hearing during which members of the public were afforded the opportunity to testify and present evidence.

Finally, as indicated in the City Attorney's separate memorandum on this appeal, the applicant did not make a request to be relieved of the original 10th Street improvements condition as part of the amendment considered by the DRB on November 4, 2008. This condition was not further modified by the Board on November 4, 2008. Therefore, any appeal of this condition is not properly part of this appeal.

Based upon all of the evidence submitted, the Board determined that the proposed amendment, as revised by the Board, would continue to meet the Criteria for Design Review Approval, if the conditions enumerated in the original Final Order are met and, therefore, approved the request for a modification to the original Consolidated Final Order.

CONCLUSION

Based upon the foregoing, and the recommendation of the City Attorney, under separate cover, the Administration recommends that the Mayor and City Commission deny the subject appeal.

T:\AGENDA\2009\April 22\Regular\DRB File No 20181- MEM.doc

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jose Smith, City Attorney

CC: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **A RESOLUTION [GRANTING OR DENYING] AN APPEAL REQUEST BY 1100 WEST PROPERTIES, LLC OF A DESIGN REVIEW BOARD DECISION PERTAINING TO DRB FILE NO. 20181, THE MONDRIAN HOTEL.**

CITY ATTORNEY'S RECOMMENDATION

Deny the Appeal.

SUMMARY

On November 26, 2008, 1100 West Properties, LLC ("1100 West") filed an appeal of a decision of the Design Review Board ("DRB") on November 4, 2008 on the Mondrian Hotel. According to the "Appellant's Pre-Hearing Statement" the decision allegedly denied requests by 1100 West to (1) extend the time by which it must build a baywalk until either it or the City obtains permits; and (2) remove a requirement in the DRB order to build a "city park" on the 10th Street street end.

The appeal is without merit -- neither of these alleged denials occurred. The appeal should be dismissed on numerous grounds.

FACTUAL BACKGROUND

On June 5, 2007, the DRB granted 1100 West approval for a series of exterior modifications to an existing multi-family residential structure for its conversion to a hotel use. The final order included a public bay walk condition. The public bay walk was voluntarily proffered by 1100 West, in conjunction with its proposed marina/dock expansion. Through discussions with City staff, the applicant agreed to alternatives to the bay walk if the dock expansion and overwater baywalk were not approved. These alternatives included a public baywalk immediately east of the property's seawall (on the pool deck), and if that were not possible (it was subject to the adjacent condominium associations' approval), 1100 West would fund improvements to the adjacent 10th Street street end.[1]

This public baywalk condition, including the stated alternatives, were confirmed in a recorded covenant, signed by the property owner and related parties, on November 29, 2007. Exhibit A.

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[1] While the street end was not immediately adjacent to the Mondrian at 1100 West Avenue, the three properties consisting of 1000, 1100 and 1200 West Avenue, formerly Forte Towers, are considered as a combined development -- one parcel -- for zoning purposes. Therefore, the 10th Street street end immediately abuts the combined development on the south.

The project was issued permits in accordance with the DRB's June 5, 2007 Order and construction commenced. On November 4, 2008, the DRB considered a request by 1100 West to amend its obligation to post a letter of credit, performance bond or similar instrument because it had not completed the public baywalk by the time it was ready for a TCO, partial CO or final CO as required in the Order. The Board approved the reduction of the bond from 1 ½ times the cost of the public baywalk, plus design and permitting costs, to $800,000, which was allowed to be posted into escrow with counsel for the applicant. This November 4, 2008 hearing considered this request to reduce or eliminate the bond requirement from the June 5, 2007 Order. These funds were posted pursuant to an escrow agreement executed November 24, 2008, in which the original DRB approval, as well as the applicant's agreement to the comprehensive baywalk condition, were reaffirmed. Exhibit B.

The transcript submitted by 1100 West in connection with this appeal confirms this factual review:

At p. 5: [by Alex Tachmes (Tasman)]:

> The only two items we are seeking to amend are, A, the time frame within which we have to complete – we have to get it permitted and built, and, two, the issue of the posting of a letter of credit.

After discussion with the Board, 1100 West then dropped the request for the amendment to the time frame.

At p. 64: [by Alex Tachmes (Tasman)]:

> All we want to do is reduce the financial security for one and a half times for the bond or LC [Letter of Credit] down to $600,000 in cash. We are not going to change our obligation to do the bay walk, and we are not going to change our obligation to do the park in the event we can't do the baywalk. We are not going to change the two-year deadline under the order. That is it.

At p. 77: [by Mr. Held]:

> You are posting $800,000 in an escrow agreement to substitute for the letter of credit or similar instrument that is provided prior to CO?
>
> Mr. Galbut: Right.
>
> Mr. Held: And then every other provision [in the 2007 Order] remains the same?
>
> Mr. Galbut: Yes.

ANALYSIS

The appeal is an improper attempt, and a year and a half late, to challenge a decision of the DRB on July 5, 2007, which accepted 1100 West's proffer of a public baywalk to be constructed as part of a marina behind the new Mondrian Hotel, specifically, the alternative that if 1100 West did not receive permits for the marina and baywalk, then 1100 West would fund improvements to the 10th Street street end. This condition was accepted and not challenged.

In approximately October 2008, when 1100 West sought a final certificate of occupancy for its hotel project, a condition of the 2007 approval required that if the baywalk were not complete, 1100 West would have to post a bond or letter of credit to guarantee the baywalk would be completed. 1100 West sought a modification of that condition because due to

economic conditions a bond or letter of credit would be too costly.

The quotes that counsel for 1100 West cites to in its Pre-Hearing Statement from the October 2008 hearing transcript are taken out of context. It is clear from numerous discussions in the transcript that 1100 West was not seeking to amend the street end condition. What it was objecting to was staff's proposed modification, NOT adopted by the Board, that as consideration for the reduction in the bond amount, 1100 West should contribute funds to the street end improvements now (not later IF the baywalk could not be permitted).

Any challenge now to the original street end condition (that 1100 West fund the 10th Street street end if the baywalk cannot be constructed) must be denied because:

1. **The appeal is untimely** as to the condition in the July 7, 2007 approval, which became final 20 days after the July 7, 2007, when that original Order was signed and filed with the clerk of the DRB.

City Code section 118-262(a): "The request shall be in writing, include all applicable fees, shall be by or on behalf of a named appellant(s), shall state the factual bases and legal argument in support of the appeal, <u>and shall be submitted to the city clerk on or before the 20th day after the date of rendition of the board's order</u>."

2. **The appeal fails to exhaust administrative remedies**, because 1100 West did not seek from the DRB the relief it seeks now from the City Commission.

3. **1100 West is estopped** from challenging these conditions because it voluntarily accepted them in a **publicly recorded covenant**.

Serra Canyon Co., Ltd. v. California Coastal Commission, 120 Cal.App.4th 663 (Ca. 2004)(developer could not challenge its recorded offer to dedicate land required as condition of mobile home park approval after development completed).

4. **1100 West is estopped** from challenging these conditions because it voluntarily accepted them in the **escrow agreement** to implement the DRB's November 6, 2008 approval to reduce the bond and allow the funds to be posted in escrow.

5. **1100 West is estopped** from challenging these conditions **because it has obtained the benefit of such approval through construction of the project approved.**

It is widely held that a property owner cannot challenge a development approval <u>after</u> accepting its benefits. *New Testament Baptist Church Inc. of Miami v. DOT*, 993 So.2d 112 (Fla. 4th DCA 2008)(church could not challenge plat dedication as alleged illegal exaction 13 years after plat recorded and development completed); *Wilson v. Board of County Commissioners of Teton*, 153 P.2d 917 (Wyo. 2007)(developer of subdivision could not challenge subdivision approval's 10% open space requirement after lots were subdivided and sold).

<u>CONCLUSION</u>
The City Attorney recommends that the Mayor and City Commission deny the appeal.

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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, [GRANTING OR DENYING] AN APPEAL REQUEST BY 1100 WEST PROPERTIES, LLC OF A DESIGN REVIEW BOARD DECISION PERTAINING TO DRB FILE NO. 20181, THE MONDRIAN HOTEL.

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

WHEREAS, 1100 West Properties, LLC is requesting a review of the Design Review Board decision rendered on November 6, 2008, (DRB File No. 9024) pertaining to an amendment to the original Final Order for the development project at 1100 West Avenue (DRB File No. 20181), which has been timely filed for such review; and

WHEREAS, on November 4, 2008, the Design Review Board approved a request for a modification to the original June 5, 2007 Final Order for the project; and

WHEREAS, pursuant to City Code Section 118-262, the applicant timely filed an appeal of the Design Review Board decision rendered on November 6, 2008; and

WHEREAS, such Code section allows the applicant, or the city manager on behalf of the city administration, or an affected person, Miami Design Preservation League or Dade Heritage Trust to seek a review of any Design Review Board Order by the City Commission; and

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

WHEREAS, in order to reverse or remand a decision of the Design Review Board, a 5/7th vote of the City Commission is required; and

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

WHEREAS, on January 28, 2009, the City Commission set the hearing for this appeal to be held on February 25, 2009, and the City Clerk was directed and did notice such hearing; and

WHEREAS, on February 25, 2009, the City Commission opened and continued the hearing for this appeal to be held on April 22, 2009, and the City Clerk was directed and did notice such hearing; and

WHEREAS, on April 22, 2009 the City Commission heard the parties, and pursuant to the argument given, the written materials submitted, and having been duly advised in the premises determined that the November 4, 2008 decision of the Design Review Board did not result in, respectively, 1) a denial of due process, 2) a departure from the essential requirements of law, nor 3) a decision that was not based upon substantial, competent evidence; and

WHEREAS, on April 22, 2009 a motion was made by the City Commission to [grant or deny] the appeal by 1100 West Properties, LLC of the November 4, 2008 decision of the Design Review Board pertaining to DRB File No. 20181; and

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

NOW THEREFORE BE IT RESOLVED THAT the Mayor and City Commission hereby [grant or deny] the appeal filed by 1100 West Properties, LLC and [reverse or affirm] the November 4, 2008 decision of the Design Review Board in file No. 20181.

PASSED AND ADOPTED, this _____ day of _____, 2009.

ATTEST:

_____
MAYOR

_____
CITY CLERK

APPROVED AS TO FORM
& LANGUAGE & FOR EXECUTION

_____ 4/14/09
CITY ATTORNEY DATED

T:\AGENDA\2009\April 22\Regular\DRB File No. 20181- RESO.doc

CFN 2007R1138311
OR Bk 26075 Pgs 3257 - 3279; (23pgs
RECORDED 11/30/2007 11:57:56
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This instrument prepared by
and after recording return to:

Alexander I. Tachmes, Esq.
Shutts & Bowen LLP
201 South Biscayne Boulevard
1500 Miami Center
Miami, Florida 33131

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Covenant"), is made this 29th day of November, 2007, by 1100 West Properties, LLC, a Delaware limited liability company (the "Owner").

WITNESSETH

WHEREAS, the Owner holds fee-simple title to certain property located in the City of Miami Beach, Florida at 1100 West Avenue, Miami Beach, Florida 33139 and legally described in Exhibit "A" attached hereto and incorporated into this Covenant by this reference (the "Property"); and

WHEREAS, the Owner filed an application with The City of Miami Beach Design Review Board (the "Design Review Board") for design review approval for its proposed alterations to the entire 1100 West Avenue property (the "Design Review Application"); and

WHEREAS, the Design Review Board approved the Design Review Application, as indicated in that certain Consolidated Order from the Design Review Board executed on June 8, 2007, a copy of which is attached hereto as Exhibit "B" and incorporated into this Covenant by this reference (the "Order"); and

WHEREAS, the Property is a portion of the above-referenced 1100 West Avenue property; and

WHEREAS, as part of the review process of the Design Review Application, Owner voluntarily proffered and agreed that, subject to the provisions of the Order, it would construct a

CIRCUIT AND COUNTY COURTS
CLERK
IN GOD WE TRUST
MIAMI-DADE COUNTY, FLORIDA

DOCS 396934 5

Exhibit A

public baywalk ("Public Baywalk") along the rear of the Property, and the immediately abutting properties to the north and south, extending from 10th St. to the northern property line of 1200 West Avenue; and

WHEREAS, the original proffer was to construct a Public Baywalk westward of the seawall running the length of these properties, either attached or detached, and if such were not possible, it would seek to construct a Public Baywalk eastward of the seawall, and if neither were possible it would make a voluntary contribution for right-of-way and park improvements at the western terminus of 10th Street, according to the more specific terms of the Order; and

WHEREAS, that even after such a contribution, if a marina expansion were ever constructed westward of the Property, a Public Baywalk would be constructed west of the seawall along the rear of the Property and the immediately abutting properties to the north and south, extending from 10th Street to the northern property line of 1200 West Avenue; and

WHEREAS, the Order contains certain further provisions regarding the construction of the Public Baywalk, and as required by Paragraph B(1)(j) of the Order, the Owner is entering into and recording this Covenant regarding the Public Baywalk.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Owner, the Owner voluntarily covenants and agrees as follows:

1. Recitals. The recitals set forth in the preamble of this Covenant are true and correct and incorporated into this Covenant by this reference.

2. Covenants. The Owner hereby establishes the following covenants running with the land upon the Property:

a. The Owner hereby confirms its voluntary proffer to design, permit, construct, and maintain the Public Baywalk, as set forth in the Order; and

b. Upon completion of construction of the Public Baywalk, the Owner shall permit public access in perpetuity to and on the Public Baywalk, pursuant and subject to the conditions of the Order.

3. Effective Date. Upon its recordation in the Public Records of Miami-Dade County, Florida, this Covenant shall constitute a restrictive covenant concerning the use, enjoyment, and title to the Property and shall constitute a covenant running with the land that is binding upon the Owner, its successors and assigns, its tenants, and all subsequent owners of the Property. The provisions of this Covenant shall be for the benefit of, and a limitation upon, all present and future owners and tenants of the Property and for the benefit of the public welfare.

4. Full Force and Effect. This voluntary Declaration shall remain in full force and effect and shall be binding upon the Owner of the Property, their successors in interest and

assigns for an initial period of thirty (30) years from the date this instrument is recorded in the public records, and shall be automatically extended for successive periods of ten (10) years, unless modified, amended or released.

5. Modification/Release. This Covenant may be modified, amended or released as to any portion of the Property by a written instrument executed by the then owner of the fee-simple title to the Property providing that same has been approved by the City of Miami Beach City Commission, or such other board with jurisdiction over the matter, at a public hearing, which public hearing shall be applied for by and at the expense of the Owner. Should this instrument be so modified, amended, or released, the City Manager of the City of Miami Beach, or his successor, or other administrative officer with jurisdiction over the matter, shall execute promptly a written instrument in recordable form effectuating and acknowledging such modification, amendment or release.

6. Effect of Partial Invalidity: Invalidation of any provision of this Covenant by judgment of a court of appropriate jurisdiction shall not affect any of the other provisions of this Covenant, which shall remain in full force and effect.

7. Recording. This Covenant shall be recorded in the Public Records of Miami-Dade County, Florida, at the cost of the Owner.

8. Access Rights of the City. It is understood and agreed that any official of the City of Miami Beach (the "City") has the right at any time during normal business hours of entering and investigating the use of the Public Baywalk, to determine whether the conditions of this Covenant and the requirements of the City's building, zoning and land development regulations are being complied with.

9. Enforcement Rights of the City. An action to enforce the terms and conditions of this Covenant may be brought by the City and may be, at law or in equity, against any party or person violating or attempting to violate any provision of this Covenant, either to restrain violations or to recover damages. The prevailing party in the action shall be entitled to recover costs and reasonable attorneys' fees, at all levels of trial and appeal. This enforcement provision shall be in addition to any other remedies available under the law.

10. Effect on Adjacent Property of Owner. To the extent that fulfillment of the obligations of this Covenant requires access to and on commercial units on the western portions of the properties located in the City at 1000 West Avenue and 1200 West Avenue, including the riparian rights thereof, owned in whole or part by Owner, its principals, or affiliated entities, the obligations hereunder shall extend to such commercial units.

11. Limitation of Liability. The Owner, its principals, affiliated entities, successors and assigns, hereby covenant not to sue the City for, and agree to indemnify and hold the City harmless from, any action arising out of this Covenant; provided, however, that the provisions of this paragraph shall not apply to the following:

a. any violations of this Covenant by the City or its departments, or

b. the gross negligence or willful misconduct by the City or any of its departments, employees, or independent contractors.

12. Authority. Owner represents and warrants that it, its Managing Member, 1100 West Holdings, LLC, a Delaware limited liability company (the "Managing Member"), and the entities signing on behalf of the Managing Member, have the full right, power, and lawful authority to enter into and execute this Covenant in order to subject Owner to the provisions of this Covenant, and that such actions do not violate any other agreement, covenant, or restriction placed upon such entities. The persons executing this Covenant on behalf of Owner, the Managing Member, and related entities represent and warrant that they have the authority to execute this Covenant on behalf of and bind the entities for which they are signing.

13. Counterparts. This Covenant may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. Any signature delivered by facsimile or other forms of electronic transmission, such as a PDF, shall be considered an original signature.

IN WITNESS WHEREOF, the Owner has executed this Covenant through its duly authorized representatives on the date set forth above.

APPROVED:

PLANNING DIRECTOR

APPROVED AS TO FORM
AND LANGUAGE AND FOR EXECUTION

for CITY ATTORNEY — Nov. 26, 2007 DATED

[*OWNER'S SIGNATURE PAGE FOLLOWS*]

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WITNESSES:

_____
Print Name:_____

_____
Print Name:_____

_____
Print Name:_____

_____
Print Name:_____

OWNER:

1100 WEST PROPERTIES, LLC,
a Delaware limited liability company

By: 1100 West Holdings, LLC,
a Delaware limited liability company,
its Managing Member

By: Sanctuary West Avenue, LLC,
a Delaware limited liability company,
Member

By: Sanctuary West Holdings, LLC,
a Delaware limited liability company,
its Sole Member

By: Sanctuary West Management, LLC,
a Delaware limited liability
company, its Manager

By:_____
Name: Abraham Galbut
Title: Manager

By: Mondrian Miami Investment LLC,
a Delaware limited liability company,
Member

By: Morgans Group LLC,
a Delaware limited liability company,
its Managing Member

By: Morgans Hotel Group Co.,
a Delaware corporation,
its Managing Member

By: _____
Name: Marc Gordon
Title: Chief Investment Officer

WITNESSES:

Bonnie H. Hudson

Print Name: BONNIE H. HUDSON

Print Name: CHANTAL DE VOS

Print Name:

Print Name:

OWNER:

1100 WEST PROPERTIES, LLC,
a Delaware limited liability company

By: 1100 West Holdings, LLC,
a Delaware limited liability company,
its Managing Member

By: Sanctuary West Avenue, LLC,
a Delaware limited liability company,
Member

By: Sanctuary West Holdings, LLC,
a Delaware limited liability company,
its Sole Member

By: Sanctuary West Management, LLC,
a Delaware limited liability
company, its Manager

By:
Name: Abraham Galbut
Title: Manager

By: Mondrian Miami Investment LLC,
a Delaware limited liability company,
Member

By: Morgans Group LLC,
a Delaware limited liability company,
its Managing Member

By: Morgans Hotel Group Co.,
a Delaware corporation,
its Managing Member

By:
Name: Marc Gordon
Title: Chief Investment Officer

WITNESSES:

_____
Print Name:_____

_____
Print Name:_____

_____
Print Name:_____

_____
Print Name:_____

OWNER:

1100 WEST PROPERTIES, LLC,
a Delaware limited liability company

By: 1100 West Holdings, LLC,
a Delaware limited liability company,
its Managing Member

By: Sanctuary West Avenue, LLC,
a Delaware limited liability company,
Member

By: Sanctuary West Holdings, LLC,
a Delaware limited liability company,
its Sole Member

By: Sanctuary West Management, LLC,
a Delaware limited liability
company, its Manager

By:_____
Name: Abraham Galbut
Title: Manager

By: Mondrian Miami Investment LLC,
a Delaware limited liability company,
Member

By: Morgans Group LLC,
a Delaware limited liability company,
its Managing Member

By: Morgans Hotel Group Co.,
a Delaware corporation,
its Managing Member

By: _____
Name: Marc Gordon
Title: Chief Investment Officer

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 21st day of NOVEMBER, 2007, by Abraham Galbut, as Manager of SANCTUARY WEST MANAGEMENT, LLC, a Delaware limited liability company, the Manager of SANCTUARY WEST HOLDINGS, LLC, a Delaware limited liability company, the Sole Member of SANCTUARY WEST AVENUE, LLC, a Delaware limited liability company, a Member of 1100 WEST HOLDINGS, LLC, a Delaware limited liability company, the Managing Member of 1100 WEST PROPERTIES, LLC, a Delaware limited liability company. He or she is (check one) [X] personally known to me or [ ] has ~~produced~~ _____ as identification.

WITNESS my hand and official seal in the county and state named above this 21st day of NOVEMBER, A.D., 2007.

NOTARY PUBLIC, State of Florida
Print Name: CHANTAL DEVOS
Commission No.: _____
Commission Expires: _____

NOTARY PUBLIC-STATE OF FLORIDA
Chantal DeVos
Commission #DD308022
Expires: APR. 07, 2008
BONDED THRU ATLANTIC BONDING CO., INC.

STATE OF New York)
)
COUNTY OF New York)

The foregoing instrument was acknowledged before me this 21st day of November 2007, by Marc Gordon, as Chief Investment Officer of MORGANS HOTEL GROUP CO., a Delaware corporation, the Managing Member of MORGANS GROUP LLC, a Delaware limited liability company, the Managing Member of MONDRIAN MIAMI INVESTMENT LLC, a Delaware limited liability company, a Member of 1100 WEST HOLDINGS, LLC, a Delaware limited liability company, the Managing Member of 1100 WEST PROPERTIES, LLC, a Delaware limited liability company. He or she is (check one) [X] personally known to me or [ ] has produced _____ as identification.

WITNESS my hand and official seal in the county and state named above this 21st day of November, A.D., 2007.

GRACE G. CHEN
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01-CH6056883
QUALIFIED IN QUEENS COUNTY
MY COMMISSION EXPIRES 04-02-20__

NOTARY PUBLIC, State of ~~Florida~~ New York
Print Name: GRACE CHEN
Commission No.: 01-CH6056883
Commission Expires: 04/02/2011

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GRACE G. CHEN
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01-CH6056883
QUALIFIED IN QUEENS COUNTY
MY COMMISSION EXPIRES 04-02-20 11

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by Abraham Galbut, as Manager of SANCTUARY WEST MANAGEMENT, LLC, a Delaware limited liability company, the Manager of SANCTUARY WEST HOLDINGS, LLC, a Delaware limited liability company, the Sole Member of SANCTUARY WEST AVENUE, LLC, a Delaware limited liability company, a Member of 1100 WEST HOLDINGS, LLC, a Delaware limited liability company, the Managing Member of 1100 WEST PROPERTIES, LLC, a Delaware limited liability company. He or she is (check one) [ ] personally known to me or [ ] has produced _____ as identification.

WITNESS my hand and official seal in the county and state named above this _____ day of _____, A.D., 2007.

NOTARY PUBLIC, State of Florida
Print Name:_____
Commission No.:_____
Commission Expires:_____

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by Marc Gordon, as Chief Investment Officer of MORGANS HOTEL GROUP CO., a Delaware corporation, the Managing Member of MORGANS GROUP LLC, a Delaware limited liability company, the Managing Member of MONDRIAN MIAMI INVESTMENT LLC, a Delaware limited liability company, a Member of 1100 WEST HOLDINGS, LLC, a Delaware limited liability company, the Managing Member of 1100 WEST PROPERTIES, LLC, a Delaware limited liability company. He or she is (check one) [ ] personally known to me or [ ] has produced _____ as identification..

WITNESS my hand and official seal in the county and state named above this _____ day of _____, A.D., 2007.

NOTARY PUBLIC, State of Florida
Print Name:_____
Commission No.:_____
Commission Expires:_____

JOINDER OF CONDOMINIUM ASSOCIATION

1100 WEST CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation (the "Association"), hereby joins in the execution of this Covenant for the sole purpose of agreeing that the Association will take no action, including, but not limited to, passing a rule or regulation or entering into any agreement, that would prevent the performance of the obligations required under this Covenant and/or the Order.

Witnessed by:

1100 WEST CONDOMINIUM ASSOCIATION, INC.,
a Florida not-for-profit corporation

_____
Name: _____

By: _____
Name: _____
Title: _____

_____
Name: _____

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2007, by _____, as _____ of 1100 WEST CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation. He or she is (check one) [ ] personally known to me or [ ] has produced _____ as identification.

WITNESS my hand and official seal in the county and state named above this _____ day of _____, A.D., 2007.

NOTARY PUBLIC, State of Florida
Print Name:_____
Commission No.:_____
Commission Expires:_____

JOINDER OF CONDOMINIUM ASSOCIATION

1100 WEST CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation (the "Association"), hereby joins in the execution of this Covenant for the sole purpose of agreeing that the Association will take no action, including, but not limited to, passing a rule or regulation or entering into any agreement, that would prevent the performance of the obligations required under this Covenant and/or the Order.

Witnessed by:

Name: DAYANI AGUIAR

Name: CHANTAL DE VOS

1100 WEST CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation

By:

Name: Keith Menin

Title: President

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 20th day of November, 2007, by Keith Menin, as President of 1100 WEST CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation. He or she is (check one) [X] personally known to me or [ ] has produced _____ as identification.

WITNESS my hand and official seal in the county and state named above this 20th day of November, A.D., 2007.

NOTARY PUBLIC, State of Florida
Print Name: CHANTAL DE VOS
Commission No.: _____
Commission Expires: _____

NOTARY PUBLIC-STATE OF FLORIDA
Chantal DeVos
Commission # DD308022
Expires: APR. 07, 2008
BONDED THRU ATLANTIC BONDING CO., INC.

JOINDER BY MORTGAGEE
CORPORATION

The undersigned _____, a _____ (state) corporation and Mortgagee under that certain mortgage from _____ _____ dated the _____ day of _____, _____, and recorded in Official Records Book _____, Page _____, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in this Covenant, does hereby acknowledge that the terms of this Covenant are and shall be binding upon the undersigned and its successors in title.

Witnessed by:

_____,
a _____ corporation

_____
Name: _____

By: _____
Name: _____
Title: _____

_____
Name: _____

STATE OF _____

COUNTY OF _____

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

WITNESS my hand and official seal in the county and state named above this _____ day of _____, A.D., 2007.

NOTARY PUBLIC, State of Florida
Print Name:_____
Commission No.:_____
Commission Expires:_____

JOINDER BY MORTGAGEE
CORPORATION

The undersigned Eurohypo AG, New York Branch, the New York branch of a German banking corporation and, in its capacity as administrative agent, Mortgagee under that certain mortgage from 1100 West Properties, LLC dated as of the 8th day of August, 2006 and recorded in Official Records Book 24801, Page 3306, of the Public Records of Miami-Dade County, Florida, as amended by that certain First Amendment to Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of the 19th day of December, 2006 and recorded in Official Records Book 25210, Page 3790, of the Public Records of Miami-Dade County, Florida, as further amendment by that certain Second Amendment to Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated as of the 6th day of September, 2007 and recorded in Official Records Book 25944 Page 2682, of the Public Records of Miami-Dade County, Florida, covering all/or a portion of the property described in this Covenant, does hereby acknowledge that the terms of this Covenant are and shall be binding upon the undersigned and its successors in title.

Witnessed by:

Name: Kelly Miller

Name: Amy Sandler

EUROHYPO AG, NEW YORK BRANCH, the New York branch of a German banking corporation, as administrative agent

By: David Sarner
Name: David Sarner
Title: Director

By:
Name: Stephen Cox
Title: Director

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by David Sarner and Stephen Cox the Directors of Eurohypo AG NY Branch ~~corporation~~, on behalf of the corporation. ~~He/She~~ They Are is personally known to me ~~or has produced~~ _____, ~~as identification.~~

WITNESS my hand and official seal in the county and state named above this 28 day of November, A.D., 2007.

PATRICIA A. FERRO
Notary Public - State of New York
No. 01FE6170163
Qualified in Kings County
My Commission Expires July 2, 2011

NOTARY PUBLIC, State of ~~Florida~~ New York
Print Name: Patricia A. Ferro
Commission No.: 01FE6170163
Commission Expires: July 2, 2011

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Exhibit "A"

Legal Description of the Property

Unit CU-4 and the Hotel Unit of 1100 WEST, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 25780, Page 0498, of the Public Records of Miami-Dade County, Florida.

[*Note: The following information related to the Property has been added for informational purposes only: The above units are located at Lots 7, 8, and the North 50.00 feet of Lot 9, Block 80, Subdivision of Block Eighty of the Alton Beach Realty Company, which is a part of Alton Beach Bay Front Subdivision, according to the plat thereof recorded in Plat Book 6, Page 12, of the Public Records of Miami-Dade County, Florida. *]

Exhibit "B"

The Order

DESIGN REVIEW BOARD
City of Miami Beach, Florida

MEETING DATE: June 5, 2007

IN RE: The Application for Design Review Approval for a new landscape plan for the entire site, as well as for alterations to the existing exterior elevations, including modifications to the windows, doors, and porte-cochere, and the construction of new 2-story cabanas at the rear of the site.

FILE NO: 20181

PROPERTY: 1100 West Avenue

CONSOLIDATED O R D E R

The applicant, 1100 West Properties, L.L.C., filed an application with the City of Miami Beach Planning Department for Design Review Approval.

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, the reasons set forth in the Planning Department Staff Report, and the original order issued March 6, 2007 and the conditions stated therein (which order is incorporated herein), the project, as submitted is not consistent with Design Review Criteria 2, 3, 4, 7 & 10 in Section 118-251 of the Miami Beach Code.

B. The project would be consistent with the criteria and requirements of section 118-251 if the following conditions are met:

1. The applicant has voluntarily offered, proffered and agreed to construct a public bay walk ("Public Baywalk") west of the existing seawall along the rear of the subject site in accord with the following conditions. This proffer and its acceptance are based on a particularized evaluation and assessment of the subject project, the rational nexus between such project and impacts to the local transportation network, and the rational nexus and rough proportionality between the project and impacts to the transportation network and the bay walk proffered. The approval of the subject application is contingent upon such Public Baywalk being constructed in accordance with the following conditions:

   a. The Public Baywalk shall be designed, permitted and built by the applicant, and may either be attached or detached from the existing seawall. All costs associated with the design, permitting, construction and maintenance of the Public Baywalk, as described herein, shall be borne by the applicant, including, but not limited to, all required environmental mitigation.

   b. The Public Baywalk shall connect to and commence at the western terminus of Tenth Street and shall continue to the northern property line of 1200 West Avenue.

c. The Public Baywalk shall be open to the public from 6:00 am to 9:00 pm, 7 days a week. The applicant may install an operable fence, gate or other operable barrier to restrict public access to the Public Baywalk from 10th Street and/or a future connection to the north, subject to the review and approval of staff; such operable fence, gate or barrier shall include some form of automatic timing device, in order to ensure that the Public Baywalk is open between the hours of 6:00 am and 9:00 pm. Access by the public to the Public Baywalk shall only be restricted between the hours of 9:00 pm and 6:00 am, and otherwise, as determined by the Planning Director, in the event of an emergency, dangerous condition or other circumstance that would render usage of the Public Baywalk a safety risk. Any violation of this condition shall be subject to a notice of violation and enforcement by the Special Master or any alternative remedy available to the City.

d. The Public Baywalk shall be at least fifteen (15) feet in width and located westward of the seawall; the method of construction and connection shall be subject to the review and approval of staff. In the event any permitting authority does not permit the Public Baywalk to be 15 ft. in width, the applicant may reduce the width of the Public Baywalk, to the degree and in a manner to be approved by City Planning Department staff. The City shall use its best efforts to assist the applicant in securing permits for the Public Baywalk westward of the seawall to the extent City's consent or approval is required for the approval or processing of permits. The applicant may elect to locate the Public Baywalk eastward of the seawall, subject to the review and approval of staff. If the applicant is unable to secure permits for the Public Baywalk westward of the seawall within two (2) years of this approval, the applicant shall design, permit and construct the Public Baywalk eastward of the seawall, subject to and contingent upon the agreement and approval of the condominium associations of 1000 and 1200 West Avenue to extend the Public Baywalk in the rear yards, eastward of the seawall, of the 1000 and 1200 West Avenue properties. The Design Review Board may, at its discretion, extend the period of time to obtain the required permits for the Public Baywalk westward of the seawall. The applicant shall work diligently while securing permits for the Public Baywalk westward of the seawall and during such time shall provide progress reports on the design, permitting and construction of the Public Baywalk to the Planning Director approximately every six (6) months. The Planning Director may refer the matter to the Design Review Board and/or request a progress report at any time, at the expense of the applicant, and the Design Review Board shall retain jurisdiction on the matter.

e. In the event that the applicant elects or is required to locate the Public Baywalk eastward of the seawall, such eastward Public Baywalk shall extend the full length of the property from 1000 through 1200 West Avenue, at a width subject to the review and approval of City staff, not to exceed five (5) feet in width. The construction of such Public Baywalk is subject to and contingent upon the agreement and approval of the condominium associations of 1000 and 1200 West Avenue to extend the Public Baywalk in the rear yards, eastward of the seawall, of the 1000 and 1200 West Avenue properties. The applicant shall be responsible for all expenses to design, permit, construct, and maintain the Public Baywalk eastward of the seawall including, but not limited to all accessible connections to 10th Street. The applicant shall use its good faith efforts to attempt to secure the approval and agreement of the condominium associations of 1000

and 1200 West Avenue necessary for the Baywalk to extend the full length of the property from 1000 through 1200 West Avenue. In the event the Public Baywalk is designed, permitted and constructed eastward of the seawall, the applicant shall be permitted to construct a glass partition wall, including the use of one-way glass, east of the Public Baywalk on the pool deck, subject to all applicable requirements of the City Code.

f. In the event consent from the condominium associations at 1000 and 1200 West Avenue cannot be obtained for a Public Baywalk eastward of the seawall in the rear yards of the 1000 and 1200 West Avenue properties or for an attached Public Baywalk westward of the seawall, or a permit is not granted for a detached Public Baywalk westward of the seawall, regardless of any connection to a future marina, the applicant has voluntarily proffered to make a monetary contribution toward right-of-way improvements on 10th Street, westward of West Avenue, including the construction of a new park at the western terminus of 10th Street. The applicant shall have the right to name the park, subject to City laws on naming rights. The amount of this monetary contribution shall be the average of three (3) certified construction estimates, to be verified and approved by the City, for the total hard construction costs (The "Public Baywalk Cost") of a detached Public Baywalk westward of the seawall behind 1000, 1100 and 1200 West Avenue. The foregoing shall not preclude the City in the future from seeking the approval and cooperation of the owners of the 1000, 1100 and 1200 West Avenue properties for the location of a Public Baywalk eastward of the seawall upon terms and conditions to be determined at that time.

g. The applicant shall be responsible for the maintenance, repair and, if necessary, the replacement, if destroyed in whole or part, of the full Public Baywalk from 1000 to 1200 West Avenue, and shall establish reserves and insurance to accomplish this obligation. However, the preceding sentence shall not apply in the event repair or replacement is necessitated due to damage caused by the City or any employee or independent contractor of the City.

h. The applicant shall complete all design development and permit drawings for the proposed Public Baywalk westward of the seawall prior to the issuance of any building permit for any work approved by the Design Review Board in this application. Such drawings shall be reviewed by City staff for sufficiency and submitted by the applicant to the appropriate regulatory authorities for permitting; the design development drawings shall be deemed complete to the extent they are ready for submission to the appropriate agencies for the initial level of review. The Public Baywalk shall be permitted and substantially completed prior to the issuance of any TCO, Partial CO or Final CO for any work approved by the Design Review Board in this application.

i. In the event that the Public Baywalk is not permitted or substantially completed at the time a request is made for a TCO, Partial CO or Final CO for any work approved by the Design Review Board in this application, the applicant shall post a Letter of Credit, Performance Bond or similar instrument (LOC), in a form acceptable to the City Attorney, in the amount of one and one-half (1-1/2) times the Public Baywalk Cost plus design and permitting costs attributable thereto, to ensure the design, permitting, construction and completion of the Public Baywalk. The providing of the LOC shall not substitute for the applicant's obligation to design, permit and construct the Public Baywalk, and if the costs of

doing so exceeds the LOC, the applicant shall be responsible for the balance of such costs. The LOC may only be released in writing by the Planning Director, and shall not be released until the Public Baywalk is completed and open to the public. Subsequent to the permitting and commencement of construction of the Public Baywalk, the Planning Director may reduce or increase the total amount of the LOC, based upon the progress of and revised estimates of the cost of the construction.

j. Prior to the issuance of a building permit for any work approved by the Design Review Board in this application, the applicant shall enter into and record a restrictive covenant, approved by the City Attorney, which runs with the land, confirming the applicant's voluntary proffer to design, permit, construct and maintain a Public Baywalk, and confirming public access in perpetuity to such Public Baywalk, in accordance with these conditions. The restrictive covenant shall be binding on successors and assigns and shall be recorded in the public records, at the expense of the applicant.

k. If the applicant sells, leases or otherwise conveys the property, these conditions shall run with the land, and the applicant's successors and assigns shall be obligated to comply with these conditions.

l. Notwithstanding the foregoing, if any marina should be constructed westward of the seawall at 1000, 1100 or 1200 West Avenue in the future, at any time, the applicant has proffered that in connection with such marina it will design, construct and maintain at its cost and expense a Public Baywalk, westward of the seawall, running the entire length of the rear of the properties at 1000, 1100 and 1200 West Avenue, including a direct connection to the western terminus of Tenth Street.

2. The Design Review Board (DRB) or the Planning Director shall retain the right to call the owners or operators back before the DRB, at the expense of the owners or operators, to impose and/or modify the hours of operation, and the placement and use on the property of outdoor bar counters, exterior loudspeakers, fixed or portable, should there be valid complaints (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as amended, shall be deemed a violation of this approval and subject the approval to modification in accordance with the procedures for modification of prior approvals as provided for in the Code, and subject the applicant to the review provided for in the first sentence of this paragraph.

3. The location, specifications and number of exterior speakers shall be consistent with the acoustic plan submitted by the applicant and subject to the review and approval of staff.

4. The applicant may remove and replace the existing tiles from the front exterior of the structure, by obtaining a separate permit immediately and prior to the issuance of a Building Permit for the project. In the event the proposed exterior modifications approved herein do not go forward, for any reason, all original tile removed by the applicant shall either be restored or replaced with a similar tile, in a manner to be approved by staff.

5. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:

a. Final details of all new tile work shall be subject to the review and approval of staff.

b. Manufacturers drawings and Dade County product approval numbers for all new windows, doors and glass shall be required.

c. All roof-top fixtures, air-conditioning units and mechanical devices shall be clearly noted on a revised roof plan and shall be screened from view, in a manner to be approved by staff.

d. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.

6. A revised landscape plan, prepared by a Professional Landscape Architect, registered in the State of Florida, and corresponding site plan, shall be submitted to and approved by staff. The species type, quantity, dimensions, spacing, location and overall height of all plant material shall be clearly delineated and subject to the review and approval of staff. At a minimum, such plan shall incorporate the following:

a. The ficus hedge proposed along the eastern perimeter of the property (fronting West Avenue), including those portions of the hedge rounding the corners to a depth of at least ten (10') feet, shall not be permitted; such hedge may be replaced with a hedge or plant material that will not exceed five (5') feet in height and shall be subject to the review and approval of staff.

b. Along the eastern perimeter of the property (fronting West Avenue) the smaller green island ficus shall be inverted and shall face the sidewalk, with the slightly large hedge material located behind it.

c. All new overhead utilities shall be placed underground, to the extent permitted by FPL.

d. Right-of-Way improvements in front of the property shall be included in the Landscape plans.

e. All exterior walkways shall consist of decorative pavers, set in sand or other semi-pervious material, subject to the review and approval of staff.

f. All landscape areas abutting driveways and parking areas shall be defined by decorative bollards.

g. A fully automatic irrigation system with 100% coverage and an automatic rain sensor in order to render the system inoperative in the event of rain. Right-of-way areas shall also be incorporated as part of the irrigation system.

h. The utilization of root barriers and/or structural soil, as applicable, shall be clearly delineated on the revised landscape plan.

i. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all backflow preventors and all other related devices and fixtures; such fixtures and devices shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of backflow preventors, siamese pipes or

other related devices and fixtures, if any, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

j. The applicant shall verify, prior to the issuance of a Building Permit, the exact location of all applicable FPL transformers or vault rooms; such transformers and vault rooms, and all other related devices and fixtures, shall not be permitted within any required yard or any area fronting a street or sidewalk. The location of any exterior transformers, and how they are screened with landscape material from the right-of-way, shall be clearly indicated on the site and landscape plans and shall be subject to the review and approval of staff.

k. Prior to the issuance of a Certificate of Occupancy, the Landscape Architect for the project architect shall verify, in writing, that the project is consistent with the site and landscape plans approved by the Planning Department for Building Permit.

7. All new building signage shall be consistent in type, composed of flush mounted, non-plastic, non-illuminated, individual letters and shall require a separate permit.

8. The final exterior surface color scheme, including color samples, shall be subject to the review and approval of staff and shall require a separate permit.

9. A traffic mitigation plan, which addresses all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, if required, shall be submitted prior to the issuance of a Building Permit and the final building plans shall meet all other requirements of the Land Development Regulations of the City Code.

10. All new and altered elements, spaces and areas shall meet the requirements of the Florida Accessibility Code (FAC).

11. The applicant may be required to submit a separate analysis for water and sewer requirements, at the discretion of the Public Works Director, or designee. Based on a preliminary review of the proposed project, the following may be required by the Public Works Department:

    a. A traffic and neighborhood impact study shall be conducted as a means to measure a proposed development's impact on transportation and neighborhoods. The study shall address all roadway Level of Service (LOS) deficiencies relative to the concurrency requirements of the City Code, and if required, shall be submitted prior to the issuance of a Building Permit. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code. The developer shall refer to the most recent City of Miami Beach's Traffic and Neighborhood Impact Methodology as issued by the Public Works Department.

    b. Remove/replace sidewalks, curbs and gutters on all street frontages, if applicable. Unless otherwise specified, the standard color for city sidewalks is red, and the standard curb and gutter color is gray.

    c. Mill/resurface asphalt in rear alley along property, if applicable.

    d. Provide underground utility service connections and on-site transformer location, if necessary.

e. Provide back-flow prevention devices on all water services.

f. Provide on-site, self-contained storm water drainage for the proposed development.

g. Meet water/sewer concurrency requirements including a hydraulic water model analysis and gravity sewer system capacity analysis as determined by the Department and the required upgrades to water and sewer mains servicing this project.

h. Payment of City utility impact fees for water meters/services.

i. Provide flood barrier ramps to underground parking or minimum slab elevation to be at highest adjacent crown road elevation plus 8".

j. Right-of-way permit must be obtained from Public Works.

k. All right-of-way encroachments must be removed.

l. All planting/landscaping in the public right-of-way must be approved by the Public Works and Parks Departments.

12. The project shall comply with any landscaping or other sidewalk/street improvement standards as may be prescribed by a relevant Urban Design Master Plan approved prior to the completion of the project and the issuance of a Certificate of Occupancy.

13. At the time of completion of the project, only a **Final** Certificate of Occupancy (CO) or **Final** Certificate of Completion (CC) may be applied for; the staging and scheduling of the construction on site shall take this into account. All work on site must be completed in accordance with the plans approved herein, as well as by the Building, Fire, Planning, CIP and Public Works Departments, inclusive of all conditions imposed herein, and by other Development Review Boards, and any modifications required pursuant to field inspections, prior to the issuance of a CO or CC.

14. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the March 6, 2007 and June 5, 2007 meetings, which are part of the record for this matter and the staff reports and analysis from the March 6, 2007 and June 5, 2007 meetings, which are adopted herein, including the staff recommendations which were amended by the Board, that the Application for Design Review Approval is GRANTED for the above-referenced project subject to those certain consolidated conditions specified in paragraph B of the Findings of Fact hereof (condition nos. 1-14, inclusive), to which the applicant has agreed.

No building permit may be issued unless and until all conditions of approval as set forth herein have been met. The issuance of Design Review approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including zoning approval. If

adequate handicapped access is not provided, this approval does not mean that such handicapped access is not required or that the Board supports an applicant's effort to seek waivers relating to handicapped accessibility requirements.

When requesting a building permit, three (3) sets of plans approved by the Board, modified in accordance with the above conditions, shall be submitted to the Planning Department. If all of the above-specified conditions are satisfactorily addressed, the plans will be reviewed for building permit approval. Two (2) sets will be returned to you for submission for a building permit and one (1) set will be retained for the Design Review Board's file.

This Final Order consolidates all conditions and requirements for Design Review Approval as same are contained herein and in the original Order of March 6, 2007, as amended. Accordingly, this Order shall serve as the Final Order for the project and, in the event of conflict between the provisions hereof and those of the March 6, 2007 Order, the provisions hereof shall control.

In the event a Full Building Permit is not obtained within eighteen (18) months of the March 6, 2007 meeting date, and construction does not commence and continue in accordance with the requirements of the applicable Building Code, the Design Review Approval will expire and become null and void, unless the applicant, prior to expiration of such period, makes application to the Board for an extension of time; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. **In the event a proposed code amendment should render the subject project non-conforming, as more specifically set forth in sections 118-168 and 118-169 of the City Code, then the project shall not be eligible to receive an extension of time for any reason.**

Failure to comply with this **Order** shall subject the Design Review Approval to Section 118-258, City Code, for revocation or modification of the Design Review Approval.

Dated this 8 day of JUNE, 2007.

DESIGN REVIEW BOARD
THE CITY OF MIAMI BEACH, FLORIDA

BY: _____
THOMAS R. MOONEY, AICP
DESIGN AND PRESERVATION MANAGER
FOR THE CHAIR

Approved As To Form:
Legal Department: _____ (6-8-07)

Filed with the Clerk of the Design Review Board on 6/11/07 (cat.)

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STATE OF FLORIDA, COUNTY OF DADE
I HEREBY CERTIFY that this is a true copy of the original filed in this office on 20 day of NOV, AD 20 07
WITNESS my hand and Official Seal.
HARVEY RUVIN, CLERK, of Circuit and County Courts
By _____ D.C.

CIRCUIT AND COUNTY COURTS CLERK IN GOD WE TRUST MIAMI-DADE COUNTY, FLORIDA

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made and entered into as of the 24th day of November, 2008 by and between 1100 West Properties, LLC ("1100 West"); the City of Miami Beach (the "City"); and Shutts & Bowen LLP ("Escrow Agent").

RECITALS

A. 1100 West is the owner of that certain property located in the City and legally described on **Exhibit "A"** attached hereto (the "Property"). 1100 West is developing a condominium hotel project, commonly known as the Mondrian South Beach (the "Mondrian Project").

B. The Mondrian Project received design review approval from the City's Design Review Board ("DRB"), as evidenced by that certain Consolidated Order issued by the DRB on June 7, 2007, as amended by that certain Amended Consolidated Order issued by the DRB on November 6, 2008 (collectively and as amended, the "DRB Approval"), both of which are attached hereto as **Exhibit "B."**

C. The DRB Approval contains conditions, requiring generally that 1100 West design, construct and obtain permits for a Public Baywalk (the "Baywalk") either west or east of the seawall from 10th Street to 12th Street or, if required government permits cannot be obtained for the construction of a Baywalk or if the abutting condominium associations do not consent to a Baywalk east of the seawall, that 1100 West contribute funds toward right-of-way improvements to be constructed at the western terminus of 10th Street in Miami Beach, all as more specifically set forth in the DRB Approval.

D. The DRB Approval also requires generally that, in the event the Baywalk has not received all required governmental permits by the date of issuance of a partial, temporary or permanent Certificate of Occupancy relating to the Mondrian Project, 1100 West will establish an Escrow Account in the amount of $800,000 as security for its obligation to construct a Baywalk pursuant to the terms of the DRB Approval.

E. Since 1100 West has requested the issuance of a Partial Certificate of Occupancy for the Mondrian Project and the Baywalk has not, as of this date, received all required governmental permits, 1100 West has agreed to place in escrow with Escrow Agent the sum of $800,000, to be disbursed in accordance with the terms and provisions of this Agreement.

F. This Agreement does not alter or amend any obligations of 1100 West or other affected entities arising from the DRB Approval, which remains in full force and effect, including but not limited to paragraph 1.l. therein, on the obligation to include a public baywalk as part of a future marina if approved at the Property.

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

Exhibit B

1. The City and 1100 West agree that the foregoing recitals are true and correct and are incorporated herein as if repeated at length.

2. Simultaneously with its execution of this Agreement, 1100 West has deposited with Escrow Agent the sum of $800,000 (the "**Escrowed Money**"). The Escrow Agent hereby acknowledges receipt of the Escrowed Money and agrees to hold the same in trust and disburse the Escrowed Money in accordance with the terms of this Agreement. Escrow Agent shall be obligated to invest the Escrowed Money in an interest-bearing account. All interest that accrues on the Escrowed Money shall be the property of and disbursed to 1100 West.

3. Escrow Agent shall hold the Escrowed Money and disburse same as follows:

(a) If, after the date that is two (2) years after the date of the DRB Approval (i.e., June 7, 2009) (unless such date is otherwise extended by the City), the City Manager or City Planning Director submits a signed statement (the "City Statement") to the Escrow Agent stating that 1100 West has not obtained either (i) all required permits from governmental agencies for the construction of a Baywalk westward of the seawall or (ii) the consent from the condominium associations at 1000 and 1200 West Avenue for the construction of a Baywalk eastward of the seawall, then Escrow Agent shall disburse the Escrowed Money to the City for right-of-way improvements (the "Alternate Improvements") to be constructed at the western terminus of 10th Street, including the construction of a new park, pursuant to the DRB Approval.

(b) In the event that the City Statement has not been submitted as described in paragraph 3(a) above, and 1100 West has received the required permits to construct the Baywalk, 1100 West shall provide the Escrow Agent, with copy to the City, written evidence of the total cost of the Baywalk prior to commencement of construction. Escrow Agent shall return the Escrowed Money to 1100 West on a pro-rata basis as 1100 West submits evidence to Escrow Agent of the monies expended for construction of the Baywalk. More specifically, Escrow Agent shall return a pro-rata share in four equal installments of the Escrowed Money to 1100 West after the equivalent of 25%, 50%, and 75% of the cost to complete the Baywalk is expended by 1100 West. The final 25% of the Escrowed Money shall not be released until the Baywalk is actually opened to the public, and written certification of such event is given by the City to the Escrow Agent.

(c) Escrow Agent shall give written notice to City of its release of the Escrowed Money.

4. In the event Escrowed Money is released to the City under paragraph 3(a) above for the Alternate Improvements pursuant to the DRB Approval, 1100 West's total contribution for the Alternate Improvements shall be determined based on the formula specified in the DRB Approval (the "Required Contribution"). In the event that the amount of the Required Contribution is determined to be less than the Escrowed Money pursuant to the cost methodology set forth in the DRB Approval, then the amount of the Required Contribution shall be disbursed to the City and the remainder of the Escrowed Money shall be released to 1100 West. In the event that the amount of the Required Contribution is determined to be more than the Escrowed Money, 1100 West shall disburse to the City such additional funds to reach the Required Contribution within thirty days of the date specified in paragraph 3(a) above. If 1100 West fails to disburse such additional funds to reach the Required Contribution as provided

herein, or it or the Escrow Agent otherwise breaches this Agreement, 1100 West acknowledges that City may revoke certificates of use and occupancy for the restaurant and lounge in the hotel pool/patio area, or may file suit in the Circuit Court for the Eleventh Judicial Circuit to enforce this payment obligation and/or seek other relief. Prior to the revocation of certificates of use and occupancy for the restaurant and lounge or the filing of suit in the Circuit Court, the City shall provide 1100 West written notice of its intent with the opportunity for 1100 West to cure the breach within thirty (30) days from the date of the notice. In the event that suit is filed, 1100 West hereby waives any objections to service, venue, waives trial by jury, and waives all challenges to the validity of the payment and other obligations arising from the DRB Approval.

5. All notices and/or written statements given or made pursuant hereto, or for the purposes of invoking or enforcing any of the provisions hereof, shall be in writing (by a party or by such party's attorney), and shall be sent by (i) personal delivery, (ii) delivery by a recognized overnight courier, (iii) United States mail, postage prepaid, registered or certified mail, or (iv) facsimile, with proof of transmission, addressed as follows:

If to 1100 West:
Mr. Eric Bass
Senior Vice President of Development
Morgans Hotel Group Corp.
475 Tenth Avenue, 11th Floor
New York, NY 10018
Telephone: (212) 277-4130
Fax: (212) 277-4270

With Copy to:
Alexander I. Tachmes, Esq.
Shutts & Bowen LLP
201 S. Biscayne Blvd., Suite 1500
Miami, Florida 33131
Telephone: (305) 347-7341
Fax: (305) 347-7754

If to City:
Planning Director
City of Miami Beach
1700 Convention Center Drive
Planning Department, 2nd Floor
Miami Beach, FL 33139
Attention: Jorge Gomez
Telephone: (305) 673-7000, Ext. 6150
Fax: (305) 673-7559

With Copy to: City Attorney
City of Miami Beach
Office of the City Attorney
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139
Attention: Gary M. Held, Esq.
Telephone: (305) 673-7000, Ext. 6532
Facsimile: (305) 673-7002

If To Escrow Agent: Shutts & Bowen LLP
201 S. Biscayne Blvd., Suite 1500
Miami, Florida 33131
Attention: Alexander I. Tachmes, Esq.
Telephone: (305) 347-7341
Fax: (305) 347-7754

Personal delivery or overnight courier shall be effective upon receipt or as of the date of first attempted delivery, and notice by mail shall be effective upon receipt as evidenced by a return receipt, and notice by facsimile shall be effective upon transmission. Any of the foregoing addressees may, at any time by giving ten (10) days prior written notice to the other addressees, designate any other address in substitution of the foregoing address. The Escrow Agent shall receive copies of all notices.

6. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all constituting only one agreement. Executed counterparts received by facsimile or electronically shall have the same validity as original counterparts.

7. The Escrow Agent:

(a) The Escrow Agent shall have no duties or obligations hereunder except those specifically set forth herein and such duties and obligations shall be determined solely by the express provisions of this Agreement. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith unless a court of competent jurisdiction determines that the Escrow Agent's gross negligence or willful misconduct was the primary cause of the loss to a party hereto. The Escrow Agent shall not incur any liability for following the instructions set forth in this Agreement or written instructions given by a party hereto in accordance with this Agreement. The Escrow Agent shall be entitled to assume that all notices and other documents provided to it are authentic and that all persons and entities executing such notices or documents have been duly authorized to do so.

(b) In the event the Escrow Agent shall be uncertain as to its duties or rights under this Agreement or shall receive any instruction, claim or demand that, in the opinion of the Escrow Agent, is in conflict with the provisions of this Agreement (any of the foregoing, an "Escrow Agent Dispute"), the Escrow Agent shall be entitled to refrain from taking any action with respect to such Escrow Agent Dispute until it shall be directed otherwise by a final and non-appealable order of a court of competent jurisdiction or by an instrument signed by 1100 West and the City. In the event of any Escrow Agent Dispute, the Escrow Agent shall be entitled to petition a court of competent jurisdiction in the County of Miami-Dade, Florida to resolve such

Escrow Agent Dispute, and 1100 West and the City each consents to the jurisdiction of any such court with respect to any such Escrow Agent Dispute.

(c) The Escrow Agent shall be entitled to employ such legal counsel and other experts as the Escrow Agent may deem necessary to advise the Escrow Agent in connection with the Escrow Agent's duties hereunder, may rely upon the advice of such counsel, and may pay such counsel reasonable compensation therefore which shall be paid by 1100 West. The Escrow Agent shall be reimbursed by 1100 West for all reasonable fees and expenses incurred by the Escrow Agent in connection with the performance of its duties and obligations under this Agreement and reasonable courier fees incurred by the Escrow Agent in connection with any deliveries required to be made by the Escrow Agent in connection with the performance of its duties and obligations under this Agreement.

(d) The Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until the Escrow Agent has actually received written notice of such matter or thing and shall not be charged with any constructive notice whatsoever.

(e) In the event instructions from the parties hereto would require the Escrow Agent to expend any monies or to incur any cost, the Escrow Agent shall be entitled to refrain from taking any action until it receives payment for such costs if such costs exceed $500.

(f) In the event the Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Money, the Escrow Agent shall, at its option, either: (a) tender the Escrowed Money to the registry of the appropriate court; or (b) disburse the Escrowed Money in accordance with the court's ultimate disposition of the case. In the event the Escrow Agent tenders the Escrowed Money to the registry of the appropriate court and files an action of interpleader naming 1100 West and the City and any affected third parties of whom the Escrow Agent has received actual notice, the Escrow Agent shall be released and relieved from any and all further obligation hereunder or in connection herewith.

(g) 1100 West and the City acknowledge that Escrow Agent is the law firm representing 1100 West, and that Escrow Agent shall have the right to represent 1100 West in any dispute among the parties hereto with respect to the Escrowed Money or otherwise. Upon delivery of the Escrowed Money pursuant to this Agreement, Escrow Agent's obligations hereunder shall terminate.

8. 1100 West shall jointly and severally indemnify, defend and hold harmless the Escrow Agent and its directors, officers, employees and agents from any loss, liability or expense incurred by the Escrow Agent (including the fees and expenses of in-house or outside counsel) arising out of or in connection with (a) its execution and performance of this Agreement, except to the extent that such loss, liability or expense is due to the gross negligence or willful misconduct of the Escrow Agent, or (b) its following of any instructions or other directions from 1100 West or the City, except to the extent that its following any such instruction or direction is expressly forbidden by the terms hereof. The provisions of this paragraph shall survive the termination of this Agreement.

9. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida without regard to principles of conflict of laws.

10. This Agreement constitutes the entire agreement of the parties hereto regarding the subject matter hereof. There are no agreements or understandings, oral or written, between the parties hereto regarding the subject matter hereof that are not merged herein or superseded hereby.

11. No waiver of any right under this Agreement shall be valid unless it is contained in a writing signed by the party to be charged therewith.

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

WITNESSES:

Print Name: Alina M. Allen

Print Name: Vanessa Valdez

Print Name:

Print Name:

Print Name: DAVID COVIELLO

Print Name: Danica Perez

1100 WEST PROPERTIES, LLC

By: 1100 WEST HOLDINGS, LLC, MANAGER

By:
Name: ABRAHAM A. GALBUT
Title: PRESIDENT

CITY OF MIAMI BEACH

By:
Name:
Title:

SHUTTS & BOWEN LLP, as escrow agent

By:
Name: Joseph Bolt
Title: Managing Partner

10. This Agreement constitutes the entire agreement of the parties hereto regarding the subject matter hereof. There are no agreements or understandings, oral or written, between the parties hereto regarding the subject matter hereof that are not merged herein or superseded hereby.

11. No waiver of any right under this Agreement shall be valid unless it is contained in a writing signed by the party to be charged therewith.

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

1100 WEST PROPERTIES, LLC

By: _____
Name: _____
Title: _____

_____
Print Name: _____

_____
Print Name: _____

CITY OF MIAMI BEACH

By: _____
Name: Jorge Gomez
Title: Planning Director

William H. Cary
Print Name: William H. Cary

Steven Greene
Print Name: STEVEN Greene

SHUTTS & BOWEN LLP, as escrow agent

By: _____
Name: _____
Title: _____

_____

Print Name: _____

_____

Print Name: _____

Approved

_____ 11·21·08

Planning Director Date

Approved ~~as to~~ form and language and for execution

_____

for City Attorney

Dated: Nov. 21, 2008

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MIAMIBEACH

Office of the City Clerk

MEMORANDUM

TO: Matti H. Bower and Members of the City Commission

FROM: Robert E. Parcher, City Clerk

DATE: April 9, 2009

SUBJECT: **DRB File No. 20181 Appeal, 1100 West Avenue- Mondrian**

At the January 28, 2009 City Commission Meeting, the Commission approved via Resolution No. 2009-26976, the setting of a public hearing to review a Design Review Board decision requested by 1100 West Properties, LLC, pertaining to DRB File No. 20181 for the property located at 1100 West Avenue. The public hearing was scheduled for February 25, 2009.

At the February 25, 2009 Commission Meeting, at the request of the applicant, the public hearing was opened and continued to the April 22nd Commission Meeting.

Pursuant to City Code Section 118-262, the applicant may seek review of any order of the Design Review Board by the City Commission, except that orders granting or denying a request for a rehearing shall not be reviewed by the City Commission. A full verbatim transcript of all proceedings which are the subject of the appeal shall be provided by the party filing the petition, along with a written statement identifying those specific portions of the transcript upon which the party filing it will rely for purposes of the appeal. The verbatim transcript and written statement, or if represented by legal counsel, appropriate legal briefs, shall be filed no later than two weeks prior to the first scheduled public hearing to consider the appeal.

The transcript and "Appellant's Pre-hearing Statement" was delivered to the City Clerk's Office on Wednesday, April 8, 2009 and is being transmitted to the City Commission and City Attorney's Office on Thursday, April 9, 2009.

Attachments – Copy of Transcript and Brief.

C: Jorge Gonzalez, City Manager
Jose Smith, City Attorney (Copy of transcript and brief attached)
Jorge Gomez, Planning Director (Copy of transcript and brief attached)
Hilda Fernandez, Assistant City Manager

An Appeal before the City Commission of the City of Miami Beach

1100 WEST PROPERTIES, LLC,

Appellant,

v.

DRB File No. 2018
1100 West Avenue-Mondrian

CITY OF MIAMI BEACH DESIGN
REVIEW BOARD,
Appellee.

_____/

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APPELLANT'S PRE-HEARING STATEMENT

Statement of the Case

A decision was rendered by the Miami Beach Design Review Board (DRB) on November 4, 2008, denying the request of the Appellant, 1100 West Properties, LLC, (1100 West), to modify the conditions of an order by the DRB which was entered on June 5, 2007 (the 2007 Order).

1100 West was represented at the November 4, 2008 hearing by attorney Alex Tachmes (Mr. Tachmes); Eric Bass, Senior Vice-President of Morgans Hotel Group; Keith Mann, Vice-President of 1100 West; and Russell Galbut (Mr. Galbut), an approved manager of the Mondrian Hotel project. As stated by Mr. Tachmes and Mr. Galbut, 1100 West requested as follows:

(1) That the 2007 Order be amended to lengthen the time frame within which 1100 West would be required to build a public bay walk behind the Mondrian Hotel (the Mondrian);

(2) That the 2007 Order be amended to remove the requirement that 1100 West build a public park on 10th Street in the event that the bay walk could not be built within 2 years; and

(3) That the 2007 Order be amended to remove the requirement that 1100 West post a LOC in the amount of 150% of the cost of the bay walk if the bay walk was not finished at the time the Mondrian applied for a certificate of occupancy (C0).

The DRB denied 1100 West's requests other than to replace the LOC requirement with a requirement that 1100 West place $80,000 in escrow.

Argument and Authority

Article II, Division 3 DRB, of The Miami Beach City Code (the City Code) established the powers and duties of the DRB are as follows:

(1) To promote excellence in urban design.

(2) To review all applications requiring design review approval for all properties not located within a designated historic district or not designated as a historic site. For works of art in the art in public places program, the design review board shall serve as advisor to the city commission, and may impose binding criteria, as provided in chapter 82, article VII, art in public places, division 4, procedures.

(3) To prepare and recommend adoption of design plans pertaining to neighborhood studies.

(4) To promote reduced crime and fear of crime through the use of

crime prevention through environmental design guidelines and strategies, as approved by the city commission.

(5) To hear and decide appeals of the planning director when deciding matters pursuant to section 118-260.

There is nothing in the City Code that would empower the DRB to force 1100 West, or any other builder, to build a public park on land unrelated to its project as a prerequisite to obtaining DRB design approval and a C0.
100 West therefore rightfully requested that the DRB remove the requirement in the 2007 Order that 1100 West build a public park on land that approximately a block away from the Mondrian if the bay walk is not built within a specified period of time.

Thomas Mooney (Mr. Mooney), Design and Preservation Manager for the Chair of the DRB, clearly admitted during the November 4th DRB meeting that the DRB used its power to force 1100 West into agreeing to the conditions of a development order (which included the public park requirement). Mr. Mooney stated as follows:

> Mr. Mooney: "I don't think the board would have approved the request for the major (sic) modifications that were approved for the exterior of the building unless the DRB conditions were as they were" (Transcript, p. 22).

Mr. Mooney has also acknowledged that, absent an extension of time sufficient for the CMB to obtain state approval for the bay walk, 1100 West could be forced to pay for both the bay walk and the public park. Mr. Mooney stated as follows:

> Mr. Mooney: "If they give us $600,000 for a street end and we effectuate the street end, and then two years later they get an approval for a marina, the City is not going to give them money for bay walk because the bay

walk is going to be part of that marina that is required by this order" (Transcript, p.49).

The CMB would be hard-pressed to cite any section of the City Code that bestows upon the DRB the power compel a property owner to contribute money to the City, or build a public park a block away from its property, or perform any other action that is unrelated to the "maintenance of high standards of architecture" as set forth in Article VI of the City Code, Section 118.254 (c), above.

It is even questionable whether the DRB acted lawfully when it imposed a requirement that 1100 build a public bay walk as a precondition to the issuance of a CO. In VES Carpenter Contractors v. City of Dania, 422 So.2d 342, 354 (Fla. App. Dist. 4 1982), the Court ruled that impact fees which were collected as a precondition to obtaining building permits and certificates of occupancy were illegal and amounted to coercion because the city had not passed an enabling ordinance permitting the assessment of the fees. While the CMB is considering the enactment of legislation imposing a requirement that property owners contribute to public bay walks behind their properties and setting uniform standards for enforcement, no such legislation or standards were in effect at the time the DRB imposed the bay walk requirement upon the Appellant. As Mr. Mooney has acknloweldged, had 1100 West declined to build the bay walk and/or the public park, its project would not have been approved.

While 1100 West remains willing to build the bay walk should the state approvals be obtained, it cannot accede to the coercion that was applied by the DRB in extracting the "agreement" by 1100 West to build a city park a block away

from the Mondrian if the bay walk is delayed due to state permitting difficulties or cannot be built. The requirement that the Appellant build the proposed public park is clearly unrelated to the "maintenance of high standards of architecture" or any other objective within the power and authority of the DRB (Article VI of the City Code, Section 118.254 (c); Article II, Division 3 DRB of the Miami Beach City Code), and was wrongfully included in the 2007 Order and ratified by the DRB on November 4, 2008. Considering the City's lack of diligence and/or success in pursing the State permits for the bay walk, as well as rapidly declining conditions in the real estate market, it was manifestly unjust for the DRB to deny the Appellant's requests for reasonable extensions of time and modifications to the 2007 Order.

Conclusion

1100 West has paid millions of dollars for taxes, impact fees, and permits for the Mondrian project, and has never sought to avoid its legitimate responsibilities to the City of Miami Beach. In addressing the DRB on November 4, 2008, Mr. Galbut pointed out how often the partners in 1100 West have also been called upon to contribute to the City voluntarily through its various projects, and have done so generously. But it is necessary to draw the line when a city board resorts to unlawful methods of coercing financial contributions from those doing business in the City.

As Mr. Galbut stated, "it is unconscionable that the city administration would take a position that if you want this type of deferral, you have to pay another $800,000 for a park that has nothing to do with the property" (Transcript,

pg 18-19). As set forth above, said actions by the DRB were not only unconscionable, but were also contrary to the clearly expressed letter and spirit of the City Code and applicable case law. In light of facts and law stated above, as well as the difficulties experienced by the CMB in obtaining the necessary state permits for the bay walk and the dire economic conditions now affecting our country and the Appellant, the failure of the DRB to grant the extension of time and other relief requested by 1100 West on November 4, 2008 should be remedied by this honorable City Commission.

WHEREFORE, the Appellant, 1100 West Properties, LLC, respectfully requests the following relief:

1. That the City Commission reverse and correct the action of the DRB refusing to extend the deadline by which 1100 West must build the bay walk until efforts to obtain state permitting have been exhausted;
2. That the City Commission reverse and correct the action of the DRB refusing to extend the time for 1100 West Avenue build a bay walk behind its property to provide the City with a reasonable amount of time to obtain state permitting;
3. That the City Commission reverse and correct the action of the DRB refusing to remove the requirement that 1100 West build a city park in the event said bay walk is not built within a set period of time or cannot be built due to the inability to obtain state permitting or other factors beyond the Appellant's control; and
4. That the City Commission grant such other relief as is just.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing Appellant's Pre-hearing Statement and copies of the transcript of the relevant proceedings at the DRB meeting on November 4, 2009, was hand-delivered to Robert Parcher, City Clerk, 1700 Convention Center Drive, Miami Beach, FL 33139 and Jose Smith, Miami Beach City Attorney, 1700 Convention Center Drive, Miami Beach, FL 33139 on this 8 day of April, 2009.

DAVID H. NEVEL, P.A.
950 S. Pine Island Road, Ste. A-150
Plantation, Florida 33324
Tel: 954-423-4348
Fax: 954-727-8250

By: _____
David H. Nevel, Esq.
FBN 201537
Attorney for Appellant

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Condensed Title:

A Resolution approving, on Second Reading, a lease agreement between the City and Moon Thai South Beach, Inc. for the lease of approximately 2216 sf of City-owned property at 22 Washington Avenue for an outdoor café, waiving by 5/7th vote the competitive bidding and appraisal requirements.

Key Intended Outcome Supported:

Increase resident satisfaction with the level of services and facilities.

Supporting Data (Surveys, Environmental Scan, etc.): Approximately 40% of retail businesses surveyed, rank Miami Beach as one of the best places to do business and 61% of the same group would recommend Miami Beach as a place to do business. The Tenant's request to Lease 22 Washington Avenue supports the Survey's findings.

Issue:

Should the City approve the lease agreement?

Item Summary/Recommendation:

SECOND READING PUBLIC HEARING

On April 11, 2006 the City Commission passed Resolution No. 2006-26171 approving a Lease Agreement with Manpriya, Inc., for the remaining portion of an undeveloped lot previously acquired by the City adjacent to 816 Commerce Street for use as an outdoor café. The square footage rent of $25 psf was based on a comparable analysis made to the sidewalk café permit fees of $15 psf and increased to $25 per square foot due to tenancy rights attached to a Lease Agreement that allows the tenant to provide improvements on the property. In the March 16, 2006 as in the March 3, 2009 City Planning Department's analysis, the outdoor café was deemed to be consistent with the land use designation contained in the Comprehensive Plan and required that the Lease Agreement prohibit the placement of any speakers in or around the Property and/or the attachment of any speakers to the restaurant building, with the use restricted to outdoor dining. The restaurant was never developed and the City terminated the Lease Agreement on August 8, 2006. The City retained the security deposit of $8,500.

On March 18, 2009, the City Commission passed Resolution No. 2009-27037, approving, on first reading, the lease agreement with Moon Thai South Beach, Inc. for the use of the Demised Premises for an outdoor café. Moon Thai South Beach, Inc. has currently leased the property at 816 Commerce Street for a restaurant with the expected opening to be May 2009 based on the completion of Tenant improvements. On March 2, 2009, the item was heard by the Land Use and Development Committee (LUDC). Pursuant to the LUDC meeting terms of the lease were added to include prohibition for any Special Event Permit, non-obstruction of pedestrian traffic, utilization of only Commerce Street for any operations related to the restaurant, and restrictions for independent operations from the restaurant as well as limitations for noise.

The lease is for the use of approximately 2216 square feet of vacant City-owned property located at 22 Washington Avenue (the Property) as an outdoor cafe. The lease terms are substantially based on the previous Lease Agreement dated April 11, 2006 with Manpriya, Inc. for the same property. During the first and second years of the initial term, Moon Thai South Beach, Inc. has agreed to pay the City a base rent of twenty five ($25) dollars per square foot. Commencing the third year of the term, Moon Thai South Beach, Inc, will compensate the City with the greater of thirty ($30) dollars psf or 3% of gross receipts for all sales, to include sales from the exterior and interior of the restaurant. Overall, the five year Base Rent to the City will be $310,240.

Staff has conducted a current review of restaurant properties for comparables, but finds that there are no comparables and the previous comparison to the sidewalk café in the 2006 review is still consistent in the determination of the $25 per square foot rent. The outdoor café will provide over 70% of the restaurant seating, which is why it is recommended that the percentage of rent based on gross receipts should be calculated on the restaurant as a whole.

Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, provides that the lease of any City-owned property, including option periods, requires a public bidding process; a Planning Department analysis; an independent appraisal to determine the value of the leasehold interest; two (2) readings of the proposed lease; and a public hearing to obtain citizen input. Section 82-39 further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions.

The Administration recommends that approving, on second reading, the Lease Agreement for 22 Washington Avenue, for an initial term of 5 years, with an option to renew for 4 years and 364 days at the City's sole discretion.

Advisory Board Recommendation:

On March 2, 2009 the Land Use and Development Committee voted to move forward to the City Commission the Lease Agreement with recommended additional language.

Financial Information:

Source of Funds: n/a		Amount	Account
	1		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Ana Cecilia Velasco extension 6727

Sign-Offs:

Department Director	Assistant City Manager	City Manager
AP_____ ACV_____	HF_____	JMG_____

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MIAMIBEACH

AGENDA ITEM R7B
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SECOND READING PUBLIC HEARING

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL),A LEASE AGREEMENT BETWEEN THE CITY AND MOON THAI SOUTH BEACH, INC. (MOON THAI), FOR THE LEASE OF APPROXIMATELY 2216 SQUARE FEET OF CITY OWNED PROPERTY, LOCATED AT 22 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA, FOR THE PURPOSE OF AN OUTDOOR CAFÉ ASSOCIATED WITH THE RESTAURANT TO BE OPERATED BY MOON THAI AT 816 COMMERCE STREET, WHICH IS DIRECTLY ADJACENT TO AND WEST OF THE SUBJECT CITY PROPERTY; SAID LEASE HAVING AN INITIAL TERM OF FIVE YEARS, WITH AN OPTION TO RENEW FOR FOUR YEARS AND 364 DAYS, AT THE CITY'S SOLE DISCRETION; WAIVING BY 5/7THS VOTE, THE COMPETITIVE BIDDING AND APPRAISAL REQUIREMENTS, AS REQUIRED BY SECTION 82-39 OF THE MIAMI BEACH CITY CODE.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

KEY INTENDED OUTCOMES SUPPORTED

To ensure well-maintained facilities.

ANALYSIS

The subject Property (see attached site plan) is the remaining portion of an undeveloped lot that had been previously acquired by the City for the completed expansion of a portion of Washington Avenue (between Commerce Street and South Pointe Drive). Due to its size and location, the Administration deems that the Property does not readily lend itself for public use at this time.

The City of Miami Beach (City) and Moon Thai South Beach, Inc. have negotiated a five (5) year lease agreement, with an option to renew for an additional four (4) years and three hundred sixty four (364) days, with the renewal option being at the City's sole discretion. The lease is for the use of approximately 2216 square feet of vacant City-owned property located at 22 Washington Avenue (the Property) as an outdoor café associated with a restaurant operation located at 816 Commerce Street, which is directly adjacent to and west of the subject property. The lease terms are substantially based on the previous Lease Agreement dated April 11, 2006 with Manpriya, Inc. for the same property.

On March 18, 2009, the City Commission passed Resolution No. 2009-27037, approving, on first reading, the lease agreement with Moon Thai South Beach, Inc. for the use of the Demised Premises for an outdoor café. Moon Thai South Beach, Inc. has currently leased the property at 816 Commerce Street for a restaurant with the expected opening to be May 2009 based on the completion of Tenant improvements. On March 2, 2009, the item was heard by the Land Use and Development Committee (LUDC). Pursuant to the LUDC meeting terms of the lease were added to include prohibition for any Special Event Permit, non-obstruction of pedestrian traffic, utilization of only Commerce Street for any operations related to the restaurant, and restrictions for independent operations from the restaurant as well as limitations for noise.

Suggestions dealing with pedestrian traffic, noise violations, and garbage disposal did not require inclusion in the lease as these issues are either addressed by current City Code, otherwise do not apply to this location, or are required in the normal course of business operations.

The proposed new Tenant negotiated the terms of the Lease Agreement regarding the Base Rent and Percentage of Gross, based on an assessment of the Tenant's financial obligations to the building property owner. As a start-up business in an area which does not have the sidewalk cafes found on Lincoln Road and Ocean Drive, the Tenant cited the market conditions in proposing and agreeing to the following terms and conditions:

- BASE RENT: During the first and second years of the initial term, Moon Thai South Beach, Inc. has agreed to pay the City a base rent of twenty five ($25) dollars per square foot. Commencing the third year of the term, the base rent will increase to thirty ($30) dollars per square foot.

- PERCENTAGE OF GROSS: Commencing the third year of the term, Moon Thai South Beach, Inc, will compensate the City with the greater of $30 psf or 3% of gross receipts for all sales, to include sales from the exterior and interior of the restaurant.

A yearly "true-up" to reconcile the Base Rent amounts with the actual "gross receipts" will be performed by a Certified Public Accountant (at Moon Thai's sole cost and expense) at the end of each contract year, and any amounts due above the Base Rent will be due and payable to the City within 45 days of the end of each contract year. The City also reserves the right to conduct annual audits.

Staff has conducted a current review of restaurant properties for comparables, but finds that there is no comparable situation with a restaurant leasing only the outdoor café space from a separate property owner; each case identifies the outdoor space within the Demised Premises as a whole. The comparable to the sidewalk café in the 2006 review is still consistent in the determination of the $25 per square foot rent. The outdoor café will provide over 70% of the restaurant seating, which is why it is recommended that the percentage of rent based on gross receipts should be calculated on the restaurant as a whole.

Overall, the five year Base Rent to the City will be $310,240, not including any projection of percentage of gross. The tenancy versus a concession is justified by Moon Thai's ability to make leasehold improvements to the Property, as contemplated in Subsection 9.1 of the Lease Agreement.

- DEVELOPMENT: Moon Thai, at its sole cost and expense, will develop the Property into the aforementioned outdoor café, and demolish and remove any improvements at Lease termination (at the City's discretion).

- USE: Moon Thai agrees to use the Property solely as an outdoor café to serve the patrons and guests of the adjoining restaurant at 816 Commerce Street. Furthermore, Moon Thai agrees not to place any speakers in or around the Property and/or attach any speakers to the exterior of the restaurant building at 816 Commerce Street. The Planning Department analysis dated March 3, 2009 (attached) supports the Lease and recommends the condition of use as stated above, and further

defined in Subsection 8.4 of the Lease. The Planning Department condition of use is consistent with expressed City Commission concerns relating to the previous lease on this property and has been incorporated in order to mitigate those concerns.

- IMPROVEMENTS: Moon Thai has collaborated with the Planning Department and the City Administration in the design and layout of the outdoor café pavers, tables, chairs and umbrellas prior to the execution of the Lease Agreement.

- PERFORMANCE BOND: Moon Thai agrees to provide a performance bond, or other similar instrument (e.g. irrevocable letter of credit, surety bond, etc.) acceptable to the City, in an amount equal to the estimated costs to demolish and remove any improvements constructed on the property at the termination and/or expiration of the lease term.

Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, provides that the lease of any City-owned property, including option periods, requires the following:

1) a public bidding process;
2) Planning Department analysis;
3) an independent appraisal to determine the value of the leasehold interest
4) two (2) readings of the proposed lease; and
5) a public hearing to obtain citizen input.

Section 82-39 further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions.

A Planning Department analysis finds that the use of this area as an outdoor café is consistent with the land use designation contained in the Comprehensive Plan. (attached)

CONCLUSION

Based on the unique disposition of this undeveloped parcel of land, and its limited use due to the size and location, it was determined in 2006 that the parcel would not be subject to public bidding as it could only be used with any functionality by the adjacent property. This continues to be the determination upon current review of the property.

Staff has conducted an internal review of possible comparable properties with findings that the Sidewalk Café is the closest parallel. Due to the cost factor of an appraisal when measured against the rent value of the property, the cost of an outside appraisal is not justified.

The Administration recommends that the Mayor and City Commission approve on second reading a Lease Agreement between the City and Moon Thai South Beach, Inc., for use of the Demised Premises, located at 22 Washington Avenue, said Lease having an initial term of five (5) years, with an option to renew for four (4) years and three hundred and sixty four (364) days at the City's sole discretion; hereby waiving by 5/7ths vote the competitive bidding and appraisal requirements as required by Section 82-39 of the Miami Beach City Code.

JMG\HMF\AP\ACV\mis
Attachments

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MIAMIBEACH

PLANNING DEPARTMENT
INTEROFFICE MEMORANDUM

TO: Ana Cecilia Velasco, Asset Manager

FROM: Jorge G. Gomez, Planning Director RGL for JGG

DATE: March 3, 2009

SUBJECT: Analysis of Proposed Lease with Moon Thai South Beach, Inc.
22 Washington Avenue

Pursuant to your request, this memorandum will serve as a planning analysis of the proposed lease agreement between the City and Moon Thai South Beach, Inc., for the use of two thousand eighty (2,216) square feet, square feet of vacant City-owned property, located at 22 Washington Avenue, for an outdoor café associated with a restaurant operation located at 816 Commerce Street, which is directly adjacent to and west of the subject property.

Section 82-38 of the Code of the City of Miami Beach requires that any proposed sale or lease of City-owned land be analyzed from a planning perspective so that the City Commission and the public are fully appraised of all conditions relating to the proposed sale or lease. The following is an analysis of the criteria delineated in the Code:

1. Whether or not the proposed use is in keeping with City goals and objectives and conforms to the City Comprehensive Plan.
The subject property, 22 Washington Avenue, is designated CPS-1, Commercial Limited Mixed-Use on the Future Land Use Map of the City's Comprehensive Plan The Lease Agreement between the City and Moon Thai South Beach, Inc. for the use of this area as a outdoor café would be consistent with the land use designation contained in the Comprehensive Plan.

2. The impact on adjacent property, including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level or enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the City shall determine the potential impact of the project on City utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the proponent shall be responsible for obtaining a traffic impact analysis from a reputable traffic engineer.
The site is currently vacant. The proposed outdoor café would diminish open space only in the sense that the currently vacant area becomes occupied with tables, chairs and landscaping; however, the site would remain open to the sky and the landscaping would be improved. There would be a moderate increase in traffic generation and demand for necessary services due to the increased occupancy of the restaurant. Noise levels should be contained, as there is no entertainment permitted in this district. An additional condition of approval, prohibiting outdoor speakers, is part of the lease, in order to ensure that there is

no negative impact as a result of background music being played too loudly.

3. A determination as to whether or not the proposed use is in keeping with a public purpose and community needs, such as expanding the City's revenue base, reducing City costs, creating jobs, creating a significant revenue stream and improving the community's overall quality of life.
The subject property is the remaining portion of a lot that had been previously acquired by the City for the expansion of a portion of Washington Avenue (between Commerce Street and South Pointe Drive) which has already been completed, and the subject parcel does not readily lend itself for public use at this time.

4. Determination as to whether or not the development is in keeping with the surrounding neighborhood, will block views, or create other environmental intrusions, and evaluation of the design and aesthetic considerations of the project.
The proposed development is generally in keeping with the commercial nature of the district, will not block views or create aesthetic intrusions, as long as the operation is regulated to minimize crowds, noise and impacts upon the surrounding neighborhoods.

5. The impact on adjacent properties, whether or not there is adequate parking, street, and infrastructure needs.
Proper safeguards and precautions should be taken to ensure that there are no negative impacts on adjacent properties. No entertainment or outdoor music will be permitted; the lease prohibits outdoor speakers from being placed in the outdoor café area. Parking is a problem throughout the City, and the proposed lease may have a moderate effect on the need for parking, since it would add a number of seats to the proposed restaurant.

6. A determination as to whether or not alternatives are available for the proposed disposition, including assembly of adjacent properties, and whether the project could be accomplished under a private-ownership assembly.
Due to the configuration of these properties, after the expansion of Washington Avenue, there is sound reasoning for assembling the parcels. Otherwise, the City owned property would continue to prevent access to the Washington Avenue façade of the 816 Commerce Street building. By leasing the property to the restaurant for use as a outdoor café area, the City is helping to alleviate a problematic situation.

7. Within the constraints of public objectives, the department should examine financial issues such as job generation, providing housing opportunities, and the return to the City for its disposition of property.
The proposed lease should increase the viability of the restaurant at the subject location, thereby enhancing the economic vitality of the area. No housing opportunities are contemplated. The City will receive a return for its property.

8. Such other items as the Planning Department may deem appropriate in analysis of the proposed disposition.
Planning Staff recommends that the any approved lease continue to contain a provision prohibiting outdoor speakers from being attached to the exterior of the building or placed in any manner in the outdoor café area..

JGG/RGL
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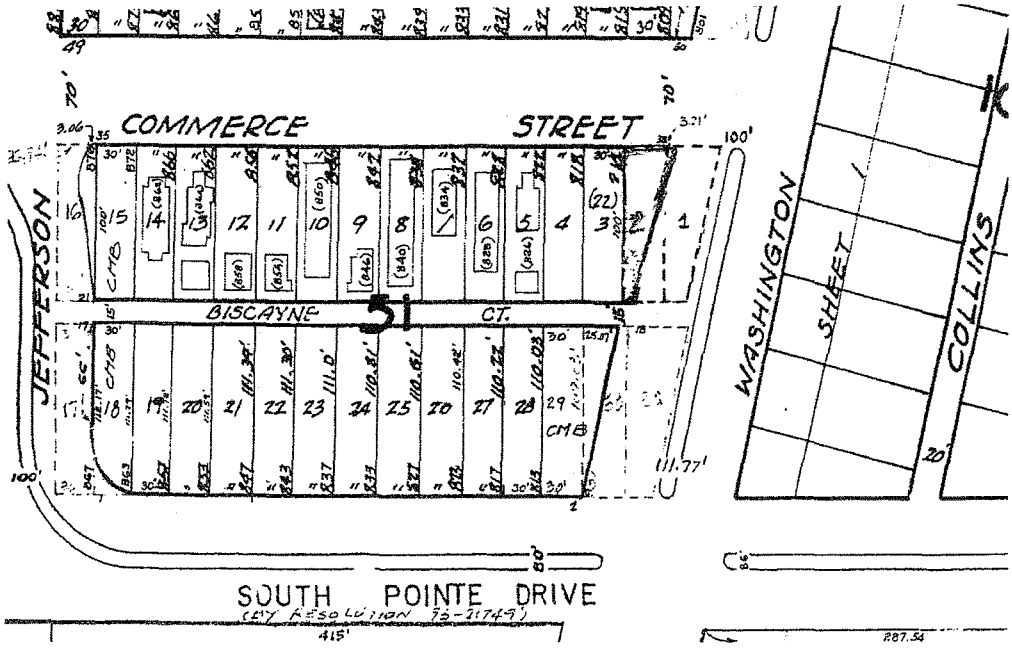
EXHIBIT A

Description of Demised Premises

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



RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), A LEASE AGREEMENT BETWEEN THE CITY AND MOON THAI SOUTH BEACH, INC. (MOON THAI), FOR THE LEASE OF APPROXIMATELY 2216 SQUARE FEET OF CITY OWNED PROPERTY, LOCATED AT 22 WASHINGTON AVENUE, MIAMI BEACH, FLORIDA, FOR THE PURPOSE OF AN OUTDOOR CAFÉ ASSOCIATED WITH THE RESTAURANT TO BE OPERATED BY MOON THAI AT 816 COMMERCE STREET, WHICH IS DIRECTLY ADJACENT TO AND WEST OF THE SUBJECT CITY PROPERTY; SAID LEASE HAVING AN INITIAL TERM OF FIVE YEARS, WITH AN OPTION TO RENEW FOR FOUR YEARS AND 364 DAYS, AT THE CITY'S SOLE DISCRETION; WAIVING BY 5/7THS VOTE, THE COMPETITIVE BIDDING AND APPRAISAL REQUIREMENTS, AS REQUIRED BY SECTION 82-39 OF THE MIAMI BEACH CITY CODE.

WHEREAS, the City and Moon Thai South Beach, Inc. (Moon Thai) have negotiated a five (5) year lease, with an option to renew for an additional four (4) years and three hundred sixty four (364) days, at the City's sole discretion, for the use of approximately 2216 square feet of vacant City-owned property located at 22 Washington Avenue (the Property) for an outdoor café associated with Moon Thai's operation of a restaurant located at 816 Commerce Street, (which is directly adjacent to and west of the Property); and

WHEREAS, Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, requires a public bidding process, a Planning Department analysis, and an independent appraisal to determine the value of the leasehold interest, as well as a public hearing to obtain citizen input; and

WHEREAS, on March 2, 2009, the Land Use and Development Committee voted to move forward to the City Commission for approval of the Lease Agreement with Moon Thai South Beach, Inc.; and

WHEREAS, on March 18, 2009 the City Commission adopted Resolution No. 2009-27037 approving on first reading the Lease Agreement; and

WHEREAS, pursuant to Section 82-39 of the City Code, the City's Planning Department has prepared the required planning analysis regarding the subject Lease; and

WHEREAS, Section 82-39 of the City Code further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, for leases of City land, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions, and the Administration would hereby recommend that the Mayor and City Commission approve said waiver; and

WHEREAS, as required pursuant to Section 82-37, on April 22, 2009, the City Commission held a duly noticed public hearing in order to obtain citizen input into the proposed lease.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve on second reading (and final approval), a Lease Agreement between the City and Moon Thai South Beach, Inc. (Moon Thai), for the lease of approximately 2216 square feet of City-owned property, located at 22 Washington Avenue, Miami Beach, Florida for the purpose of an outdoor café associated with the restaurant to be operated by Moon Thai at 816 Commerce Street, which is directly adjacent to and west of the subject City property; said Lease having an initial term of five years, with an option to renew for four years and 364 days, at the City's sole discretion; waiving by 5/7ths vote, the competitive bidding and appraisal requirements, as required by Section 82-39 of the Miami Beach City Code.

PASSED and ADOPTED this 22nd day of April, 2009.

ATTEST:

CITY CLERK	**MAYOR**

JMG\HMF\AP\ACV\mis

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/16/09 Date

LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 22nd day of April, 2009, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City"), and **MOON THAI SOUTH BEACH, INC.**, a Florida corporation, (hereinafter referred to as "Tenant").

1. Demised Premises.
The City, in consideration of the rentals hereinafter reserved to be paid and of the covenants, conditions and agreements to be kept and performed by the Tenant, hereby leases, lets and demises to the Tenant, and Tenant hereby leases and hires from the City, those certain premises hereinafter referred to as the "Demised Premises", located at 22 Washington Avenue, Miami Beach, Florida 33139, and more fully described as follows:

Approximately two thousand eighty (2,216) square feet of unimproved land. Such Demised Premises are specified in Exhibit A, which is hereby made a part of this Lease Agreement (the Lease or the Agreement).

2. Term.

2.1. Tenant shall be entitled to have and to hold the Demised Premises for an initial term of five (5) years, commencing on the 1st day of May, 2009 (Commencement Date), and ending on the 30th day of April, 2014.

2.2. The City, at its sole discretion, may grant Tenant an option to renew Agreement for one additional term of four (4) years and 364 days. In the event Tenant wishes to request said renewal option, Tenant shall communicate said request, in writing, to the City at least 180 days prior to the end of the initial term.

3. Rent.

3.1 Base Rent:
Base Rent for the Demised Premises shall begin to accrue as of August 1, 2009 (the Rent Commencement Date), and shall be based upon the total leasable space of 2,216 square feet.

3.1.1 During the first and second year of the initial term of this Lease, Base Rent for the Demised Premises shall be twenty five dollars (**$25.00**) per square foot, or a total annual Base Rent of fifty five thousand four hundred dollars and no/100 (**$55,400**); payable in monthly installments of four thousand sixteen dollars and 66/100

($4,616.66).

3.1.2 The Base Rent shall be increased in the third year to thirty dollars **($30.00)** per square foot, or a total annual Base Rent of sixty six thousand four hundred eighty and no/100 **($66,480);** payable in monthly installments of five thousand five hundred forty dollars and 00/100 **($5,540.00)** for the remainder of the initial term.

3.1.3 Base Rent shall be due and payable on the first day of each month throughout the Term of this Agreement.

3.1.4 Notwithstanding anything in this Section 3 or in the Agreement, the City reserves the right to re-negotiate the Base Rent amount concurrent with Tenant's right to exercise, and City's approval (if at all) of, the renewal term.

3.1.5 Percentage of Gross Receipts vs. Base Rent.
Commencing on the third year of the initial term, in the event that the amount equal to three (3%) percent of Tenant's annual gross receipts (GR) exceeds the Base Rent amount provided in Section 3.1 herein (and as same may be increased annually pursuant to Subsections 3.1.1 and 3.1.2), then Tenant shall also pay to the City the difference between the amount of the GR and the Base Rent amount, no later than 45 days after the conclusion of the third Lease year and every Lease year during the initial (and the renewal, if approved) term.

The term "gross receipts" is understood to mean all income, whether collected or accrued, derived by the Tenant from its operations related to this Agreement, **AND INCLUDING**, without limitation, all income, whether collected or accrued, from the restaurant operation at 816 Commerce Street, Miami Beach, Florida. Any amounts that may be due for any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind and required by law to be remitted to the taxing authority, or other governmental authority, shall be the sole responsibility of Tenant.

3.2 Late Payment.
It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on Landlord's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace

period, such grace period to be defined as within five (5) days of the due date. In addition, there will be a late charge of $50.00 for any payments submitted after the grace period.

3.3 Sales and Use Tax.
It is also understood that Tenant shall also include and forward to the City any and all additional sums for all applicable sales and use tax, now or hereafter prescribed by State, Federal or local law, and now described by Florida Statute 212.031. It is the City's intent that it is to receive all payments due from Tenant as net of such Florida State Sales and Use Tax.

3.4 Location for Payments.
All rents or other payments due hereunder shall be paid to the City of Miami Beach at the following address:

City of Miami Beach
Finance Department
c/o Revenue Supervisor
1700 Convention Center Drive
Miami Beach, Florida 33139

4. MAINTENANCE AND EXAMINATION OF RECORDS.
Tenant shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Agreement, **including such records and accounting related to the restaurant operation at 816 Commerce Street**. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit by the City Manager or his designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements, and such records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

A monthly report of gross receipts must be submitted to the City, through the Finance Department's Revenue Manager, to be received no later than thirty (30) days after the close of each month.

5. INSPECTION AND AUDIT.
Tenant shall maintain its financial records pertaining to its operation pursuant to this Agreement **and including the restaurant operation at 816 Commerce Street** for a period of three (3) years after the conclusion of the initial term, or (if approved) the last renewal term, and such records shall be open and available to the City Manager or his designee, as deemed necessary by the City Manager or his designee. Tenant shall maintain all such records at its principal office, currently located at 816 Commerce Street, Miami Beach, Florida, 33139 or, if moved to another location, all

such records shall be relocated, at Tenant's expense, to a location within the City of Miami Beach, within ten (10) days' written notice from the City Manager or his designee that the City desires to review said records.

The City Manager or his designee shall be entitled to audit Tenant's records pertaining to its operation **and including the restaurant located at 816 Commerce Street**, as often as it deems reasonably necessary throughout the Term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the Term or for any other reason. The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five (5%) percent or more in Tenant's statement of gross receipts for any year or years audited, in which case the Tenant shall pay to the City, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest; provided, however, the audit shall not be deemed final until Tenant has received the audit and has had a reasonable opportunity to review the audit and discuss the audit with the City. Nothing contained within this Section shall preclude the City's audit rights for resort tax collection purposes.

Tenant shall submit at the end of each Lease year and in any event no later that June 30th of each year, an Annual Statement of Gross Receipts, (**including the restaurant at 816 Commerce Street**), in a form consistent with generally accepted accounting principles. Additionally, such Statement shall be accompanied by a report from an independent CPA firm.

6. TAXES, ASSESSMENTS, AND UTILITIES.

6.1 Tenant agrees to and shall pay before delinquency all taxes (including but not limited to Resort Taxes) and assessments of any kind assessed or levied upon Tenant by reason of this Agreement or by reason of the business or other activities and operations of Tenant upon or in connection with the Demised Premises **and/or the adjoining restaurant at 816 Commerce Street**.

Tenant shall also pay for any fees imposed by law for licenses or permits for any business, activities, or operations of Tenant upon the Demised Premises **and/or the adjoining restaurant at 816 Commerce Street**, and shall maintain same current and in good standing throughout the Term of this Agreement.

6.2 Utilities.
The City shall not be responsible for providing electrical or water service, or any and all other utilities to and/or for, and/or in connection with, the Demised Premises.

Requests for installation of electrical, water and /or any and all other utilities

shall be submitted in writing to the City Manager or his designee. Installation and connection of any and all utilities, as and if approved by the City, will be performed at Tenant's sole cost and expense.

6.3 Procedure If Ad Valorem Taxes Assessed.
During the term of this Agreement, Tenant shall be solely responsible for all taxes of whatever nature lawfully levied upon or assessed against the Demised Premises and improvements, sales, or operations thereon, including but not limited to, Ad Valorem taxes.

7. Security Deposit.

7.1 On or prior to the Commencement Date, Tenant shall to pay the City a Security Deposit, in the sum of nine thousand two hundred thirty three dollars and 33/100 (**$9,233.33**). Said Security Deposit is to ensure the full and faithful performance by the Tenant of each and every term, covenant and condition of this Agreement. In the event that Tenant defaults in respect of any of the terms, provisions, covenants and conditions of this Agreement, including but not limited to, the payment of any rent, the City may use, apply or retain the whole or any part of the Security Deposit for the payment of such rents in default or any other sum which the City may expend or be required to expend by reason of the Tenant's default, including any damages or deficiency in the re-letting of the Demised Premises, whether such damages or deficiency may accrue or after summary proceedings or other re-entry by City.

7.2 In the event that the Tenant shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Agreement, the Security Deposit or any balance thereof shall be returned to the Tenant, without interest, upon the expiration of the Agreement and peaceful surrender of the Demised Premises.

7.3 City shall not be required to keep the Security Deposit in a segregated account and the Security Deposit may be commingled with other funds of City and in no event shall the Tenant be entitled to any interest on the Security Deposit.

7.4 In the event of a bona fide sale of the Demised Premises, as delineated in this Agreement, the City shall have the right to transfer the Security Deposit to the purchaser for the benefit of the Tenant and the City shall be considered by the Tenant free from all liability for the return of such Security Deposit, and the Tenant agrees to look to the new owner/landlord solely for the return of the Security Deposit, if such Security Deposit is actually transferred, and it is agreed that this shall apply to every transfer or assignment made of the Security Deposit to any new owner/landlord.

It is expressly understood that the issuance of a warrant and the lawful re-

entry to the Demised Premises by the City for any default on the part of the Tenant, prior to the expiration of the term of this Agreement, shall not be deemed such termination of this Agreement as to entitle the Tenant to recovery of the Security Deposit and the Security Deposit shall be retained and remain the possession of the City.

8. Use and Possession of Demised Premises.

8.1 The Demised Premises shall be used by the Tenant solely as an outdoor café to serve the patrons and guests of Tenant's adjoining restaurant at 816 Commerce Street. The outdoor café shall have days and hours of operation from Sunday through Thursday commencing on 11:30 a.m., and ending no later than 11:00 p.m., and Friday through Saturday, commencing on 11:30 a.m., and ending no later than midnight. Notwithstanding the preceding hours of operation, the outdoor café on the Demised Premises shall only be open when the restaurant at 816 Commerce Street is open for business (and, conversely, shall be closed when the restaurant is closed).

8.2 Tenant and owner of the restaurant at 816 Commerce Street shall at all times throughout the Term of the Agreement be one and the same and cannot exist independently of each other. Tenant acknowledges and agrees that its use of the Demised Premises shall be, and remain at all times throughout the Term, an ancillary use to Tenant's restaurant at 816 Commerce Street.

The number of seating on the Demised Premises shall be included in the overall seating count of Tenant's restaurant at 816 Commerce Street. There shall be no bar counter of any kind as part of the Demised Premises and all food served shall be prepared within the interior kitchen of the Tenant's restaurant. Any and all alcoholic beverages served at the outdoor café shall be serviced by Tenant's restaurant. All tables and chairs will be removed and stored each night at close of business.

8.3 Tenant hereby warrants and represents that Moon Thai, Inc. is the owner of the restaurant at 816 Commerce Street and shall, throughout the Term of the Lease, remain as the owner of said restaurant, unless any change in ownership is approved by the City Manager, in writing, prior to such change taking place. Change of ownership for purposes hereof shall include, without limitation, a sale, exchange, assignment, transfer or other disposition by Tenant of all or a portion of Tenant's interest in the restaurant, whether by operation of law or otherwise.

8.4 Tenant agrees not to place any speakers, or any other device used to amplify sound, on or around the Demised Premises. Tenant further agrees to not attach any televisions, speakers, or any other device used to amplify sound, to the exterior of the restaurant building at 816 Commerce Street. Furthermore, Tenant shall in no manner use the Demised Premises, or

Tenant's restaurant at 816 Commerce Street, as an outdoor entertainment or open air entertainment establishment, and hereby acknowledges that such uses are prohibited (whether as main or accessory uses).

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

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

8.7 It is understood and agreed that the Demised Premises shall be used by the Tenant during the term of this Agreement only for the uses contemplated herein, and for no other purpose or use whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by public law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit waste on the Demised Premises, use the Demised Premises for any illegal purpose, or commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises for any purpose not expressly permitted herein, then the City may declare this Agreement in default pursuant to Section 18, or without notice to Tenant, restrain such improper use by injunction or other legal action.

8.8 **Notwithstanding anything to the contrary contained herein, in the event of a breach by Tenant of this Section 8, the City Manager, in his sole determination and judgment, shall have the right to automatically terminate this Lease, without any liability to the City; said termination effective upon three (3) days written notice to Tenant. By executing the Lease, Tenant hereby agrees to this condition, and further voluntarily and knowingly waives and releases any and all rights now or hereinafter conferred upon Tenant pursuant to Florida Statutes including, without limitation, the procedures set forth in Chapter 83, Florida Statutes' for removal in nonresidential tenancies; the Miami-Dade; and the Miami Beach Code (respectively); to the extent this and applicable law(s) would have the effect of limiting or modifying the City's rights to terminate this Lease pursuant to this Subsection.**

9. Improvements.

9.1 Any improvements on the Demised Premises shall be subject to the prior written approval of the City Manager, which approval, if given at all, shall be at the his sole discretion. All permanent (fixed) improvements to the Demised Premises shall become the property of the City upon termination of the

Lease. Notwithstanding the preceding sentence, the City may require that Tenant, upon termination of the Agreement, remove all permanent (fixed) improvements to the Demised Premises (at his/her sole discretion), without damage to the Demised Premises or cost to the City. Furthermore, upon the lawful termination of the Agreement, all personal property and trade fixtures may be removed by the Tenant from the Demised Premises without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with or related to the construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City. Any and all costs, permits and or licenses required for the installation of improvements shall be the sole responsibility of Tenant.

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

10. City's Right of Entry.

10.1 The City, or its authorized agent or agents, shall have the right to enter upon the Demised Premises at all reasonable times for the purpose of inspecting same, preventing waste, making such repairs as the City may consider necessary and for the purpose of preventing fire, theft or vandalism. However, the City agrees that whenever possible, the City shall provide reasonable notice, in writing, to Tenant, unless the need to enter the Demised Premises is an emergency, as deemed by the City at its sole discretion, which if not immediately addressed could cause property damage, loss of life or limb, or other injury to persons. Nothing herein shall imply any duty on the part of the City to do any work that under any provisions of this Agreement the Tenant may be required to perform, and the performance thereof by the City shall not constitute a waiver of the Tenant's default.

10.2 If the Tenant shall not be personally present to permit entry onto the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City, or its agents, may enter the Demised Premises, including, without limitation, forcibly entering the Demised Premises, without rendering the City or such agents liable therefore.

11. Tenant's Insurance.

The Tenant shall, at its sole cost and expense, comply with all insurance requirements of the City. It is agreed by the parties that the Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been furnished to and approved by the City's Risk Manager:

Comprehensive General Liability in the minimum amount of $1,000,000 per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured party on this policy.

Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

All-Risks property and casualty insurance, written at a minimum of 80% of replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Demised Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of the Lease) and all leasehold improvements installed in the Demised Premises by or on behalf of Tenant.

Proof of these coverages must be provided by submitting original certificates of insurance. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager at 1700 Convention Center Drive, Miami Beach, Florida, 33139. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida and must have a rating of B+:VI or better per A.M. Best's Key Rating Guide, latest edition, and certificates are subject to the approval of the City's Risk Manager.

12. Assignment and Subletting.

12.1. Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of City which shall not be unreasonably withheld. Such written consent is not a matter of right and City is not obligated to give such consent. If granted as provided herein, the making of any assignment or sublease will not release Tenant from any of its obligations under this Agreement. A sale or transfer of a majority interest of the stock of Tenant's corporate entity shall be deemed an assignment, and for purposes of this Agreement, the City shall have the right to approve the new majority owner. Said approval shall be provided in writing. Tenant is prohibited from assigning or subletting this Agreement to any person or entity which is not of the same or higher financial responsibility as Tenant, as shall be determined by City, in its sole judgment and discretion. Further, Tenant shall be prohibited from any changes in ownership, whether in the Demised Premises or the restaurant located at 816 Commerce Street, as set forth in Subsections 8.2 and 8.3.

12.2 Any consent by the City to any act of assignment shall apply only to the specific transaction thereby authorized. Such consent shall not be construed

as a waiver of the duty of the Tenant or the legal representatives or assigns of the Tenant, to obtain from the City consent to any other or subsequent assignment, or as modifying or limiting the rights of the City under the foregoing covenants of the Tenant not to assign without such consent.

12.3 Any violation of the provisions of this Agreement, whether by act or omissions, by assignee, sub-tenant, or under-tenant or occupant, shall be deemed a violation of such provision by the Tenant, it being the intention and meaning of the parties hereto, that the Tenant shall assume and be liable to the City for any and all acts and omissions of any and all assignees, sub-tenants, or under-tenants or occupants. If the Agreement be assigned, the City may and is hereby empowered to collect rent from the assignee; if the Demised Premises or any part thereof be underlet or occupied by any person, other that the Tenant, the City, in the event of the Tenant's default, may, and is hereby empowered to, collect rent from the under-tenant or occupants; in either of such events, the City may apply the net amount received by it for rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of the Tenant from the further performance of the covenants herein contained on the part of the Tenant.

13. Maintenance and Repair.

13.1 Tenant shall maintain the Demised Premises and any fixtures and appurtenances thereon, and, at its sole cost and expense, shall make all repairs thereto as and when needed to preserve them in good working order and condition. This shall include, but not be limited to, Tenant being responsible for maintenance and repair of any and all improvements, such as fences, walkways, pavers, ground-coverings, landscaping, and gates.

13.2 All damage or injury of any kind to the Demised Premises shall be the obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant at its sole cost and expense to the satisfaction of the City.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to the original work or installations and shall be done in good and workmanlike manner.

13.4 If Tenant fails to make such repairs or restorations or replacements, the same may be made by the City, at the expense of the Tenant, and all sums spent and expenses incurred by the City shall be collectable and shall be paid by the Tenant within ten (10) days after rendition of a bill or statement thereof.

13.5 It shall be Tenant's obligation to insure that any renovations, repairs and/or improvements made by Tenant to the Demised Premises comply with all

applicable building codes and life safety codes of governmental authorities having jurisdiction.

13.6 **THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.** Tenant may construct or cause to be constructed, such exterior improvements to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s); provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior received written approval, which approval, if granted at all, shall be at the City Manager's sole and absolute discretion. Additionally, any and all approved improvements shall be made at Tenant's sole cost and expense. All permanent (fixed) improvements to the Demised Premises shall remain the property of the City upon termination and/or expiration of this Agreement. Upon termination and/or expiration of this Agreement, all personal property and non-permanent trade fixtures may be removed by the Tenant from the Demised Premises, provided that they can be (and are) removed without damage to the Demised Premises. Tenant will permit no liens to attach to the Demised Premises arising from, connected with, or related to the design and construction of any improvements. Moreover, such construction shall be accomplished through the use of licensed, reputable contractors who are acceptable to the City Manager. Any and all permits and or licenses required for the construction and/or installation of improvements shall be the sole cost and responsibility of Tenant.

14. Governmental Regulations.

The Tenant covenants and agrees to fulfill and comply with all statutes, ordinances, rules, orders, regulations, and requirements of any and all governmental bodies, including but not limited to Federal, State, Miami-Dade County, and City governments, and any and all of their departments and bureaus applicable to the Demised Premises and shall also comply with and fulfill all rules, orders, and regulations for the prevention of fire, all at Tenant's own cost and expense. Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may be imposed because of Tenant's failure to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Intentionally Omitted.

16. Condemnation.

16.1 If at any time during the term of this Agreement all or any part or portion of the Demised Premises are taken, appropriated, or condemned by reason of Eminent Domain proceedings (except if the Eminent Domain proceedings are initiated by the City of Miami Beach), then this Agreement shall be terminated as of the date of such taking, and shall thereafter be completely null and void, and neither of the parties hereto shall thereafter have any rights against the other by reason of this Agreement or anything contained

therein, except that any rent prepaid beyond the date of such taking shall be prorated to such date, and the Tenant shall pay any and all rents, additional rents, utility charges, or other costs including excess taxes for which it is liable under the terms of this Agreement, up to the date of such taking.

16.2 Except as hereunder provided, Tenant shall not be entitled to participate in the proceeds of any award made to the City in any such Eminent Domain proceeding, excepting, however, the Tenant shall have the right to claim and recover from the condemning authority, but not from the City, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reasons of the condemnation and for or on account of any cost or loss which Tenant might incur in removing Tenant's furniture and fixtures.

17 Default.

17.1 Default by Tenant.
At the City's option, any of the following shall constitute an Event of Default under this Agreement:

17.1.1 Rent, or any installment thereof is not paid promptly when and where due within fifteen (15) days of due date and if Tenant shall not cure such failure within five (5) days after receipt of written notice from the City specifying such default;

17.1.2 Any other payment provided for under this Agreement is not paid promptly when and where due;

17.1.3 Demised Premises shall be deserted, abandoned, or vacated;

17.1.4 Tenant shall fail to comply with any material term, provision, condition or covenant contained herein other than the payment of rent and shall not cure such failure within thirty (30) days after the receipt of written notice from City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;

17.1.5 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a code, regulation, ordinance or the like, which remains uncured within the time specified in such notice of violation or such period of time acceptable to the City Manager, at his sole discretion;

17.1.6 Any petition is filed by or against Tenant under any section or chapter of the Bankruptcy Act, as amended, which remains pending for more than sixty (60) days, or any other proceedings now or hereafter authorized by the laws of the United States or of

any state for the purpose of discharging or extending the time for payment of debts;

17.1.7 Tenant shall become insolvent;

17.1.8 Tenant shall make an assignment for benefit of creditors;

17.1.9 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or

17.1.10 The leasehold interest is levied on under execution.

17.1.11 Tenant's violation of the provision of Subsection 8.8 herein, which shall result in an automatic termination of the Lease, as further provided in said subsection.

18 Rights on Default.

18.1 Rights on Default.

18.1.1 In the event of any default by Tenant as provided herein, the City shall have the option to do any of the following in addition to and not in limitation of any other remedy permitted by law or by this Agreement;

18.1.2 Terminate this Agreement, in which event Tenant shall immediately surrender the Demised Premises to the City, but if Tenant shall fail to do so the City may, without further notice, and without prejudice to any other remedy the City may have for possession or arrearages in rent or damages for breach of contract, enter upon Demised Premises and expel or remove Tenant and his effects in accordance with law, without being liable for prosecution or any claim for damages therefore, and Tenant agrees to indemnify and hold harmless the City for all loss and damage which the City may suffer by reasons of such termination, whether through inability to re-let the Demised Premises, or through decrease in rent, or otherwise.

18.1.3 Declare the entire amount of the rent which would become due and payable during the remainder of the term of this Agreement to be due and payable immediately, in which event Tenant agrees to pay the same at once, together with all rents therefore due, at the address of the City, as provided in the Notices section of this Agreement; provided, however, that such payment shall not constitute a penalty, forfeiture, or liquidated damage, but shall merely constitute payment in advance of the rents for the remainder of said term and such payment shall be considered, construed and taken to be a debt provable in bankruptcy or

receivership.

18.1.4 Enter the Demised Premises as the agent of Tenant, by force if necessary, without being liable to prosecution or any claim for damages therefore, remove Tenant's property there from, and re-let the Demised Premises, or portions thereof, for such terms and upon such conditions which the City deems, in its sole discretion, desirable, and to receive the rents therefore, and Tenant shall pay the City any deficiency that may arise by reason of such re-letting, on demand at any time and from time to time at the office of the City; and for the purpose of re-letting, City may (i) make any repairs, changes, alterations or additions in or to said Demised Premises that may be necessary or convenient; (ii) pay all costs and expenses therefore from rents resulting from re-letting; and (iii) Tenant shall pay the City any deficiency as aforesaid.

18.1.5 Take possession of any personal property owned by Tenant on said Demised Premises and sell the same at public or private sale, and apply same to the payment of rent due, holding the Tenant liable for the deficiency, if any.

18.1.6 It is expressly agreed and understood by and between the parties hereto that any installments of rent accruing under the provisions of this Agreement which shall not be paid when due shall bear interest at the maximum legal rate of interest per annum then prevailing in Florida from the date when the same was payable by the terms hereof, until the same shall be paid by Tenant. Any failure on the City's behalf to enforce this Section shall not constitute a waiver of this provision with respect to future accruals of past due rent. No interest will be charged for payments made within the grace period, such grace period to be defined as within five (5) days of the due date. In addition, there will be a late charge of fifty ($50.00) dollars for any payments submitted after the grace period.

18.1.7 If Tenant shall default in making any payment of monies to any person or for any purpose as may be required hereunder, the City may pay such expense but the City shall not be obligated to do so. Tenant, upon the City's paying such expense, shall be obligated to forthwith reimburse the City for the amount thereof. All sums of money payable by Tenant to the City hereunder shall be deemed as rent for use of the Demised Premises and collectable by the City from Tenant as rent, and shall be due from Tenant to City on the first day of the month following the payment of the expense by the City.

18.1.8 The rights of the City under this Agreement shall be cumulative

but not restrictive to those given by law and failure on the part of the City to exercise promptly any rights given hereunder shall not operate to waive or to forfeit any of the said rights.

18.2 Default by City.
Failure of the City to perform any of the covenants, conditions and agreements of the Agreement which are to be performed by the City and the continuance of such failure for a period of thirty (30) days after notice thereof in writing from Tenant to the City (which notice shall specify the respects in which Tenant contends that the City failed to perform any such covenant, conditions and agreements) shall constitute a default by the City, unless such default is one which cannot be cured within thirty (30) days because of circumstances beyond the City's control, and the City within such thirty (30) day period shall have commenced and thereafter shall continue diligently to prosecute all actions necessary to cure such defaults.

However, in the event the City fails to perform within the initial thirty (30) day period provided above, and such failure to perform prevents Tenant from operating its business in a customary manner and causes an undue hardship for the Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

18.3 Tenant's Rights on Default.
If an event of the City's default shall occur, Tenant, to the fullest extent permitted by law, shall have the right to pursue any and all remedies available at law or in equity, including the right to sue for and collect damages, including reasonable attorney fees and costs, to terminate this Agreement (and all of its obligations hereunder by giving notice of such election to the City, whereupon this Agreement shall terminate as of the date of such notice), to specifically enforce Tenant's rights; and/or to enjoin the City.

19. Indemnity Against Costs and Charges.

19.1 Tenant shall be liable to the City for all costs and charges, expenses, reasonable attorney's fees, and damages which may be incurred or sustained by the City, by reason of the Tenant's breach of any of the provisions of this Agreement. Any sums due the City under the provisions of this item shall constitute a lien against the interest of the Tenant and the Demised Premises and all of Tenant's property situated thereon to the same extent and on the same conditions as delinquent rent would constitute a lien on said premises and property.

19.2 If Tenant shall at any time be in default hereunder, and if the City shall deem it necessary to engage an attorney to enforce the City's rights and Tenant's obligations hereunder, Tenant will reimburse the City for the reasonable expenses incurred thereby, including, but not limited to, court costs and

reasonable attorney's fees, whether suit be brought or not and if suit be brought, then Tenant shall be liable for expenses incurred at both the trial and appellate levels.

20. Indemnification Against Claims.

20.1 Tenant shall indemnify and save the City harmless from and against any and all claims or causes of action (whether groundless or otherwise) by or on behalf of any person, firm, or corporation, for personal injury or property damage occurring upon the Demised Premises or upon any parking lot or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

20.1.1 An act or omission on the part of the Tenant, or any employee, agent, invitee, or guest, assignee or sub-tenant of the Tenant;

20.1.2 Any misuse, neglect, or unlawful use of the Demised Premises or the building in which the Demised Premises is located or any of its facilities by the Tenant, or any employee, agent, invitee, or guest, assignee or sub-tenant or the Tenant, but not to include trespassers upon the Demised Premises;

20.1.3 Any breach, violation, or non-performance of any undertaking of the Tenant under this Agreement;

20.1.4 Anything growing out of the use or occupancy of the Demised Premises by the Tenant or anyone holding or claiming to hold through or under the Agreement.

20.2 Tenant agrees to pay all damages to the Demised Premises or other facilities used in connection therewith, caused by the Tenant or any employee, guest, or invitee of the Tenant.

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

22. Damage to the Demised Premises and/or Restaurant at 816 Commerce Street.

22.1 If the Demised Premises **and/or restaurant at 816 Commerce Street** shall be damaged by the elements or other casualty not due to Tenant's negligence, or by fire, but are not thereby rendered untenantable, as determined by the City, in whole or in part (hereinafter referred to as "such occurrence"), Tenant shall as soon as possible after such occurrence, utilize

its insurance proceeds to cause such damage to be repaired and the rent for the Demised Premises shall not be abated. If by reason of such occurrence, the Demised Premises **and/or restaurant at 816 Commerce Street** shall be rendered untenantable, as determined by the City, only in part, Tenant shall as soon as possible utilize its insurance proceeds to cause the damage to be repaired, and the rent for the Demised Premises shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, if either the Demised Premises **and/or restaurant at 816 Commerce Street** are by reason of such occurrence, rendered more than 50% but less than 100% untenantable, as determined by the City, Tenant shall promptly obtain a good faith estimate, from a licensed contractor acceptable to the City, of the time required to render the Demised Premises **and/or restaurant at 816 Commerce Street** tenantable. **If such time exceeds sixty (60) days, the City and/or Tenant shall have the option of canceling this Agreement, which option shall be exercised by the requesting party in writing within ten (10) days of the end of the sixty (60) day period, and the Agreement shall be terminated within thirty (30) days from the date thereof.**

22.2 If the Demised Premises **and/or restaurant at 816 Commerce Street** shall be rendered wholly untenantable by reason of such occurrence, Tenant shall utilize its insurance proceeds to cause such damage to be repaired and the rent for the Demised Premises shall be abated in whole; provided, however, that the Tenant shall have the right, to be exercised by notice in writing delivered to the City within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises and/or restaurant, and in such event, this Agreement and the tenancy hereby created shall cease as of the date of said occurrence, the rent to be adjusted as of such date. If the Demised Premises shall be rendered wholly untenantable, the City and/or Tenant shall have the right, to be exercised by notice in writing, delivered to the other party within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the rent to be adjusted accordingly.

23. Quiet Enjoyment.

Tenant shall enjoy quiet enjoyment of the Demised Premises and shall not be evicted or disturbed in possession of the Demised Premises so long as Tenant complies with the terms of this Agreement.

24. Waiver.

24.1 It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and

effect.

24.2 A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

24.3 The receipt of any sum paid by Tenant to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such breach, but shall be taken, considered and construed as payment for use and occupation, and not as rent, unless such breach be expressly waived in writing by the City.

25. Notices.
The addresses for all notices required under this Agreement shall be as follows, or at such other address as either party shall be in writing, notify the other:

CITY:	City Manager City of Miami Beach 1700 Convention Center Drive Miami Beach, Florida 33139
With copies to:	Asset Manager City of Miami Beach 1700 Convention Center Drive Miami Beach, Florida 33139
TENANT:	Moon Thai, Inc. 816 Commerce Street Miami Beach, Florida 33139 Attn: Jack Punma
With copies to:	Mr. Jack Punma 5901 Mariposa Court Coral Gables, Florida 33146

All notices shall be hand delivered and a receipt requested, or by certified mail with return receipt requested, and shall be effective upon receipt.

26. Entire and Binding Agreement.
This Agreement contains all of the agreements between the parties hereto, and it may not be modified in any manner other than by agreement in writing signed by all the parties hereto or their successors in interest. The terms, covenants and conditions contained herein shall inure to the benefit of and be binding upon the City and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Agreement.

27. Provisions Severable.
If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

28. Captions.
The captions contained herein are for the convenience and reference only and shall not be deemed a part of this Agreement or construed as in any manner limiting or amplifying the terms and provisions of this Agreement to which they relate.

29. Number and Gender.
Whenever used herein, the singular number shall include the plural and the plural shall include the singular, and the use of one gender shall include all genders.

30. Governing Law.
This Agreement shall be governed by and construed in accordance with the law of the State of Florida.

31. Limitation of Liability.
The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's 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 Ten Thousand ($10,000.00) Dollars and no/100. Tenant hereby expresses its willingness to enter into this Agreement with the Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of Ten Thousand ($10,000.00) Dollars. Accordingly, and notwithstanding any other term or condition of this Agreement, Tenant hereby agrees that the City shall not be liable to Tenant for damage in an amount in excess of Ten Thousand ($10,000.00) Dollars 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 Section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Florida Statutes, Section 768.28.

32. Surrender of the Demised Premises.
Tenant shall, on or before the last day of the term herein demised, or the sooner termination thereof, peaceably and quietly leave, surrender and yield upon to the City the Demised Premises, together with any and all equipment, fixtures, furnishings, appliances or other personal property, if any, located at or on the Demised Premises and used by Tenant in the maintenance, management or operation of the Demised Premises, excluding any trade fixtures or personal property, if any, which can be removed without material injury to the Demised Premises, free of all liens, claims and encumbrances and rights of others or broom-

clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Demised Premises, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Article. Any property which pursuant to the provisions of this Section is removable by Tenant on or at the Demised Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by the Tenant, and either may be retained by the City as its property or may be removed and disposed of at the sole cost of the Tenant in such manner as the City may see fit. If the Demised Premises and personal property, if any, be not surrendered at the end of the term as provided in this Section, the Tenant shall make good the City all damages which the City shall suffer by reason thereof, and shall indemnify and hold harmless the City against all claims made by any succeeding tenant or purchaser, so far as such delay is occasioned by the failure of the Tenant to surrender the Demised Premises as and when herein required.

33. Time is of the Essence.
Time is of the essence in every particular and particularly where the obligation to pay money is involved.

34. Venue.
This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.

CITY AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT THE CITY AND TENANT MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.

(INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed by the respective duly authorized officers and the respective corporate seals to be affixed this ____ day of _____, 2009.

ATTEST:

_____
Robert Parcher, CITY CLERK

CITY:
CITY OF MIAMI BEACH, FLORIDA

BY: _____
Matti Herrera Bower, MAYOR

ATTEST:

_____
SECRETARY

_____
(Print Name)

TENANT:
MOON THAI SOUTH BEACH , INC.

BY: _____
PRESIDENT

_____
(Print Name)

CORPORATE SEAL
(affix here)

T:\AGENDA\2009\March 18\Regular\LUDC Memo Moon Thai LEASE.doc

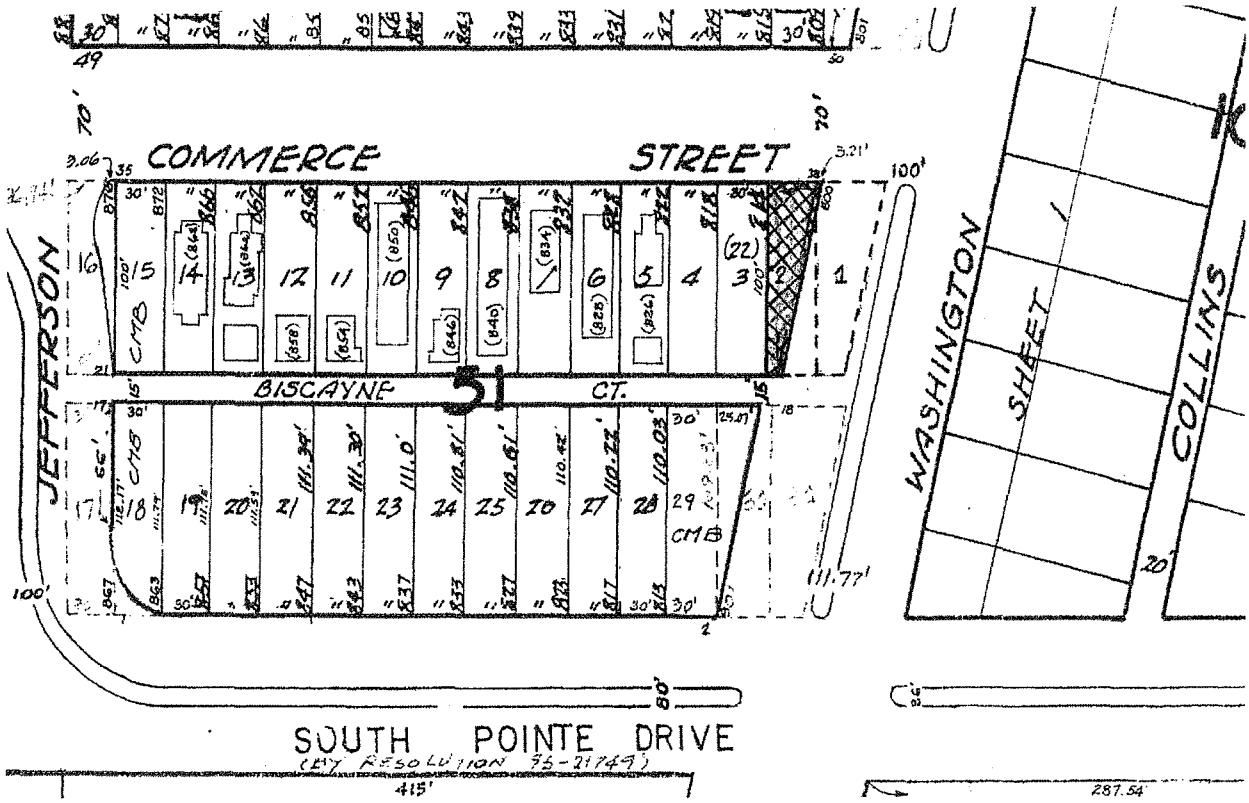
APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/15/09
Date

EXHIBIT A

Description of Demised Premises

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



MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY given that a second reading and public hearing will be held by the City Commission of the City of Miami Beach, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, April 22, 2009 at 11:00 A.M.**, to consider A Resolution Approving A Lease Agreement Between The City And Moon Thai South Beach, Inc., For The Lease Of Approximately 2216 Square Feet Of City Owned Property, Located At 22 Washington Avenue, Miami Beach, Florida, For The Purpose Of An Outdoor Café Associated With A Restaurant Operation Located At 816 Commerce Street, Which Is Directly Adjacent To And West Of The Subject City Property; Said Lease Having An Initial Term Of Five Years, With An Option To Renew For Four Years And 364 Days, At The City's Sole Discretion; Waiving By 5/7ths Vote, The Competitive Bidding And Appraisal Requirements, As Required By Section 82-39 Of The Miami Beach City Code.

Inquiries may be directed to the Office of Real Estate, Housing and Community Development at (305) 673-7260.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

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

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

Ad #532

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Condensed Title:

Request for Approval for a lease agreement between the City and Damien J. Gallo & Associates, Inc. for use of 1802.89 sf of City-owned property located at 1701 Meridian Avenue, Unit 2, for a term of three years, with an additional three year renewal term, waiving by 5/7ths vote the competitive bidding and appraisal requirements as required by Section 82-30 and setting a public hearing on May 13, 2009 for second reading and public hearing.

Key Intended Outcome Supported:

To Ensure Well-Maintained Facilities

Supporting Data (Surveys, Environmental Scan, etc.): 83% of residents surveyed felt that recent capital improvement projects were either excellent or good.

Issue:

Should the City approve the lease agreement?

Item Summary/Recommendation:

FIRST READING

At its October 17, 2001 meeting, the City Commission passed Resolution No. 2001-24661 authorizing the purchase of 1701 Meridian Avenue to address the City's ongoing need for administrative office expansion. Also in consideration was the preservation of a retail environment on the ground floor of the property. At that time, it was determined to be conducive to maintaining and enhancing the pedestrian character of the linkage between Lincoln Road Mall and the Civic/Convention Center area. Staff has recently conducted a space plan which indicates that the usage of the first floor of 1701 Meridian remains a primary use for commercial retail space.

When the City purchased the building, Vidal Tan Soon, Inc. had been an existing tenant of retail space since 1994. When Vidal Tan Soon, Inc. closed its business operations, the Mayor and City Commission adopted Resolution No. 2006-26282, approving a Second Amendment and Assignment of the Lease Agreement to Damian J. Gallo & Associates, Inc. (d/b/a The Permit Doctor, and hereinafter referred to as "Gallo"), effective September 15, 2006 and expiring on April 14, 2009. The assigned lease governed approximately 1,700 square feet of City-owned property. The square footage was corrected to1802.89 per a 2008 City survey. Gallo will continue to lease space at the same location on a month-to-month basis until a new lease is fully approved by the City Commission.

Use and Possession:

The leased Premises would be used for the purpose of providing building plan and permit processing services. The Tenant hereby represents and warrants to the City that it shall in no way, whether express or implied, give the impression that Tenant is in any way acting as an agent and/or representative of the City of Miami Beach, nor that, by virtue of the Agreement, does the Tenant derive any special benefit and/or consideration from the City (acting in its regulatory capacity) with regard to Tenant's provision of plan and permit processing services to third parties. Any violation of this Subsection 7.1 by theTenant is deemed an automatic default under this Agreement and, notwithstanding any other provision set forth herein, entitles the City to automatically terminate this Agreement, without further notice to Tenant, and without liability to the City.

Security Deposit: Upon execution of the Agreement, the Tenant will furnish the City a Security Deposit in the sum of $6,000.

Rent: The City has exercised its right to negotiate the rent terms resulting in an increase of 3% from the previous year rent of $24.75 psf. The administration has negotiated a base of rent of $25.49 psf, for a total of $45,962.84 annually to be paid to the City in monthly installments.

Additional Rent : For the proportionate share of "Operating Expense" ("CAM") the Tenant will pay to the City $600.96 per month.

Property Taxes: The Property Tax Payment is payable by the Tenant. The 2008 Property Tax Payment is $15,674.98.

Insurance: The Additional Rent also includes the Tenant's pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of $135.22.

Section 82-39 further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions. At the March 10, 2009 of the Finance and Citywide Projects Committee, the Committee determined that it was in the public's best interest to forgo competitive bidding and staff should proceed in leasing the identified leaseable space in 1701 Meridian according to market rates and industry standards.

A Planning Department analysis finds that the use of this area as retail space is consistent with the land use designation contained in the Comprehensive Plan. (attached)

The Administration recommends that the City Commission approve the Lease Agreement on First Reading.

Advisory Board Recommendation:

Financial Information:

Source of Funds: n/a		Amount	Account
	1	n/a	

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Ana Cecilia Velasco extension 6727

Sign-Offs:

Department Director	Assistant City Manager	City Manager
AP_____ ACV_____		JMG_____

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MIAMIBEACH

AGENDA ITEM R7C

DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

TO: Mayor Matti H. Bower and Members of the City Commission

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009 **FIRST READING**

SUBJECT: **A RESOLUTION APPROVING ON FIRST READING, A LEASE AGREEMENT BETWEEN THE CITY AND DAMIAN J. GALLO & ASSOCIATES, INC. (D/B/A PERMIT DOCTOR), FOR USE OF 1,802.89 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1701 MERIDIAN AVENUE, UNIT 2 (A/K/A 767 17TH STREET), MIAMI BEACH, FLORIDA; SAID LEASE HAVING AN INITIAL TERM OF THREE YEARS, WITH AN ADDITIONAL THREE YEAR RENEWAL TERM, AT THE CITY'S SOLE DISCRETION; WAIVING BY 5/7THS VOTE, THE COMPETITIVE BIDDING AND APPRAISAL REQUIREMENTS, AS REQUIRED BY SECTION 82-39 OF THE MIAMI BEACH CITY CODE; FURTHER SETTING A PUBLIC HEARING ON MAY 13, 2009, FOR THE SECOND READING (AND FINAL APPROVAL) OF THE LEASE AGREEMENT.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution

ANALYSIS AND BACKGROUND

On October 17, 2001, the City Commission passed Resolution No. 2001-24661 authorizing the purchase of the building at 1701 Meridian Avenue (a.k.a. 775 17th Street) in order to address the City's ongoing need for administrative office expansion. At the time, the preservation of a retail environment on the ground floor of the property was considered and it was determined to be conducive to maintaining and enhancing the pedestrian character of the linkage between Lincoln Road Mall and the Civic/Convention Center area. Staff recently conducted a space plan which indicates that the usage of the first floor of 1701 Meridian remains a primary use for commercial retail space.

When the City purchased the building, Vidal Tan Soon, Inc. had been an existing tenant of retail space since 1994. When Vidal Tan Soon, Inc. closed its business operations, the Mayor and City Commission adopted Resolution No. 2006-26282 approving a Second Amendment and Assignment of the Lease Agreement to Damian J. Gallo & Associates, Inc. (d/b/a The Permit Doctor, and hereinafter referred to as "Gallo"), effective September 15, 2006 and expiring on April 14, 2009. The assigned lease governed approximately 1,700 square feet of City-owned property.

Gallo has requested a new lease for an initial term of three years commencing June 1, 2009, and ending May 31, 2012, with one additional three year renewal term to continue providing building plan and permit processing services in its current space, and has agreed to the terms outlined below. Gallo will continue to lease space at the same location on a month-to-month basis until a new lease is fully approved by the City Commission. Furthermore, a separate agenda item to be considered by the Commission on April 22, 2009, would allow Gallo to assume the lease of the adjacent tenant, the Dade County Federal Credit Union, which is ceasing its Miami Beach operations effective May 1, 2009. Gallo's assumption of the lease of the adjacent tenant will allow for the expansion of its operations.

SUMMARY OF TERMS

Use and Possession:

The leased premises will continue to be used for the purpose of providing building plan and permit processing services (i.e. certificates of completion, certificates of occupancy, violation remediation, plan review, processing and expediting services, inspection management, special and 40 year inspections, fire and building compliance, permit administration, occupancy load calculations, special event permitting, and recording services), these services may require the Tenant to interact, from time to time, with City of Miami Beach officials and employees, acting in their regulatory capacity. The Tenant represents and warrants to the City that it will in no way, whether express or implied, give the impression that they are in any way acting as an agent and/or representative of the City of Miami Beach, nor that, by virtue of this Agreement, They derive any special benefit and/or consideration from the City (acting in its regulatory capacity) with regard to the Tenant's provision of plan and permit processing services to third parties. Any violation of this Subsection 7.1 by Tenant is deemed as an automatic default under this Agreement and, notwithstanding any other provision set forth in this lease, shall entitles the City to automatically terminate this Agreement, without further notice to the Tenant, and without liability to the City.

Security Deposit:
Upon execution of the Agreement, the Tenant shall furnish the City a Security Deposit in the sum of $6,000, as agreed to by the City. The guaranty will serve to secure the Tenant's performance in accordance with the provisions of the Agreement.

Rent:
The City has exercised its right to negotiate the rent terms, resulting in a 3% increase from the Tenant's previous year's rent of $24.75 psf. Rent increase terms were assessed pursuant to the information gathered on comparable retail space in the area. The administration has negotiated a base of rent of $25.49 psf for a total of $45,962.84 annually to be paid to the City in monthly installments based on a corrected square footage of 1802.89 square feet (from the previously indicated 1700 square feet per a 2008 City survey).

Additional Rent:
For the proportionate share of "Operating Expense" (CAM), the Tenant will also pay to the City $600.96 per month. "Operating Expenses" are defined as expenses incurred in operating, repairing, and maintaining the Common Facilities.

Property Taxes:
The Property Tax Payment is payable by the Tenant. The 2008 Property Tax Payment is $15,674.98, payable in monthly installments of $1,306.25.

Insurance:
The Additional Rent shall also include Tenant's pro-rata share toward estimated insurance costs incurred to insure the whole of the Building, payable in monthly installments of $135.22. This insurance coverage is in addition to the insurance required, which must be obtained at the Tenant's sole expense and responsibility.

Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, provides that the lease of any City-owned property, including option periods, requires the following:

1) a public bidding process;
2) Planning Department analysis;
3) an independent appraisal to determine the value of the leasehold interest
4) two (2) readings of the proposed lease; and
5) a public hearing to obtain citizen input.

Section 82-39 further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions. At the March 10, 2009 of the Finance and Citywide Projects Committee, the Committee determined that it was in the public's best interest to forgo competitive bidding and staff should proceed in leasing the identified leaseable space in 1701 Meridian according to market rates and industry standards.

A Planning Department analysis finds that the use of this area as retail space is consistent with the land use designation contained in the Comprehensive Plan (attached).

CONCLUSION

Based on the aforementioned, the Administration recommends that the Mayor and City Commission approve, on first reading, the Lease Agreement by and between the City and Damian J. Gallo & Associates, Inc. (D/B/A Permit Doctor), for the lease of 1,802.89 square feet of City-owned property, located at 1701 Meridian, Miami Beach, Florida, for an initial term of three years, with one additional three year renewal term, at the City's sole discretion; waiving by 5/7ths vote, the competitive bidding and appraisal requirements, as required by Section 82-39 of the Miami Beach City Code; and further setting a public hearing on May 13, 2009 for the second reading (and final approval) of the Lease Agreement.

JMG\HMF\AP\ACV\mis
Attachments (2)

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MIAMIBEACH

PLANNING DEPARTMENT
INTEROFFICE MEMORANDUM

TO: Anna Parekh, Real Estate, Housing & Comm. Development Director

FROM: Jorge G. Gomez, Planning Director RGL for JGG

DATE: April 2, 2009

SUBJECT: Analysis of Proposed Lease Agreement between the City and Damian J. Gallo & Associates, Inc. (D/B/A Permit Doctor) – 1701 Meridian Avenue

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Pursuant to your request, this memorandum will serve as a planning analysis of the proposed lease agreement between The City and Damian J. Gallo & Associates, Inc.(D/B/A Uni-K Wax), for use approximately 1,802.89 s.f. of City-owned retail space located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), said lease having a term of three (3) years.

Section 82-38 of the Code of the City of Miami Beach requires that any proposed sale or lease of City-owned land be analyzed from a planning perspective so that the City Commission and the public are fully appraised of all conditions relating to the proposed sale or lease. The following is an analysis of the criteria delineated in the Code:

1. **Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city comprehensive plan.**

   Consistent - The subject property, 1701 Meridian Avenue, is an office building with retail spaces on the ground floor. The Future Land Use Map of the City's Comprehensive Plan designates the site as CD-3 Commercial High Intensity.

   The Lease Agreement between the City and Damian J. Gallo & Associates, Inc., for use of the retail space would be consistent with the land use designation contained in the Comprehensive Plan.

2. **The impact on adjacent property, including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level or enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the proponent shall be responsible for obtaining a traffic impact analysis from a reputable traffic engineer.**

   Consistent - The property subject to the lease is a office bay within the first floor level of the 777 office building. The property has been and is currently in use as an office building and retail space. There would be no diminution of open space as no new construction is being proposed. No additional utility or infrastructure is necessary.

3. **A determination as to whether or not the proposed use is in keeping with a public purpose and community needs, such as expanding the city's revenue base, creating jobs, creating a significant revenue stream, and improving the community's overall quality of life.**
   Consistent - The retail lease generates an income stream for the City, and the lounge provides jobs for local service workers. As long as this venue operates in a responsible way, it has the potential to be an asset to this area of the City.

4. **Determination as to whether or not the development is in keeping with the surrounding neighborhood, will block views or create environmental intrusions, and evaluation of the design and aesthetic considerations of the project.**
   Consistent - The establishment is already in operation, and has not created negative effects on the surrounding neighborhood. There have been no significant code violations in the past four years.

5. **The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.**
   Consistent – The impact on adjacent properties should be minimal, as the facility is already in use. Parking is available nearby. No further infrastructure needs are anticipated.

6. **A determination as to whether or not alternatives are available for the proposed disposition, including assembly of adjacent properties, and whether the project could be accomplished under a private ownership assembly.**
   Consistent - This criterion is not applicable as the establishment is already operating within the subject space, and the proposed lease extends the term of the lease.

7. **Within the constraints of public objectives, the department should examine financial issues such as job generation, providing housing opportunities, and the return to the city for its disposition of property.**
   Consistent - The existing establishment slightly increases the job base of the City. The proposed lease would be expected to maintain this level of job creation. No housing opportunities are created by the proposed lease.

8. **Such other issues as the Planning Department may deem appropriate in analysis of the proposed disposition.**
   Planning Staff has not identified any further items.

JGG/RGL
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RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON FIRST READING, A LEASE AGREEMENT BETWEEN THE CITY AND DAMIAN J. GALLO & ASSOCIATES, INC. (D/B/A PERMIT DOCTOR), FOR USE OF 1,802.89 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1701 MERIDIAN AVENUE, UNIT 2 (A/K/A 767 17TH STREET), MIAMI BEACH, FLORIDA; SAID LEASE HAVING AN INITIAL TERM OF THREE YEARS, WITH AN ADDITIONAL THREE YEAR RENEWAL TERM, AT THE CITY'S SOLE DISCRETION; WAIVING BY 5/7THS VOTE, THE COMPETITIVE BIDDING AND APPRAISAL REQUIREMENTS, AS REQUIRED BY SECTION 82-39 OF THE MIAMI BEACH CITY CODE; FURTHER SETTING A PUBLIC HEARING ON MAY 13, 2009, FOR THE SECOND READING (AND FINAL APPROVAL) OF THE LEASE AGREEMENT.

WHEREAS, on October 17, 2001 the City Commission adopted Resolution No. 2001-24661, authorizing the purchase of 1701 Meridian Avenue with the intention of preserving the retail environment on the ground floor of the property; and

WHEREAS, the City has been leasing to the Vidal Tan Soon, Inc. a portion of the City-owned property, located at 1701 Meridian Avenue, Unit 2 (a.k.a. 775 17th Street), Miami Beach, Florida, under the terms and conditions of that certain Lease Agreement, dated April 15,2004; and

WHEREAS, Vidal Tan Soon, inc. closed its business and thereafter requested that the Mayor and City Commission approve a Second Amendment and Assignment of the Lease Agreement to Damian J. Gallo & Associates, Inc., commencing on September 15, 2006 and expiring on April 14, 2009 for the 1802.89 square feet of City-owned property which was currently under their leasehold; and

WHEREAS, at the meeting of September 6, 2006, the City Commission adopted Resolution No. 2006-26282, approving the Second Amendment and Assignment of the Lease Agreement to Damien J. Gallo & Associates, Inc.; and

WHEREAS, Damien J. Gallo & Associates has requested a new lease for those premises, for an initial term of three years, commencing June 1, 2009 and ending May 31, 2012, with one additional three year renewal term to continue providing building plan and permit processing services in their current space; and

WHEREAS, Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, requires a public bidding process, a Planning Department analysis, and an independent appraisal to determine the value of the leasehold interest; as well as a public hearing to obtain citizen input; and

WHEREAS, Section 82-39 of the City Code further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7ths vote of the Mayor and City Commission, for leases of City land, upon a finding by the Mayor and City Commission that the public interest would be served by waiving such conditions, and the Administration would hereby recommend that the Mayor and City Commission approve said waiver; and

WHEREAS, the Administration recommends that the City Commission approve on first reading the Lease Agreement for said property with Damien J. Gallo & Associates, Inc.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve on first reading, a Lease Agreement between the City and Damian J. Gallo & Associates, Inc. (d/b/a Permit Doctor) for use of 1802.89 square feet of City-owned property, located at 1701 Meridian Avenue, Unit 2 (a/k/a 767 17th Street), Miami Beach, Florida for an initial term of three years, with an additional three year renewal term, at the City's sole discretion, and waiving by 5/7ths vote, the competitive bidding and appraisal requirements, as required by Section 82-39 of the Miami Beach City Code; further setting a public hearing on May 13, 2009, for the second reading (and final approval) of the Lease Agreement.

PASSED and ADOPTED this 22nd day of April, 2009.

ATTEST:

CITY CLERK	**MAYOR**

JMG\HMF\AP\ACV\mis

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APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 4/16/09 Date

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Condensed Title:

A resolution approving on 2nd Reading a 2nd Addendum to the Development Agreement between the City and the New World Symphony (NWS), approving the final Garage Budget in the amount of $17,085,000, amending the Design-to Park Budget from $14,960,000 to $13,085,000 and modifying certain provisions in the Development Agreement and the 1st Addendum pertaining to the Garage and the Park as noted in the following summary.

Key Intended Outcome Supported:

Increase community rating of cultural activities and ensure well maintained facilities.

Supporting Data (Surveys, Environmental Scan, etc.): While a majority of residents say that the City has the right amount of cultural activities, approximately 30% of those surveyed say there are too few cultural activities. The NWS Project will significantly enhance the City's attraction as a cultural destination.

Issue:

Shall the City Commission approve the proposed 2nd Addendum to the Development Agreement between the City of Miami Beach and the NWS?

Item Summary/Recommendation:

Pursuant to the provisions set forth in the Development Agreement between the City and NWS and the 1st Addendum thereto, dated February 20, 2007, NWS is required to secure the City's approval of the Final Garage Budget prior to NWS entering into a Guaranteed Maximum Price ("GMP") contract with a contractor to construct the Garage. On March 18, 2009, the City Commission approved the proposed 2nd Addendum on First Reading, which provides for a Final Garage Budget in the amount of $17,085,000 and a Design-To Park Budget in the amount of $13,085,000,(which amounts reflect the inclusion of the two (2) elevators in the middle of the Garage in the Final Garage Budget, with the difference to be funded from the Park Budget); waiving the "Key Man" requirement for Gehry Partners, LLC., to design the Park component; authorizing NWS to proceed in selecting an Architect and/or Architectural Consultant for the Park project pursuant to a competitive process approved by the City Manager, and approval by the City Commission of the recommended Architect and/or Architectural Consultant; and, providing for the City Commission to determine at the time of the Park Concept Plan approval, to decide whether or not to place the architectural treatment on the east façade of the Garage. The Commission also voted to include a provision recommended by Commissioner Weithorn that would make the $15 Million Grant-in-Aid contingent upon NWS procuring 175 parking spaces at the time the Grant is payable or escrowing the amount of money equal to 175 spaces at $35,000 per space or any combination thereof.

At the April 14 Finance Committee Meeting, Commissioner Weithorn agreed to reconsider this motion subject to certain milestones being put into place that would provide the necessary assurances that the garage to be built by 420 Lincoln Road Associates will in fact be built and to the extent that it doesn't, that the NWS be required to pay for its parking requirement upon expiration of the Parking License Agreement. The Committee also addressed certain concerns that were raised regarding elimination of the Key-Man provision and discussed the possibility of just retaining Gehry to develop the conceptual design for the Park and then entering into a separate design-build contract to complete the project, similar to the arrangement involving the Pennsylvania Avenue Parking Garage. Howard Herring said he spoke with Gehry and has indicated it will consider this type of an arrangement. NWS was asked to meet with Gehry to negotiate a new fee based on this reduction in scope. Gehry has since informed NWS that they are no longer interested in undertaking the design of the Park. Once proposals are received in connection with the RFQ/RFP process initiated by NWS/Hines, a determination as to who will design the Park can be made. In addition, the Committee recommended exploring the possibility of eliminating a floor of covered parking from the Pennsylvania Avenue Garage as well as eliminating one of the two central elevators, as way to put more money back into the Park Project. The Committee recommended by a vote of 2 to 1 to adopt the Final Garage Budget that was approved during 1st Reading of the 2nd Addendum on March 18, 2009, and to include the above referenced deductive alternates. The Administration recommends approval of the 2nd Addendum on 2nd and final reading, so as not to adversely impact the Garage schedule.

Advisory Board Recommendation:

Finance & Citywide Projects Committee, Feb 11, Mar 10 and Apr 14, 2009: Recommendation in favor of proposed modifications to the Development Agreement and 1st Addendum as noted above.

Financial Information:

Source of Funds:		Amount	Account	Approved
OBPI	Total	1,875,000		

Financial Impact Summary: The difference between the Preliminary Garage Budget and the Final Garage Budget in the amount of $1,875,000 is being proposed to be funded from the FY 2009/10 appropriation for the Park, thereby reducing the overall Park Budget from $14,960,000 to $13,085,000. No new appropriation of funding is required, just a reallocation from planned future capital appropriations.

City Clerk's Office Legislative Tracking:

Kent O. Bonde, Redevelopment Coordinator

Sign-Offs:

Redevelopment Coordinator	Assistant City Manager	City Manager

MIAMIBEACH

AGENDA ITEM R7D
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

SECOND READING PUBLIC HEARING

DATE: April 22, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND AND FINAL READING, IN ACCORDANCE WITH THE REQUIREMENTS OF SECTIONS 163.3220 – 163.3243, FLORIDA STATUTES, ALSO REFERRED TO AS THE "FLORIDA LOCAL GOVERNMENT DEVELOPMENT ACT", A SECOND ADDENDUM ("SECOND ADDENDUM") TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH ("CITY") AND THE NEW WORLD SYMPHONY ("NWS"), DATED JANUARY 5, 2004 (THE DEVELOPMENT AGREEMENT), AS AMENDED BY THAT CERTAIN FIRST ADDENDUM TO DEVELOPMENT AGREEMENT, DATED FEBRUARY 20, 2007 (THE FIRST ADDENDUM) (COLLECTIVELY, THE JANUARY 5, 2004 DEVELOPMENT AGREEMENT AND THE FIRST ADDENDUM MAY ALSO COLLECTIVELY BE REFERRED TO AS THE "NWS DEVELOPMENT AGREEMENT"); SAID SECOND ADDENDUM PROVIDING FOR THE FOLLOWING: 1) APPROVAL OF THE FINAL GARAGE BUDGET, IN THE AMOUNT OF $17,085,000; 2) AMENDING THE DEFINITION OF GARAGE COSTS FROM $15,210,135 TO $17,085,000 (SUBJECT TO FURTHER CONDITIONS AS MORE SPECIFICALLY SET FORTH IN THE SECOND ADDENDUM); 3) AMENDING THE DESIGN-TO PARK PROJECT BUDGET FROM $14,960,000, TO $13,085,000; AND, 4) AMENDING THE DEFINITION OF "GARAGE."**

Administration Recommendation

Adopt the Resolution.

Funding

Pursuant to the City's Capital Plan, the balance of funding for the Park component, in the amount of $13,910,000 is anticipated to be appropriated as part of the FY 2009/10 Capital Budget, to be funded from City Center Redevelopment Agency TIF. The Administration is recommending to fund the difference between the Preliminary Garage Budget and the Final Garage Budget in the amount of $1,875,000 from the FY 2009/10 appropriation for the Park, thereby reducing the overall Park Budget from $14,960,000 to $13,085,000.

Background

On January 5, 2004, the City of Miami Beach (City) and the New World Symphony (NWS), entered into a Development Agreement and Ground Lease Agreement (the Agreements),

providing for design, development and construction of an educational performance and internet broadcast facility and exterior screen (formally known as "Soundspace") and a public parking garage to be located on the westernmost portion of the 17th Street surface parking lots, bounded by 17th Street to the north; North Lincoln Lane to the south; Drexel Avenue to the east; and Pennsylvania Avenue to the west. Pursuant to the direction of the City Commission on September 8, 2004 and consistent with the Planning Board's August 24, 2004 recommendation, the Project site was expanded east to Washington Avenue to include both surface lots, to be designed as an integrated site, to include the development of a Park and certain other public improvements.

The Agreements have NWS serving as the Developer of the site and, in this capacity, NWS enters also into separate agreements with its vendors to plan, design, and construct the Garage and the Park on the City's behalf. The City is obligated to provide funding for these improvements upon approval of the scope of work and budgets for each.

On February 20, 2007, the City and NWS executed the First Addendum to the Development Agreement (First Addendum) that established the City's Preliminary Budgets for the Garage Project and the Park Project and established a $15 million Grant-in-Aid for the NWS building. The Preliminary Garage Budget was established as $15,210,135, and the Preliminary Park Budget was established as $14,960,000.

The First Addendum requires that NWS secure City approval of the Final Garage Budget prior to NWS entering into a Guaranteed Maximum Price ("GMP") contract with a contractor to construct the Garage. NWS has advised the City that it is ready to proceed with the Garage design/build contract.

Architectural Consultant Criteria

The Development Agreement and the First Addendum contain language that names "Gehry Partners, LLC", as the Architectural Consultant for the Project (including the Garage and the Park components). A considerable amount of importance was placed on having the entire project site developed in accordance with the "single design vision of the Architectural Consultant...". The City and NWS agreed that a "Gehry" designed Project (including Garage and Park) was a material and integral part of the development of the site. In deciding that a "Gehry" design was a material element, the City Commission carefully considered the potential financial costs attached to making the Architectural Consultant a material requirement.

The firm "Gehry Partners, LLC" is an architectural company created by Frank O. Gehry. The services of Mr. Gehry and his firm, Gehry Partners, are in demand throughout the world. Mr. Gehry is particularly known for the Guggenheim Museum in Bilbao, Spain; the Millennium Park in Chicago; the Walt Disney Concert Hall in downtown Los Angeles; the Experience Music Project in Seattle; the Weisman Art Museum in Minneapolis; the Dancing House in Prague, Czech Republic; and his private residence in Santa Monica, California. His work is often sought by owners to distinguish themselves from others, as the buildings that he designs become tourist attractions in and of themselves.

The projects designed by Gehry Partners are considered to be world class facilities. This type of distinction, which carefully and uniquely combines art with function is, by its nature, higher in expense than a typical municipal project. The firm is able to command a premium in fees, and the projects that are designed by them are high end products with a commensurate premium in the cost of construction. In approving the First Addendum, the

City Commission considered the premium that went with making a Gehry design a material element, and determined that the distinctive value of the end product, a world class design, was worth the premium cost of design and construction.

Total Project Funding

The allocated funding for the NWS Project totals approximately $51 million (not inclusive of land value) and comes from City Center RDA funds. At the time that the First Addendum was approved, the revenue projections by the City staff indicated that this amount could be contractually allocated in accordance with a specified schedule. It should be noted that the revenue projections were developed prior to the legislative changes to property taxes imposed by the State Legislature in 2007 and the dramatic erosion of property values and corresponding reduction in RDA funds available for this year, next year and the foreseeable future. Both of these events have greatly affected the projected revenue for the City Center RDA and consequently have required the City to reevaluate and reprioritize the various projects "in the cue."

Given the parameters of projected available funding at the time, the City Commission generally considered the Garage, the Park, and the Additional Improvements of primary importance. The Grant-in-Aid provided for in the First Addendum was an articulated need by NWS and their original request was for a Grant-in-Aid of $30 million. In reviewing and considering this request, the City placed the various components into priority order and spread the funding among them - with the Garage, Park, and Additional Improvements having highest priority for the City since the Development Agreement and First Addendum assign these responsibilities to the City. From the City's perspective, this meant that the Grant-in-Aid was largely backed into as the amount remaining after the Garage, Park, and Additional Improvements were funded.

All parties recognized the significance of developing both a "world class" Park and "world class" Garage to complement the significant addition of the NWS Campus Expansion to the City Center landscape. That is why the budget for both the Park and the Garage were significantly increased at the time of the First Addendum. The City's desire was clear at the time: RDA funds should provide for "public" amenities which would complement the "private" investment and make the entire improvement an extraordinary facility attracting visitors from around the world. While important, the Grant-in-Aid was determined after the budgets for the public amenities were established. These budgets, established in concert with the NWS and based on information provided by the NWS were anticipated, at the time, to be sufficient to meet the architectural and aesthetic requirements of the program.

The funding approved by the City is as follows:

Garage (FY 09)	$15,210,135
Additional Improvements (FY 08)	$6,400,000
Park (Design FY 09/Const FY 2010)	$14,960,000
Grant in Aid (FY 2010)	$15,000,000
Total Funding Commitment	**$51,570,135**

As noted above, the funding commitments for the Garage, the Additional Improvements, and the design for the Park have already been appropriated by the City Commission.

The funding commitment for the construction of the Park and for the Grant-in-Aid will be due as of October 1, 2009.

The Garage Project

From the inception of the Project, the Garage has been an integral component. The Project site, including the Park and the Garage, was previously two (2) City surface parking lots that contained just over 500 parking spaces. Throughout the course of the Project's development, the City Commission has taken the position that the Project should not result in a net loss of parking spaces. For this reason, the Project has consistently contemplated a Gehry designed Garage containing 500 to 600 parking spaces.

The First Addendum increased the total Preliminary Garage Budget from approximately $7 million, to $15,210,135, to fund a projected 608 spaces (see attached proposed budget from NWS/Hines as Attachment 5), and including the City Code required retail component on the ground floor. The Preliminary Garage Budget provided by NWS and approved by the City Commission in the First Addendum was generally divided as follows:

Total Architectural/Engineering Cost	$1,511,000
Total Construction Cost	$12,106,000
Total Site Cost	$650,680
Total Tax/Insurance Cost	$215,608
Total Owner Expenses	$10,000
Total General/Admin Costs	$568,755
Total Contingency Cost	$148,092
Total Project Cost	**$15,210,135**

The First Addendum anticipated a potential change between the Preliminary Garage Budget and the Final Garage Budget, and therefore requires NWS to bring back its Final Garage Budget, for consideration and potential approval by the City Commission. As of March 10, 2009, NWS advised the City that it is prepared to present a Final Garage Budget.

Since execution of the First Addendum on February 20, 2007, NWS has proceeded with both the construction of the NWS building (now known as the "NWS Campus Expansion") as well as the conceptual design for the Garage with Gehry Partners. The recommended and approved process (in large part to help limit the design fees) was to have Gehry Partners do the conceptual design and obtain Design Review Board approval. Currently, the conceptual design has been bid to design/build contractors, and the selected contractor and its design professional will be responsible for finishing the design and engineering in accordance with the DRB approved conceptual plans, and then construct the Garage. The selected design/build contractor is contemplated to be a sub-contractor of the NWS Campus Expansion, general contractor, Facchina McGaughan, LLC.

Schedule

Successful completion of the Garage is on the same Critical Path as for completion of the NWS Campus Expansion building, for two reasons: (1) the electrical power vaults for both the Campus Expansion building and the Garage are located within the Garage. At this point, permanent power cannot be provided to the Campus Expansion building without the Garage commencing construction. In order to meet the Critical Path for the Campus Expansion building, engineering for the Garage has commenced as of the beginning of April 2009; and

(2) Pursuant to Resolution No. 2007-26704, the City Commission approved a temporary License Agreement for NWS to count 175 parking spaces within the proposed Garage to meet its City Code required parking for a period of five (5) years from the date of Certificate of Occupancy (C.O.) of the Campus Expansion building. This requires that the Garage be constructed and open in order for a C.O. to be granted on the Campus Expansion building.

In 2006, the City Commission approved a three-party Agreement between the City, NWS, and 420 Lincoln Road Associates, known as a "Declaration of Restrictive Covenants in Lieu of Unity of Title (aka "Parking Covenant")". The purpose of this Agreement, which is a recorded document, was to allow NWS to locate its 175 Code required parking spaces within a mixed use project owned by 420 Lincoln Road Associates. This project has been delayed in its implementation and at the time that the temporary License Agreement noted above was approved, it was contemplated by NWS that 420 Lincoln Road Associates would construct the mixed use project within 5 years of TCO/CO of its Campus Expansion building. To place these two Agreements into context, NWS has provided to meet its Code required parking through the Parking Covenant which contemplates locating these 175 spaces in a mixed use project to be built by 420 Lincoln Road Associates. The temporary License Agreement essentially provides a temporary location for the Code required parking until approximately 2016 for the mixed use project to be constructed and opened.

If this mixed use project by 420 Lincoln Road Associates is not constructed and open after five (5) years of NWS obtaining a CO on its Campus Expansion building, the NWS would need to provide for its 175 Code-required parking spaces at an alternate location.

As soon as approval from the City Commission is obtained, NWS will complete the contract with the design/build contractor and finalize the design and initiate the permitting and construction of the site. Initial design/engineering commenced after First Reading of the Second Addendum was approved on March 18th. If this schedule is met, then completion of the Garage is projected to be August/September 2010.

The Park Project

The planning effort for the Park has not yet officially commenced. Up until October 2008, NWS was still in negotiations with Gehry Partners regarding the proposed design services and fees for this component. The Preliminary Park Budget in the First Addendum is $14,960,000. At the February Finance Committee, the NWS was asked to approach Gehry Partners, through a personal appeal by Michael Tilson Thomas, in an effort to persuade him to provide the design services for the park project at a more reasonable fee. The NWS has informed the City that they were unsuccessful in this effort and as a result, the design fees for the park project remain in excess of $4.5 million dollars if the City wishes to use Gehry Partners as the design professionals. Furthermore, at the March 10, 2009 Finance and Citywide Projects Committee meeting, representatives from NWS proposed that the City consider an alternate design professional for the Park. After discussing this issue with the representatives from NWS, the Committee ended up agreeing with NWS that this should be explored. Based on this discussion, NWS has begun preliminary efforts to identify a suitable alternate design team.

February/March 2009

The NWS/Hines development team has selected a low bidder for the Garage. The low bidder for the Garage is a local company doing business as KVC Construction (KVC). The principals of KVC are Miami Beach residents and, although not related, currently have a

contract with the City as the Construction Manager at Risk for the Scott Rakow Youth Center project.

As of the February 11, 2009 FCWPC Meeting, the cost projected for the proposed Garage was as follows:

Total Architectural/Engineering Cost	$2,255,612
Total Construction Cost	$16,235,372
Total Site Cost	Included in Construction Cost
Total Tax/Insurance Cost	$331,500
Total Owner Expenses	$0
Total General/Admin Costs	$977,000
Total Contingency Cost	$989,974
Total Project Cost	**$20,789,458**

The proposed Garage costs as of March 11, 2009 by NWS/Hines are:

Total Architectural/Engineering Cost	$2,155,612
Total Construction Cost	$13,132,888
Total Site Cost	Included in Construction Cost
Total Tax/Insurance Cost	$181,500
Total Owner Expenses	$0
Total General/Admin Costs	$578,000
Total Contingency Cost	$750,000
Total Project Cost	**$16,798,000**

The proposed Garage costs following the March 18, 2009 City Commission Meeting are:

Total Architectural/Engineering Cost	$2,155,612
Total Construction Cost	$13,419,906
Total Site Cost	Included in Construction Cost
Total Tax/Insurance Cost	$181,500
Total Owner Expenses	$0
Total General/Admin Costs	$578,000
Total Contingency Cost	$750,000
Total Project Cost	**$17,085,018**

At the current proposed total cost of $17,085,018, the projected amount over the contractually allocated $15,210,135 is $1,874,883 (for purposes of the 2nd Addendum, this amount has been rounded up to $1,875,000). KVC's design/build proposal projects approximately 535+ parking spaces, although the final count will not be known until the full engineering and permitting effort is completed.

The proposed Garage received approval by the DRB at the March 3, 2009 meeting. The DRB approval calls for the stainless steel mesh on 3 sides of the structure with the proposed LED lights. The DRB Order does not include the façade treatment on the eastern elevation, but does allow for it if funds become available to add the treatment at a future date.

A Second Addendum to the Development Agreement was negotiated between NWS and City staff. The main purposes of the Second Addendum is to accept the Final Garage Budget and reallocate funds from the Preliminary Park Budget to the Garage Budget; amend the Preliminary Park Budget; remove the "Gehry Keyman" clause from the Park Project; and amend the definition of the Garage Project.

The Second Addendum was presented to the City Commission for its consideration at First Reading at its March 18, 2009 meeting.

March 18, 2009 City Commission Meeting

At the March 18, 2009 City Commission Meeting, the Commission approved the following Motions:

Motion #1:
Motion made by Commissioner Weithorn to address the parking issue; seconded by Commissioner Wolfson. Commission Weithorn stated that she has a very specific motion and that is she wants the City's $15 million Grant-in-Aid to be contingent upon either a) procuring the 175 spaces in time to give the grant-in-aid or b) escrow the amount of money equal to 175 spaces at $35,000 a space or any combination thereof.

Motion #2:
Motion made by Vice-Mayor Tobin to approve the Second Addendum of the Development Agreement and moving $1.6 million from the park, add $275,000 to capture the cost of the two elevators, which means that an estimated $1.875 million is being removed from the Park and added to the Garage with the cost of the two elevators coming from the Park Budget and if any money is left over should go to the Park and the points raised by Mr. Goldsmith in his email will be negotiated at the Finance and Citywide Projects Committee (FCWPC) meeting between the first and second reading.

In approving the Second Addendum, the action also confirmed that NWS could proceed with the initial design and engineering of the Garage with KVC. This is necessary in order to maintain the current critical path of the project. A copy of the Second Addendum, as amended by the above motions, and including amendments in affiliated agreements, is attached as Attachment 1.

During the discussion, the City Commission considered a number of recommendations brought forth by City resident William Goldsmith to be included in the Addendum. NWS has indicated that, with the exception of the recommendation regarding the 175 Code-required spaces, it had already addressed the issues raised that are within its control. For this reason, these items do not appear in the proposed Addendum.

NWS has advised the City, in a letter dated April 9, 2009, that the provisions contained in Motion 1 above are unacceptable and NWS will not agree to the proposed amendments. A copy of this letter is attached as Attachment 3. The primary reason for objection by NWS on this issue is that the City and NWS have already entered into Agreements that provide for its Code required parking, specifically the Parking Covenant and the temporary License Agreement noted above. The position of NWS is that these Agreements provide them a specific time period for performance post construction and occupancy of the Campus Expansion building; and not only has this time period not lapsed, it has, arguably, not yet begun.

As noted above, the current set of Agreements, specifically the Parking Covenant and the temporary License Agreement, provide for the 175 Code required parking spaces to be located in a proposed mixed use project to be constructed by 420 Lincoln Road Associates. The temporary License Agreement allows for these Code required parking spaces to be located within the City's proposed Garage Project for five (5) years from the time of CO for the Campus Expansion building. The five (5) year time period temporary License Agreement was provided in order to allow 420 Lincoln Road Associates additional time to construct and open the proposed mixed use project.

Staff has spoken with representatives of NWS regarding their position on the Second Addendum. NWS advised staff that their position on Second Reading is consistent with their position on First Reading, in that NWS is agreeable to the Second Addendum originally submitted for First Reading with the amendment of the City funding the two elevators on the east side and center of the Garage.

Proposed Park Status and Potential Alternatives

As noted above, NWS advised the City that Michael Tilson Thomas discussed the proposed Park fees with Frank Gehry over the February 28/March 1, 2009 weekend. NWS advised the City that Gehry Partners will not lower their requested fees.

NWS/Hines is proposing that the City consider an alternative design professional for the Park, such as a well-known Landscape Architect. NWS/Hines has advised the City that it has had initial discussions with several firms since the February 11, 2009 FCWPC meeting and believes that the design costs for the park can be substantially reduced from the Gehry Partners proposed fee.

Presently, NWS/Hines is proposing to the City that if the design professional is changed, then the projected shortage to the Garage can be moved from the Park project without any reduction in scope to the proposed Park. NWS/Hines has advised the City that the current Park construction budget can be increased under the NWS proposal described above. The previous Park budget, as of February 11, 2009 was:

Total Architectural/Engineering Cost	$4,662,800
Total Construction Cost	$8,628,600
Total Tax/Insurance Cost	$300,000
Total Owner Expenses	$300,000
Total General/Admin Costs	$878,600
Total Contingency Cost	$190,000
Total Project Cost	**$14,960,000**

The proposed Park Budget by NWS/Hines as of the March 18, 2009 Commission Meeting is summarized below for a 535+ space Garage, if the Park design professional is changed:

Total Architectural/Engineering Cost	$1,500,000
Total Construction Cost	$10,344,000
Total Tax/Insurance Cost	$300,000
Total Owner Expenses	0
Total General/Admin Costs	$578,000
Total Contingency Cost	$650,000
Total Project Cost	**$13,372,000**

The proposed Park Budget as amended by Motion 2 of the City Commission at the March 18, 2009 meeting is:

Total Architectural/Engineering Cost	$1,500,000
Total Construction Cost	$10,057,000
Total Tax/Insurance Cost	$300,000
Total Owner Expenses	$0
Total General/Admin Costs	$578,000
Total Contingency Cost	$650,000
Total Project Cost	**$13,085,000**

Under this proposal from NWS/Hines, the NWS would meet its commitments to provide a 500 to 600 space parking garage and a high end urban park to compliment the total campus site and remain within the overall contractual amounts for the Project. It does require the City Commission to approve the transfer of dollars between budgets ($1,875,000) within the current NWS Development Agreement, as well as removing the Gehry "key man" requirement for the Park design. This proposal would also increase the construction budget for the Park by approximately $1.5 million above the current allocation.

Subsequent to the Commission meeting, and in an effort to maintain a schedule that would have the Park completed in early 2011, NWS/Hines, in conjunction with the City, issued a Request for Qualifications for a potential new design professional for the Park (Attachment 4). Should the City Commission determine that it will retain Gehry Partners as the architectural consultant for the Park, then this RFQ can be withdrawn. However, the schedule is constrained at this point and the loss of three weeks was deemed critical if the Commission determines it would like to pursue an alternative design professional.

If an alternative design professional is sought, then the process, which contains two main steps, is intended to proceed as follows:

1. The RFQ will be received in early May 2009. The RFQ submissions will be reviewed by representatives of NWS and the City and a shortlist will be selected to move forward to the next step of submitting a formal Request for Proposal. The shortlist is currently scheduled to be brought to the City Commission at the May 13, 2009 Commission Meeting for approval.

2. The short-listed firms would be invited to submit a formal Request for Proposal. This proposal would include a refined concept for the Park, as well as a proposed fee for service and projected construction budgets. NWS/Hines, with significant input from City staff, would negotiate with the shortlist firms once the RFPs are received in order to get to a lowest and best proposer. The City Commission, at its discretion, will have the opportunity to select the best proposal from the shortlist firms once defined. This process is currently scheduled to be brought to the City Commission at the July 15, 2009 Commission Meeting for a final selection of the alternative design professional.

Park Schedule

The schedule for the Park is largely dependent upon how the City elects to proceed at this point. If Gehry Partners had been maintained as the Park Project consultant, then the current Development Agreement allowed for a Planning and Design phase of 18 months, followed by a construction period of 12 months. Based on this schedule, the opening of the Park would have been 30 months from the time that Park notice to proceed was issued to Gehry Partners. If this were to have been done on May 1, 2009, then the proposed opening date would have been around November 2011.

If a decision is made to proceed with an alternative design professional to Gehry Partners, then the timeline would be directly affected by the amount of time needed for the selection process. Assuming that an alternative design professional can be selected by July 15th, in accordance with the process outlined above, then Planning and Design efforts may commence by August 1, 2009. The projected Planning and Design period is 12 months, followed by a 12 month construction period. Under this scenario, assuming authorization to proceed is granted by August 1, 2009, the projected opening date for the Park would be September 2011.

In any event, depending upon the quality of the design professional, it may be possible to shorten both the design and construction timelines; however, staff is not prepared to adjust these timelines until a design professional is selected.

April 14, 2009 Finance and Citywide Projects Committee Meeting Update

During the April 14, 2009, Finance and Citywide Projects Committee Meeting, Neisen Kasdin, speaking on behalf of Ambassador Paul Cejas, confirmed that 420 Lincoln Road Associates is in fact proceeding with construction of a parking garage facility, which would satisfy NWS' parking requirements in accordance with the Parking Covenant between NWS, 420 Lincoln Road Associates and the City. Plans for the garage are scheduled to be reviewed by the Planning Board in May and by the Design Review Board in June. In consideration of this announcement, NWS asked the Committee to reconsider Commissioner Weithorn's motion made during the March 18 Commission Meeting to withhold funds from the Grant-in-Aid subject to satisfaction of its parking requirements. Commissioner Weithorn agreed to reconsider this motion subject to certain milestones being put into place that would provide the necessary assurances that the garage will be built and to the extent that it doesn't, that the NWS be required to pay for its parking requirement upon expiration of the Parking License Agreement.

The Committee also addressed certain concerns that were raised regarding elimination of the Key-Man provision and discussed the possibility of retaining Gehry to develop the conceptual design for the Park and then entering into a separate design-build contract to complete the project, similar to the arrangement involving the Pennsylvania Avenue Parking Garage. Mr. Howard Herring, NWS Executive Director, stated to the Finance Committee that he spoke with Gehry Partners and that Gehry has indicated it will consider this type of an arrangement. Consequently, NWS was asked to meet with Gehry to negotiate a new fee based on this reduction in scope. Once proposals are received in connection with the RFQ process in May, a determination would be made as to whether to proceed with Gehry or with the RFP process for a new design consultant for the Park. In addition, the Committee recommended exploring the possibility of eliminating a floor of covered parking from Pennsylvania Avenue Garage as well as eliminating one of the two central elevators, as a way to put more money back into the Park Project. In order not to compromise the critical path schedule for the Garage, it was recommended to address these options in the form of deductive alternates that could be implemented after execution of the GMP contract. The additive alternate included in the First Reading of the proposed Addendum, potentially adding the stainless steel mesh and LED lighting on the east elevation, remains a part of the GMP Contract.

Lastly, the Committee recommended by a vote of 2 to 1 to adopt the Final Garage Budget that was approved during First Reading of the Second Addendum on March 18, 2009, and to include the above referenced options involving elimination of one level of parking and an elevator as deductive alternates , the amounts of which are to be determined.

On April 17, 2009, the City received correspondence from Howard Herring advising that Gehry Partners has chosen not to undertake the design of the Park, but would be willing to volunteer its time to review plans prepared by a design consultant selected through NWS's RFQ/RFP process, and make recommendations to ensure that the Park is designed as close as possible to Gerhy's original vision within the limitations of the Budget. A copy of this correspondence is included as Attachment 6 to this Memorandum.

Proposed Second Addendum to the Development Agreement

In summary, the proposed Second Addendum has been revised to reflect the recommendations made during First Reading on March 18, 2009, as well as during the Finance and Citywide Projects Committee Meeting on April 14, 2009, which specifically provide for :

1) A Final Garage Budget in the amount of $17,085,000, with two deductive alternates, the amounts of which are to be determined, involving elimination of one floor of covered parking and the other to remove one of two elevators in the middle of the Garage; and two additive alternates to add the stainless steel mesh and LED lighting to the east elevation;

2) A Design-To Park Budget in the amount of $13,085,000;

3) Defines "Garage" as having approximately 535 parking spaces, but no less than 520 parking spaces;

4) Notwithstanding the approval of the Final Garage Budget, the City Commission shall retain the authority and final approval over whether to a) reduce the size of the Garage by removing one floor of covered parking and/or b) removing one of

the two elevators in the middle of the Garage which are intended to primarily service the NWS's patrons and guests; and/or c) adding the stainless steel mesh and LED lighting to the east elevation, once the Park Budget is better defined; and

5) The balance of funding to be transferred from the Design-to Park Budget to the Final Garage Budget, in the amount of $1,875,000, shall not occur prior to October 1, 2009; and any amounts remaining unspent upon final completion of the Garage Project shall be transferred to the Park Project to be utilized at the sole discretion of the City Commission.

Conclusion

As noted, further delay in approval of the Second Addendum would be detrimental to the critical path for the Garage, since it would not only delay construction of the new electrical vaults, but will also likely prevent NWS from being able to meet its parking requirement in time for completion of the Campus Expansion, which in turn would delay its CO.

JMG:TH:KOB

Attachments
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Attachment 1

Second Reading 4-22-09

SECOND ADDENDUM TO DEVELOPMENT AGREEMENT

THIS SECOND ADDENDUM TO DEVELOPMENT AGREEMENT is made as of this _____ day of _____, 2009 (this "Second Addendum") by and between the CITY OF MIAMI BEACH, FLORIDA ("Owner" or "City"), a municipal corporation duly organized and existing under the laws of the State of Florida, and NEW WORLD SYMPHONY, Inc. a not-for-profit Florida corporation ("Developer") (the Owner and Developer, each a "Party" and collectively, the "Parties").

RECITALS:

A. Owner and Developer entered into an Agreement of Lease ("Lease") dated as of January 5, 2004, pursuant to which Owner leased to Developer certain real property described in Exhibit "A" to said Lease (the "Land").

B. Concurrently therewith, Owner and Developer also entered into a Development Agreement ("Development Agreement") dated as of January 5, 2004, setting forth, among other things, the Owner's and Developer's respective responsibilities and agreement to coordinate and cooperate in the planning, scheduling and approval of the development, design and construction of an automobile parking garage (the "Garage") to be located on land adjacent to the Land, and a performance, educational and internet broadcast facility, together with certain related amenities, facilities and other infrastructure improvements on the Land ("Developer's Improvements"), as set forth in the Development Agreement.

C. On February 20, 2007, Owner and Developer entered into a First Addendum to Development Agreement ("First Addendum"), further clarifying the parties' respective obligations (including processes, scopes for implementation, and estimated costs and budgets) for the Garage and Developer's Improvements, and also pertaining to certain Additional Improvements and Infrastructure Improvements, and the design, development, and construction of the Park (collectively, for purposes of these Recitals, the "Project").

D. On January 23, 2008, Developer commenced construction of Developer's Improvements. Notwithstanding the preceding, subsequent to the execution of the Lease, Development Agreement and First Addendum, and commencement of construction, and given the current fiscal/financial realities affecting the U.S. and global economies, the Parties now wish to enter into this Second Addendum, further clarifying and memorializing their agreements regarding the ongoing development of the Project (including, without limitation, the Garage and Park components).

NOW THEREFORE, it is hereby mutually covenanted and agreed by and between the Parties hereto that this Second Addendum is made in consideration of the terms, covenants and conditions hereinafter set forth.

1. Capitalized Terms; Recitals. All capitalized terms not defined herein shall have the meanings given to them in the Development Agreement, as amended by the First Addendum. Hereafter, all references to the Development Agreement shall mean the Development

Agreement, as modified and augmented by the First Addendum and this Second Addendum, unless the context indicates otherwise. The Recitals are incorporated herein by reference.

2. Additional and Revised Definitions. The following definitions, as initially set forth in the Development Agreement or as may have been subsequently added or amended pursuant to the First Addendum are amended as follows:

(a) "Design-to Park Project Budget" means the preliminary total costs budgeted by the City for the Park Project, which is the preliminary estimate of costs, including estimated hard and soft construction costs, anticipated as of the date hereof, to be incurred in connection with the design, development and construction of the Park Project. As of the date hereof, the parties acknowledge and agree that the City has budgeted an amount not to exceed ~~$13,810,000~~ $13,085,000 for Zones 3.1, 3.2 and 3.3, ~~and an additional $1,150,000 for Zone 3.4~~, for a total of ~~$14,960,000~~ $13,085,000, for the entire Park Project.

(b) "Garage" means the public municipal parking garage comprising Zone 1.1 to be designed, developed and constructed by Developer for Owner and funded as set forth in Section 13 of the First Addendum (as amended hereto), and operated by Owner at its sole cost and expense on City-owned property adjacent to the Land, legally described in Exhibit "C." It is anticipated that the Garage will maximize public parking and minimize any net loss of public parking within Zone 1.1 and will have approximately 535 (but no less than 520) spaces; ~~have~~ six (6) stories, including five (5) stories of covered parking plus open rooftop parking (subject to the City's option to remove a story of covered parking pursuant to Section 4 (b)(ii)(a) hereof); two (2) FPL vaults; four (4) elevators (subject to the City's option to remove an elevator pursuant to Section 4 (b)(ii)(b) hereof) a pedestrian bridge to Developer's Project; and ground-floor retail space along 17th Street and Pennsylvania Avenue. Owner shall be responsible for operation and management of the Garage, including the leasing and management operations of the retail portion of the Garage.

(c) "Preliminary Park Project Budget" means the total cost budgeted by the City for the Park Project, as mutually agreed to by the Parties and as shall be approved by the City Commission concurrently with the approval of the Park Project Concept Plan (pursuant to the provisions of Section 10 and Exhibit "D" of the First Addendum, as amended hereto), which is the preliminary estimate of costs, including estimated hard and soft construction costs, anticipated as of the date thereof to be incurred in connection with the design, development and construction of the Park Project, including the sound system. The Parties acknowledge and agree that the Preliminary Park Project Budget shall be established in accordance with the dollar amounts set forth in the "Design to" Park Project Budget, in the amount of ~~$14,960,000~~ $13,085,000.

(d) All reference (s) in the Agreement to "Zone 3.4" (as said term is defined in the First Addendum) is hereby deleted. Accordingly, the area encompassing Zone 3.4, and any improvements to be designed, developed and constructed thereon, shall not be part of the Park Project or Park Project Zone, and the budgeted amount allocated to Zone 3.4 in the Design-to Park Project Budget (or $1,150,000), as defined in the First Addendum, has been allocated to the Park Project Budget for Zones 3.1, 3.2 and 3.3 (which shall hereafter consist of the Park Project Zone).

3. Amendment or Replacement of Certain Sections of Development Agreement.

The following section or subsections in the Development Agreement or the First Addendum, as noted respectively below, are amended as follows:

(a) Section 23.2.1 of the Development Agreement is deleted in its entirety and replaced with the following:

> Developer shall design and construct the Garage (as set forth in the Development Agreement), at Owner's cost and expense, and as further set forth and subject to the provisions of the Development Agreement. The Parties acknowledge that the timing of construction and completion of the Garage is critical; therefore, Developer agrees to, and shall, as expeditiously as reasonably possible, obtain Substantial Completion of the Garage prior to completion of Developer's Improvements.

~~(b) Section 26.20 of the Development Agreement ("Key Man" Clause), shall not be deemed to include Gehry Partners, LLC as the Architectural Consultant (as said term is defined in the Development Agreement) for the Park Project. Accordingly, to the extent that there is any other reference in the Development Agreement, or any exhibits thereto, to the Architectural Consultant in relation to the design, development, and construction of the Park Project (but **only** as to the Park Project), then such reference shall not be interpreted as referring to Gehry Partners, LLC but, rather, shall refer to the successor architect/engineering (A/E) firm selected by NWS, and approved by the City, for the Park Project.~~

~~(c) (i) In accordance with Section 3(b) above, Section 9 of the First Addendum ("Park Project Design") shall also be amended to delete the reference to Gehry Partners, LLC, as the architectural consultant for the Park Project, and the use of the defined term "Architectural Consultant" in Section 9 (as well as in any other section of the First Addendum, and/or exhibits thereto) referring to, or intending to refer to, the Architectural Consultant, in relation to the Park Project **only**, shall be deemed to refer to the successor A/E firm selected by Developer, and approved by the City, for the Park Project.~~

~~(ii) The first sentence of Section 9(b) of the First Addendum is deleted.~~

4. Garage Costs.

(a) The amount for the Garage Costs, as set forth in Section 5(a)(i) of the First Addendum, is hereby amended from $15,210,135, to $17,085,000.

(b) The City and Developer hereby mutually agree upon, and the City Commission hereby approves, the Final Garage Budget, in the amount of $17,085,000; such approval by the City is further subject to, and contingent upon, the following conditions:

(i) The approval of the Final Garage Budget contemplates the design, development, and construction of the Garage, as said term is defined in this Second Addendum;

(ii) Notwithstanding the City's approval of the Final Garage Budget, the City Commission shall retain authority and final approval over whether to a) reduce the size of the Garage (as defined in this Second Addendum) by removing one (1) floor of covered parking; and/or b) removing one (1) of the two (2) elevators in the middle of the Garage (on the east side). Accordingly, the GMP Contract for the Garage shall contain Deductive Alternate options for each of these changes and, in the event the City Commission exercises either (or both) options (a) and (b), the Final Garage Budget and the Garage Costs shall be adjusted and reduced accordingly;

(iii) At the City's sole cost, and subject to the approval of Gehry Partners, LLC, the City Commission shall retain authority and final approval over whether to add certain proposed "architectural treatments", to the east façade of the Garage including, without limitation, the stainless steel mesh and LED lighting. The City Commission shall review, consider, and approve or disapprove, the inclusion of aforestated treatments concurrent with its review of the Park Project Concept Plan; ~~and~~

~~(iii) The approved Final Garage Budget, as set forth in this Second Addendum, shall not include the cost for the two (2) elevators in the middle of the Garage (on the east side) which will primarily service NWS's patrons and guests. These elevators shall be designed, developed and constructed at NWS's sole cost and expense.~~

(iv) Section 13 (c) (iii) of the First Addendum shall remain in full force and effect and Developer shall not obligate any amount in excess of $15,210,135 for the design, development and construction of the Garage, prior to October 1, 2009, with the balance of the funding in the amount of $1,875,000, available after October 1, 2009.

5. Section 14 of the First Addendum (entitled "Substantial Completion; Final Completion") is amended to include the following new subsection (h):

(h) Any amounts remaining unspent upon Final Completion of the Garage Project shall be transferred to the Park Project to be utilized at the sole discretion of the City Commission.

6. Miscellaneous.

(a) Counterparts. To facilitate execution, the Parties hereto agree that this Second Addendum may be executed in counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each Party, or that the signatures of all persons required to bind any Party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each Party, or that the signatures of the persons required to bind any Party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single Second Addendum.

(b) References. All references in the Development Agreement (or the First Addendum) to the "Agreement" shall hereafter mean and refer to the Development Agreement, as amended by the First Addendum and this Second Addendum. If there is a contradiction between the terms of the Development Agreement, the First Addendum, and this Second Addendum, then the terms of this Second Addendum shall control. Facsimile signatures appearing hereon shall be deemed an original.

(c) Effect of Second Addendum. Except as modified herein, the Development Agreement remains in full force and effect. In the event of any conflict or ambiguity between the Development Agreement, the First Addendum, and this Second Addendum, this Second Addendum shall control.

EXECUTION BY OWNER

IN WITNESS WHEREOF, Owner and Developer intending to be legally bound have executed this Second Addendum to Development Agreement as of the day and year first above written.

WITNESSES:

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

_____

Print Name:_____

By:_____

_____

Print Name:_____

ATTEST:

By:_____[SEAL]

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/17/09 Date

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

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

My commission expires:

_____
Notary Public, State of Florida
Print Name:_____

EXECUTION BY DEVELOPER

WITNESSES:

THE NEW WORLD SYMPHONY, a not-for-profit Florida corporation

_____
Print Name:_____

By:_____
Howard Herring, President and CEO

_____
Print Name:_____

ATTEST:

By:_____
_____, Secretary

[CORPORATE SEAL]

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

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by Howard Herring, as President and CEO, and _____, as Secretary, of THE NEW WORLD SYMPHONY, a not-for-profit Florida corporation, on behalf of such corporation. They are personally known to me or produced valid Florida driver's licenses as identification.

My commission expires:

_____
Notary Public, State of Florida
Print Name:_____

List of Exhibits

Exhibit "A" Legal Description of Land

Exhibit "B" Article 1 – Definitions from Original Development Agreement

Exhibit "C" Legal Description of Garage Property

Exhibit "D" Procedure for Obtaining Park Project Approval

Second Reading 4-22-09

Exhibit "A"

Legal Description of Land

(To be submitted)

Exhibit "B"

Article 1 – Definition from Original Development Agreement

ARTICLE 1

DEFINITIONS

All capitalized terms used herein and not specifically defined herein shall have the meanings ascribed thereto in the "Ground Lease" (defined below). For all purposes of this Agreement the terms defined in this Article 1 shall have the following meanings and the other provisions of this Article 1 shall apply:

"Accounting Principles" shall have the meaning provided in the Ground Lease.

"Adjacent Property" means the parcel of land owned by Owner immediately adjacent to the Land, which shall be legally described in Exhibit B, and attached hereto and made a part hereof, to be identified upon approval of the Project Concept Plan by the Mayor and City Commission.

"Architect" means a person or firm licensed to operate as an architect in Miami-Dade County, Florida.

"Architectural Consultant" shall mean the firm of Gehry Partners, LLP.

"Building Permit" means a "Full Building Permit" as such term is defined in the Land Development Regulations, issued by the Building Department of the City, which allows building or structures to be erected, constructed, altered, moved, converted, extended, enlarged, or used, for any purpose, in conformity with applicable codes and ordinances.

"Building Equipment" has the meaning provided in the Ground Lease.

"Business Day" or "business day" means a day other than Saturday, Sunday or a day on which banking institutions in the State of Florida are authorized or obligated by law or executive order to be closed.

"Certificate of Occupancy" means the document by that name that is required prior to the occupancy of any premises by Section 307.1 of the South Florida Building Code as amended from time to time; provided, however, that such definition shall not apply to a temporary certificate of occupancy if issued only for a period not to exceed twelve (12) months prior to the Project receiving a final Certificate of Occupancy. Such term shall include both a temporary

certificate of occupancy ("TCO") and a final certificate of occupancy ("Final CO"), as the context may require.

"City" means the City of Miami Beach, Florida, a municipal corporation duly organized and existing under the laws of the State of Florida.

"City Code" means the Code of the City of Miami Beach, Florida, as amended through the date hereof.

"City Commission" means the Mayor and City Commission of the City of Miami Beach, Florida the governing body of the City, or any successor commission, board or body in which the general legislative power of the City shall be vested.

"City Manager" means the chief administrative officer of the City, or his or her designee.

"City Hall Parking Expansion" means the expansion by Owner, at its sole cost and expense, of the existing City-owned parking facility located behind City Hall ("Expansion Property") from its current parking capacity to approximately 450-600 parking spaces.

"Commence Construction" or "Commencement of Construction" means the commencement of major work (such as pilings or foundations) for construction of the Improvements in accordance with the Plans and Specifications to be performed in connection with Construction of the Project. Promptly after Commencement of Construction, Owner and Developer shall enter into an agreement acknowledging the date of Commencement of Construction. Any and all preliminary site work (including, without limitation, any environmental remediation and ancillary demolition) shall not be deemed to be Commencement of Construction.

"Commencement Date" shall mean the date this Agreement and the Ground Lease commence, which shall be the date of execution of this Agreement, and upon satisfaction of the requirements of Section 26.18 herein.

"Completion Deadline" means the date that is ten (10) years from the Commencement Date.

"Comprehensive Plan" means the Comprehensive Plan which the City adopted and implemented for the redevelopment and continuing development of the City pursuant to Chapter 163, Part II, Florida Statutes.

"Concurrency Requirements" has the meaning provided in Section 2.5(b).

"Consenting Party" has the meaning provided in Section 20.2(c)(i).

"Construction" or "Construction of the Project" means the construction of Developer's Improvements on the Land, and construction of the Garage on the Garage Property.

"Construction Agreement(s)" means, collectively, any general contractor's agreement, architect's agreement, engineers' agreements, or any other agreements for the provision of labor, materials or supplies entered into with respect to the Construction of the Project, as the same may be amended or otherwise modified from time to time.

"Construction Commencement Date" has the meaning provided in Section 2.8.

"Construction Work" means any construction work performed under any provision of this Agreement and/or the Construction Agreements with respect to the Construction of the Project.

"Contractor" means any contractor, subcontractor, supplier, vendor or materialman supplying services or goods in connection with the Construction of the Project.

"CPM" has the meaning provided in Section 4.2(b).

"CPM Schedule" has the meaning provided in Section 4.2(b).

"Default" means any condition or event, or failure of any condition or event to occur, which constitutes, or would after the giving of notice and lapse of time (in accordance with the terms of this Agreement) constitute, an Event of Default.

"Default Date" has the meaning provided in Section 2.7.

"Default Notice" has the meaning provided in Section 19.1(b).

"Design Review Board" or "DRB" means the Design Review Board of the City created and established pursuant to the Land Development Regulations, or any board or body which may succeed to its function.

"Detailed Plans" has the meaning provided in Section 4.2(a)(iv)(2).

"Developer" means The New World Symphony, a not-for-profit Florida corporation.

"Developer's Improvements" means the SoundSpace facility and related improvements to be constructed or supplied by Developer, including but not limited to all buildings or structures (including footings and foundations), the Screen, as defined in the Ground Lease, Building Equipment, infrastructure improvements and other improvements and appurtenances of every kind and description now existing or hereafter erected, constructed, or placed upon the Land (whether temporary or permanent), and any and all alterations and replacements thereof, additions thereto and substitutions therefore.

"Development Agreement" (or this "Agreement") means collectively, this Development Agreement and all exhibits and attachments hereto, as any of the same may hereafter be supplemented, amended, restated, severed, consolidated, extended, revised and otherwise modified, from time to time, either in accordance with the terms of this Agreement or by mutual agreement of the parties.

"Development Agreement Act" means the Florida Local Government Development Agreement Act, Section 163.3220, et. Seq., Florida Statutes (1998).

"Development Approval" includes any final non-appealable zoning, rezoning, conditional use special exception, variance or subdivision approval, concurrency approval under Section 163.3180, Florida Statutes, or any other official action of local government having the effect of approving development of land.

"Development Arbitrator" shall have the meaning provided in Section 22.1(j).

"Development Dispute" has the meaning provided in Section 3.5.

"Development Site" means the real property and air rights, if any, described collectively in Exhibits A, B, and C, attached hereto and made a part hereof, and as illustrated in the preliminary Master Plan in Exhibit D, attached hereto and made a part hereof. The preliminary Master Plan shall be replaced by the Project Concept Plan, upon approval of same by the City Commission, pursuant to Section 2.2 herein.

"Event of Default" has the meaning provided in Section 19.1.

"Fees" has the meaning provided in Section 6.2(a).

"Floor Area" means the floor area of any development (measured in square feet), as defined in, and measured in accordance with, the Land Development Regulations.

"Garage" means the public municipal parking garage to be constructed by Developer for Owner and funded as set forth in Section 23.2.2 hereof, and operated by Owner at its sole cost and expense on City-owned property adjacent to the Land ("Garage Property"), legally described in Exhibit C, which Garage shall contain approximately three hundred twenty (320) parking spaces and which shall be available as a public municipal parking facility subject to the terms and conditions of this Agreement.

"Garage Construction Costs" means all hard and soft construction costs incurred in connection with the development and Construction of the Garage.

"General Contractor" means the general contractor for the Construction of the Project pursuant to a construction contract to be entered into by Developer and such general contractor.

"Governmental Authority or Authorities" means the United States of America, the State of Florida, Miami-Dade County, the City (in its governmental as opposed to proprietary capacity) and any agency, department, commission, board, bureau, instrumentality or political subdivision (including any county or district) of any of the foregoing, now existing or hereafter created, having jurisdiction over Developer or any owner, tenant or other occupant of, or over or under the Project Site or any portion thereof or any street, road, avenue or sidewalk comprising apart of, or in front of, the Project Site, or any vault in or under the Project Site, or airspace over the Project Site.

"Ground Lease" means that certain Agreement of Lease between Owner and Developer dated as of the date hereof, pursuant to which Developer (as tenant) has agreed to lease the Land from Owner (as Landlord).

"Hearing" has the meaning provided in Section 22.1(b).

"Infrastructure Improvements" means work to be done by Owner at its sole cost and expense as a condition of Developer's obligation hereunder to construct the Developer's Improvements. Owner shall only be responsible for Infrastructure Improvements as may be agreed upon and approved by the City Commission in connection with Developer's obligations to construct the Project and the Owner's obligations to construct and operate the City Hall Parking Expansion.

"Institutional Lender" has the meaning provided in the Ground Lease.

"Land" means the real property and air rights, if any, described in Exhibit A attached hereto and incorporated by reference herein, and subject to the provisions of Section 2.1(a) in the Ground Lease.

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

"Loan Documents" means, collectively, any loan agreement, promissory note, mortgage, guaranty or other document evidencing or securing a loan secured by, among other collateral, Developer's interest in the Ground Lease or the Project.

"Mortgage" has the meaning provided in the Ground Lease.

"Mortgagee" means the holder of a Mortgage.

"Notice" has the meaning provided in Section 20.1(a).

"Notice of Failure to Cure" has the meaning provided in Section 10.1(a).

"Operating Equipment" has the meaning provided in the Ground Lease.

"Owner" means the City, acting in its proprietary capacity, and any assignee or transferee of the City of the entire Owner's Interest in the Premises, from and after the date of the assignment or transfer pursuant to which the entire Owner's Interest in the Premises was assigned or transferred to such assignee or transferee.

"Owner's Consultant" means such Person as Owner may designate in writing to Developer from time to time.

"Owner's Interest in the Premises" has the meaning provided in the Ground Lease.

"Payment and Performance Bond" has the meaning provided in Section 2. 7(f).

"Permits and Approvals" shall mean any and all permits and final non-appealable approvals required to be issued by the City—its applicable boards, and Governmental Authorities in connection with the Construction of the Project, including, without limitation, the City of Miami Beach building permits, the final non-appealable approvals of the City of Miami Beach Planning Board, Design Review Board, as applicable, the Miami-Dade County Department of Environmental Resources Management permits, the Florida Department of Environmental Protection coastal construction permit, and any utility access agreements with all applicable utility companies.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, estate, trust, unincorporated association or other entity; any Federal, state, county or municipal government or any bureau, department, political subdivision or agency thereof, and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Planning Board" means the Planning Board of the City or any board or body which may succeed to its functions.

"Plans and Specifications" means the final plans and specifications for the Project, including, foundation, structural, electrical, plumbing and HVAC plans, the finish schedule, the Project program, and such other plans and specifications customarily required to obtain a Building Permit, each as established in accordance with Article 3, as the same may be modified from time to time in accordance with the provisions of Section 3.1.

"Possession Date" has the meaning provided in the Ground Lease.

"Preliminary Plans and Specifications" has the meaning provided in Section 2.4(a) of this Development Agreement.

"Premises" means Developer's Improvements and the Land.

"Project" means Developer's Improvements and the Garage.

"Project Opening Date" has the meaning provided in the Ground Lease.

"Project Site" means the Land and the Garage Property.

"Recognized Mortgage" has the meaning provided in the Ground Lease.

"Recognized Mortgagee" means the holder of a Recognized Mortgage.

"Requirements" has the meaning provided in Article 13.

"Substantial Completion" or "Substantially Complete" or "Substantially Completed" means, with respect to the Project, that (1) it shall have been substantially completed in accordance with the Plans and Specifications, (2) the certificate of the Architect described in Section 2.8(c)(i) shall have been obtained, and (3) all of the Improvements therein shall have been issued Certificates of Occupancy.

"Term" means the period commencing on the Effective Date of the Development Agreement and, unless sooner terminated as provided hereunder, expiring on the issuance of a Final CO and the completion of all remaining punch list items with respect to completion of the Project in accordance with the terms of this Agreement, subject, however, to survival of any provisions of this Agreement that are expressly stated herein to survive such expiration or termination (as the case may be).

"Unavoidable Delays" means delays due to strikes, slowdowns, lockouts, acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, catastrophic weather conditions, eminent domain, a court order which actually causes a delay (unless resulting from disputes between or among the party alleging an Unavoidable Delay, present or former employees, officers, members, partners or shareholders of such alleging party or Affiliates (or present or former employees, officers, partners, members or shareholders of such Affiliates) of such alleging party), the application of any Requirement, or another cause beyond such party's control or which, if susceptible to control by such party, shall be beyond the reasonable control of such party. Such party shall notify the other party not later than twenty (20) days after such party knows of the occurrence of an Unavoidable Delay. Failure to provide timely notice, as set forth herein, shall be deemed a waiver by the party alleging an Unavoidable Delay. In no event shall (i) any party's financial condition or inability to fund or obtain funding or financing constitute an "Unavoidable Delay" (except for an Institutional Lender's inability to fund, which inability is not caused by Developer) with respect to such party and (ii) any delay arising from a party's (or its Affiliate's) default under this Development Agreement or any of the Construction Agreements constitute an "Unavoidable Delay" with respect to such party's obligations hereunder. The times for performance set forth in this Development Agreement (other than for monetary obligations of a party) shall be extended to the extent performance is

delayed by Unavoidable Delay, except as otherwise expressly set forth in this Development Agreement.

Exhibit "C"

Legal Description of Garage Property

(To be submitted)

Exhibit "D"

Procedure for Obtaining Park Project Approval

THE PROGRAM – Park Project Concept Plan

1) Visioning Session

Developer, Owner and Architectural Consultant shall meet in a Visioning Session on a mutually agreeable date following the approval of this Amendment. Such Visioning Session shall clarify the project goals and prepare the Developer, Owner and Architectural Consultant for the Community Design Workshops. Issues to be discussed shall include, but will not be limited to, the Park layout and siting, streetscape improvements, infrastructure improvements and landscape improvements and other appurtenances proposed upon the Project Site. The budget and schedule for the Park shall be discussed at this meeting. The Architectural Consultant shall present its initial concept for the Park Project at this Visioning Session and shall document comments and conclusions of the proceedings of this meeting.

2) Preparation of the Design Concept

Developer shall be solely responsible for the execution of the design of the Project, and such design shall be substantially in accordance with the Comprehensive Plan and the decisions reached at the Visioning Session. The design and construction of Project shall be at the sole cost and expense of the Owner. After the Owner, Developer and Architectural Consultant have agreed on the project goals as established during the Visioning session the Architectural Consultant shall develop the Design Concept. The Architectural Consultant shall submit the Design Concept to the Owner for review and approval within one hundred twenty (120) Calendar Days following the Visioning session. The Design Concept shall include, but not be limited to, a detailed site plan, concepts for public spaces, performance venues, landscape concept drawings and preliminary utility, drainage, sewer and water plans (the "Design Concept").

The Owner, Developer and Architectural Consultant shall consult together as often as necessary during the one hundred twenty (120) Calendar Day Design Concept preparation period. The Owner, Developer and Architectural Consultant shall meet to review and agree upon the Design Concept within thirty (30) Calendar Days from the Developer's delivery of the Design Concept to the Owner. At this time the Owner, Developer and Architectural Consultant shall discuss any concerns related to project scope, schedule and budget prior to Community Design Workshop Number 1. If Owner unreasonably disapproves the Design Concept and if the Design Concept is consistent with the goals established in the Visioning Session, then the Developer shall cause the Architectural Consultant to prepare a modification to the Design Concept to meet Owner's objections and all costs associated with such modification shall be at Owner's sole expense. This approval shall be completed by the City Manager and shall constitute the Approved Preliminary Design.

3) Community Design Workshop Number 1

The intent of the Community Design Workshops (CDWs) is to provide the Architectural Consultant the opportunity to present the Approved Preliminary Design to the community for the purpose of achieving general consensus with the residents. A total of two CDWs shall be conducted for this Project. The Owner shall organize and host the CDW Number 1 within thirty (30) Calendar Days following the Approved Preliminary Design. The Architectural Consultant shall prepare all meeting materials for the presentation at the workshops. The first CDW is intended to provide community residents with a review of the proposed scope and budget for the Project. The Architectural Consultant shall prepare large scale presentation graphics illustrating existing conditions and the proposed improvements as documented in the Approved Preliminary Design. The Developer shall also prepare a budget level of cost estimates for presentation at this CDW. Applicable City staff shall also attend this CDW and shall assist the Architectural Consultant and the Developer with responses to resident questions. The Architectural Consultant shall document the proceedings of the CDW Number 1 and shall note reasonable design revision requests from residents for review and possible incorporation into the Approved Preliminary Design.

4) Post Community Design Workshop Number 1 Meeting

Within twenty-one (21) Calendar Days following the Community Design Workshop Number 1 the Owner, Developer and Architectural Consultant shall meet to review the resident comments and revision requests. An agreed upon list of revisions shall be developed by the Owner, Developer and Architectural Consultant and shall be documented by the Architectural Consultant. The Architectural Consultant shall revise the Approved Preliminary Design consistent with the agreed upon list of revisions (the "Revised Preliminary Design") within thirty (30) Calendar Days of the Post CDW Number 1 Meeting.

5) Community Design Workshop Number 2

The Owner shall organize and host the CDW Number 2 within thirty (30) Calendar Days following the completion of the Revised Preliminary Design. The Owner, Developer and Architectural Consultant shall prepare for and participate in a second CDW to present community residents with the Revised Preliminary Design, the budget and a schedule for the Project. The Architectural Consultant shall have met with the appropriate City representatives and appropriate staff to ensure that the agreed upon comments and recommended revisions by the residents at the CDW Number 1 had been addressed in the Revised Preliminary Design. The Architectural Consultant shall prepare large scale presentation graphics illustrating the proposed improvements as documented in the Revised Preliminary Design. The Developer shall also prepare an updated budget level of cost estimates for presentation at this CDW. Applicable City staff shall also attend this CDW and shall assist the Architectural Consultant and the Developer

with responses to resident questions. The Architectural Consultant and the Owner shall note that the design presented during this CDW are considered "near final" and it is the Owner's intent to consider only minor design revision requests from the residents for review and possible incorporation into the design. The Architectural Consultant shall note reasonable design revision requests from residents for review and incorporation into the Revised Preliminary Design.

6) Post Community Design Workshop Number 2 Meeting

Within twenty-one (21) Calendar Days following the Community Design Workshop Number 2 the City Manager, Developer and Architectural Consultant shall meet to review the resident comments and revision requests. An agreed upon list of revisions, if any, shall be developed by the City Manager, Developer and Architectural Consultant and shall be documented by the Architectural Consultant. The Architectural Consultant shall revise the Revised Preliminary Design to be consistent with the revisions, if any, developed in the Post CDW Number 2 Meeting (the "Final Preliminary Design") within thirty (30) Calendar Days of the Post CDW Number 2 Meeting. This Final Preliminary Design shall be the basis for the design to be presented to the City Commission.

7) Preparation of the Initial Basis of Design Report (BODR)

Within forty-two (42) Calendar Days the Developer and Architectural Consultant shall submit the Initial BODR to the Owner for review and approval. The Initial BODR shall include at a minimum the following information – an executive summary describing the contents of the Initial BODR, description of existing conditions of the site, a detailed presentation describing the proposed design and all associated improvements, a project implementation plan describing the construction plan, traffic control details and surrounding area impacts, a budget for the project, an preliminary project schedule and the anticipated permitting process prepared by the Developer and/or the Architectural Consultant.

8) Owner Review of the Initial BODR

The Owner shall be responsible for distribution of all copies of the Initial BODR to all appropriate City Departments for review. Written comments shall be solicited and distributed to the Developer and Architectural Consultant by the Owner within thirty (30) Calendar Days following Developer's submission of the Initial BODR to the Owner. It is anticipated that the Owner, Developer and Architectural Consultant shall meet during the Owner's review period of the Initial BODR for clarifications and discussions. All such meetings will be initiated by the Owner to facilitate the Owner's review of the Initial BODR.

9) Preparation of the Final BODR

The Architectural Consultant shall prepare a Final BODR based upon the written comments from the Owner's review of the Initial BODR. The Architectural Consultant shall be prepared to submit the Final BODR to the Owner and the City Commission no later than thirty (30) Calendar Days following the receipt of Owner's written comments of the Initial BODR. The Owner, Developer and Architectural Consultant shall present the Final BODR to the City Commission as soon as possible following completion of the Final BODR. If the City Commission rejects the Final BODR or request modifications to the Final BODR the Architectural Consultant shall make such modifications to the Final BODR and shall resubmit the Project to the City Commission no later than thirty (30) Calendar Days following the original City Commission meeting. If the City Commission requests modifications to the Final BODR and if the Final BODR is consistent with the comments of the Owner and the agreed to comments from the CDW's then in addition to the Owner's obligation to reimburse Developer for all Park Project Design Costs as set forth in this First Addendum to Development Agreement, subparagraph 10 (c), and notwithstanding the "cap" on the Park Project Design Costs of $1,110,000 under the circumstances described therein, all costs associated with the revision, redesign and resubmission of the Final BODR shall be borne solely by the Owner and the "cap" of $1,110,000 shall not apply.

10) Preparation of the Contract Documents for the Project

The Park Project design as approved by the City Commission shall be the "Park Project Concept Plan" as described in Section 10 of this First Addendum to the Development Agreement. Upon final approval of the Final BODR by the City Commission the Developer and Architectural Consultant shall proceed immediately with the Design Review Board approval process and preparation of the construction documents as described in Section 10 of the First Addendum to the Development Agreement.

Attachment 2

Hemstreet, Tim

From: billg [billg@gatorinvestments.com]

Sent: Tuesday, March 17, 2009 11:59 AM

To: Weithorn, Deede; ed@edtobin.com; Bower, Matti H.; Libbin, Jerry; Gross, Saul; Wolfson, Jonah; vdiaz@podhurst.com; Gonzalez, Jorge; Hemstreet, Tim

Cc: neisen.kasdin@akerman.com; howard.herring@nws.edu; Swanson, Anne; Torter, Benjamin; billg; goldsmiw@bellsouth.net

Subject: FW: Recommendation - Proposed 2nd Addendum and Related Commission Approval Request - $16,798,000 Final Garage Budget AND $13,372,000 Preliminary Park Budget AND $6,400,000 Additional Improvements Budget - New World Symphony Projects - Miami Beach, Fla

Attachments: NWS 3-18-09 Commission Memo.pdf

I have reviewed the attached as well as the prior draft of the 2Nnd Addendum together with plans, specifications, prior agreements, accountings of past monies spent, contractor budgets, and unit prices I received on my own initiative.

I recommend approval of the attached subject to the following changes (all of which should be approved by both the City Manager and City Commission at every important financial step of the way):

1. $6,400,000 Infrastructure/Additional Improvements Budget

- It appears from my review with Tim Hemstreet that approx. $3,200,000 of these monies have been spent
- I recommend getting NWS to assemble a) NTE Budget within 10 days for the A/E Fees to complete the 100% Civil Plans (I would target a $50,000 to $100,000 Total Fees amount "All IN" including CD's/CA/CM/RPR b) award contract within 15 days to A/E Firm c) get A/E Consultant to assemble quantities lists and budget within 30 days for City Manager's reasonable approval and d) get Hines to list it's PM fees and estimated GC fees and e) finish a construction budget within 60 days for the City Manager and City Commission to sign off on
- Failure to do the above will likely result in another "Garage" type scenario where either the taxpayer or NWS or both can get hurt by Hines further delays and fee upon fee upon fee structure...and then be forced to proceed with Hines at "top of the market" prices due to time constraints.....for example at the Garage Project even though the $15,210,000 Original Budget for the Garage might have been achievable had we ensured strict dates were observed (Hines was late) and cost ceilings established (Hines was initially approx. $5 Million over budget) at every step of the way, we let this thing get away from us and we may have paid a premium for the same ....it is very clear to me that Hines has NOTHING TO LOSE and EVERYTHING TO GAIN by dragging their feet and running out the clocks while simultaneously sending NWS "pie in the sky" numbers....I would NOT give them that opportunity again here
- FP&L approx. $150,000 Vault Relocation costs (exclusive of Vault Room and exclusive of secondary cabling to NWS Garage) should be in infrastructure budget

2. Park Fees and Park Budget

- Removal of the TOPA Zone 3.4 Improvements is OK as long as Zone 3.4 is 100% included and funded by the County in the Covention Center Project (see paragragh #2(a) and (d) of 2nd Addendum). This intersectection at 17th and Washington is one of the most important intersections in the entire city and deserves to have significant and beautiful improvements on both corners to serve as "Bookends" as you head down what will one day be perceived as "Institutional Row".

- NWS should immediately a)submit RFP to at least 100 likely Landscape/Park Engineering Design candidates within 15 days b) agree that Hines will not get more than $25,000 TOTAL for submitting and reviewing Landscaping Design RFP...this is critically important as NWS MUST immediately get control of Hines to prevent another "Garage" type situation c) make all Landscape Engineering firms respond within 30 to 60 days d) NWS should be prepared to select a candidate within 30 days of receiving all bid proposals e) NWS should NOT obligate itself to either Hines or Facchina for any fees for the Park (if CM/CA is needed NWS could easily hire Kimley Horn or the chosen Landscape Engineer or BOTH and also avail itself of the services of Hazen Sawyer/CIP.....but all efforts should be made now to avoid unnecessary duplicitous fees, especially from Hines) e) set a "Target Budget" of $6,000,000 to $8,500,000 in the RFP (inclusive of the A/E fees which should not exceed $500,000 to $1 Million "All In" with CD's/CA/CM/RPR...this is consistant with the $8.5 M Feb 11, 2009 FCWPC Recommendation set forth in p.351 of the attached)

- Failure to follow each of the above steps will likely result in another "Garage" type scenario where Hines can run out the clocks and put the taxpayer or NWS or both in check mate....now is the time to put stringent time/budget controls on Hines BEFORE they can gain the upperhand again like they did at the Garage (see bullet point #3 in paragragh #1 above)

3. Garage Final Budget

- I agree that approx. $1,588,000 of Park monies should be re-allocated to the Garage IN ADDITION to another approx. $1 Million for the east side exterior features (see bullet point #5 of this paragragh #3 below)
- I am NOT happy as a taxpayer to see that we must spend approx. $1,588,000 over initially approved budget and get a ¾'s finished exterior building, but I think that is what we have to do today and to NOT proceed would be an even bigger mistake...
- I think the 2 elevators in the middle of the garage can be reduced to 1 without materially compromising anything...this will lower costs for NWS by approx. $125,000....I do not think that the middle elevator is just there to service NWS but rather is something that would likely be a selection by any architectural firm building a similar type building
- I am assuming staff re-allocated to the $6.4Million "Additional Improvements" budget the $150,000 FP&L costs as set forth in last bullet point of paragragh #1 above
- Another approx. $1 Million of monies from the Park Budget should be immediately re-allocated and the Gehry skin and related LED lighting feature on the east side should be included at NTE $1M (including all OH&P fees/GC fees/A&E fees and any other fees of any sort or kind). To me it seems ridiculous that we would not complete a taxpayer owned building 100% on all 4 sides after the taxpayer is spending possibly up to $51 Million of total project costs (would the NWS ever allow its main campus facility to be done on 3 sides???). This is even more upsetting after having seen that the City is prepared to re-allocate funds from the Park Budget but cannot re-allocate same now for something that immediately needs same
- I would also get NWS to get Gehry to confirm we have the right to install the skin mesh and LED now or later on the east side and that we have a license to use his plans as we see proper (I have not seen the Gehry contract so I cannot comment on exactly what must be done....but I know the City of M.B. should have control of its own destiny here)

4. Future 175 Parking Spaces by NWS

- I would require NWS to identify by 12-31-09 where it intends to find these 175 parking spaces and put target dates down now...I would not wait until Year #4 and then find out we have a problem....I would also try to tie this into something so that the TOPA Jackie Gleason theatre has more available parking so that in combination the City has better ability to utilize the TOPA facility for events and concerts that can bring more revenue into the City
- Parking is critically important and we cannot forget that just replacing the lost approx. 500 spaces is NOT enough since we have introduced a new NWS facility that will require more parking than what we previously had.....I would not rely on Mr. Cejas on this matter

5. Timing Issues and NWS Benefits to the City

-NWS and the City should move asap

- Time is of the Essence here as the FP&L Vault must be completed by this year at the latest for the NWS Main Campus Building to be energized
- Accordingly I would immediately authorize and proceed with the Garage A/E plans with a NTE $100,000/month price for A/E fees and a NTE $500,000 of A/E fees in total ....and with the understanding that the City owns all plans and design.....certainly NWS can sign a contract with KVS/Facchina to proceed contingent on Municipal Approval
- This will ensure that the NWS is NOT delayed if any of the above is still not 100% resolved on March 18, 2009 City Commission....in all events we need to continue to forge forward so the $150 Million Main Campus is not delayed with its Opening in Jan 2011 since the introduction of the NWS is certainly a great benefit for our Miami Beach Community
- In these harsh financial times when cutbacks even in the Big Five orchestras (NY, Boston, Philadelphia, Cleveland, and Chicago) are occurring (see 3-12-09 NY Times article on page C1) we must do all we can to try and preserve the arts and help our community grow culturally .....we need to be more than just night clubs and hotels and restaurants and Lincoln Road....NWS is critically important in this respect

Thanks
William Goldsmith

From: Kasdin, Neisen [mailto:neisen.kasdin@akerman.com]
Sent: Saturday, March 14, 2009 12:22 PM
To: billg
Subject: FW: Electronic Copy of Form Approved Second Addendum

here is what is going to Commission

Neisen O. Kasdin
Shareholder
Akerman Senterfitt
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From: David J. Phillips [mailto:David.Phillips@nws.edu]
Sent: Friday, March 13, 2009 5:25 PM
To: Kasdin, Neisen
Subject: Fw: Electronic Copy of Form Approved Second Addendum

Just in. I haven't read it yet.

David J. Phillips
Senior Vice President & Chief Financial Officer
New World Symphony, America's Orchestral Academy
541 Lincoln Road, Miami Beach, FL 33139
[http://www.nws.edu/map]
david.phillips@nws.edu
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mobile: 305-528-7845
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www.nws.edu

The New World Symphony, America's only full-time orchestral academy, prepares gifted graduates of prestigious music programs for successful careers in orchestras and ensembles. NWS has launched the careers of more than 630 young musicians now making a difference in the profession worldwide.

Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: De Pinedo, Naima <NaimadePinedo@miamibeachfl.gov>
To: Hemstreet, Tim <TimHemstreet@miamibeachfl.gov>; pwelles@swmwas.com <pwelles@swmwas.com>; Howard Herring; David J. Phillips
CC: Aguila, Raul <RaulAguila@miamibeachfl.gov>; Bonde, Kent <KentBonde@miamibeachfl.gov>; Baker, Milton <Milton_Baker@hines.com>; Barry, Matthew <Matthew_Barry@hines.com>; Lawrence, David <David_Lawrence@hines.com>
Sent: Fri Mar 13 17:23:37 2009
Subject: RE: Electronic Copy of Form Approved Second Addendum

P <<NWS 3-18-09 Commission Memo.pdf>> lease see the attached Commission Memo.

From: Hemstreet, Tim
Sent: Thursday, March 12, 2009 6:38 PM
To: Patricia G. Welles (pwelles@swmwas.com); New World Symphony Howard Herring; 'David J. Phillips'
Cc: Aguila, Raul; Bonde, Kent; 'Baker, Milton'; Barry, Matthew; Lawrence, David; De Pinedo, Naima
Subject: Electronic Copy of Form Approved Second Addendum

To All: I am forwarding the attached electronic copy of the Second Addendum to the Development Agreement, which has been Form Approved by the City Attorney. I will forward a copy of the City Manager's Memorandum that will accompany the proposed Addendum when it is finalized. Please let me know if there is any problems opening the attached. Tim

MIAMIBEACH
Tim Hemstreet, Assistant City Manager
OFFICE OF THE CITY MANAGER
1700 Convention Center Drive, Miami Beach, FL 33139
Tel: 305-673-7010 Fax: 305-673-7782/ www.miamibeachfl.gov <http://www.miamibeachfl.gov/>

We are committed to providing excellent public service and safety to all who live, work and play in our vibrant, tropical, historic community.

Attachment 3

STEARNS WEAVER MIL
WEISSLER ALHADEFF & SITTERSON, P.A.

Miami ▪ Ft. Lauderdale ▪ Tampa

Eugene E. Stearns
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Fax: (305) 789-2669
Email: estearns@swmwas.com

Museum Tower, Suite 2200
150 West Flagler Street
Miami, Florida 33130
(305) 789-3200

April 9, 2009

Via Email and U.S. Mail

The Honorable Matti Herrera Bower
Mayor, City of Miami Beach
City Hall
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Commissioner Jerry Libbin
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Commissioner Victor Diaz
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Commissioner Deede Weithorn
City of Miami Beach
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Commissioner Jonah Wolfson
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Commissioner Saul Gross
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Commissioner Edward L. Tobin
City of Miami Beach
1700 Convention Center Drive
Fourth Floor
Miami Beach, FL 33139

Re: The New World Symphony Campus Expansion Project

Dear Mayor Bower and Commissioners,

The New World Symphony asked us to review its written agreements with the City of Miami Beach in the wake of the City Commission meeting of March 18, 2009, to determine the relationship between those agreements and what some Commissioners said about them. Having done so, we are puzzled at the number and magnitude of the differences, and the vigor with which some Commissioners advance positions that are simply and indisputably contrary to what was reduced to writing and relied upon.

It is one thing to commit generously to worthwhile civic endeavors. It is another to tarnish a gift before its commitment is fulfilled by requiring a beneficiary to enforce its terms. That is where we fear this matter is headed.

Mutual Appreciation Led to the Binding Agreements

At the outset, NWS both recognizes and appreciates the critical role the City of Miami Beach has played in its success. Its support has been invaluable, and the quality of the Miami Beach environment has been a magnet for the best and brightest of those who have chosen a life of concert music.

It is equally important, however, to recognize the contribution NWS has made to the City of Miami Beach over the years of its existence; a contribution that led to the contractual undertakings upon which NWS and its many donors have relied. You should be proud – and we know you are – of the success of NWS, and its place in your great City. This unique cultural institution has brought honor and distinction to the City of Miami Beach, placing the City at the highest level in the world of classical music.

The New World Symphony is America's Orchestral Academy. It is the premier organization of its kind; an organization which provides top graduates of music programs throughout the United States with the opportunity to enhance their music education with the finest professional training. Led by Michael Tilson Thomas, one of the most critically-acclaimed and sought-after conductors in the world, NWS not only provides an unparalleled educational environment for aspiring young musicians, it provides as well a regular program of superb concert performances for the people of this community.

The competition to be selected to be part of NWS is fierce. Each year, NWS receives over 1000 applications from all over the world for approximately 35 fellowships. After an intensive three-year program of training – including performances that attract thousands of people and prompt routine standing ovations – NWS fellows emerge prepared to excel in the increasingly-competitive world of orchestral performance.

All told, more than 700 NWS alumni have taken their experiences in the City of Miami Beach to professional orchestras and ensembles around the world.

The great cities of the world compete for the quality of their orchestras. No city can compete with the City of Miami Beach for the quality of *this* orchestra because of its unique organization.

NWS Commits to Make the City of Miami Beach its Permanent Home

As NWS grew in reputation and stature it outgrew its modest Miami Beach facilities. A desire by the leaders of NWS to have quarters befitting its quality and a desire on the part of the City of Miami Beach to make its presence a permanent fixture of the City led to a very public process through which NWS agreed to make Miami Beach its permanent home in exchange for substantial City support, the terms of which were carefully spelled out. Among other things, the agreements dedicate valuable City land for a state of the art educational and concert hall facility, give to NWS the right to construct its facilities on that property, commit to NWS $15 million of CRA funds, obligate the City to construct a new parking garage and resolve a myriad of questions including parking and concurrency requirements.

An Architectural Achievement Commensurate with the Quality of the Symphony

Relying on the agreements reached with the City, NWS reached out to the community to support design and construction of its new facilities. Response from the community was overwhelming. Private funding commitments met every expectation. Unlike similar concert facilities around the world, the vast bulk of the funds that will be used to construct this extraordinary facility are private.

Relying on the substantial funding that had been achieved, the world class design team produced a design for the facility that will be an architectural masterpiece for the City and a stunning home for NWS. As the shell of the structure nears completion, it is apparent that the architecture will equal the quality of the building's inhabitants and the performances that will be enjoyed by audiences for many years to come.

The Existing Agreements Address and Resolve the Issues

Having ironed out the development issues years ago, it is disappointing that

some of the issues long ago resolved are now being raised again by new voices speaking for the same City that entered into the binding agreements. Indeed, the issues that arose at the recent Commission meeting are not new and are no longer debatable. They were each previously addressed and previously resolved in the binding agreements upon which NWS has relied.

- **The City's Parking Garage**

The Parking Garage is to be constructed on City land and will be owned by the City. The City will receive all of the revenue from the Garage and the retail spaces. NWS will not own the Garage, and will not enjoy any revenue it creates. Its role with respect to the Garage is solely as the City's developer.

The process to develop the Garage is spelled out in the Development Agreement. First, NWS was to present the City several garage designs compatible with the adjacent Campus Expansion, with a minimum of 320 parking spaces. From the alternatives presented, the City was to choose the design it preferred. After a preliminary design was recommended, NWS was to solicits bids to determine the actual cost to build the Garage design chosen. Finally, if the City did not like the construction cost for the chosen design, the parties were to work together to arrive at another design that the City would be willing to fund.

The proposed Second Addendum was simply a step in that established and agreed-upon process.

NWS presented the City with Garage design choices which attempted to maximize the number of spaces within the preliminarily approved budget. City boards and staff chose the design that was preferred; a design that includes six parking levels and no fewer than 520 parking spaces, ground-floor retail space, and a decorative "scrim" wrapping. Construction costs were calculated based on the City's choices. The design and budget was brought to the Commission to formalize approval and to appropriate funds to build it (or exercise the alternative described above).

Had the City made those critical decisions contained in the proposed Second Addendum, NWS would have the direction it needs from the Commission to sign a

maximum guaranteed price contract for the Garage's construction, and construction could proceed.

- **Parking Concurrency**

The binding agreements also address and resolve parking concurrency issues pertaining to the NWS facilities. NWS resolved its concurrency parking obligation for an additional 175 off-site parking spaces by entering into two contracts with the City, which the City agreed would satisfy NWS's concurrency obligations now and in the future:

1. The October 2006 Declaration of Restrictive Covenants in Lieu of Unity of Title (Parking Covenant) provides the long-term solution for meeting parking concurrency requirements by locking up sufficient parking beginning some five (5) years after the Campus Expansion is completed. The Parking Covenant obliges an adjacent property owner, 420 Lincoln Road Associates, Inc. ("420 Associates"), a company controlled by Paul Cejas, to provide 175 parking spaces to NWS, and obliges NWS to pay for their use. 420 Associates' obligation runs with title to its land.

2. The November 2007 License Agreement for Non-Exclusive Use of Parking Spaces (Parking License Agreement) provides the short-term, or interim, parking solution for the period between project completion and the date NWS can begin exercising its rights under the Parking Covenant. In this contract the City agrees for a period of five years after the project's TCO is issued to grant NWS the use of 175 parking spaces within the City's garage in exchange for payment of market rate rent for those spaces.

- **The CRA Grant of $15 million**

The Grant Agreement binds the City to contribute $15 million to NWS in connection with construction of the facility. There is no dispute that the $15 million grant is critical to the success of the Campus Expansion as the City expressly acknowledged that fact in the Grant Agreement. Indeed, since then, the financial obligations incurred in connection with the project have made the $15 million grant even more essential to successful completion of the project.

The City agreed that its obligation to disburse the grant monies is entirely separate from and in addition to its other financial obligations under the Development Agreement.

The $15 million is to be funded from CRA funds, and is included in the City's 2010 budget.

NWS will require the full $15 million early in 2010 in order to complete the project.

- **The Park**

The agreements provide that NWS will assist the City in the design and construction of a public park contemplated by the City across the street from the NWS Campus Expansion but only if the City approves a design and funds its development. The park, if it is developed, anticipates joint programming related to projection on the east façade of the New World facility. However, the park would not be owned by NWS – it would be, if developed, the City's park to be built on the City's land and to be operated by the City for the use of its residents and visitors.

If the Commission approves a design and funds its development, NWS as the City's developer would be required to cause that park to be built in accordance with the parties' contract. Again, those decisions are entirely in the City's hands.

The Desire of Some Commissioners to Ignore Existing Agreements

Notwithstanding the foregoing, the belief was expressed at the March meeting that the City can ignore its agreements and unilaterally structure new arrangements, long after the existing ones formed the basis for a host of commitments by NWS and a host of third parties who relied on the City's performance of its contractual obligations. For example, it was suggested that the City can ignore the Parking Covenant because, it was prophesied that 420 Associates will not honor its obligations under the Parking Covenant six years from now. That expectation is not only absurd on its face (no representative of 420 Associates, of course, was in front of the Commission on March 18); it would not, in any event, excuse the City's breach of its obligations long before

420 Associates' obligation matures. The City is bound to its agreement to accept the Parking Covenant as meeting NWS' future parking obligations.

The proposed new conditions, which affront the written agreements are also impossible to meet. At this late stage, after construction of the facility is long in process, it would be impossible for NWS to obtain additional off-site parking by the time the TCO is ready to be issued. What Miami Beach businessperson would be willing to agree to bind his or her property to a parking covenant with the City when the City clearly is willing to violate the existing Parking Covenant by assuming that the other parties will default six years hence?

The City's attempt to bundle its false prophecy with regard to 420 Associates' obligations in six years to its obligation to fund $15 million in CRA funds will hopefully be abandoned upon reflection. An attempt to take millions from these grant monies in anticipation of a breach long in the future would be, to say the least, a breach of contract.

The design-build process for the parking garage does not permit new city officials to unilaterally renegotiate fundamental terms of the prior written agreements relied upon by NWS and its many donors in years past. The Second Addendum as it is proposed to be amended by the Commission would, in effect, eviscerate NWS' existing contractual entitlements under the 2007 Grant-in-Aid Agreement, the 2006 Parking Covenant among the City, NWS and 420 Associates, and the 2008 Parking License Agreement between the City and NWS.

The Commission debate did not focus on the City's obligations but instead focused on what current Commissioners might have liked those obligations to be. It does not work that way. Had the current Commissioners been in office when the contracts were made and if their views in 2003, 2004 and on through the present were the views expressed on March 18, there would have been no agreements with NWS, NWS would not have solicited donors to build what is now being built, and perhaps some other city would enjoy the benefits and share the burden of this wonderful institution. NWS chose to stay in Miami Beach, however, and it committed itself to complete its enormous undertaking on the basis of the City's written promises. At this late stage of the process, it is not possible, and it is not right, to undo what has already

been done. NWS is entitled to rely upon the agreements that exist and, on behalf of itself and on behalf of the many residents of Miami Beach and the surrounding area who contributed to this undertaking, NWS must insist that the City fully perform its obligations.

We approach this matter with the resolve to enforce the binding contractual obligations undertaken by the City but with the hope that the Commission will reflect on these matters and do nothing to darken the joy that should come to the City from the fulfillment of its contractual undertakings.

Respectfully yours,

Eugene E. Stearns

cc: New World Symphony Board of Trustees
Jorge M. Gonzalez, City Manager
Jose Smith, Esquire, City Attorney

G:\W-PGW\31605 - NWS\085\Letters\NWS Ltr to Mayor & Commissioners 04.09.09.doc

CITY OF MIAMI BEACH

LINCOLN PARK

MIAMI BEACH, FLORIDA

REQUEST FOR QUALIFICATIONS

FOR

LANDSCAPE ARCHITECT – ARCHITECT OF RECORD

PREPARED BY HINES

April 3, 2009

PROPRIETARY

This RFQ is proprietary to the Developer and the Developer reserves the right to recall the RFQ in its entirety or in part.

Recipients shall not include or reference this RFQ in any publication, or other public manner, without prior written consent from the Developer.

I.	INTRODUCTION	PAGE 3
II.	LANDSCAPE ARCHITECT RESPONSIBILITIES	PAGE 3
III.	PROPOSAL REQUIREMENTS	PAGE 4
IV.	SUBMISSION REQUIREMENTS AND PROJECT CONTACT	PAGE 9
V.	PROPOSAL ACCEPTANCE	PAGE 10
VI.	OTHER	PAGE 10
	ATTACHMENTS	
	ATTACHMENT A: EVALUATION AND SELECTION PROCESS	PAGE 11
	ATTACHMENT B: SITE PLAN	PAGE 12
	ATTACHMENT C: SITE AERIAL PHOTOGRAPHS	PAGE 14
	ATTACHMENT D: MODEL PICTURES	PAGE 17
	ATTACHMENT E: REGULATORY PROCESS	PAGE 20

I. INTRODUCTION

New World Symphony has entered into an agreement with City of Miami Beach (the "City") to construct the New World Symphony Campus Expansion Project (the "Campus Expansion") in the City of Miami Beach, Florida consisting of an educational, rehearsal and performance facility including administrative offices and music practice rooms designed by Frank O. Gehry and Gehry Partners, LLP. New World Symphony through its affiliate New Campus II, LLC ("New Campus") has agreed with the City to manage the design and construction of a public park including a sound system building to house projection equipment, two projectors that will project images on the wall of the Campus Expansion building, seating areas for people to view projection, shade structures, walkways, landscaped areas, hardscaped areas, public restrooms and other amenities as defined during the design process (the "Park") on City land (the "Land") adjacent to the Campus Expansion to be owned and operated by the City (collectively, the "Project). The City is the owner of the Land and Park, New Campus will be hereafter referred to as "Developer" with respect to the work.

Developer and the City have agreed that it is important for the Park to become an integrated part of the New World Symphony Campus and create a high end urban park for the City of Miami Beach. Landscape Architect (as defined below) will review the Campus Expansion design and collaborate with Developer's Architect for Campus Expansion on the design and concepts for the Park. The Park is approximately 2.5 acres bounded by Washington Avenue on the east, Drexel Avenue on the west, Lincoln Lane on the south and 17th Street on the north and located adjacent to the Lincoln Road Mall and the Fillmore Miami Beach at the Jackie Gleason Theater and in close proximity to City Hall and the Miami Beach Convention Center. The close proximity of such diverse and important social, cultural and business activities makes the Park an important venue for the City as a gathering place for residents and visitors alike.

The Developer has retained Hines to act as the development manager ("Development Manager") on the entire New World Symphony Campus Expansion project. The Development Manager on behalf of the Developer is responsible for coordinating all aspects of the Project including design and oversight of construction administration. Major decisions regarding the scope of the Project, and critical Project team members, are vested mutually with the Developer and City and communicated through the Developer.

This Request for Qualifications (the "RFQ") is being issued for the express purpose of identifying Landscape Architects to include on a short list to receive a Request for Proposal (the "RFP") to provide Landscape Design and Architect of Record services for the Project.

Your response should be based on the requirements described herein and the Evaluation and Selection Process in Attachment A.

II. LANDSCAPE ARCHITECT RESPONSIBILITIES

The Landscape Architect will be the prime consultant on the Project and act as Architect of Record (the "Landscape Architect"). The Landscape Architect will subcontract with all design consultants including as required, but not limited to, architectural, structural, civil, mechanical, electrical, plumbing, fire protection, signage, graphics and wayfinding, lighting, security, telecommunications, audio-visual, acoustics, code consultant, geotechnical, etc. ("Consultants"). The Developer will contract for materials testing directly.

The Landscape Architect under the direction of the Developer, Development Manager, and the City and in close coordination with the other design consultants will be responsible for developing a design, coordinating all aspects of design and providing complete contract documents for the Project suitable for permitting, regulatory approval and competitive bidding. The Landscape Architect and consultants will be required to perform bid and award and construction administrative services for the Project. Landscape Architect will coordinate the design and installation of projection equipment and sound system with the Developer's audio-visual consultant Acoustic Dimensions. Contact at Acoustic Dimensions is Brian Elwell.

III. PROPOSAL REQUIREMENTS

Your Firm will be evaluated on the basis of how well your Firm, your key subconsultants, and your team's collective individual professionals meet the criteria outlined below including general and specific selection criteria. Please submit your proposal in a concise written tabulated format indexed and organized in order by the following sections:

A. Summary of Minimum Qualifications

ALL FIRMS THAT SUBMIT A PROPOSAL FOR CONSIDERATION MUST MEET THE MINIMUM QUALIFICATIONS AS PROVIDED BELOW. IF THE MINIMUM QUALIFICATIONS ARE NOT MET, THE CONSULTANT'S SUBMITTAL WILL BE REJECTED. PROPOSALS WILL BE CONSIDERED ONLY FROM CONSULTANTS THAT ARE REGULARLY ENGAGED IN THE BUSINESS OF PROVIDING THE SERVICES AS DESCRIBED IN THIS RFQ.

1. Firm's Experience: Indicate the Firm's years of experience in providing the requested professional services. Firm must have five (5) years of continuous operation under same name with professional licenses and insurance, qualifier for company name and type of licenses, DBPR Official Complaint History along with any disciplinary administrative action taken within the last five years to provide Landscape Architect services. Professional licenses and insurance in the State of Florida is preferred. If the Firm is not presently licensed as a Landscape Architect in Florida, the Firm shall state in its Proposal whether it will seek licensure in Florida for the Project, or if a sub-consultant Landscape Architecture Firm will be utilized for this purpose.

2. Qualifications of Project Team: Indicate the Team's years of experience, including all Key Subconsultants, in providing the requested professional services. Project Team must have prior experience within the past ten years with at least three (3) urban park projects including both buildings and site improvements valued at a minimum construction cost of $2,000,000. Provide resumes for key Team members, including Key subconsultants, as well as a Project Team organizational chart. It is preferred, but not necessary, for the Prime Consultant and its Key Subconsultants to have completed similar projects.

3. Principal in Charge's Experience: Provide a comprehensive summary of the experience and qualifications of the individual who will be selected to serve as the Principal in Charge. This individual must have a minimum of five (5) years' experience in the planning, design, and construction administration of municipal projects, and should have served as Principal in Charge on a minimum of three

(3) previous urban park projects including both buildings and site improvements projects valued at a minimum construction cost of $2,000,000.

4. Project Manager's Experience: Provide a comprehensive summary of the experience and qualifications of the individual who will be selected to serve as the Project Manager. This individual must have a minimum of five (5) years' experience in the planning, design, and construction administration of environmental services for municipal projects, and should have served as Project Manager on a minimum of three (3) previous urban park projects including both buildings and site improvements projects valued at a minimum construction cost of $2,000,000. . This individual must be capable of speaking and making decisions on behalf of the Firm.

5. Similar Projects:

   a. Provide a list of seven (7) similar projects on which your Firm and Key Subconsultants have been directly involved and responsible. In particular, the Developer and Development Manager would like to review similar project experience and whether on those projects the schedule and budget requirements were achieved. It is preferred, but not necessary, for the Prime Consultant and its Key Subconsultants to have completed similar projects.

   b. Provide a schedule of current and past projects of similar scope and magnitude for which your Firm has provided services and describe those services. For each project provide anticipated or proposed schedule and budget and actual schedule and budget.

   c. List all projects done directly or indirectly by your Firm and those personnel proposed for the Project with the City in the last five (5) years.

   d. Provide a summary of experience by your Firm and those personnel proposed for the Project with LEED and sustainable building design.

6. Risk Assessment Plan:

   All Consultants must submit a Risk-Assessment Plan (RAP). The RAP **must not be longer than two pages** front side of page only. The RAP must be based on: a clear understanding of project objectives; familiarity with the project site; a thorough understanding of all permitting and regulatory requirements and impacts; and other considerations that may impact the design and construction of the proposed improvements. The RAP **should be submitted in a sealed unmarked envelope** and included within the RFQ response. The Risk-Assessment Plan should address the specific items in a clear language, such as:

   (1) What risks the project has. (Areas that may cause the Consultant not to finish on time, not finish within budget, cause any change orders, or be a source of dissatisfaction with the Developer).
   (2) Explanation of consultant's plan to avoid/minimize each risk.
   (3) Propose any value-added options that could improve this project.

(4) Explain the benefits of the Risk Assessment Plan. Address the quality and performance differences in terms of risk minimization that the City can understand and what benefits the option will provide to the user. Do not provide brochures or marketing pieces.

7. Insurance:

Please indicate the amount of professional liability coverage, employer's liability insurance, commercial general liability insurance, and commercial automobile liability insurance and other insurance requirements that you are proposing to carry for this Project.

During the entire term that this Agreement shall remain in effect, the Landscape Architect and its Consultants, at each's sole cost and expense, shall obtain and maintain the following insurances:

1) Workers Compensation insurance in amounts as required by statute.

2) Employers Liability insurance in an amount not less than $1,000,000 each accident.

3) Commercial General Liability insurance on an occurrence basis in an amount of not less than $2,000,000 per occurrence combined single limit for bodily injury (including death) and property damage. Such Commercial General Liability insurance shall include, but not be limited to, the following coverages:

- Blanket contractual coverage;
- Personal and advertising injury;
- Independent contractors;
- Explosion, collapse and underground hazards (x, c, u) included.

4) Commercial Automobile liability insurance on an occurrence basis covering all hired, owned and non-owned vehicles in an amount not less than $1,000,000 each occurrence combined single limit for bodily injury (including death) and property damage.

5) Valuable Papers insurance to protect against destruction of valuable papers and records on an all-risk basis for the full replacement cost thereof.

The insurance policies required in the above sub-paragraphs 3) and 4) of this Section shall name the Developer, City of Miami Beach and the Development Manager as additional insured and shall be endorsed to be primary and non-contributory with any insurance otherwise carried by Developer or Development Manager. All insurance required hereunder a) shall be written with insurers authorized to do business in the state of Florida and rated A- IX by AM Best & Co.; b) shall provide to Developer and Development Manager 30 days advance written notice of reduction, cancellation or non-renewal and; c) shall waive all rights of subrogation against Developer and Development Manager.

B. Other Proposal Requirements

1. Project Implementation Strategy: Please describe the Project Team's strategy for implementing the project, including the following information:

   Organizational structure of Project Team.

   Approach to the Project.

   Narrative description of how Project Team's experience, including the direct experience of Key subconsultants, specifically relates to this Project.

2. Personnel: Provide a schedule of your personnel, as well as the main personnel of Key subconsultants, who will be assigned and directly involved and responsible throughout the duration of the Project. Information shall include the names, title and resumes of all assigned Project personnel, including but not limited to:

   a. Name, Title and Resume

   b. Experience with similar projects (include the specific role of the individual employee on the project);

   c. Organizational chart of proposed Project Team, including Key subconsultants, and relationship to upper management/principals;

   d. Description of tasks key personnel, including Key subconsultants, will perform;

   e. References for each key team member, including that of Key subconsultants, proposed;

   f. Indicate relative involvement (based on number of hours per week) of each Project Team member;

   g. Indicate relative involvement of the Prime and of each Key subconsultant.

3. Personnel Commitments: Provide a summary of the time (based on number of hours per week) requirements for each of your personnel assigned to the Project and a description of the nature and extent of their commitments to other projects that may impact this Project;

4. Firm Size: Provide a schedule by job description of the number of people in your Firm and indicate the total number of licensed Architects and Engineers;

5. Contact References: Provide no less than three (3) contact references for each of your Firm's personnel assigned to the Project;

6. Computer Aided Design (CAD): Provide acknowledgement that your Firm will produce all work product using the latest version of AutoCAD; prior to and during construction CAD files shall be made available to the Contractor(s) at no cost for the Contractor's coordination drawings, and will be provided to the Developer and to City at no cost at the completion of construction. It must also be acknowledged that submitted work product as well as final permitted construction documents are and will be the property of the City of Miami Beach upon submittal to Developer;

7. Special Considerations: Describe any special resources which your Firm or your personnel assigned to the Project may bring to the Project or in-house expertise in technical areas which will specifically benefit the Developer;

8. Quality Assurance/Quality Control: Provide a detailed description of your Firm's quality assurance/quality control review and checking procedures including describing how coordination, checking and quality assurance/quality control will be accomplished to achieve a one hundred percent correct, complete, coordinated, and cost effective set of construction documents for this specific Project in compliance with all applicable laws, codes, ordinances, rules and regulations;

9. Regulatory Process and Permitting: Describe your Firm's experience with the applicable jurisdictional agencies regulatory process and permitting in the City of Miami Beach, and other pertinent Miami-Dade County jurisdictional agencies as described in Attachment E, Regulatory Process and the role your Firm will provide in obtaining permit and approvals from regulatory agencies.

10. Bid and Award Services: Describe your Firm's experience with providing bid and award services, including attending pre-bid conferences, assisting with the preparation of necessary addenda, attending the bid opening, assisting with the bid evaluation and recommendation of award by the Developer and City, and providing "As-Bid" documents for use during construction.

11. Construction Administration: Describe your Firm's construction administration processes and procedures. Include qualifications of personnel, field review format, contractor interface, etc. You should anticipate that your lead personnel assigned to this Project will be at the Project site as required during the entire construction period. You will be expected to provide qualified representatives at the Project construction meetings as required during the entire construction period.

12. Detailed Exceptions: Provide in writing any exceptions you may take to the requirements of this RFQ, the reasons for such exceptions and any proposed alternatives.

C. **Proposed Fee Structure** - None required at this time

D. **Schedule of Billable Rates** – Please include a detailed schedule of fully burdened billing rates for all personnel classes that you propose to use on the Project in an Excel format per specific Tasks of scope of work.

E. **Special Services**

Provide a detailed description of all services which you would plan to provide that are not described above, and any fees required for special design work not included in basic services but which you believe would be in the Developer's interests for you to provide.

F. **Financial Information**

Provide information regarding your Firm's financial condition, type of ownership.

G. **Additional Information**

Please provide any other additional information that you believe would be helpful to Developer and Evaluation Committee in their decision.

H. **RFQ Schedule**

The **anticipated** schedule for this RFQ is as follows:

RFQ to be issued	April 3, 2009
Deadline for receipt of responses	May 4, 2009
Evaluation committee meeting(s)	May 4-8, 2009
Evaluation Committee recommend short list for RFP	May 9, 2009
City Commission Meeting approval of short list for RFP	May 13, 2009
Issue RFP to short list Landscape Architects	May 20, 2009

IV. SUBMISSION REQUIREMENTS AND PROJECT CONTACT

Please submit fifteen (15) hard copies and one (1) electronic copy in pdf format on compact disc of your Proposal to the Developer's designated RFQ representatives listed below no later than 3:00 pm Eastern Time on Monday, May 4, 2009:

Mr. Matthew Barry
Hines
1672 Drexel Avenue
Miami Beach, Florida 33139
(305) 535-6284
matthew.barry@hines.com

Thirteen (13) Copies and One (1) CD

Mr. Jerry Lea
Hines
2800 Post Oak Boulevard, 48th Floor
Houston, Texas 77056

Two (2) Copies

Should you have any questions concerning the Project or this submission, please call Mr. Matthew Barry at (305) 535-6284.

V. PROPOSAL ACCEPTANCE

The Developer reserves the right to reject any or all proposals received under this Request for Qualifications, and is under no obligation to any of the prospective Landscape Architect or their Consultants as a result of this Request for Qualifications process. Upon review of the proposals, the Developer may elect to enter into negotiations with one or more respondents for one or more components of the various services described herein.

VI. OTHER

You will receive no reimbursement for your expenses in preparing this qualifications information, or travel expenses if you choose to visit the site or if Developer requests you to provide additional written or oral presentation. The Developer is under no obligation to accept your proposal and specifically reserves the right to reject it for any reason.

All materials and documents submitted hereunder shall become the sole property of the Developer and the Developer may use and disclose as the Developer may deem necessary or reasonable.

A response to this RFQ shall not be construed as a contract nor indicate a commitment of any kind on the part of the Developer. The Developer reserves the right to reject any or all responses to this RFQ, or to accept any response deemed to be in the Developer's best interest.

You should be aware that this Project is being developed in conjunction with the City of Miami Beach, Florida. The City of Miami Beach is a municipal corporation of the State of Florida and is subject to the Public Records laws of the State. Any documents provided by Developer to the City of Miami Beach, which may include any and/or all documents that you provide, are subject to Florida's broad public records laws and must be provided to any person upon request.

End of Request for Qualifications

Attachment A

EVALUATION and SELECTION PROCESS

The procedure for RFQ response evaluation and selection is as follows:

1. Request for Qualifications issued.
2. Receipt of responses.
3. Opening of responses and determination if they meet the minimum standards of responsiveness.
4. An Evaluation Committee, consisting of three (3) members appointed by Developer and three (3) members appointed by the City Manager, shall meet to evaluate each response in accordance with the requirements of this RFQ. If further information is desired, Landscape Architect may be requested to make additional written submissions or oral presentations to the Evaluation Committee.
5. The Evaluation Committee will recommend the short list of Landscape Architects to receive RFP that Evaluation Committee deems to be in the best interest of the City and Developer.

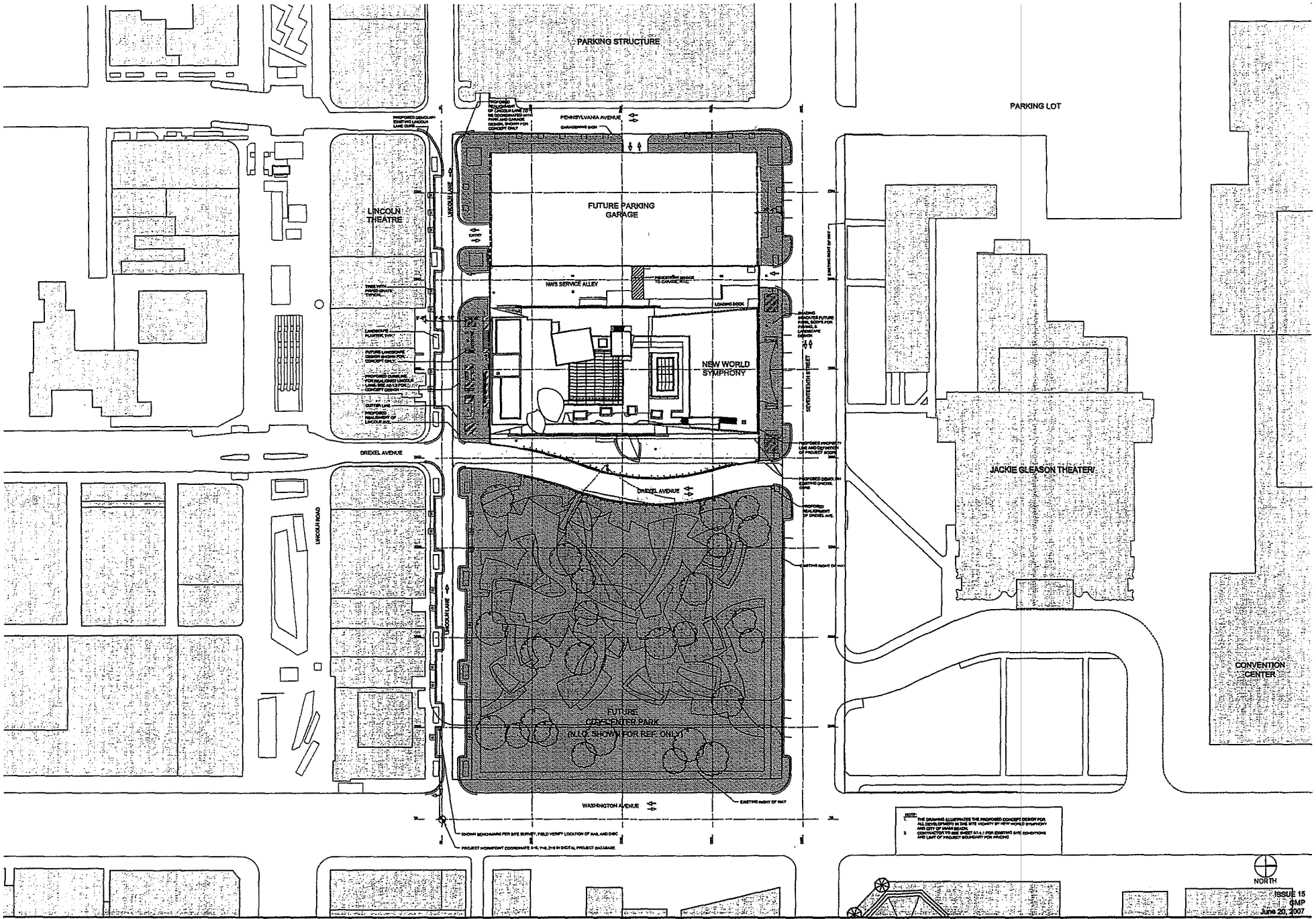
THE EVALUATION COMMITTEE SHALL BASE ITS RECOMMENDATIONS ON THE FOLLOWING FACTORS:

A. The experience, qualifications and similar projects of the Principal in Charge (**15** points).
B. The experience, qualifications and similar projects of the Firm (**10** points).
C. The experience, qualifications and portfolio of similar projects of the Project Manager, as well as his/her familiarity with this project and a thorough understanding of the methodology and design approach to be used in this assignment (**20** points).The experience and qualifications of the professional personnel assigned to the Project Team, as well as their familiarity with this project and a thorough understanding of the methodology and design approach to be used in this assignment (**10** points).
D. Risk Assessment Plan that reflects a clear understanding of project objectives; familiarity with the project site; a thorough understanding of all permitting and regulatory requirements and impacts; and other considerations that may impact the design and construction of the proposed improvements and client expectations **(20 points).**
E. Ability to meet schedule and budget requirements as demonstrated by past performance on similar projects (**5** points).
F. Location of Headquarters of Applicant (**5** points).
G. Recent, current, and projected workloads of the Firms (**5** points).
H. The volume of work previously awarded to each Firm by the City (**5** points).

Attachment B

Site Plan

Sheet A1-1.2 Proposed Future Vicinity Plan dated June 20, 2007



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GEHRY PARTNERS, LLP.
ARCHITECT
1697 SOUTHEAST STREET
LOS ANGELES, CALIFORNIA 90021 USA
TEL 213-628-3038 FAX 213-628-2058

CONSULTANTS

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ARCHITECTS, CONSULTANTS
1200 WEST 7TH STREET, 8TH FLOOR
LOS ANGELES, CA 90017
TEL (213) 624 2821 FAX (213) 477 5979

CORENTHAL & ASSOCIATES (CA)
CONSULTANTS & ACOUSTICAL CONSULTANT
7700 HOLLYWOOD BLVD., 2ND FLOOR
NEW YORK, NY 10017
TEL (212) 315 2400 FAX (212) 315 2409

NAGATA ACOUSTICS INC. (NAI)
ACOUSTICAL CONSULTANT
2020 SAWTELLE BLVD, SUITE 207A
LOS ANGELES, CA 90025
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THEATRE PROJECTS CONSULTANTS
THEATRE CONSULTANT
55 TOWNSEND, 3RD FLOOR
SOUTH NORWALK, CT 06854
TEL (203) 299 9500 FAX (203) 299 9535

LAM PARTNERS, INC.
LANDSCAPE ARCHITECTS
34 GODWIN ST.
NORWALK, CT 06850
TEL (877) 341 4000 FAX (877) 447 9526

ACOUSTIC DIMENSIONS
ACOUSTICAL CONSULTANT
10000 SHORT BANDERA DRIVE
AUSTIN, TEXAS 78759
TEL (512) 338 1000 FAX (512) 338 1004

BONITUS
SIGNAGE & WAYFINDING CONSULTANT
2000 SOUTHEAST 1ST AVENUE
LOS ANGELES, CA 90021
TEL (213) 622 1000 FAX (213) 622 1002

RAYMOND JUNGLES INC.
LANDSCAPE ARCHITECT
3425 NE 2ND STREET
MIAMI, FLORIDA 33137
TEL (305) 573 1030 FAX (305) 573 1031

KIMLEY HORN & ASSOCIATES INC.
CIVIL ENGINEER
1001 WASHINGTON AVENUE, SUITE 400
MIAMI BEACH, FLORIDA 33139
TEL (305) 672 2020 FAX (305) 672 1002

LERCH BATES INC.
ELEVATOR CONSULTANT
2000 SOUTHWEST 1ST AVENUE, SUITE 300
LA PROMENADE, 20 NORTH PARK
TEL (954) 467 1400 FAX (954) 467 1020

FINISH HARDWARE TECHNOLOGY
FINISH HARDWARE CONSULTANT
13000 SATURN ST. SUITE F
SANTA CLARITA, CA 91355
TEL (310) 364 3100

LERCH BATES INC.
FOODSERVICE CONSULTANT
12 SOUTHWINDS LANE
CONCORD, CA 94518
TEL (925) 243 2444 FAX (925) 243 2445

NEW WORLD SYMPHONY CAMPUS EXPANSION

1672 DREXEL AVENUE
MIAMI BEACH, FL 33139
USA
TEL (305) 673 3330 FAX (305) 673 8746
WEBSITE http://www.nws.org

DEVELOPMENT MANAGER, HINES
2655 PONCE DE LEON BOULEVARD, SUITE 225
CORAL GABLES, FLORIDA 33134
TEL (305) 444 5330 FAX (305) 444 9184

No.	Issue	Date	No.	Issue	Date
11	BUILDING PERMIT	6/20/07			
13	CD PROGRESS	8/01/07			
15	GMP	8/20/07			

TITLE
PROPOSED FUTURE VICINITY PLAN
FOR REFERENCE ONLY

PROJECT NUMBER 2003005
SCALE 1/32"=1'
DRAWN BY
DATE
DRAWING SHEET SIZE: 30" x 42"

SHEET NUMBER
A1-1.2

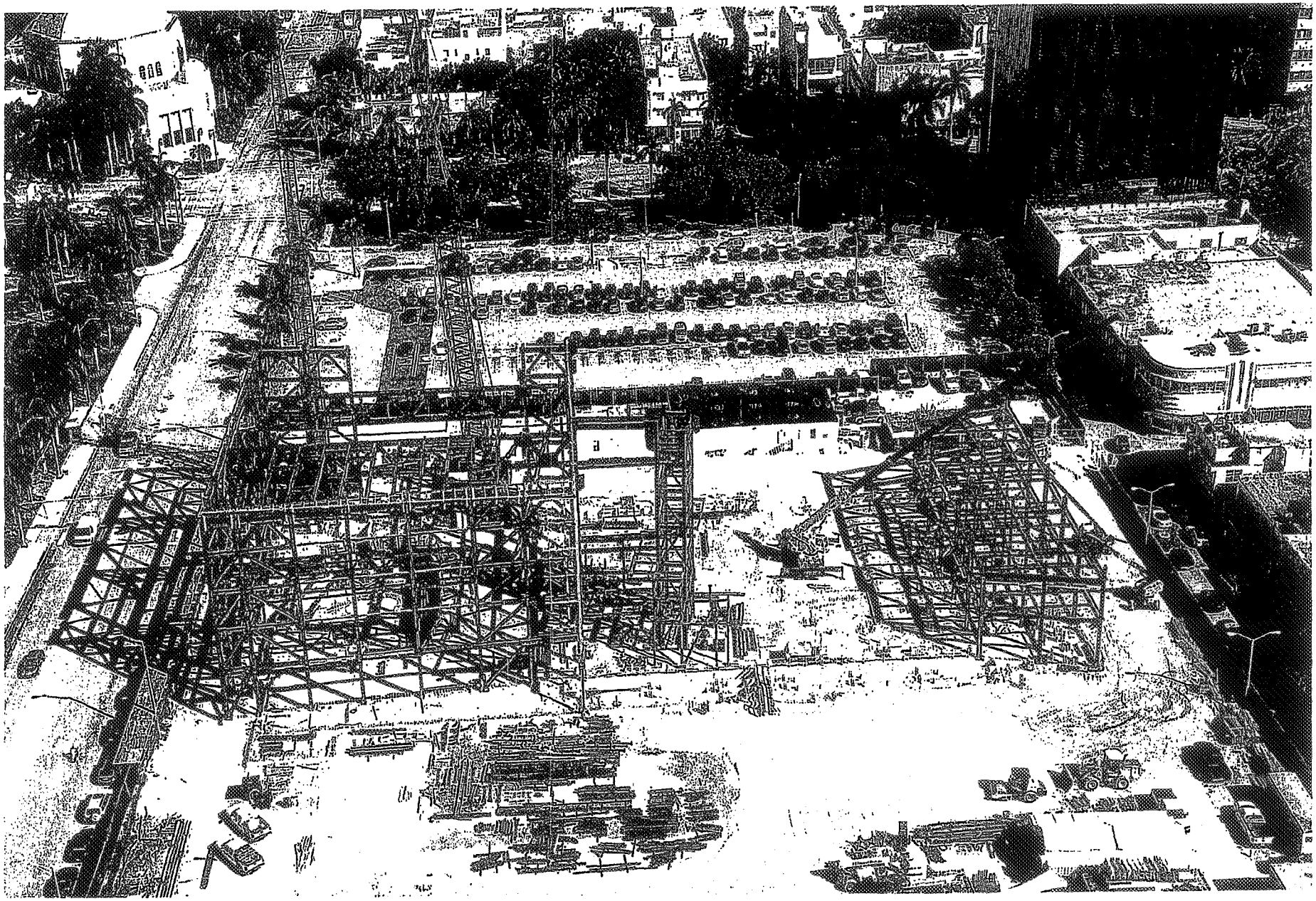
© GEHRY PARTNERS, LLP

ISSUE 15
GMP
June 20, 2007

Attachment C

Site Aerial Photographs

Two (2) pages Smith Aerial Photos dated November 3, 2008



Facchina
CONSTRUCTION of FLORIDA, L.L.C.

New World Symphony

SMITH AERIAL PHOTOS 11-03-08

Facchina
CONSTRUCTION of FLORIDA, L.L.C.

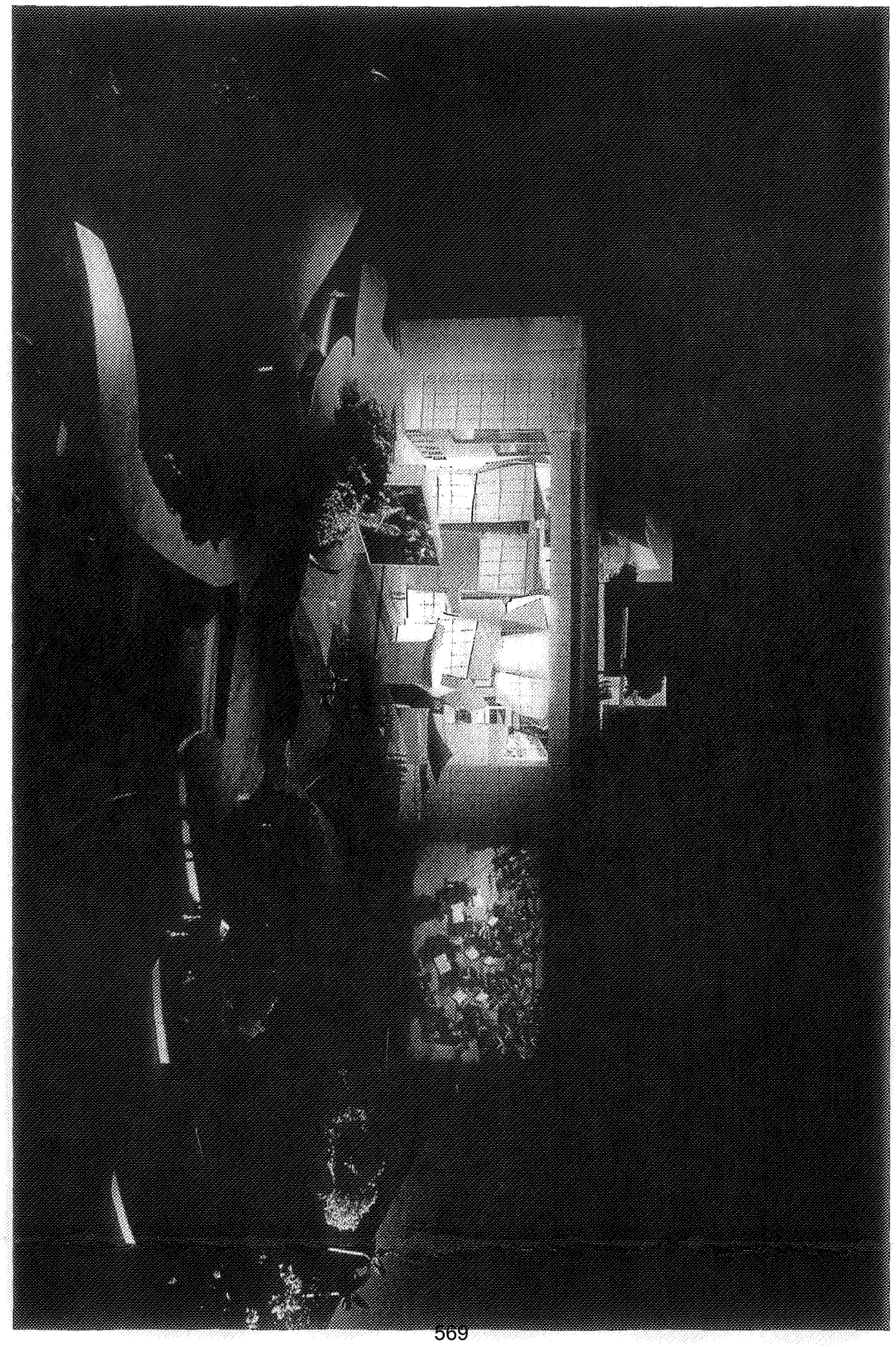
New World Symphony

SMITH AERIAL PHOTOS 11-03-08

Attachment D

Model Pictures

Two (2) pages



10/21/2008

Attachment E

Regulatory Process

The following reviews and approvals may be required as a part of the approval process for the Lincoln Park design:

1. Project Kick-Off Meeting with the Developer and the City of Miami Beach ("City").
2. Project Reconnaissance Visit(s) with the Developer and the City.
3. Visioning Session(s) with the Developer and the City to Review Park Concepts.
4. Development of Design Concept Alternatives with an estimate of probable costs for each Design Concept.
5. Review Meeting Prior to Community Design Workshops.
6. One (1) or Two (2) Community Design Workshops with public notice and public participation.
7. After Each Community Design Workshop, Meetings with the City to review public comments.
8. Submission of a draft Basis of Design Report (BODR) to the Developer and the City.
9. Review of BODR with City Departments and Divisions.
10. Submission of and Presentation of the BODR to the City Commission and City Approval.
11. City Design Review Board (DRB) Submission, Presentation and Approval.
12. After DRB Approval, Submission of 50% (preliminary) Plans and Specifications to the Developer and the City for Review and Approval.
13. Submission of 50% (Contract Documents), Plans and Specifications, to Utility Companies and obtain Approval from Utility Companies.
14. Submission of 75% Contract Documents (Plans and Specifications and other Bid Documents) to the Developer and the City for Review and Approval.
15. Submission of Final Contract Documents to the City Commission and or appropriate Committee for Approval.
16. Submission of Final Contract Documents to the City for the necessary Building Permit(s).
    A City Building Permit Will Require Approval From but not limited to, the following Jurisdictional Regulatory Agencies:
    a. City Building Section
    b. City Electrical Section
    c. City Plumbing Section
    d. City Mechanical Section
    e. City Fire Section
    f. City Fire Marshal
    g. City Engineering Section
    h. City Accessibility Section
    i. City Structural Section
    j. City Zoning (and Planning Department)
    k. City Public Works Department/Miami-Dade County Public Works Department-Traffic Engineering Division (off-site impacts & pavement markings and signage only)
    l. City Concurrency Approval
    m. Miami-Dade County Water and Sewer Department (M-DWASD)
    n. Miami-Dade County Department of Environmental Resources (DERM) Paving & Drainage
    o. Miami-Dade County DERM Pollution
    p. Miami-Dade County DERM Asbestos (Does the City have a report that asbestos exist on this site?)

q. Miami-Dade County DERM Tree Section including Tree Relocation Plan
r. Miami-Dade County DERM Sewer (Sewer Estoppel Notice)
s. State of Florida/Miami-Dade County Health Department

17. Assistance to the City in bidding and award services The selected Firm shall assist City in bidding and award of the contract. Such assistance shall include facilitating reviews of its contract documents with applicable Procurement, Risk Management, and Legal Department representatives. In addition, the selected Firm shall furnish camera ready contract documents for reproduction and distribution by the City, attend pre-bid conferences, assist with the preparation of necessary addenda, attend the bid opening, and assist with the bid evaluation and recommendation of award by the City. The selected Firm shall provide "As-Bid" documents for use during construction.
18. Certificate of Occupancy

NEW WORLD SYMPHONY
Project Budget - GARAGE
January 19, 2007

		Proposed Budget 11/18/2006	Costs Spent Through	% Spent	Balance to Complete on Proposed Budget
31-110-2	Design Architect Fees - Gehry Partners	$600,000			$600,000
31-110-Z	Design Architect Reimbursables	$100,000			$100,000
31-110-5	Design Architects Fees - Addt'l Services				$0
31-210-1	Structural Engineer Fees - GMS	$100,000			$100,000
31-210-Z	Structural Engineer Reimbursables	$15,000			$15,000
31-210-5	Structural Engineer - Addt'l Services				$0
31-220-1	Mechanical Engineer Fees - Cosentini	$40,000			$40,000
31-220-5	Mechanical Engineer Fees - Addt'l Services				$0
31-220-Z	Mechanical Engineer Reimbursables	$15,000			$15,000
31-230-1	Civil Engineer Fees	$75,000			$75,000
31-230-5	Civil Engineer - Addt'l Services				$0
31-230-Z	Civil Engineer Reimbursables	$5,000			$5,000
31-240-1	Survey Engineering	$15,000			$15,000
31-240-Z	Survey Engineering Reimbursables	$2,000			$2,000
31-250-1	Geotechnical Engineer Fees - ECS	$15,000			$15,000
31-250-Z	Geotechnical Engineer Reimbursables	$2,000			$2,000
31-250-5	Geotechnical Engineer Addt'l Services				$0
31-260-1	Materials Testing	$50,000			$50,000
31-260-Z	Materials Testing Reimbursables	$5,000			$5,000
31-265-1	Special Inspections	$20,000			$20,000
31-320-1	Elevator Consultants	$35,000			$35,000
31-320-Z	Elevator Consultants Reimbursables	$7,000			$7,000
31-320-A	Elevator Consultants - Addt'l Services				$0
31-330-1	Parking Consultants	$75,000			$75,000
31-330-5	Parking Consultants - Addt'l Services				$0
31-330-Z	Parking Consultants Reimbursables	$15,000			$15,000
31-340-1	Traffic Survey Consultants	$30,000			$30,000
31-340-Z	Traffic Survey Consultants Reimbursables	$10,000			$10,000
31-390-1	Threshold Inspector	$100,000			$100,000
31-390-Z	Threshold Inspector Reimbursables	$10,000			$10,000
31-400-1	Other Miscellaneous Consultants	$30,000			$30,000
31-440-1	Blueprints/Reproduction	$40,000			$40,000
31-470-1	Models/Mockups				$0
31-475-1	Design Contingency	$100,000			$100,000
	TOTAL ARCH & ENGINEERING COST	$1,511,000			$1,511,000
32-100	Construction Costs for Garage ($60.00 per sf)	$11,856,000			$11,856,000
	Construction Costs for Retail	$250,000			$250,000
	TOTAL CONSTRUCTION COST	$12,106,000			$12,106,000
32-500-1	Construction Contingency (3%)	$363,180			$363,180
32-600-1	Utility Relocation - FP&L Vaults	$287,500			$287,500
	TOTAL SITE COST	$650,680			$650,680
34-200-1	Builder's Risk Insurance (included in construction costs)				$0
34-300-1	City of Miami Beach Building Permits (.863%)	$104,475			$104,475
34-305-1	Utility Tap Fees/Service Charges (.27%)	$32,686			$32,686
34-320-1	Impact Fees (Concurrency Fees) (.324%)	$39,223			$39,223
34-325-1	Road Impact Fees (.324%)	$39,223			$39,223
34-330-1	Public Space Art Fee				
	TOTAL TAX & INSURANCE COST	$215,608			$215,608

NEW WORLD SYMPHONY
Project Budget - GARAGE
January 18, 2007

		Proposed Budget 11/18/2006	Costs Spent Through	% Spent	Balance to Complete on Proposed Budget
36-260-1	Audit Costs (assume no cost to project)				$0
36-320-1	Legal Fees (assume no cost to project)				$0
36-330-1	Owner's Liability Insurance (assumed no cost to project)				$0
36-380-1	City Travel & Meeting Expenses	$10,000			$10,000
	TOTAL OWNER EXPENSES	$10,000			$10,000
38-230-1	Project Development Fee	$149,560			$149,560
38-320-Z	Project Travel and Reimburseable	$39,749			$39,749
38-230-2	Incentive Fees	$25,000			$25,000
38-240-1	Direct Payroll Expenses (DPE)	$332,356			$332,356
38-240-2	Supplies	$6,242			$6,242
38-240-3	Telephone/Postage/Deliveries	$7,808			$7,808
38-240-4	Reproductions	$3,000			$3,000
38-240-5	IT Services	$5,042			$5,042
38-240-6	Office Furniture and Equipment				$0
38-240-7	Office Rent				$0
38-240-8	Office Buildout				$0
	TOTAL GENERAL & ADMIN COST	$568,755			$568,755
39-110-1	Project Contingency (3%) NIC Construction and A&E	$32,456			$32,456
	TOTAL CONTINGENCY COST	$32,456			$32,456
	TOTAL PROJECT COSTS				$15,094,499

City Proposed Total Garage Budget **$15,210,135**

Assume 4,000 sf of retail space @		
- Curtainwall 165' x 12' x $65.00	$	128,700
- Separation Block Wall 225' x 12' x $18.00	$	48,600
- Plumbing and Electrical	$	40,000
- Fire Sprinklers 4,000 x $3.50	$	14,000
Total upgrade for retail	$	231,300
Assume 325 sf per parking space with 608 spaces		197,600 s.f.
Construction costs run $55.00 - $65.00 per sf		

Memo to: Mayor and City Commissioners
From: Howard Herring
Re: Frank Gehry and Park Design
Date: April 17, 2009
CC: Jorge Gonzalez and Tim Hemstreet

Over the past 48 hours, I have had a series of conversations with Frank Gehry and Craig Webb. They have considered the possibility of creating a schematic design for the park then turning the work over to an executive architect to finish the design process. They have chosen not to participate in the design work.

They understand that the City is sensitive to the ratio of design fee to total park budget, especially in the current economic climate. Beyond the design fee issue, they are concerned that the park budget may be too small in relation to the vision for the park. They suggest a very simple park design be created at minimal expense. They would be willing to volunteer their time to review such a plan and suggest ways for that plan to be enhanced so that the park can come as close as possible to the original vision within the limitations of the budget. Their commitment to the total project is solid.

I am disappointed that Gehry Partners will not be designing the park. However, I believe we should continue the search for an alternate designer. The New World Symphony New Campus is on time and on budget. We have an articulated second addendum to the development agreement for Commission consideration next week. This second addendum allows us to proceed with the garage in a timely manner. By moving quickly and efficiently through the park designer selection process, and by achieving the park timeline milestones, we can take full advantage of the opening of our New Campus in January 2011.

You should be aware that Andres Viglucci of the Miami Herald is now covering the developments in this story. You may receive a call from him today.

I am happy to answer any questions you may have regarding this email and the status of the project.

Howard

Howard Herring
President and CEO
New World Symphony, America's Orchestral Academy
541 Lincoln Road, Miami Beach, FL 33139 [http://www.nws.edu/map] howard.herring@nws.edu
direct: 305-673-3330 x 227
fax: 305-673-6749
www.nws.edu

The New World Symphony, America's only full-time orchestral academy, prepares gifted graduates of prestigious music programs for successful careers in orchestras and ensembles. NWS has launched the careers of more than 630 young musicians now making a difference in the profession worldwide.

MIAMIBEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY given that a second reading and public hearing will be held by the City Commission of the City of Miami Beach, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, April 22, 2009 at 2:30 P.M.**, to consider A Resolution Approving, In Accordance With The Requirements Of Sections 163.3220 – 163.3243, Florida Statutes, Also Referred To As The "Florida Local Government Development Act," A Second Addendum ("Second Addendum") To The Development Agreement Between The City Of Miami Beach ("City") And The New World Symphony ("NWS"), Dated January 5, 2004 (The Development Agreement), As Amended By That Certain First Addendum To Development Agreement, Dated February 20, 2007 (The First Addendum) (Collectively, The January 5, 2004 Development Agreement And The First Addendum May Also Collectively Be Referred To As The "NWS Development Agreement"); Said Second Addendum Providing For The Following: 1) Approval Of The Final Garage Budget, In The Amount Of $16,798,000; 2) Amending The Preliminary Park Project Budget From $14,960,000, To $13,372,000; 3) Deleting The Reference In The First Addendum Specifying Gehry Partners, LLC, As The Architectural Consultant For The Park Project, And Also Waiving The Requirement Under Section 26.20 Of The Development Agreement ("Key Man" Clause) And Section 9 Of The First Addendum But Only As It Pertains To Gehry Partners, LLC's Participation As The Architectural Consultant For The Park Project; 4) Authorizing NWS To Proceed With The Selection Of A New Architectural Consultant And/Or Architectural Engineering (A/E) Firm For The Design Of The Park Project, With NWS's Selection Process Therefore Subject To The Prior Written Approval Of The City Manager (Prior To Implementation By NWS); 5) In Conjunction With The City Commission's Future Consideration And Review Of The Park Project Concept Plan, Directing NWS To Also, At That Time, Bring To The City Commission, For Review And Consideration, The Pending Issue Of Whether To Add Certain Architectural Treatments (As Discussed At The City's Finance Committee Meeting On March 10, 2009 And Including, Without Limitation, The Stainless Steel Mesh And Led Lighting) For The East Façade Elevation Of The NWS Garage, With The Final Decision On Whether To Add Such Treatments To Be Subject To The Approval Of The City Commission At That Time; 6) Amending Section 23.2.1 Of The Development Agreement ("Garage") Deleting The Reference That The NWS Garage Accommodate Approximately 320 Cars And, Further, Amending The Definition Of "Garage" In Section 2(J) Of The First Addendum To Include That The Garage, As Contemplated By The Parties, Shall Contain Approximately 535 Spaces (But No Less Than 520 Spaces) And Shall Be Designed, Developed, And Constructed By Developer In Accordance And Consistent With That Certain Order Of The City's Design Review Board (File No. 22010), Approved On March 3, 2009; And 7) That The Final Garage Budget Will Not Include Funding For The Two (2) Elevators In The Middle Of The Garage (On The East Side), And Having A Construction Value Of $275,000, Which Have Been Designed To Primarily Access NWS' Building, However, Said Elevators Will Be Included In The Garage And Funded At The Sole Cost And Expense Of NWS; And Further Authorizing NWS To Proceed With Design And Engineering Of The Garage Upon Approval Of First Reading Of The Second Amendment Of The Development Agreement.

Inquiries may be directed to the City Manager's Office at (305) 673-7010.

INTERESTED PARTIES are invited to appear at this meeting, or be represented by an agent, or to express their views in writing addressed to the City Commission, c/o the City Clerk, 1700 Convention Center Drive, 1st Floor, City Hall, Miami Beach, Florida 33139. Copies of these ordinances are available for public inspection during normal business hours in the City Clerk's Office, 1700 Convention Center Drive, 1st Floor, City Hall, and Miami Beach, Florida 33139. This meeting may be continued and under such circumstances additional legal notice would not be provided.

Robert E. Parcher, City Clerk
City of Miami Beach

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

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

Ad #531

RESOLUTION TO BE SUBMITTED

Condensed Title:

A Resolution authorizing the Mayor and the City Clerk to execute Amendment No. 2 to the Pre-Construction Services agreement with KVC Constructors, Inc, dated December 6, 2006 in accordance with Resolution 2006-26416 for Scott Rakow Youth Center in the negotiated GMP amount of $4,565,666 plus a contingency of $228,283, with previously appropriated funds in the amount of $3,550,666 from Pay as You Go Fund 302 for construction, $850,000 from County G.O. Bond Fund 390 for construction, $165,000 from the IBLA default in Fund 301 for construction, and $228,283 from the Quality of Life Resort Tax 1% Fund 161 for contingency for the Phase II remodeling and renovation of the facility.

Key Intended Outcome Supported:

To ensure a quality, well constructed Capital project.

Supporting Data (Surveys, Environmental Scan, etc.): The 2007 Community Satisfaction Survey indicates that 79% of Middle Beach residents rate recreational programs and facilities as excellent or good.

Issue:

Shall the Mayor and the City Commission approve the Resolution?

Item Summary/Recommendation:

The Scott Rakow Youth Center (SRYC) Renovation Project was initiated by the Mayor and City Commission in 1994 and was a part of the original $15 million Parks Bond issue and Phase I of the improvements included the construction of the new ice skating rink. The Phase II improvements include a major remodeling and renovation of the existing facility. On December 6, 2006, the Mayor and City Commission approved Resolution No, 2006-26415, authorizing the execution of an Agreement between the City of Miami Beach and Brown and Brown Architects Inc. for professional architecture and engineering services for the Phase II renovation of the Scott Rakow Youth Center; and also on December 6, 2006, the Mayor and City Commission approved Resolution No. 2006-26416, authorizing the Mayor and City Clerk to execute a Pre-Construction Services Agreement with KVC Contractors, Inc (KVC) for the Scott Rakow Youth Center (SRYC) pursuant to Request For Qualifications No. 27-05/06.

The City and KVC negotiated a Guaranteed Maximum Price (GMP) of $4,565,666 for construction services, which is 15% below the cost estimate provided by the Architect and 21% below the cost estimate provided by the independent estimator. The construction duration of this project has been negotiated at 425 calendar days. With the approval of this Resolution, it is anticipated that this work will commence in June 2009. The City will also retain $228,283 for an owner's project contingency. A motion to issue an Invitation to Bid for this project failed approval at the CIPOC meeting of April 6, 2009.

THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:

	Amount	Account	
1	$3,550,666	302-2513-067357	Pay As You Go (Construction)
2	$ 850,000	390-2513-067357	County G.O. (Construction)
3	$ 165,000	301-2513-067357	IBLA Default (Construction)
4	$ 228,283	301-2513-000356	Resort Tax 1% (Contingency)
Total	$4,793,949		

OBPI

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Humberto Cabanas, Ext. 4105

Sign-Offs:

Department Director	Assistant City Manager	City Manager
FHB	TH	JMG

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MIAMIBEACH

AGENDA ITEM R7E
DATE 4-22-09

MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 2, TO THE PRE-CONSTRUCTION SERVICES AGREEMENT WITH KVC CONSTRUCTORS, INC., DATED DECEMBER 6, 2006, IN ACCORDANCE WITH RESOLUTION NO. 2006-26416 FOR THE SCOTT RAKOW YOUTH CENTER, IN THE NEGOTIATED GUARANTEED MAXIMUM PRICE (GMP) AMOUNT OF $4,565,666 PLUS AN OWNER'S PROJECT CONTINGENCY OF $228,283; WITH PREVIOUSLY APPROPRIATED FUNDING IN THE AMOUNT OF $3,550,666 FROM PAY-AS-YOU-GO FUND 302 FOR CONSTRUCTION, $850,000 FROM COUNTY G.O. BOND FUND 390 FOR CONSTRUCTION, $165,000 IN IBLA DEFAULT IN FUND 301 FOR CONSTRUCTION, AND $228,283 FROM THE QUALITY OF LIFE RESORT TAX 1% FUND 161 FOR CONTINGENCY FOR THE PHASE II REMODELING AND RENOVATION OF THE FACILITY.**

ADMINISTRATIVE RECOMMENDATION

Adopt the Resolution.

KEY INTENDED OUTCOME

Ensure a quality, well constructed capital project.

FUNDING

Previously appropriated funds for this project, through the Fiscal Year 2008-2009 Capital budget, are available in the amounts of $6,755,990 for Construction and $1,041,476 for Contingency; for a total of $7,797,466. Funds for this GMP Amendment and Contingency totaling $4,793,949, will be allocated as follows:

Construction:

$3,550,666	Pay-as-You-Go Fund 302	302-2513-067357
$850,000	County G.O. Bond Fund 390	390-2513-067357
$165,000	IBLA Default in Fund 301	301-2513-067357
$4,565,666	**Total**	

Contingency:

$228,283	Quality of Life Resort Tax 1% Fund 161	301-2513-000356

SCOTT RAKOW YOUTH CENTER OPERATIONS

Over 500 children, youths and adults a day enjoy the many amenities and programs offered at the Scott Rakow Youth Center (SRYC). They include the after school program, summer camp, specialty camps, bowling, special populations bowling league, learn to swim classes, swim teams, water fitness, water polo, youth basketball leagues, learn to ice skate, advanced ice skating (classes & private) ice skating public sessions, youth and adult hockey, indoor beach volleyball, hip hop and drumming classes.

Weekend programs offer family days that provide parents and their children a chance to recreate in a safe and friendly atmosphere. Ice skating birthday parities and ice skating open sessions are heavily utilized by the residents of Miami Beach. Due to the high demand, ice skating birthday parties are often booked many months in advance.

The swimming pool opens as early as 6:45 am on Tuesdays and Thursdays for dedicated lap swimmers. Monday, Wednesday, and Friday the swimming pool opens at 9:00 am and has continued programs till 7:30 pm, excluding Monday and Wednesday the pool closes at 9:00 pm for Water polo.

The ice skating rink opens at Monday – Friday 3:00 pm and closes the following hours:

Monday and Thursday	10:40 pm
Tuesday	8:00 pm
Wednesday	10:10 pm
Friday	10:00 pm

The SRYC building opens Monday – Friday at 9:00 am and closes at 9:00 pm. The after school programs run from 2:30 – 7:00 pm, and the summer camp program is scheduled from 8:30 am – 6:00 pm. Specialized programs till 9:00 pm.

Weekend hours for the SRYC building and swimming pool are Saturday 9:00 am – 4:00 pm, and Sunday 11:00 am – 6:00 pm.

The ice skating weekend hours are Saturday 9:00 am – 10:00 pm, and Sunday 9:00 am – 6:30 pm.

The after school program hours are from 2:30 – 7:00 pm, however, the building remains open for specialized programs and classes till 9:00 pm.

ANALYSIS

The SRYC Renovation Project (the "Project") was initiated by the Mayor and City Commission in 1994 and was a part of the original $15-Million Parks Bond issue. The original scope called for the expansion and renovation of the ice rink and other improvements to the SRYC. After the default of IBLA Contractors from the project, the City subsequently finished the new Ice Rink and achieved a Certificate of Occupancy under F&L Construction on 4-4-2006. On October 17, 2005, the City of Miami Beach tasked Brown and Brown Architects (an A/E firm on the City's rotational list) with developing a schematic conceptual master plan which would evaluate code concerns, including ADA and Fire Safety, validate the program and the budget, and propose a phasing plan for construction. Brown and Brown have participated in various site meetings to evaluate the existing conditions of the facility and met with the users to review the scope of work which would be necessary to bring the facility into compliance and fulfill the operational and programmatic requirements that the City presented to the community. After various meetings with the Parks and Recreation Department, the SRYC Advisory Board, the Facility Managers, the Property Management Division, the Fire Department, and the Building Department, Brown and Brown

proposed an acceptable schematic conceptual master plan and budget which would be phased over an estimated one year of design and 18 months of construction, while the facility would remain in operation. On May 10, 2006, the Mayor and City Commission approved the issuance of Request for Qualifications (RFQ) 27-05/06 for Construction Manager at Risk Pre-Construction Services for the Renovation and Construction of the SRYC Project. The purpose of this RFQ was to secure the services of a Construction Manager at Risk (CMR) firm to provide pre-construction services and all required construction in order to achieve a Guaranteed Maximum Price (GMP) for the Renovation and Construction of the SRYC. RFQ No. 27-05/06 was issued on May 12, 2006 and the submittals opened on June 29, 2006. A pre-RFQ proposal meeting was held on June 2, 2006. On July 11, 2006, an evaluation committee convened to review submittals and interview and rank the candidate CMR firms. KVC Contractors Inc., was unanimously ranked No.1, followed by Tran Construction at No. 2. On September 6, 2006, the City Commission authorized the Administration to enter into negotiations with the top-ranked firm of KVC Contractors Inc.

On December 6, 2006, the Mayor and City Commission authorized the execution of an Agreement with Brown & Brown Architects, Inc. for professional services for Phase II of the SRYC renovation, based on the May 10, 2006, City Commission approval to issue RFQ No. 26-05/06 architectural, engineering and landscape architectural services for the planning, design, bid and award, and construction administration services for the renovation and construction of the SRYC Project. On September 6, 2006, the City Commission authorized the Administration to enter into negotiations with the top-ranked firm of Brown and Brown Architects. The scope of work included expansion of the existing parking lot to include a new bus drop-off area and a revised layout that provides 82 spaces including 29 new spaces, a new 28,000 square-foot play area, new landscaping including approximately 50 trees and 100 palms, a new sidewalk on 28th Street, six restrooms renovated for ADA accessibility, a new lobby with an ADA compliant elevator, conversion of the old ice rink into a multi-purpose room with new windows, renovation of the existing entry plaza, renovated classrooms and offices, a new pool manager's office, a complete remodeling of the first and second floors, new fire sprinkler and central fire alarm systems, an upgrade to the existing HVAC system for new design loads including two new chillers and air handlers, a new trash collection area, and a new Zamboni drainage pit for the new ice rink.

At the same meeting, the Mayor and City Commission under Resolution No. 2006-26416 approved and authorized the Mayor and City Clerk to execute a professional services agreement to KVC Contractors Inc., in an amount not to exceed $75,000, for pre-construction services for the renovation and construction of the SRYC, pursuant to RFQ No. 27-05/06 with funding from the previously appropriated Pay-As-You-Go Funds. KVC services which were competitively procured through the City's RFQ process included: reviews of existing conditions, preliminary budgeting, project scheduling and phasing, value engineering, and plan development assistance.

The value of a construction manager at risk agreement is that the contractor assumes the risks and costs associated with unforeseen conditions and delays. The City is not exposed to claims over design and constructability issues. For instance, if the construction manager at risk were to expose a column and found structural damage that was not identified in the plans, it would still be responsible for the additional costs and time associated with repairing that column. If this project were bid, the City would be responsible for the costs and time delays associated with repairing the column or any unforeseen conditions not identified in the plans or specifications. This method of procurement is particularly useful in complex projects that have potential for significant delays and claims due to unforeseen conditions. Building rehabilitation projects are very suitable for this procurement method since some conditions cannot be identified until construction starts. This is particularly true at SRYC, since the ongoing operations preclude partial demolition and where construction delays would have considerable impacts on the programming.

Like all construction manager at risk agreements, the Construction Manager at Risk Agreement with KVC provides for a construction services amendment once the design is complete and a guaranteed maximum price (GMP) is negotiated. Amendment No. 2 to the KVC Agreement is to provide these construction services.

KVC has spent 29 months becoming familiar with the building and the operations of the SRYC. During this time, KVC was instrumental in working with the City and Consultant to develop a phasing plan that is superior to the original plan. The total number of phases was reduced from five to two, while reducing disruptions to the SRYC operations. This phasing plan also reduces the contract time, which allows the center to return to normal operations more quickly and which saves overhead costs. During this time, KVC also provided expertise on material selection particularly in areas where it identified cost or time savings.

During the design, there was also an opportunity to expedite the replacement of pool filtration and electrical equipment and structural repairs to the equipment room. Through Amendment No. 1 to the Agreement, KVC performed this work and completed it on time and on budget. Completing the project on time was especially critical because there was a hard date for the resumption of programs that are run from the pool.

As part of the process of developing a cost for the Amendment, KVC bid the various components of the work. Bids were opened in the presence of Brown & Brown and CIP staff. Upon opening and reviewing the bids, CIP and KVC negotiated a GMP for the work. In addition to the items that were bid, other items were negotiated. The negotiated items include permit fees, warranty, insurance, bonding, profit, and contract time.

The final negotiated GMP is $4,565,666 and 425 calendar days for construction. It is important to note that KVC obtained competitive bids from sub-contractors for a total of $4,092.596, or approximately 90% of the final negotiated GMP cost. Only $473,070, or about 10% of the total negotiated GMP, which includes contractor fees, general liability insurance and builder risk allowance were not obtained from hard bids. Attached are a Schedule of Values by discipline (Attachment A) and a listing of various bids received (Attachment B). This portion will be self performed by the General Contractor.

The original total price submitted by KVC was $4,891,146; this price was negotiated to a GMP of $4,565,666, a 7% reduction. It should be noted that the GMP of $4,565,666 is 15% lower than the $5,396,236 construction cost estimate provided by Brown & Brown, the project's Architect of Record (Attachment C) and 21% lower than the $5,805,676 construction cost estimate provided by an independent estimator (Attachment D).

The Administration is of the opinion that the final GMP is competitive and a fair and reasonable price for the scope of work to be completed in a youth center that must be kept open and operational at all times.

While bidding the project out again in the current economic conditions, would likely yield additional savings, given the nature of the work expected and the need to minimize impacts to the day to day operations of the youth recreational facility, the Administration recommends continuing with the CM Risk Model for the following reasons:

- The competitive GMP shifts a significant amount of the construction risks to the contractor, while a low bid approach would shift the majority of the risk to the City.
- KVC is familiar with the site and has developed a construction methodology to minimize impacts on the operations of the SRYC. This familiarity takes time to develop, a low bid

contractor normally has 30 days or less to review the Invitation to Bid (ITB) documents (plans, specifications and general conditions); therefore, it is not possible for a low bid contractor to become as familiar with the constraints of working in a fully operational facility that must maintain its youth programs running at all times.

- KVC has demonstrated, via its timely completion of the pool renovation, its ability to meet deadlines and work with staff to minimize impacts to its operations. This is critical to the functioning of the SRYC during this renovation.
- A low bid approach can result in unrealistically low prices, which may sacrifice the quality of the finished product through corner-cutting measures, or through the use of cheaper building materials, potentially increasing repair maintenance and replacement cost of components over time.
- A low bid generally increases the risk of excessive contractor generated change orders.
- A low bid generally leads to a more antagonistic relationship between the contractor and the owner.
- When lowest price is the driving factor and no other information is considered, the contractors will install the cheapest easiest system requiring the lowest skill level.
- On a low bid, there is less incentive for the contractor to minimize the owner's risk.
- On low bid, low margin projects, contractors often treat the project as a "filler project", by moving labor and equipment resources from other higher margin projects, instead of fully dedicating the resources to the low bid project.

Further, the Special Assistant to the City Manager visited the site with CIP staff and KVC. Prior to the site visit, the Special Assistant reviewed the plans, specifications, and GMP submittal which consist of:

1. 100% Construction Documents GMP Estimate Breakdown
2. Contractor's Clarifications, Qualifications, and Value Engineering
3. Contractor's General Conditions, Estimate Breakdown and Construction Schedule
4. List of Drawings, Specifications and Requests for Information
5. Construction Staging Area and Phasing Plan.

During the site visit which lasted approximately 2 hours staff, the Special Assistant to the City Manager and KVC walked through all the spaces in the youth center and at each space the intended scope was discussed at length the means and methods of construction and the costs associated with these various items. During the site visit price elements of the proposal were briefly discussed and the Special Assistant did not question any of the schedule of values pricing for the different disciplines of construction. Upon discussing the work and the phasing, he agreed that this amendment should be awarded to KVC at the price negotiated. Following the walk-through, the Special Assistant discussed the value of KVC's familiarity with the site and operations of he facility. He believes that by advertising the project, the City would introduce many of the risks associated with low bid contractors such as: change orders, delays, and unplanned / unnecessary disruptions to facility, programming, and operations. He also discussed the value of awarding the work of a resident to the City of Miami Beach.

<u>CIP Oversight Committee (CIPOC) Meeting – April 6, 2009</u>

The recommended Amendment No. 2 to the Pre-Construction Services Agreement with KVC constructors, for the final negotiated GMP for the SRYC Phase II construction was discussed at

length, as Agenda Item 4A, at the April 6, 2009, CIPOC meeting. The discussion centered around an initial recommendation to solicit advertised construction bids, as opposed to proceeding with the GMP that had been negotiated with KVC, in consideration of the current competitive construction market that may yield a lower initial bid price.

When asked about this alternative, the Special Assistant to the City Manager opined that if the project was bid the City might receive a 15% lower number than that negotiated with KVC. However, he recommended in favor of awarding the contract at the negotiated GMP, noting that under this construction option the contractor "owns" the project; in other words the contractor will be responsible for the risks, costs and delays associated with unforeseen conditions. He stated that he felt that this amounted to "an inherent insurance policy" for the project.

Vick Crespin, a principal with KVC, also spoke. He stated that he was selected under a Best Value Procurement Method, there would be a high level of principal involvement and that his firm has a track record of delivering projects within budget and schedule. He added that any delays in initiating construction would impact SRYC for two summers. As the meeting continued, members of the committee further discussed the merits of construction management at risk versus low bid contracts. The pros of construction management at risk include: a GMP, transfer of risk from owner to contractor, contractors familiarity with the job site and a reduced risk of disruption of facility operations. The main concern expressed by certain members of the CIPOC was losing the opportunity to secure a lower bid price and applying the potential savings to other youth programs. It was also discussed that the value engineering has been incorporated into the contract documents and that these savings could be realized in a competitive bid.

Following the discussion, a motion was entered to recommend that the City Commission authorize the advertisement of an ITB for the SRYC renovations. This motion failed to pass.

CONCLUSION

The Administration recommends approval of the attached Resolution, authorizing the Mayor and City Clerk to execute Amendment No. 2, in the amount of $4,565,666 plus a contingency in the amount of $228,283, to the Agreement with the firm of KVC Constructors, Inc., for Construction Services at the SRYC.

Attachments:

A. Schedule of Values by Discipline

B. Listing of Various Bids Received

JMG/TH/FHB/JCC/RWS

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ATTACHMENT "A"

KVC Constructors, Inc.

Scott Rakow Youth Center - Facility Renovation

PHASE III - 100% Construction Documents

Schedule of Values

Date:	Friday, February 27, 2009	
1	GENERAL CONDITIONS	$571,799
2	DEMOLITION	$48,140
3	EARTHWORK	w/Asphalt Pav.
4	SITE CONCRETE, FENCING AND GATES	$32,950
5	ASPHALT PAVING	$353,500
6	LANDSCAPING AND IRRIGATION	$114,289
7	TERMITE PROTECTION	$1,000
8	SITE UTILITIES	w/Asphalt Pav.
9	CONCRETE SHELL WORK	$294,350
10	AUGERED CAST PILES	$64,859
11	LIGHTWEIGHT INSULATING CONCRETE	w/Roofing
12	UNIT MASONRY	w/Concrete
13	MISCELLANEOUS METALS	$141,720
14	ROUGH CARPENTRY	$8,500
15	FINISH CARPENTRY	$62,400
16	ROOFING	$43,990
17	INSULATION	w/Drywall
18	CAULKING, SEALANTS & WATERPROOFING	$8,145
19	HOLLOW METAL	$98,710
20	WOOD DOORS / BI-FOLDS	N/A
21	FINISH HARDWARE	w/Hollow Metal
22	OVERHEAD DOOR	$4,400
23	SLIDING GRILL UNIT AT SNACK COUNTER (EXCLUDED BY OWNER)	NIC
24	GLASS / GLAZING / STOREFRONTS	$59,829
25	WALL MIRRORS AT FITNESS CENTER (ALLOWANCE)	$3,000
26	GLAZING ENCLOSURE AT SLATWALL (EXCLUDED BY OWNER)	NIC
27	GYPSUM DRYWALL	$128,000
28	PLASTER / STUCCO	$33,000
29	TILE / STONE	$28,800
30	RESILIENT AND RUBBER FLOORING	$157,706
31	EXISTING CONCRETE FLOOR PREP.	$15,000
32	CARPETING	N/A
33	ACOUSTICAL TILE / SPECIAL CEILINGS	$49,470
34	PAINT / WALLCOVERING	$96,084
35	RESIDENTIAL TOILET ACCESSORIES	N/A
36	PUBLIC TOILET ACCESSORIES AND PARTITIONS	$21,200
37	MISCELLANEOUS SPECIALTIES	$44,982
38	PROJECTION SCREENS (BY OWNER PER RFI #16)	By Owner
39	INTERIOR & EXTERIOR SIGNAGE (ALLOWANCE)	$3,000
40	APPLIANCES (BY OWNER)	By Owner
41	FURNISHING & EQUIPMENT (BY OWNER)	By Owner
42	REMOVE AND REINSTALL GYM SCOREBOARD FOR WALL REPAIRS (ALLOWANCE)	$2,000
43	WINDOW TREATMENTS (BY OWNER)	By Owner
44	ZAMBONI TRENCH DRAIN & PIPING	w/Asphalt Pav.
45	ELEVATORS	$55,590
46	FIRE PROTECTION	$179,000
47	PLUMBING	$101,475
48	H.V.A.C.	$501,710
49	ELECTRICAL	$764,000
	SUBTOTALS	$4,092,596
50	OWNERS CONTINGENCY (ALLOWANCE)	See Below
51		
52	CITY OF MIAMI BEACH GENERAL BUILDING PERMIT FEES	WAIVED
53	OTHER PERMIT FEES TO BE PAID BY CONTRACTOR	$15,000
54		
	SUBTOTALS	$4,107,596
55	FEE	$308,070
56	WARRANTY RESERVE	N/A
57	GL INSURANCE	$50,000
58	OPLIC (BY OWNER)	By Owner
59	BUILDERS RISK (ALLOWANCE)	$50,000
	SUBTOTALS	$4,515,666
60	BOND	$50,000
	TOTAL PROJECT COST WITHOUT OWNER'S CONTINGENCY =	$4,565,666

KVC CONSTRUCTORS

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Division 2 - Sitework

	Sealed Bid Proposals February 12, 2009				Low Bid Used Revised Proposals 2/27/2009
Site Fencing					
Subcontractor					
Gomez Fencing	$11,865.00	Not per specifications			
Guaranteed Fence	$8,700.00	Missing Scope	Revised proposal	=	**Total $11,950.00**
Carlson Fence					
Fence Masters					
Netting					
Subcontractor					
Guaranteed Fence	$9,000.00				**Total $9,000.00**
Demolition					
Subcontractor					
Florida Demolition	$37,140.00	Missing Scope	Revised proposal	=	**Total $48,140.00**
D&D	$65,000.00				
Demolition Services	$86,500.00				
Landscaping/ Irrigation					
Subcontractor					
Tropics North					
Tip Top	$133,336.05	Missing Scope	Revised proposal	=	**Total $139,114.00**
Arazoza Bros	$115,700.45		Revised proposal	=	**Total $114,289.00**
Rouco & Sons, Inc,					
All Green Landscaping					
Tree Movers					
Superior Landscaping	$133,680.95	Missing Scope	Revised proposal	=	**Total $148,220.00**
Vila & Sons					

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Sitework

Subcontractor					
CFE	$336,000.00	Missing Scope	Revised proposal	=	**Total $362,276.00**
Ranger Construction	$454,582.00				
Marks Bros.	$393,468.00		Revised proposal	=	**Total $382,992.00**
Pinnicle Eng & Development					
Budget					
Rock Power	$311,266.00	Missing Scope	Revised proposal	=	**Total $353,500.00**
All Star Enterprises					
MEF Construction					
Downrite Engineering					

Dewatering - N/A

Soil Treatment

Subcontractor					
Accurate	Unit Price				**Total $1,000.00**
Diligent	Unit Price				

Pavers

Subcontractor					
Stone Age	$12,479.55		Revised proposal	=	**Total $12,000.00**
Dirtsa	$9,937.95	Incomplete Scope			**No Revised Bid**
Perfect Pavers	$15,286.14				
J&P Tile	$15,800.00				

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Striping

Subcontractor					
Hi-Tech	$3,226.50		Included in Sitework Prices above.		
Roberts					

Division 3 - Concrete

Concrete/Masonry

Subcontractor					
D&D Concrete	$348,860.55		Revised proposal	=	**Total $294,350.00**
HDM Concrete					
P&H Structural Forming					
Florida Lemark	$243,190.00	Missing Scope	Revised proposal	=	**Total $302,190.00**
MJM Structural	$551,036.18		Revised proposal	=	**Total $388,000.00**

Precast Joists

Subcontractor					
PCI					
PSFI	$17,800.00		Included in Concrete/Masonry Prices above.		
SFI					

Piles

Subcontractor					
HJ Foundation	$83,000.00	Missing Scope	Revised proposal	=	**Total $89,859.00**
Ebsary	$59,000.00	Missing Scope	Revised proposal	=	**Total $64,859.00**
Bodax Foundations	$57,385.00		Revised Proposal (Not Bonded)	=	**Total $63,300.00**
J.L.U Piles					

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Division 5 - Metals

Misc. Metals

Subcontractor						
Skyline Steel	$134,000.00	Missing Scope	Revised proposal	=	**Total**	**$141,720.00**
Dixie Metals	$161,815.00				**No Revised Bid**	
Remior	$126,650.00	Not per specifications				
George's Welding	$138,870.00	Missing Scope	Revised proposal	=	**Total**	**$143,800.00**
Bachiller	$83,797.20	Not per specifications				

Division 6 - Wood & Plastics

Millwork

Subcontractor						
Royal Cabinetry	$58,471.50	Missing Scope	Revised proposal	=	**Total**	**$66,954.00**
Woodworks, Inc.	$73,845.00		Revised proposal	=	**Total**	**$70,000.00**
5 star millwork	$56,902.00	Missing Scope	Revised proposal	=	**Total**	**$62,400.00**
Cayman						

Division 7 - Thermal & Moisture Protection

Caulking & Waterproofing

Subcontractor						
General Caulking	$7,270.00	Missing Scope	Revised proposal	=	**Total**	**$8,145.00**
Metro Caulking						
Florida Lemark	$8,258.00	Missing Scope	Revised proposal	=	**Total**	**$9,228.00**
M&P Reynolds						

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Roofing

Subcontractor						
Unlimited Roofing (URS)	$57,700.00	Missing Scope	Revised proposal	=	**Total**	**$75,562.00**
Z Roofing						
Thermaseal						
Allied Roofing	$40,843.00	Missing Scope	Revised proposal	=	**Total**	**$43,990.00**
Southern Coast	$42,190.00	Missing Scope	Revised proposal	=	**Total**	**$46,072.00**
BET Const. & Roofing						
PetersenDean	$52,000.00	Missing Scope	Revised proposal	=	**Total**	**$53,040.00**

Division 8 - Doors & Windows

Doors & Hardware

Subcontractor						
SPS Builders Store						
Door Guys	$75,370.00	Missing Scope	Revised proposal	=	**Total**	**$89,818.00**
Cynamon Bros.	$82,500.00	Missing Scope	Revised proposal	=	**Total**	**$93,833.00**
The Katana Group	$87,000.00	Missing Scope	Revised proposal	=	**Total**	**$98,660.00**

Door Installation

Subcontractor						
ADH Install	$13,200.00	Missing Scope	Revised proposal	=	**Total**	**$16,930.00**
SPS Builders Store						
Door Guys	$23,700.00	Missing Scope	Revised proposal	=	**Total**	**$25,200.00**
The Katana Group	$12,250.00	Missing Scope	Revised proposal	=	**Total**	**$13,750.00**

Overhead Doors

Subcontractor						
Best Rolling Doors						
American Overhead Doors	$4,356.00		Revised proposal	=	**Total**	**$4,400.00**
B & B Doors						
Door Systems	$5,100.00		Revised proposal	=	**Total**	**$5,100.00**

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Glazing

Subcontractor						
Pena Alum	$66,225.00		Revised proposal	=	**Total**	**$64,310.00**
SPS Builders Store						
Perspective Glass	$57,700.00	Missing Scope	Revised proposal	=	**Total**	**$63,945.00**
ProGlass	$89,772.00	Missing Scope	Revised proposal	=	**Total**	**$90,402.00**
Continental Glass						

Division 9 - Finishes

Drywall

Subcontractor						
George Moerler Inc	$155,100.00		Revised proposal	=	**Total**	**$153,800.00**
Agape	$117,600.00	Missing Scope	Revised proposal	=	**Total**	**$128,000.00**
RC Interior	$142,488.00		Revised proposal	=	**Total**	**$131,968.00**
B&B Interiors						
Acousti	$110,216.00	Missing Scope	Revised proposal	=	**Total**	**$135,593.00**
Executive Drywall	$221,878.00	Missing Scope	Revised proposal	=	**Total**	**$231,878.00**
Paramount Drywall & Stucco						
Kendall Diversified						

Stucco / Plaster

Subcontractor						
George Moerler Inc	$39,300.00	Missing Scope	Revised proposal	=	**Total**	**$45,300.00**
Amaya	$36,535.00	Missing Scope	Revised proposal	=	**Total**	**$36,535.00**
Lion Plastering	$76,106.80	Missing Scope	Revised proposal	=	**Total**	**$76,107.00**
Agape	$32,834.00	Missing Scope	Revised proposal	=	**Total**	**$33,000.00**
Paramount Drywall & Stucco						
Kendall Diversified						

Acoustical

Subcontractor						
Bergolla	$50,315.00	Missing Scope	Revised proposal	=	**Total**	**$59,000.00**
George Moerler Inc						
RC Interior	$73,881.00	Missing Scope	Revised proposal	=	**Total**	**$74,631.00**
Acousti	$60,755.00	Missing Scope	Revised proposal	=	**Total**	**$62,255.00**
Lotspeich						

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

VCT / Sheet Vinyl / Base

Subcontractor						
Resource	$111,170.00		Revised proposal	=	**Total**	**$55,023.00**
Acousti	$28,925.00	Incomplete Scope	Revised proposal	=	**Total**	**$39,425.00**
Opler						
Tamiami Carpet & Tile						
Carpetech	$140,425.00	Missing Scope	Revised proposal	=	**Total**	**$39,281.00**
J&P Tile	$38,000.00	Missing Scope	Revised proposal	=	**Total**	**$40,300.00**

Carpeting/ Base (DELETED)

Subcontractor

Carpet deleted see VCT

Rubber Flooring

Subcontractor						
Acousti Engineering	$96,955.00	Missing Scope	Revised proposal	=	**Total**	**$96,955.00**
SSE	$92,025.00	Missing Scope	Revised proposal	=	**Total**	**$98,145.00**
Resource	Included in VCT		Revised proposal	=	**Total**	**$126,917.00**
Trident Surfacing	$93,320.00	Missing Scope	Revised proposal	=	**Total**	**$95,000.00**
Carpetech	Included in VCT		Revised proposal	=	**Total**	**$113,225.00**

Painting

Subcontractor						
J. Mori	$157,160.00	Missing Scope	Revised proposal	=	**Total**	**$157,600.00**
M&P Reynolds	$75,061.00	Missing Scope	Revised proposal	=	**Total**	**$105,119.00**
Jax Services	$59,200.00	Missing Scope	Revised proposal	=	**Total**	**$96,084.00**
Inclan Painting	$33,500.00	Incomplete Scope			**No Revised Bid**	
Broadline Painting						
Brilliant Brush						

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Tile

Subcontractor						
JP Tiles	$24,500.00	Missing Scope	Revised proposal	=	**Total**	**$28,800.00**
Architile	$36,000.00	Missing Scope	Revised proposal	=	**Total**	**$39,500.00**
Tamiami Carpet						
Millenium Marble	$42,614.00	Missing Scope	Revised proposal	=	**Total**	**$44,920.00**
Artistic						

Division 10 - Specialties

Fire Extinguishers

Subcontractor			
Elechs	$1,885.00	**Total**	**$1,885.00**
All Specialty Sales			
Multiline			
Triangle	$1,939.91		

Toilet Partitions

Subcontractor			
Multiline	$15,738.00		
All Specialty Sales	$13,465.00	**Total**	**$13,465.00**
Elechs	$13,840.00		
Mardale			

Toilet/ Shower Access.

Subcontractor			
Multiline	$6,780.00	**Total**	**$6,780.00**
All Specialty Sales	$6,940.00		
Elechs	$7,275.00		
Mardale			

KVC CONSTRUCTORS

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Signage - OWNER ALLOWANCE

Subcontractor					
Multiline	No Signage Drawings	Allowance		**Total**	**$3,000.00**
All Specialty Sales	No Signage Drawings				
Elechs	No Signage Drawings				
Mardale	No Signage Drawings				
Baron Sign	No Signage Drawings				
Law's Architectural	No Signage Drawings				

Lockers / Benches

Subcontractor					
Multiline	No Bid	New proposal	=	**Total**	**$23,000.00**
Elechs	$13,480.00	Revised proposal	=	**Total**	**$23,350.00**
Mardale					

Chalkboards/Bulletin Boards

Subcontractor					
Multiline	$5,032.00			**Total**	**$5,032.00**
All Specialty Sales	$7,714.00				
Elechs	$8,210.00				
Mardale					

Wall Louvers

Subcontractor

With Mechanical

Folding Partitions

Subcontractor					
Folding Walls of Miami					
SSE	$8,870.00	Revised proposal	=	**Total**	**$5,100.00**
Hufcor Florida Group	$6,895.00	Revised proposal	=	**Total**	**$6,895.00**

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

Bike Racks

Subcontractor						
Elechs	$1,315.00	Incomplete Scope	Revised proposal	=	**Total**	**$2,630.00**
Multiline	$3,630.00	Incomplete Scope	Revised proposal	=	**Total**	**$5,100.00**

Division 11 - Equipment

Kitchen Equipment - N/A

Division 12 - Furnishings

Decorative Ceiling Panels

Subcontractor

With Acoustical

Division 14 - Conveyance Sysytems

Elevators

Subcontractor						
Kone						
Otis Elevator	$56,500.00	Incomplete Scope	Revised proposal	=	**Total**	**$58,491.00**
Thyssen Krupp	$58,337.00	Incomplete Scope	Revised proposal	=	**Total**	**$56,900.00**
Schindler	$50,987.00	Incomplete Scope	Revised proposal	=	**Total**	**$55,590.00**

Division 15 - Mechanical

Fire Sprinkler

Subcontractor						
SimplexGrinnell	$207,660.00		Revised proposal	=	**Total**	**$204,060.00**
Falcon	$198,000.00		Revised proposal	=	**Total**	**$198,000.00**
Sprinklermatic	$261,799.00		Revised proposal	=	**Total**	**$263,299.00**
Wiginton Fire Systems						
Advanse Systems						
Carribbean Fire	$244,697.00		Revised proposal	=	**Total**	**$246,197.00**

CITY OF MIAMI BEACH SCOTT RAKOW YOUTH CENTER RENOVATION
PHASE III 100% CONSTRUCTION DOCUMENTS
Attachment "B"

H. V. A. C

Subcontractor					
Tropic AC					
RP Tech	$509,900.00	Missing Scope	Revised proposal	=	**Total $511,710.00**
Archon Air	$839,580.00	Missing Scope	Revised proposal	=	**Total $852,174.00**
Air Electric, Inc.					
A&P Airconditioning	$676,500.00	Missing Scope	Revised proposal	=	**Total $656,705.00**
Unitech Mechanical					
Weathertrol	$502,300.00	Missing Scope	Revised proposal	=	**Total $516,838.00**
Jorda					
Thermal Concepts					

Plumbing

Subcontractor					
Centerline Plumbing	$112,750.00	Missing Scope	Revised proposal	=	**Total $121,846.00**
Peoples Plumbing	$108,500.00	Missing Scope	Revised proposal	=	**Total $113,472.00**
S.I. Plumbing	$111,900.00	Missing Scope	Revised proposal	=	**Total $116,923.00**
Ringermann Plbg.					
Tasco Plumbing					
Plumbers Enterprises					
Doug Orr Plumbing					
Olympia	$183,200.00		Revised proposal	=	**Total $101,475.00**
Aurora					

Division 16 - Electrical

Electrical

Subcontractor					
IES / Daniel Electric	$846,758.00	Missing Scope	Revised proposal	=	**Total $862,910.00**
Royal Electric	$612,370.00		Proposal still incomplete (Not Bonded)		**Total $727,567.00**
Summit	$789,400.00	Missing Scope	Revised proposal	=	**Total $769,000.00**
Hypower					
21st Century					
Elcon Electric					
DEC Electric					

ATTACHMENT C

ADDITIONS, REMODELING AND RENOVATIONS

SCOTT RAKOW YOUTH CENTER

CITY OF MIAMI BEACH

080815

ESTIMATE OF PROBABLE COST OF CONSTRUCTION

Division	Description	Probable Cost	% of Total
2	Demolition (Building)	$299,500	7.4%
2	Site Improvements	$511,200	12.6%
3	Concrete	$278,600	6.9%
4	Masonry	$32,000	0.8%
5	Metals	$41,500	1.0%
6	Woods & Plastics	$36,000	0.9%
7	Thermal & Moisture Protection	$52,950	1.3%
8	Doors & Windows	$157,500	3.9%
9	Finishes	$564,200	13.9%
10	Specialties	$87,255	2.2%
11	Equipment	$5,000	0.1%
12	Furnishings	$20,000	0.5%
13	Special Construction (Systems)	$0	0.0%
14	Conveying Systems	$65,000	1.6%
15	Plumbing	$109,782	2.7%
15	HVAC	$461,201	11.4%
15	Fire Protection	$250,000	6.2%
16	Electrical	$1,078,300	26.6%
	Total	**$4,049,988**	**100.0%**

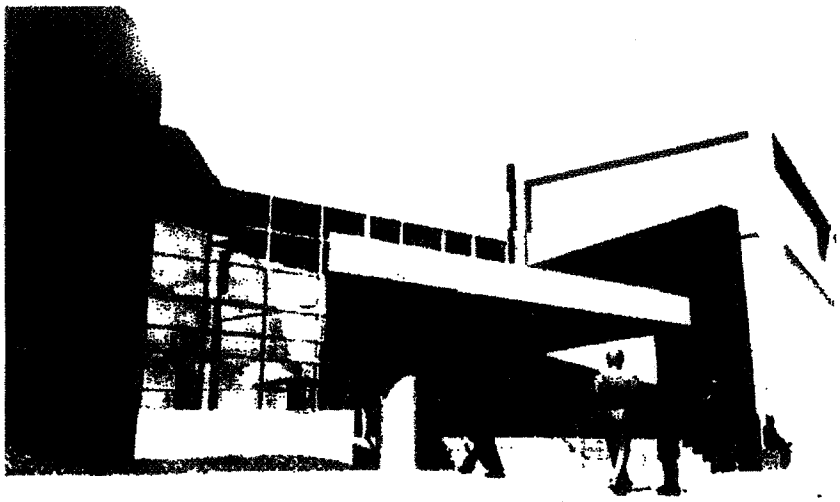
General Conditions	12%	$485,999
Subtotal		**$4,535,987**
Bonds & Insurances	3%	$136,080
Subtotal		**$4,672,066**
Overhead & Profit	10%	$467,207
Subtotal		**$5,139,273**
Contingency	5%	$256,964
Total Estimate of Probable Construction Cost		**$5,396,236**
Owner's Contingency	5%	$269,812
Total Estimate of Probable Cost		**$5,666,048**

BROWN & BROWN • CSA GROUP

ATTACHMENT D

Scott Rakow Youth Center
New Additions and Renovations
CMB Project No. CMB-001

ESTIMATE OF PROBABLE CONSTRUCTION COSTS



Rendering by Brown + Brown Architects

Phase III - 90 % Construction Documents Submittal

For

by

PBS&J

October 17, 2008

City of Miami Beach

ATTACHMENT D

Scott Rakow Youth Center (SRYC)
New Additions & Renovations
CMB Project No. CMB-001

Phase III - 90% Construction Documents

CSI - Summary

REV 10/17/2008

CSI Div.	Description	Bldg	Site	Estimated Total	% per CSI Div.
2	Demolition/Sitework (Within Bldg. Limits)	$316,730		$316,730	7.5%
	Site / Civil Improvements (Overall Site)		$571,458	$571,458	13.5%
3	Concrete	$288,150		$288,150	6.8%
4	Masonry	$30,990		$30,990	0.7%
5	Metals	$38,673		$38,673	0.9%
6	Woods & Plastics	$18,550		$18,550	0.4%
7	Thermal & Moisture Protection	$49,358		$49,358	1.2%
8	Doors & Windows	$169,145		$169,145	4.0%
9	Finishes	$568,864		$568,864	13.4%
10	Specialties	$77,305		$77,305	1.8%
11	Equipment	$22,500		$22,500	0.5%
12	Furnishings	$28,190		$28,190	0.7%
13	Special Construction (Systems)	Incl. in Div. 16		Incl. in Div. 16	
14	Conveying Systems	$70,000		$70,000	1.7%
15	Mechanical (Plumbing, HVAC, Fire Prot.)	$838,703		$838,703	19.8%
16	Electrical incl. Site Electrical	$965,554	$176,200	$1,141,754	27.0%
	Subtotal	**$3,482,712**	**$747,658**	**$4,230,370**	**100.0%**

3-Phase Construction @ 3%	$126,911
Subtotal	**$4,357,281**
General Conditions @ 12%	$522,874
Subtotal	**$4,880,155**
Bonds & Insurances @ 3%	$146,405
Subtotal	**$5,026,560**
Overhead & Profit @ 10%	$502,656
Subtotal	**$5,529,215**
Estimate / Design Contingency @ 5%	$276,461
Estimated Probable Construction Cost (2008)	**$5,805,676**
Estimated Probable Construction Cost (Rounded)	**$5,806,000**
Owner's Contingency @ 5%	$290,284
Estimated Probable Const. Cost (2008) w/Owner's Contingency	**$6,095,960**

Exclusions:

Environmental Remediation/Mitigation incl. Lead, Asbestos, and Arsenic
Builder's Risk Insurance
General Contractor's Contingency (if applicable)

City of Miami Beach

Scott Rakow Youth Center (SRYC)
New Additions & Renovations
CMB Project No. CMB-001

Phase III - 90% Construction Documents REV 10/17/2008

Basis, Assumptions and Exclusions

Estimate is based on 90% Construction Documents Submittal Drawings provided by Brown + Brown dated May 23, 2008
Unit prices and allowances are based on standard references and historical projects.
Quantities and unit-prices are subject to change pending design progress.
Estimate includes an Estimate Design Contigency
Estimate includes an Owner's Construction Contingency
Estimate includes all **In-Contract** Furniture, Fixtures, & Equipment (FF& E), items noted in drawings
Estimate excludes all **Not-In-Contract** (NIC) Furniture, Fixtures, & Equipment (FF& E)
Estimate excludes any removal, storage & re-install of Existing FF&E
Estimate excludes any upgrades to Existing Emergency Generator, or any other equipment
Estimate excludes any work done to Existing Pool and Pool Equipment
Estimate excludes any specialty work being done to the Existing Ice Rink, Bowling Alley, etc.
Estimate excludes any Major Off-Site Improvements and Areas Not in Contract
Estimate excludes all Not-In-Contract (NIC) items noted in the drawings.
Estimate excludes any other scope of work, unless noted .
Estimate excludes Environmental Remediation & Mitigation, if required. (Lead, Asbestos, Arsenic, etc.)
Estimate excludes General Contractor's Contingency, if required.
Estimate excludes Design, Construction Engineering & Inspection (CEI) fees.
Estimate is based on normal bidding circumstances and current market conditions.
Estimate assumes that the entire scope of work is to be performed under one single contract
Estimate only includes construction costs and does not include any pre-construction costs.

City of Miami Beach
Scott Rakow Youth Center (SRYC)
New Additions & Renovations
CMB Project No. CMB-001

Main Building
Estimate of Probable Construction Cost

REV 10/17/2008

DIV.	DESCRIPTION	QTY.	UNIT	UNIT COST	TOTAL COST
2 DEMOLITION / SITE (WITHIN BUILDING LIMITS)					
	Gut-out Demolition for Bathrooms/Kitchenette & Cap Utility Lines	915	SF	$10.00	$9,150
	Selective Interior Demolition (Walls, Floors, Ceilings)	22,461	SF	$5.00	$112,305
	Demo Concrete Slabs on grade	444	SF	$2.00	$888
	Remove Existing Elevator Shaft Masonry Wall	1520	SF	$3.00	$4,560
	Remove Existing Exterior Masonry Wall	344	SF	$2.50	$860
	Remove Existing Stair Railings	225	LF	$13.00	$2,925
	Remove Existing Steel Mesh Railing	90	LF	$14.45	$1,301
	Remove Existing Interior Single Doors	14	EA	$85.00	$1,190
	Remove Existing Interior Double Doors	1	EA	$125.00	$125
	Remove Existing Exterior Single Doors	2	EA	$85.00	$170
	Remove Existing Metal Roll-up Door (13'-0x10'-0")	1	EA	$250.00	$250
	Remove Existing Metal Roll-up Door (34'-0x10'-0")	2	EA	$350.00	$700
	Remove Existing Vinyl Curtain @ Roll-up Door	1	EA	$150.00	$150
	Remove Existing Two Story Aluminum & Glass Storefront Wall	342	SF	$8.00	$2,736
	Remove/Relocate Existing Bronze Plaques at right and left entry walls	2	EA	$100.00	$200
	Remove Existing Bulletin Glass Cabinet Display	1	EA	$100.00	$100
	Remove Existing Front Cabinet Desk	1	EA	$500.00	$500
	Remove Existing Hanging Hooks (Assumed Qty)	10	EA	$2.00	$20
	Remove Existing Metal Lockers (Assumed Qty)	30	EA	$50.00	$1,500
	Remove Existing Steel & Plywood Platform	85	SF	$6.00	$510
	Remove Existing Volley Ball Net w/Supports	1	EA	$500.00	$500
	Remove Existing Plumbing Fixtures	20	EA	$100.00	$2,000
	Remove Existing Toilet Accessories (grab bars, toilet tissue, etc)	40	EA	$10.00	$400
	Remove Existing Toilet Partitions	6	EA	$100.00	$600
	Remove Existing Water Fountain	1	EA	$200.00	$200
	Remove Existing Ice Machine	1	EA	$500.00	$500
	Remove Existing Water Heater (Assumed up thru 245 GPH)	5	EA	$250.00	$1,250
	Remove Existing Hydraulic Elevator & Hydraulic Equipment	1	EA	$5,000.00	$5,000
	Remove Existing Piping (Water, Sanitary & Vent)	4,669	LF	$2.00	$9,338
	Remove Existing Hose Bibbs	4	EA	$10.00	$40
	Remove Existing 1-1/2" VTR	1	EA	$50.00	$50
	Remove Existing Sump Pump	1	EA	$100.00	$100
	Remove Existing Floor & Area Drains	3	EA	$75.00	$225
	Remove Existing Ductwork	810	LF	$2.50	$2,025
	Remove Existing Cooling Tower (Assumed Up Thru 400 Tons)	1	EA	$2,000.00	$2,000
	Remove Existing Chillers (Assumed Up Thru 100 Tons)	3	EA	$3,500.00	$10,500
	Remove Existing Water Cooled Pkgd. Unit (Asmd Up thru 140 Tons)	1	EA	$3,000.00	$3,000
	Remove Existing Air Handling Unit (Assumed Up Thru 5 Tons)	3	EA	$650.00	$1,950
	Remove Existing Pumps (Assumed 7-1/2 HP thru 15 HP)	6	EA	$450.00	$2,700
	Remove Existing Expansion Tanks	2	EA	$100.00	$200
	Remove Existing Exhaust Fans	4	EA	$100.00	$400
	Remove Existing Dehumidifier (Assumed Up Thru 155lbs/hr)	1	EA	$150.00	$150
	Remove Existing Supply Grilles	47	EA	$50.00	$2,350
	Remove Existing Fire Dampers	2	EA	$50.00	$100
	Remove & Replace Existing Supply Air Diffusers	21	EA	$400.00	$8,400
	Relocate Existing Ductwork	9	LF	$15.00	$135
	Reroute Existing Piping (Assumed 4" thru 6")	79	LF	$50.00	$3,950
	Remove Existing Electrical (Lighting, Power & Distribution) (Allowance)	22,461	SF	$2.00	$44,922
	Excavate and remove all refrigerant lines down to underground	5,101	SF	$4.00	$20,404
	Protection of Migration of Debris (Allowance)	1	LS	$8,000.00	$8,000
	Misc. Demolition & Removals (Allowance 10% of Demolition work)	1	LS	$27,000.00	$27,000
	30 CY Dumpsters during construction, assumed one per month	12	EA	$1,000.00	$12,000
	Clearing Area for Building Footprint	1,345	SF	$0.50	$673
	Excavation for Building Foundation (Assumed 3' average)	149	CY	$12.00	$1,793

City of Miami Beach
Scott Rakow Youth Center (SRYC)
New Additions & Renovations
CMB Project No. CMB-001

Main Building
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REV 10/17/2008

DIV.	DESCRIPTION	QTY.	UNIT	UNIT COST	TOTAL COST
	Imported Fill for Bldg. Pad (Assumed 3' average)	149	CY	$25.00	$3,736
		SUBTOTAL SITE (BLDG. LIMITS)			$316,730
3 CONCRETE					
	Elevator				
	Elevator Piles 14"Ø	220	LF	$32.00	$7,040
	Elevator Pit structure walls and bottom slab	12	CY	$600.00	$7,200
	Elevator Concrete Tie Columns	15	CY	$900.00	$13,500
	Elevator Concrete Beams & Parapet	7	CY	$900.00	$6,570
	Elevator 6" Elevated Slab	17	CY	$900.00	$15,300
	Pool Manager Office				
	Piles 14"Ø	330	LF	$32.00	$10,560
	Piles Cap	4	CY	$450.00	$1,800
	TE (thickened s.o.g. edge)	1	CY	$350.00	$350
	SOG	1	CY	$240.00	$240
	Concrete Columns	2	CY	$900.00	$1,800
	Beams	6	CY	$1,000.00	$6,000
	Elevated Slab & Parapet	3	CY	$700.00	$2,100
	Canopies				
	Piles 14"Ø	1,045	LF	$32.00	$33,440
	Piles Cap	16	CY	$450.00	$7,200
	Columns	25	CY	$900.00	$22,500
	Beams	27	CY	$1,000.00	$27,000
	4 3/4" Concrete Elevated Slab for Entrance Canopy	21	CY	$700.00	$14,700
	8" x 10" Concrete Curb for entrance canopy	4	CY	$300.00	$1,200
	7 1/2" Concrete Canopy over 12" PC Joists for lobby	16	CY	$900.00	$14,400
	12" Precast Concrete Joists	1092	SF	$23.60	$25,771
	Lightweight Insulating Concrete	1092	SF	$4.00	$4,368
	Slab on grade for Exercise Room	63	CY	$240.00	$15,120
	Slab on grade for Fitness Center to match existing	5	CY	$240.00	$1,200
	Concrete Curb 1'-4" x 8" for Fitness Center to match existing	3	CY	$300.00	$900
	New Topping Slab (between ramps and bldg)	159	SF	$3.00	$477
	Concrete Bench for Fitness Center	151	SF	$10.00	$1,510
	Columns for new windows	18	CY	$800.00	$14,400
	Concrete Eyebrow (106 SF)	3	CY	$900.00	$2,700
	Control Joints (Allowance)	1	LS	$1,000.00	$1,000
	Drill Slabs, Saw Cuts, Dowels, etc (Allowance)	1	LS	$3,000.00	$3,000
	Misc. Concrete (Allowance for unforseen conditions)	62,010	GSF	$0.40	$24,804
		SUBTOTAL CONCRETE			$288,150
4 MASONRY					
	Pool Manager's Office 8" Exterior CMU Walls	126	SF	$15.00	$1,893
	Elevator 8" Interior CMU Walls	540	SF	$12.00	$6,480
	8" CMU (Exterior)	601	SF	$15.00	$9,021
	8" CMU (Interior)	1,133	SF	$12.00	$13,596
		SUBTOTAL MASONRY			$30,990
5 METALS					
	Hoistbeam	10	LF	$100.00	$1,000
	2" Steel Columns & Beams, anchorage for the roof stairs	5	LF	$70.00	$364
	L 6" x 4" x 3/8"@ elevator	135	LBS	$5.50	$743
	1/4" Diamond Plate @ Elevator Pit	1	EA	$200.00	$200
	Hot Dipped Galv Metal Stair (landing)	25	SF	$120.00	$3,000
	Hot Dipped Galv Metal Stair (nosing)	20	LF of Nose	$150.00	$3,000
	1 1/4" x 1 1/4" x 4" Metal Grate for Metal Stair (landing)	25	SF	$75.00	$1,875
	1 1/4" x 1 1/4" x 4" Metal Grate Risers for Metal Stair (nosing)	20	LF of Nose	$75.00	$1,500
	Elevator 42" High hot Galv Railing	23	LF	$80.00	$7,600
	Roof Ladder	1	EA	$1,200.00	$5,850
	Handrail for Stairs	95	LF	$80.00	$5,850
	Guardrail for Stairs	130	LF	$45.00	$5,850
	Misc Metals - Angles, Plates, Bolts, Connections (Allowance 5%)	1	LS	$1,841.58	$1,842

City of Miami Beach
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New Additions & Renovations
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Main Building
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DIV.	DESCRIPTION	QTY.	UNIT	UNIT COST	TOTAL COST
		SUBTOTAL METALS			$38,673
6 WOODS & PLASTICS					
	Snack Area				
	Upper Cabinets	8	LF	$120.00	$960
	Base Cabinets	8	LF	$180.00	$1,440
	24" formica Backsplash	25	LF	$18.00	$450
	3/4" Plywood Worksurface w/plastic laminate finish	55	SF	$40.00	$2,200
	Security Desk (Allowance)	50	LF	$250.00	$12,500
	Wood Blocking (Allowance)	1	LS	$1,000.00	$1,000
		SUBTOTAL WOOD & PLASTICS			$18,550
7 THERMAL & MOISTURE PROTECTION					
	Vapor Barrier for SOG	8,083	SF	$0.15	$1,212
	Bentonite Waterproofing Membrane for ext pit wall	479	SF	$3.00	$1,437
	Cementitious Waterproofing for interior of pit walls	245	SF	$4.50	$1,103
	1" Rigid Board Insulation (Perimeter Walls)	728	SF	$1.50	$1,091
	3" Batt Insulation (Interior Walls)	14,689	SF	$0.80	$11,751
	Fire Proofing (Allowance) (Addition Area Only)	1,649	Roof SF	$2.00	$3,298
	Modified Bitumen Roofing System	1,043	Roof SF	$7.00	$7,301
	Fluid Applied Waterproofing Membrane	606	Roof SF	$6.00	$3,636
	Flashing, Cant strip, Other Accessories (Allowance)	1,649	Roof SF	$0.85	$1,402
	Overflow Scuppers & Working Scuppers	4	EA	$250.00	$1,000
	4" Downspouts	78	LF	$8.00	$624
	Waterproofing, Sealants & Caulking (Allowance)	62,010	GSF	$0.25	$15,503
		SUBTOTAL THER. & MOIS. PROT.			$49,358
8 DOORS & WINDOWS					
Doors	Interior Single Door and Frame	16	EA	$650.00	$10,400
	Interior Single Door and Frame W/ Vision Panel	14	EA	$750.00	$10,500
	Interior Double Door and Frame	4	EA	$1,300.00	$5,200
	Interior Double Door anjd Frame W/ Vision Panel	1	EA	$1,400.00	$1,400
	Exterior Single Door and Frame W/ Vision Panel	1	EA	$800.00	$800
	Exterior Double Door and Frame	2	EA	$1,600.00	$3,200
	Exterior Double Doorand Frame W/ Vision Panel	2	EA	$1,700.00	$3,400
	Exterior Picket Gate/ Double Gate (16'W x 7'H)	1	EA	$4,500.00	$4,500
	Interior Hardware	35	EA	$400.00	$14,000
	Exterior Hardware	6	EA	$800.00	$4,800
	Roll-up Door (10'-0"x7'-0")	1	EA	$2,300.00	$2,300
	Panic Hardware & Kick plate	6	EA	$1,000.00	$6,000
Windows					
	Interior Glazing	236	SF	$35.00	$8,260
	Impact Resistant Windows	193	SF	$80.00	$15,440
	Storefront System	831	SF	$95.00	$78,945
		SUBTOTAL DOORS & WINDOWS			$169,145
9 FINISHES					
Wall	Interior Walls (Drywall, inc. studs, framing etc.)	14,689	SF	$6.00	$88,134
	Perimeter Walls (Drywall, inc. furring, framing etc.)	728	SF	$4.00	$2,910
	Ceramic Tile Walls	4,978	SF	$9.00	$44,802
	Interior Painting	43,036	SF	$0.80	$34,429
Floors	Ceramic Tile Floors	1,770	SF	$10.00	$17,700
	Carpeting	1,384	SF	$4.00	$5,536
	Rubber Interlocking Floors	6,163	SF	$10.00	$61,630
	VCT, Vinyl Composition Tile Floor	11,976	SF	$3.50	$41,916
	Sealed Concrete Floors	663	SF	$1.50	$995
Base	Ceramic Tile Base	607	LF	$6.50	$3,946
	Rubber Base	2,653	LF	$2.50	$6,633
Ceiling	2'x2' Lay-in Acoustical Ceiling Panel on Suspended Ceiling Grid	12,667	SF	$4.50	$57,002
	Hard Ceiling System w/one coat veneer plaster o/ 5/8" Gyp. Board Base	2,971	SF	$6.50	$19,312
	Exposed Structure Painted	374	SF	$1.00	$374
	Existing Structure Exposed, Repair, Clean & Paint	5,041	SF	$2.00	$10,082

City of Miami Beach
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New Additions & Renovations
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REV 10/17/2008

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DIV.	DESCRIPTION	QTY.	UNIT	UNIT COST	TOTAL COST
	Armstrong Infusion Canopy Ceiling System	213	SF	$12.00	$2,556
Exterior	Smooth Texture Stucco	200	SY	$35.00	$7,000
	Exterior Paint (Allowance)	36,591	SF	$1.20	$43,909
	Misc. Existing Finishes Protection / Replacement due to construction (Allowance)	20,000	SF	$6.00	$120,000
		SUBTOTAL FINISHES			$568,864
10 SPECIALTIES					
	Toilet Partitions (ADA)	6	EA	$900.00	$5,400
	Toilet Partitions	10	EA	$800.00	$8,000
	Urinal Screens	2	EA	$350.00	$700
	36" Grab Bars	6	EA	$60.00	$360
	42" Grab Bars	8	EA	$70.00	$560
	Dual Toilet Tissue Dispenser	17	EA	$50.00	$850
	Soap Dispenser Wall Mounted	18	EA	$150.00	$2,700
	Feminine Napkin Disposal/Partition Mounted	11	EA	$325.00	$3,575
	Feminine Napkin Dispenser Surface Mounted	1	EA	$450.00	$450
	Surface Mounted Paper Towel Dispenser	2	EA	$100.00	$200
	Wall Mounted Stainless Steel Frame Tilt Mirror (18" x 30")	19	EA	$150.00	$2,850
	Electric Hand Dryer	12	EA	$750.00	$9,000
	Diaper Changing Table	4	EA	$350.00	$1,400
	Heavy Duty Clothes Hook	14	EA	$40.00	$560
	Fire Extinguishers & Cabinets (Allowance)	20	EA	$300.00	$6,000
	Interior Building Signage (Allowance)	80	EA	$200.00	$16,000
	Exterior Building Signage (Allowance)	1	LS	$5,000.00	$5,000
	Lockers (1-0"x3-0")	45	EA	$250.00	$11,250
	Wire Shelving (18"x48")	21	LF	$50.00	$1,050
	Plaque above ceiling"Fire and smoke barrier: seal and protect all openings" (Allowance)	1	LS	$600.00	$600
	Pit Ladder	1	EA	$800.00	$800
		SUBTOTAL SPECIALTIES			$77,305
11 EQUIPMENT					
	Glass Enclosed Display Case w/ Shelves (9'-8"x1'-5")	1	EA	$3,000.00	$3,000
	Display Case (4'-8"x8'-3")	1	EA	$4,500.00	$4,500
	Kiln Oven	1	EA	$5,000.00	$5,000
	Snack Area Equipment (Allowance)	1	LS	$10,000.00	$10,000
	Microwave	4	EA		Incl. above
	Ref./Freezer Vert.	2	EA		Incl. above
	Freezer Hor.	1	EA		Incl. above
	Icemaker	1	EA		Incl. above
	Toaster Oven	1	EA		Incl. above
	Coffe Maker	1	EA		Incl. above
	Cash Register	1	EA		Incl. above
		SUBTOTAL EQUIPMENT			$22,500
12 FURNISHINGS					
	Window Treatments (Allowance)	1,260	SF	$6.50	$8,190
	Folding Partition	1	EA	$20,000.00	$20,000
		SUBTOTAL FURNISHINGS			$28,190
13 SPECIAL CONSTRUCTION					
		SUBTOTAL SPECIAL CONSTRUC.			Incl. in Div. 16
14 CONVEYING SYSTEMS					
	New ADA Hydraulic Passenger Elevator, 2 stops	1	EA	$70,000.00	$70,000
		SUBTOTAL CONVEYING SYSTEMS			$70,000
15 MECHANICAL					
Plumbing					
	Waterclosets (ADA)	7	EA	$1,500.00	$10,500
	Lavatories (ADA)	6	EA	$1,400.00	$8,400
	Waterclosets	9	EA	$1,400.00	$12,600
	Lavatories	13	EA	$1,300.00	$16,900

City of Miami Beach
Scott Rakow Youth Center (SRYC)
New Additions & Renovations
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Main Building
REV 10/17/2008

Estimate of Probable Construction Cost

DIV.	DESCRIPTION	QTY.	UNIT	UNIT COST	TOTAL COST
	Urinals	3	EA	$1,600.00	$4,800
	Electric Water cooler, Dual Type (Hi-Low)	4	EA	$2,000.00	$8,000
	Three Compartment Sink	1	EA	$1,500.00	$1,500
	Wall-mounted hand-washing Sink	1	EA	$600.00	$600
	Mop Receptor	1	EA	$1,200.00	$1,200
	Electric Water Heater (12 Gal Assumed)	2	EA	$3,500.00	$7,000
	3" Floor Drains	9	EA	$300.00	$2,700
	Cleanouts	6	EA	$400.00	$2,400
	Hose Bib	1	EA	$150.00	$150
	Cut & Cap Existing Pipes (Sanitary & Sewer)	11	Loc	$500.00	$5,500
	Connections to Existing (Sanitary & Sewer)	23	Loc	$500.00	$11,500
	Sanitary and Water Piping (Allowance)	4,008	SF	$4.00	$16,032
	Special Drainage for Ice Rink Area, Zamboni Melt Pit (Allowance)	500	SF	$10.00	$5,000
HVAC					
	WaterCooled Chiller				
	CH-1 (70 Tons, 180 GPM)	1	EA	$75,000.00	$75,000
	CH-2 (70 Tons, 180 GPM)	1	EA	$75,000.00	$75,000
	Air Handling Units				
	AHU-1 (20,000 CFM, 20 HP, 877.4 MBH)	1	EA	$52,000.00	$52,000
	AHU-3 (10,000 CFM, 10 HP, 410.3 MBH)	1	EA	$30,000.00	$30,000
	Direct Expansion Split System Unit				
	AHU-4 (17,000 CFM, 7.5)	1	EA	$45,000.00	$45,000
	Packaged Terminal AC Unit (As per Quote)	1	LS	$900.00	$900
	AC-1 & 2 (230 CFM, 976 Watts)	2	EA		Incld. Above
	Fan Schedule (As Per Quote)	1	LS	$3,000.00	$3,000
	TEF (80 CFM, 957 RPM, Centrifugal, Ceiling)	1	EA		Incld. Above
	EF-2 (300 CFM, 1441 RPM, Centrifugal, Roof)	1	EA		Incld. Above
	EF-3 & 4 (600 CFM, 964 RPM, Centrifugal, Roof)	2	EA		Incld. Above
	Pump Schedule				
	P-1 & 2 (Chilled Water, 380 GPM, 10 HP)	2	EA	$10,000.00	$20,000
	P-3 & 4 (Condensing Water, 420 GPM, 10 HP)	2	EA	$10,000.00	$20,000
	Diaphragm Expansion Tank (21.7 Gallons)	1	EA	$600.00	$600
	Air Separator with strainer (assumede 6" diameter)	1	EA	$3,500.00	$3,500
	New Ductwork	7,550	LBS	$7.50	$56,625
	New Ductwork Insulation	5,813	SF	$3.50	$20,346
	Supply Diffuser (All Types)	73	EA	$250.00	$18,250
	Linear Diffuser (All Sizes)	6	EA	$120.00	$720
	Return Register/Grille	37	EA	$450.00	$16,650
	Manual Volume Damper	52	EA	$180.00	$9,360
	5 thermostats with wiring	5	EA	$250.00	$1,250
	Fire Damper	15	EA	$200.00	$3,000
	Testing & Balance (Allowance)	1	LS	$10,000.00	$10,000
	Misc. Mechanical (Allowance)	1	LS	$14,000.00	$14,000
	Fire Protection				
Fire Spr.	Sprinkler System for entire Building (Allowance)	62,180	GSF	$4.00	$248,720
		SUBTOTAL MECHANICAL			**$838,703**
16 ELECTRICAL					
Special Construction					
	Special Construction	20,787	GSF	$9.00	$187,083
	Telephone and Data Raceway System				Included above
	Intercom & Clock / Bell Systems incl Raceway				Included above
	Television / Radio Frequency Systems				Included above

City of Miami Beach
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DIV.	DESCRIPTION	QTY.	UNIT	UNIT COST	TOTAL COST
	* Energy Management System (see below)				
	Intrusion Detection System				Included above
	CCTV System				Included above
	Card Access Control System				Included above
	*** Energy Management System (Assumed Entire Bldg)**	62,010	GSF	$5.00	$310,050
	Connections and Extensions of all systems (Allowance)	1	LS	$25,000.00	$25,000
	Raceway System (Allowance)	1	LS	$5,000.00	$5,000
Power & Distribution, Lighting, Fire Alarm, Communications					
	Panels				
	"H2" (277/480, 4W, 225A)	1	EA	$5,000.00	$5,000
	"H5" (277/480, 4W, 225A)	1	EA	$5,000.00	$5,000
	"IEL" (120/208, 4W, 50A)	1	EA	$1,800.00	$1,800
	"L2" (120/208, 4W, 250A) - Section 1 of 2	1	EA	$3,800.00	$3,800
	"L2" (120/208, 4W, 400A) - Section 2 of 2	1	EA	$5,300.00	$5,300
	"L5" (120/208, 4W, 250A)	1	EA	$3,800.00	$3,800
	Receptacles				
	Single	5	EA	$20.00	$100
	Duplex	79	EA	$30.00	$2,370
	Duplex (GFI)	17	EA	$60.00	$1,020
	Duplex (GFI, WP)	5	EA	$105.00	$525
	Quadruple Duplex	9	EA	$75.00	$675
	Junction Boxes	7	EA	$40.00	$280
	Disconnect Switches				
	3 Pole, 100A, MF	1	EA	$575.00	$575
	3 Pole, 100A, F	1	EA	$860.00	$860
	1 Pole, 30A, 20	1	EA	$300.00	$300
	Transformers				
	Transformer T2 - 15KVA, 480V/208V	1	EA	$2,600.00	$2,600
	Transformer T5 - 75KVA, 480V/208V	1	EA	$6,500.00	$6,500
	Transformer T6 - 75KVA, 480V/208V	1	EA	$6,500.00	$6,500
	Grounding System Incl. Bar, Grounding Conduit & Wiring (Allow.)	1	LS	$2,500.00	$2,500
	Raceways (Allowance)	1	LS	$2,000.00	$2,000
	Conduit & Wiring for Power (Allowance)	3000	LF	$11.00	$33,000
	Interior & Exterior Lighting for Bldg				
	Lighting Fixtures				
	Light Type A - 2 x 4 Troffer	102	EA	$280.00	$28,560
	Light Type A1 - 2 x 4 Troffer (Battery Pack)	35	EA	$375.00	$13,125
	Light Type B - 2 x 4 Troffer	15	EA	$175.00	$2,625
	Light Type B1 - 2 x 4 Troffer (Battery Pack)	7	EA	$375.00	$2,625
	Light Type E - 6" Downlight (Battery Pack)	5	EA	$160.00	$800
	Light Type F - 4' Strip w/ Wireguard	30	EA	$200.00	$6,000
	Light Type H - HID Pendant	7	EA	$850.00	$5,950
	Light Type H - HID Pendant (Battery Pack)	3	EA	$1,100.00	$3,300
	Light Type I - Hi-Bay Circular Pendant	24	EA	$250.00	$6,000
	Light Type J - Elevator Pit	2	EA	$180.00	$360
	Light Type M - Linear Fluorscent Pendant	27	EA	$200.00	$5,400
	Light Type M1 - Linear Fluorscent Pendant (Battery Pack)	10	EA	$350.00	$3,500
	Light Type N - 6" Downlight	2	EA	$75.00	$150
	Light Type N1 - 6" Downlight (Battery Pack)	8	EA	$160.00	$1,280
	Light Type Q - 1 x 4 Troffer	10	EA	$160.00	$1,600
	Light Type Q1 - 1 x 4 Troffer (Battery Pack)	16	EA	$375.00	$6,000
	Light Type S - 2 Head Emergency Battery Pack	5	EA	$350.00	$1,750
	Light Type U - 8" Downlight	11	EA	$100.00	$1,100
	Light Type U1 - 8" Downlight (Battery Pack)	14	EA	$250.00	$3,500
	Light Type "X" Exit	21	EA	$400.00	$8,400
	Light Type "X1" - Exit Sign	8	EA	$400.00	$3,200
	Light Type AA - 2 Head Emergency Battery Pack	3	EA	$350.00	$1,050
	Light Type BB - Recessed Showcase Light	4	EA	$180.00	$720

City of Miami Beach
Scott Rakow Youth Center (SRYC)
New Additions & Renovations
CMB Project No. CMB-001

Main Building
Estimate of Probable Construction Cost

REV 10/17/2008

DIV.	DESCRIPTION	QTY.	UNIT	UNIT COST	TOTAL COST
	Light Type CC - 2 x 4 Troffer	6	EA	$175.00	$1,050
	Light Type DD - 13" Dia. (Outside Canopy)	4	EA	$400.00	$1,600
	Light Type EE - 8" Dia. Cyclinder Pendant (Over Canopy)	5	EA	$400.00	$2,000
	Light Type FF - 6" Dia. Cyclinder Pendant (Between Canopy)	2	EA	$400.00	$800
	Light Type FF1 - 6" Dia. Cyclinder Pendant (Between Canopy)	3	EA	$400.00	$1,200
	Toggle Switches (Single Pole)	51	EA	$50.00	$2,550
	Toggle Switches (Triple Pole)	10	EA	$80.00	$800
	Raceways (Allowance)	1	LS	$6,000.00	$6,000
	Conduit & Wiring for Lighting (Allowance)	7,000	LF	$11.00	$77,000
	Fire Alarm System				
	Fire Alarm Flashing Light w/ Horn	93	EA	$185.00	$17,205
	Fire Alarm Flashing Light w/ Horn (WP)	25	EA	$200.00	$5,000
	Fire Alarm Flashing Strobe Light	3	EA	$125.00	$375
	Fire Alarm Heat Detector	1	EA	$185.00	$185
	Fire Alarm Smoke Detector	36	EA	$175.00	$6,300
	Fire Alarm Duct Smoke Detector	10	EA	$400.00	$4,000
	Fire Alarm Duct Smoke Detector (WP)	8	EA	$400.00	$3,200
	Fire Alarm Relay	21	EA	$1,200.00	$25,200
	Fire Alarm Control Panel (Assumed 8 Zones)	1	EA	$3,500.00	$3,500
	Pull Stations	18	EA	$200.00	$3,600
	Pull Stations (WP)	2	EA	$225.00	$450
	Conduit & Wiring for Fire Alarm (Allowance)	1	LS	$27,000.00	$27,000
	Raceways (Allowance)	1	LS	$2,700.00	$2,700
	Interface Modules and Expansion Cards (Allowance)	1	LS	$18,000.00	$18,000
	Lightining Protection (Allowance)	62,010	GSF	$0.60	$37,206
		SUBTOTAL ELECTRICAL			**$965,554**
	Main Building	**Subtotal Direct Cost**			**$3,482,712**

City of Miami Beach
Scott Rakow Youth Center (SRYC)
New Additions & Renovations
CMB Project No. CMB-001

Site / Civil Improvements incl. Site Electrical
Estimate of Probable Construction Cost

REV 10/17/2008

DIV	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
Site / Civil Improvements					
Demolition					
	Remove Existing Steel Pipe Bollards at Side & Front of the bldg	15	EA	$150.00	$2,250
	Remove/Relocate Existing Sculpture (Allowance)	1	EA	$8,000.00	$8,000
	Remove Existing Bicycle Rack	1	EA	$80.00	$80
	Remove Existing Outdoor Pole Light	1	EA	$200.00	$200
	Remove Existing Pole Lights & Pull Boxes	10	EA	$250.00	$2,500
	Remove Existing Steel Guard Railing	53	LF	$13.00	$689
	Remove Existing 20'-0" High Chainlink Fence	353	LF	$3.50	$1,235
	Patch and Repair Existing Asphalt as required, Trash/Collection Area (Allowance)	1791	SF	$4.00	$7,164
	Patch and Repair Existing Pool Deck (Allowance)	8812	SF	$5.00	$44,060
	Remove Existing Site Concrete	1000	SF	$2.00	$2,000
	Remove Existing Sidewalk	3000	SF	$2.00	$6,000
	Remove Existing Wood Structure	510	SF	$1.50	$765
	Temporary 6'-0" High Chainlink Construction Fence & Gates	456	LF	$14.00	$6,384
	Temporary 2 hr Partition Construction (Allowance)	1000	SF	$5.00	$5,000
	Protection of Migration of Debris (Allowance)	1	LS	$3,000.00	$3,000
	Disposal & Hauling of Debris (Allowance 15% of Demolition Cost)	15	%	$89,326.63	$13,399
		Subtotal Demolition			**$102,726**
Earthwork					
	Re-Grading Site	4577	SY	$1.25	$5,722
	Removal of top soil (Allowance)	1	LS	$5,000.00	$5,000
	Imported Fill (Allowance)	1	LS	$15,000.00	$15,000
		Subtotal Earthwork			**$25,722**
Paving, Striping and Signage					
	Re-Surface Parking Lot (53 spaces)	1713	SY	$8.00	$13,704
	New Parking Lot (3 buses and 24 spaces)	1435	SY	$40.00	$57,400
	New Bus Drop-Off Area	209	SY	$40.00	$8,360
	Wheel Stops (Assumed new for the old parking)	80	EA	$70.00	$5,600
	Parking Striping	1330	LF	$1.00	$1,330
	Handicap Stripes	190	SF	$2.00	$380
	24" Stop Bar White (Assumed Qty)	32	LF	$4.00	$128
	Directional Arrows (Assumed Qty)	10	EA	$150.00	$1,500
	Handicap Symbol	4	EA	$150.00	$600
	Parking Lot Curbing	1332	LF	$15.00	$19,980
	Signage (with post) (Assumed Qty)	12	EA	$300.00	$3,600
		Subtotal Paving			**$112,582**
Drainage					
	All Paved Areas (Allowance for French Drains/Catch Basins)	1,665	SY	$20.00	$33,300
	3" Area Drains	2	EA	$500.00	$1,000
	3" Storm Drain Line	52	LF	$24.00	$1,248
	6" Storm Drain Line	88	LF	$40.00	$3,520
	Connection into existing Storm Water Management (Allowance)	1	LS	$2,000.00	$2,000
		Subtotal Drainage			**$41,068**
Fire Water					
	Fire Line (Assumed Qty)	100	LF	$45.00	$4,500
	Prop P. Box (Assumed Qty)	1	EA	$1,500.00	$1,500
	8" x 6" Tee (Assumed Qty)	1	EA	$700.00	$700
	Fire Dept. Connection (Assumed Qty)	1	EA	$1,500.00	$1,500
	Fire Hydrant (Assumed Qty)	1	EA	$2,500.00	$2,500
		Subtotal Fire Water			**$10,700**
Site Concrete, Walls and Pavers					
	New Walkway ADA Ramp	364	SF	$15.00	$5,460
	Stairs for New Walkway ADA Ramp	30	LF of nose	$45.00	$1,350
	New 5" Walkway	501	SY	$43.20	$21,643

City of Miami Beach
Scott Rakow Youth Center (SRYC)
New Additions & Renovations
CMB Project No. CMB-001

Site / Civil Improvements incl. Site Electrical
REV 10/17/2008

Estimate of Probable Construction Cost

DIV	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
	New Plaza Colored and Textured Concrete	230	SY	$80.00	$18,400
	New Entry Addition 4" Concrete Slab	21	SY	$40.00	$840
	6" Concrete Ramps	664	SF	$15.00	$9,960
	Landing for Exterior Stairs	577	SF	$15.00	$8,655
	Stairs Cast on ground	181	LF of nose	$30.00	$5,430
	Wall Footing for ramps	15	CY	$350.00	$5,250
	Wall Footing for Retaining Wall 16 x 10	11	CY	$350.00	$3,850
	Concrete Beam for Retaining Wall 8 x 12	7	CY	$600.00	$4,200
	CMU Retaining Wall (finishes included)	659	SF	$16.00	$10,541
	Concrete Bench	56	SF	$35.00	$1,960
	Control Joints (Allowance)	1	LS	$1,000.00	$1,000
		Subtotal Site Concrete & Pavers			**$98,539**
Hardscape					
	Bike Parking Racks	2	EA	$500.00	$1,000
		Subtotal Hardscape			**$1,000**
Landscaping and Irrigation					
	New Trees and Bushes:				
	Quercus Virginiana, assumed 12' height	20	EA	$250.00	$5,000
	Sabal Palmetto, assumed 12' height	28	EA	$150.00	$4,200
	Gumbo Limbo, assumed 12' height	9	EA	$250.00	$2,250
	Senna Polyphyll, assumed 10' height	4	EA	$225.00	$900
	Thrinax Radiata, assumed 15 G	34	EA	$200.00	$6,800
	Thrinax Morisii, asumed 15G	33	EA	$200.00	$6,600
	Veitia Montgomeryana, assumed 12' height	21	EA	$215.00	$4,515
	Conocarpusd erectus, assumed 15G	14	EA	$125.00	$1,750
	Chrysobalanus Icaco, Red Tip, assumed 7G	93	EA	$30.00	$2,790
	Alpinia Purpurata	8	EA	$60.00	$480
	Eugenia Foetida, assumed 7 G	4	EA	$50.00	$200
	Chrysophillum Oliviforme	98	EA	$35.00	$3,430
	Myrcianthes Fragrans, assume 7G	18	EA	$45.00	$810
	Psycotria Nervosa, assumed 7G	15	EA	$45.00	$675
	Relocated Trees:				
	Remove Existing Tree	6	EA	$800.00	$4,800
	Remove, Relocate Tree and Nurse until settled	11	EA	$2,000.00	$22,000
	Protect tree from damage (specimen)	3	EA	$250.00	$750
	Protect tree from damage	32	EA	$250.00	$8,000
	Sodding	37,736	SF	$0.15	$5,660
	Automatic Irrigation System	37,736	SF	$1.15	$43,396
	2" Irrigation Meter w/ 2" vac Breakes Irrigation Service	1	EA	$2,800.00	$2,800
		Subtotal Landscaping & Irrigation			**$127,807**
Metal Fencing and Gates					
	Handrail for ext ramps	362	LF	$80.00	$28,960
	Emergency Exit Gate	1	EA	$1,500.00	$1,500
	6' CLF	57	LF	$15.00	$855
		Subtotal Metal Fencing & Gates			**$31,315**
Misc/Other Site Improvements					
	Allowance for on-site not determined improvement	1	LS	$10,000.00	$10,000
		Subtotal Misc. Site Improvements			**$10,000**
MOT					
	Maintenance of Traffic (Allowance)	1	LS	$10,000.00	$10,000
		Subtotal MOT			**$10,000**
	Site/Civil Improvements	**Subtotal Direct Costs**			**$571,458**

City of Miami Beach
Scott Rakow Youth Center (SRYC)
New Additions & Renovations
CMB Project No. CMB-001

Site / Civil Improvements incl. Site Electrical

REV 10/17/2008

Estimate of Probable Construction Cost

DIV	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL PRICE
Site Electrical					
Lighting					
	Light Type G - Fluorscent Step Light (13W)	28	EA	$500.00	$14,000
	Light Type P, single pole - Parking Area (400W)	4	EA	$1,600.00	$6,400
	Light Type P1, single pole - Parking Area (400W)	2	EA	$1,600.00	$3,200
	Light Type P2, single pole - Parking Area (400W)	1	EA	$1,600.00	$1,600
	Light Type P3, single pole - Parking Area (400W)	2	EA	$1,600.00	$3,200
	Light Type Y, single pole - Security Floodlight (400W)	2	EA	$1,000.00	$2,000
	Light Type Z (400W), wall mounted - Same as P,P1,P2,P3	18	EA	$1,000.00	$18,000
	Pull Boxes (Assumed 24 x 24 x 24)	27	EA	$1,400.00	$37,800
	PVC Feed Conduit	4,500	LF	$20.00	$90,000
		Subtotal Site Electrical			**$176,200**
Site Electrical		**Subtotal Direct Costs**			**$176,200**
Total Site Improvements incl. Site Electrical					**$747,658**

RESOLUTION TO BE SUBMITTED

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MIAMIBEACH

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

OFFICE OF THE CITY CLERK, Robert Parcher, City Clerk
Tel: (305) 673-7411, Fax: (305) 673-7254

COMMISSION MEMORANDUM

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

From: Jorge M. Gonzalez, City Manager

Date: April 22, 2009

Subject: BOARD AND COMMITTEES

ADMINISTRATION RECOMMENDATION:

That appointments be made as indicated.

ANALYSIS:

Attached are the applicants that have filed with the City Clerk's Office for Board and Committee appointments.

VACANCIES

BOARD OR COMMITTEE:	TOTAL MBRS.	APPOINTED BY:	TOTAL VAC	PAGE
Affordable Housing Advisory Committee	11	City Commission	1	Page 1
Art in Public Places	7	City Commission	5	Page 3
Beautification Committee	8	Steinberg Diaz	1	Page 5
Budget Advisory Committee	9	City Commission	1	Page 7
		Commissioner Victor M. Diaz, Jr.	1	
Committee for Quality Education in MB	16	Mayor Matti Herrera Bower	1	Page 9

Agenda Item R9A
Date 4-22-09

We are committed to providing excellent public service and safety to all who live, work and play

VACANCIES

BOARD OR COMMITTEE:	TOTAL MBRS.	APPOINTED BY:	TOTAL VAC	PAGE
Committee on the Homeless	9	Mayor Matti Herrera Bower	1	Page 11
Community Development Advisory Committee	14	Steinberg Diaz	2	Page 12
Convention Center Advisory Board	7	Commissioner Victor M. Diaz, Jr.	1	Page 14
Debarment Committee	7	Commissioner Ed Tobin	1	Page 15
		Mayor Matti Herrera Bower	1	
Design Review Board	7	City Commission	1	Page 16
Disability Access Committee	7	Commissioner Victor M. Diaz, Jr.	1	Page 18
Fine Arts Board	14	Mayor Matti Herrera Bower	1	Page 19
Gay Business Development Ad Hoc Committee	17	Mayor Matti Herrera Bower	1	Page 20
Health Advisory Committee	11	City Commission	4	Page 22
Miami Beach Commission For Women	21	Commissioner Saul Gross	1	Page 30
		Mayor Matti Herrera Bower	2	
Miami Beach Sister Cities Program	24	Mayor Matti Herrera Bower	9	Page 32

VACANCIES

BOARD OR COMMITTEE:	TOTAL MBRS.	APPOINTED BY:	TOTAL VAC	PAGE
Normandy Shores Local Gov. Neighborhood Impv.	3	City Commission	3	Page 34
Personnel Board	10	City Commission	2	Page 36
Police Citizens Relations Committee	17	Mayor Matti Herrera Bower	1	Page 38
Production Industry Council	7	Commissioner Victor M. Diaz, Jr.	1	Page 40
Public Safety Advisory Committee	7	Commissioner Deede Weithorn	1	Page 41
		Commissioner Victor M. Diaz, Jr.	1	
		Mayor Matti Herrera Bower	1	
Safety Committee	14	Commissioner Deede Weithorn	1	Page 42
		Steinberg Diaz	2	
Single-Family Residential Review Panel	3	Jorge M. Gonzalez, City Manager	3	Page 43
Youth Center Advisory Board	10	Commissioner Jerry Libbin	1	Page 49
		Mayor Matti Herrera Bower	1	

Attached is breakdown by Commissioner or City Commission:

JMG:REP/lg

City Commission Committees

Committee	Position	First Name	Appointed by
Finance & Citywide Projects Committee			
		Commissioner Saul Gross	Mayor Bower
		Commissioner Deede Weithorn	Mayor Bower
	Alternate	Commissioner Ed Tobin	Mayor Bower
	Member	CommissionerJerry Libbin	Mayor Bower
	Liaison	Patricia Walker, Chief Financial Off.	
Land Use & Development Committee			
	Chairperson	Commissioner Jonah Wolfson	Mayor Bower
	Vice-Chair	Commissioner Victor M. Diaz, Jr.	Mayor Bower
	Alternate	Commissioner Dedee Weithorn	Mayor Bower
	Member	Commissioner Saul Gross	Mayor Bower
	Liaison	Jorge Gomez, Planning Director	
Neighborhoods/Community Affairs Committee			
	Chairperson	Commissioner Jerry Libbin	Mayor Bower
	Vice-Chair	Commissioner Ed Tobin	Mayor Bower
	Alternate	Commissioner Victor M. Diaz Jr.	Mayor Bower
	Member	Commissioner Jonah Wolfson	Mayor Bower
	Liaison	Barbara Hawayek, Code Complianc	

NON-CITY COMMISSION COMMITTEES

Mayor Matti Herrera Bower

- Citizen's Oversight Committee
- Greater Miami Convention and Visitors Bureau
- Metropolitan Planning Organization
- Performing Arts Center Trust (PACT)
- Tourist Development Council
- Wolfsonian F. I. U.

Hilda Fernandez, Asst. CM.

- Miami-Dade County Homeless Trust Board

Vacant Vacant Vacant

- Dade Cultural Alliance

Commissioner Weithorn

- Miami Dade League of Cities

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MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **BOARD AND COMMITTEE APPOINTMENTS – CITY COMMISSION APPOINTMENTS**

ADMINISTRATION RECOMMENDATION

Make appointments as indicated.

BOARDS AND COMMITTEES

1. Affordable Housing Advisory Committee
2. Arts in Public Places
3. Budget Advisory Committee
4. Design Review Board
5. Health Advisory Committee
6. Normandy Shores Local Gove. Neighborhood Improvements
7. Personnel Board

JMG/REP

T:\AGENDA\2008\October 7\Regular\Board and Committee City Commission App Memo.doc

Agenda Item R9A1
Date 4-22-09

COMMISSION COMMITTEE APPOINTMENTS

1. Affordable Housing Advisory Committee (one appointment)

Board and Committees Current Members

Affordable Housing Advisory Committee

Sec. 2-167

Composition:

The committee shall consist of eleven (11) voting members with two (2) year terms appointed at large by a majority vote of the Mayor and City Commission:

One citizen:
1) actively engaged in the residential home building industry in connection with affordable housing;
2) actively engaged in the banking or mortgage banking industry in connection with affordable housing;
3) representative of those areas of labor actively engaged in home building in connection with affordable housing;
4) actively engaged as an advocate for low-income persons in connection with affordable housing;
5) actively engaged as a for-profit provider of affordable housing;
6) actively engaged as a not-for-profit provider of affordable housing (Housing Authority member);
7) actively engaged as a real estate professional in connection with affordable housing;
8) actively serving on the local planning agency pursuant to Florida Statute § 163.3174 (Planning Board member);
9) who resides within the jurisdiction of the local governing body making the appointments;
10) who represents employers within the jurisdiction;
11) who represents essential services personnel as defined in the local housing assistance plan.

Members of the Loan Review Committee, members of the Community Development Advisory Committee (CDAC), Planning Board and Miami Beach Housing Authority may be appointed to fill any of the eleven (11) categories and serve as ex-officio voting members on this committee. If due to conflict of interest by prospective appointees, or other reasonable factor, the City is unable to appoint a citizen actively engaged in these activities in connection with affordable housing, a citizen engaged in the activity without regard to affordable housing may be appointed.
City Liaison: Anna Parekh

Vacancy:

To replace Brian Ehrlich	(1) Res. Home Bldg.	12/31/2010	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	*Term Limit:*
Ada	Llerandi	(4) Low-Income Advoc.	12/31/2009	City Commission	12/31/13
Clark	Reynolds	(9) Res. Juris. Local Gvt	12/31/2009	City Commission	12/31/13
David	Smith	(2) Banking/Mortgage	12/31/2010	City Commission	12/31/13
Dr. Barry	Ragone	(10) Rep. Employee w/jurisdi	12/31/2009	City Commission	12/31/13
Jonathan	Fryd	(8) Local Planning Board	12/31/2010	City Commission	12/31/13
Lianne	Pastoriza	(11) Rep. Essential Services	12/31/2009	City Commission	12/31/13
Michael	Burnstine	(7) Real Estate Prof.	12/31/2009	City Commission	12/31/13
Robert	Saland	(5) For Profit	12/31/2010	City Commission	12/31/13
Roberto	DaTorre	(6) Not For Profit	12/31/2010	City Commission	12/31/13
Stephanie	Berman	(3) Rep. Labor Home Bldg	12/31/2010	City Commission	12/31/13

Applicants	Position/Title	Applicants	Position/Title

Board and Committees Current Members

David Gorson
Prakash Kumar
Mario Coryell

COMMISSION COMMITTEE APPOINTMENTS

2. Art in Public Places (five appointment)

Board and Committees Current Members

Art in Public Places

Sec. 82-561

Composition:

Two (2) year term.
Appointed by a minimum of 4 votes.
Seven (7) members to be appointed by a majority of the entire City Commission, and who shall possess a high degree of competence in evaluation of art history and architectural history, art, architecture, sculpture, painting, artistic structure design and other appropriate art media for display or integration in public places.
City Liaison : Dennis Leyva

Vacancy:

Tor replace Jeremy Chestler	12/31/2010	City Commission
To replace James Weingarten	12/31/2010	City Commission
To replace Mariangela Capuzzo	12/31/2010	City Commission
To replace Elizabeth Resnick	12/31/2010	City Commission
To replace Heather Urban	12/31/2009	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	*Term Limit:*
Claire	Breukel		12/31/2009	City Commission	12/31/13
Rhonda	Mitrani-Buchman		12/31/2009	City Commission	12/31/12

Applicants	Position/Title	Applicants	Position/Title
Ana Cordero		Claire Warren	
David Alschuler		Dena Stewart	
Flavia Lowenstein-Elortegui		Francis Trullenque	
Isadore Havenick		James Lloyd	
Jeanie Hernandez		Joe Hidalgo - Gato	
Judith Wurtmen		Laura Bruney	
Lisa Cole		Lisa Ware	
Lisette Olembert Goldstein		Matthew Maffai	
Merri Mann		Michael McManus	
Nelida Barrios		Zoila Datorre	

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Victor M. Diaz, Jr., Commissioner VMD/sm

DATE: January 21, 2009

SUBJECT: Agenda Item for January 28, 2009 commission meeting

I would like to make the following board and committee nominations:

Art In Public Places
Jeremy Chestler
Elizabeth Resnick
Mariangela Capuzzo

Design Review
Marilys Nepomechie (faculty member, school of architecture)

If you have any questions, please feel free to contact my Aide, Gary Cloutier at x6087.

VMD/sm

We are committed to providing excellent public service and safety to all who live, work, and play in our vibrant, tropical, historic community.

c: Hilda
Bob

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

RECEIVED
2009 JAN 27 PM 5:39
CITY CLERK'S OFFICE

TO: Jorge M. Gonzalez, City Manager

FROM: Victor M. Diaz, Jr., Commissioner VMD/sm

DATE: January 28, 2009

SUBJECT: Art in Public Places nomination

I would like to nominate Lisette Olemberg Goldstein for the Art in Public Places committee. I have attached a copy of her resume for your perusal.

If you have any questions, please contact my Aide, Gary Cloutier at x 6087.

VMD/sm

MIAMI BEACH

CITY OF MIAMI BEACH
BOARD AND COMMITTEE APPLICATION FORM

NAME: Olemberg Goldstein Lisette S
Last Name First Name Middle Initial

HOME ADDRESS: 1405 West 24th street Sunset Island #3 Miami Beach, Fl. 33140
Street City State Zip Code

PHONE:
H(305)534-0662 cell(305)458-1168 fax(305)534-2352 lisette.goldstein@mac.com

Business Name: Olem Shoe Corporation Position: Assistant Buyer/Design Development

Address: 800 N.W. 21st Street Miami, Fl. 33127
Street City State Zip Code

Professional License (describe): Attorney - Member of the Florida Bar - Admitted 05-05-1997
Fl. Bar # 0110371
Membership: current in good standing – inactive status

Pursuant to City Code section 2-22(4) a and b: Members of agencies, boards, and committees shall be affiliated with the city; this requirement shall be fulfilled in the following ways: a) an individual shall have been a resident of the city for a minimum of six months; or b) an individual shall demonstrate ownership/interest for a minimum of six months in a business established in the city.

_ Resident of Miami Beach for a minimum of six (6) months: Yes or No

_ Demonstrate an ownership/interest in a business in Miami Beach for a minimum of six (6) months: Yes or No

_ Are you a registered voter in Miami Beach: Yes or No

_ (Please check one): I am now a resident of: North Beach South Beach Middle Beach

_ I am applying for an appointment because I have special abilities, knowledge, experience. Please list below:

Please list your preferences in order of ranking [1] first choice [2] second choice, and [3] third choice. **Please note that only three (3) choices will be observed by the City Clerk's Office.** (Regular Boards of City)

(2) Art in Public Places Committee
Beach Preservation Board
Beautification Committee
Board of Adjustment*
Budget Advisory Committee
Committee on Homeless
Committee for Quality Education in MB
Community Development Advisory*
Community Relations Board
Convention Center Advisory Board
Debarment Committee
(1) Design Review Board*
Disability Access Committee
Fine Arts Board
Golf Advisory Committee

Housing Authority*
Loan Review Committee*
Marine Authority*
(3) Miami Beach Cultural Arts Council

Miami Beach Florida Sister Cities
Normandy Shores Local Gov't Neigh. Improvement
Oversight Committee for General Obligation Bond
Parks and Recreation Facilities Board
Personnel Board*
Planning Board*
Police Citizens Relations Committee
Production Industry Council
Public Safety Advisory Committee

RECEIVED
2008 JAN 15 AM 9:00
CITY CLERK'S OFFICE

Health Advisory Committee
Health Facilities Authority
Hispanic Affairs Committee
Historic Preservation Board*

Safety Committee
Board Transportation and Parking Committee
Visitor and Convention Authority*
Youth Center Advisory Board

Note: If applying for Youth Advisory Board, please indicate your affiliation with the Scott Rakow Youth Center:

_____

1. Past service on the Youth Center Advisory Board: Yes No Years of Service: _____
2. Present participation in Youth Center activities by your children Yes No . If yes, please list the names of your children, their ages, and which programs. List below:

Child's name: _____ Age: _____ Program: _____

Child's name: _____ Age: _____ Program: _____

Have you ever been convicted of a felony: Yes or (No) If yes, please explain in detail:

_____

Do you currently have a violation(s) of City of Miami Beach codes: Yes or (No). If yes, please explain in detail:

_____

Do you currently owe the City of Miami Beach any money: Yes or (No). If yes, explain in detail

_____

Are you currently serving on any City Boards or Committees: Yes or (No). If yes; which board?

_____

What organizations in the City of Miami Beach do you currently hold membership in?

Name: PTA of RASG Hebrew Academy Title: member

Name: _____ Title: _____

List all properties owned or have an interest in, which are located within the City of Miami Beach:

1405 west 24th street Sunset Island #3 Miami Beach, Fl. 33140

I am now employed by the City of Miami Beach: Yes or (No) Which department? _____

Pursuant to City Code Section 2-25 (b): Do you have a parent, spouse, child, brother, or sister who is employed by the City of Miami Beach? Check all that apply. Identify the department(s):

_____

This section is "not required" but desired: Age: 39 years old Gender: Male Female
Ethnic Origin (Check one)
White African-American/Black Hispanic Asian or Pacific Islander American Indian or Alaskan Native
Employment Status: Employed Retired Home-maker Other: Employed part time- homemaker and part-time student Miami Dade College – School of Architecture

"I hereby attest to the accuracy and truthfulness of the application and have received, read and will abide by Chapter 2, Article VII – of the City Code "Standards of Conduct for City Officers, Employees and Agency Members."

Lisette Gol 01-14-08 Lisette Olemberg Goldstein
Applicant's Signature Date Name of Applicant (PLEASE PRINT)

2389 Sibria ✓

Please attach a copy of your resume to this application
NOTE: Applications will remain on file for a period of one (1) calendar year.

Received in City Clerk's Office by Fernando Sr Date 01/15/08
Name of Deputy Clerk

Document Control Number (Assigned by the City Clerk's Office) 2389 Entered By Silvia

Date 1/18/08

Revised 10/29/2007 L. Hatfield

Lisette Olemberg Goldstein

Contact Information:

Lisette Olemberg Goldstein
1405 West 24th Street
Sunset Island #3
Miami Beach, Fl. 33140
Cell: (305) 458-1168

OBJECTIVE: APPLYING FOR A POSITION ON 1) THE DESIGN REVIEW BOARD OR ON THE 2) ART IN PUBLIC SPACES COMMITTEE OR FOR A POSITION ON THE 3) MIAMI BEACH CULTURAL ARTS COUNCIL

EDUCATION: CURRENTLY ENROLLED PART TIME AT MIAMI-DADE COLLEGE – SCHOOL OF ARCHITECTURE

NOVA SOUTHEASTERN UNIVERSITY LAW SCHOOL - FT. LAUDERDALE, FL.
JURIS DOCTOR – 1996

BOSTON UNIVERSITY, BOSTON, MASSACHUSETTS
BACHELOR OF ARTS, ECONOMICS – 1990

LANGUAGES: FLUENT IN ENGLISH AND SPANISH

WORK EXPERIENCE:

CURRENTLY WORK PART TIME AT OLEM SHOE AS A DESIGN CONSULTANT

WORKED FULL TIME IN DESIGN DEVELOPMENT AND PURCHASING FOR OLEM SHOE CORPORATION (1996-2002)

COMMUNITY SERVICE:

ACTIVE MEMBER OF THE PTA AT THE BASG HEBREW ACADEMY
ACTIVE MEMBER OF THE GREATER MIAMI JEWISH FEDERATION (WOMEN'S DIVISION)
ACTIVE MEMBER OF TEMPLE MENORAH

PROFESSIONAL MEMBERSHIPS:

THE FLORIDA BAR - ADMITTED 05-05-1997
LICENSE NUMBER: #0110371 (CURRENTLY INACTIVE)

COMMISSION COMMITTEE APPOINTMENTS

3. Budget Advisory Committee (one appointment)

Board and Committees Current Members

Budget Advisory Committee

Sec. 2-44

Composition:

Nine (9) members. Seven (7) direct appointments with Mayor and each Commissioner making one (1) appointment.
Two (2) at-large appointments:
one (1) certified public accountant and
one (1) for a financial advisor.
City Liaison: Jose Cruz

Vacancy:

To replace Alan Lips	C. P. A.	12/31/2010	City Commission
To replace Philip Levine		12/31/2009	Commissioner Victor M. Diaz, Jr.

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	*Term Limit:*
Antonio	Hernandez		12/31/2009	Commissioner Saul Gross	12/31/16
Dushan	Koller		12/31/2009	Commissioner Jonah M. Wolfson	12/31/15
Jack	Benveniste		12/31/2009	Mayor Matti Herrera Bower	12/31/15
John	Gardiner		12/31/2010	Commissioner Jerry Libbin	12/31/16
Marc	Gidney		12/31/2010	Commissioner Deede Weithorn	12/31/14
Stephen	Hertz		12/31/2010	Commissioner Ed Tobin	12/31/16
Tony	Rodriguez	Financial Advisor	12/31/2009	City Commission	12/31/10

Applicants	Position/Title	Applicants	Position/Title
Dwight Kraai		Frank Kruszewski	
Frank Schwartz		Jared Plitt	
Jenifer Caplan		Jonathan Fryd	
Lior Leser		Mario Coryell	
Robert Glick		Steven Gonzalez	
Theodore Berman		Willis "Chip" Arndt Jr.	

COMMISSION COMMITTEE APPOINTMENTS

4. Design Review Board (one appointment)

Board and Committees Current Members

Design Review Board

Sec. 118.71

Composition:

Two (2) year term.
Appointed by a minimum of 4 votes.
Seven (7) regular members and two (2) ex-officio members.
The seven (7) regular members shall consist of:
two (2) registered architects,
one (1) registered architect or a member of the faculty of a school of architecture, urban planning or urban design in the state, with practical or academic expertise in the field of design, planning, historic preservation or the history of architecture, or a professional architectural designer or professional urban planner
one (1) registered landscape architect,
one (1) registered architect, professional designer or professional urban planner,
and two (2) citizens at-large.

One person appointed by the City Manager from an eligibility list provided by the Disability Access Committee shall serve in an advisory capacity with no voting authority. The Planning Director, or designee and the City Attorney or designee shall serve in an advisory capacity.

Residency and place of business in the county. The two (2) citizen-at-large members and one of the registered landscape architects, registered architects, professional designer or professional urban planners shall be residents of the city.

City Liaison: Thomas Mooney

Vacancy:

To replace Peter Chevalier	Urban Land Planner	12/31/2010	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	*Term Limit:*
Alex	David	Urban Planner	12/31/2009	City Commission	12/31/10
Clotilde	Luce	At-large	12/31/2010	City Commission	12/31/10
Gabrielle	Redfern	At-large	12/31/2009	City Commission	12/31/11
Michael F.	Steffens	Reg. Arch. TL12/31/2009	12/31/2009	City Commission	12/31/09
Seraj	Saba	Landscape Architect	12/31/2009	City Commission	12/31/13
Thomas	DeLuca	Registered Architect	12/31/2010	City Commission	12/31/11

Gary Held	advisory/City Attorney Designee
Jorge Gomez	advisory/ Planning Director
Vacant	ex-officio/Disability Access Committee

Applicants	Position/Title	Applicants	Position/Title
Alan Lips		Alexander Annunziato	
Brian Ehrlich		David Wieder	
Dona Zemo		Elsa Urquiza	
Gail Thompson		Jariel Bortnick	
Jay Parker		Jorge Kuperman	
Leonor Hernandez		Lisette Olembert Goldstein	

Board and Committees Current Members

Oliver Weirich
Todd Glaser
Scott Diffenderfer

COMMISSION COMMITTEE APPOINTMENTS

5 Health Advisory Committee (four appointments)

Board and Committees Current Members

Health Advisory Committee

Sec. 2-81 2002-

Composition:

Eleven (11) voting members. Appointed by the City Commission at-large, upon recommendations of the City Manager:
Two (2) members shall be the chief executive officers (CEO's) or their designated administrators from each of the following local hospitals:
1) Mount Sinai Medical Center,
2) South Shore Hospital,
One (1) member shall be the Chief Executive Officer (CEO) from Stanley C. Myers Community Health Center or his/her designee administrator;
Two (2) member shall be an administrator from an Adult Congregate Living Facility (ACLF). And/or an Assisted Living Facility (ACLF);
One (1) member shall be a representative from the nursing profession;
One (1) member shall be a health benefits provider;
Two (2) members shall be physicians.;
Two (2) members shall be consumers consisting of:
1) one (1) individual from the corporate level and ;
2) one (1) private individual.

There shall be one (1) non-voting ex-officio representative from each of the following: The Miami Dade County Health Department and the Fire Rescue Department. The director of the Office of the Children's Affairs shall be added as a non-voting ex-officio member of the board.
City Liaison: Cliff Leonard

Vacancy:

To replace kimberly Galbut	Dentist	12/31/2010	City Commission
To replace Joyce Galbut	Adm. Adult Congr. Liv.	12/31/2010	City Commission
To replace Eda Valero-Figueira	Private Industry	12/31/2009	City Commission
To replace Abraham Galbut	ACLF	12/31/2010	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	*Term Limit:*
Dr. Andrew	Nullman	Physician	12/31/2010	City Commission	12/31/14
Dr. Rasciciel	Socarraz	Health Provider (TL 12/09)	12/31/2009	City Commission	12/31/09
Dr. Ronald	Shane	Private Industry (TL12/09)	12/31/2009	City Commission	12/31/09
Kathryn	Abbate	CEO, Stanley Myers (NTL)	~~12/31/2010~~	City Commission	
Laura	Leyva	Nursing Profession	12/31/2009	City Commission	12/31/12
Steven	Sonenreich	CEO/Mt. Sinai/MH (NTL)	~~12/31/20~~10	City Commission	
William	Zubkoff	C.E.O.. So. Shore (NTL)	~~12/31/2010~~	City Commission	

Maria Ruiz	ex-officio, Director of Children's Affairs
Sonia Albury	rep. From the Health Council of South Fla

Applicants	Position/Title	Applicants	Position/Title

Board and Committees Current Members

Emilio Suster
Rolando Rodriguez
Suzanne Stonbely
Michael Martirena
Shaheen Wirk

COMMISSION COMMITTEE APPOINTMENTS

6. Normandy Shores Local Gove. Neighborhood Improvements (three appointments)

Board and Committees Current Members

Normandy Shores Local Gov. Neighborhood Impv.

Sec 34-175

Composition:

The Advisory Council shall be appointed by the Board of Directors (City Commission) and composed of three members of the Executive Committee of the Normandy Shores Homeowner Association. On behalf of the Board of Directors, the City Clerk shall solicit from the Executive Committee the eligibity list of its members for appointment consideration. The Advisory Council shall be composed of the three members of the Executive Committee of the Normandy Shores Homeowners Association as per Resolution No. 97-22449 adopted July 2, 1997.

Vacancy:

To replace Ronald Loring	12/31/2010	City Commission
To replace Erik Schlein	12/31/2010	City Commission
To replace Joel Rodriguez	12/31/2010	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	*Term Limit:*
New	Member		12/31/2009	City Commission	

COMMISSION COMMITTEE APPOINTMENTS

7. Personnel Board (two appointments)

Board and Committees Current Members

Personnel Board

Sec. 2-190.66

Composition:

Ten (10) members appointed by a 5/7 vote.
Six (6) of which shalll be citizens of Miami Beach not in the employment of the city, each having a different vocation;
and three (3) regular employees of the City of Miami Beach, to be elected by the probationary and regular employees of the city and who shall be elected from the employees of regular status in the respective groups:

Group I shall consist of the employees of the Police Department, Fire Department and Beach Patrol Department,
Group II shall consist of employees who are in clerical and executive positions,
Group III shall consist of all other employees,

The Personnel Director is a non-voting member.
City Liaison: Ramiro Inguanzo

Vacancy:

To replace James Kirkland III	12/31/2009	City Commission
To replace Zalman Bacheikov	12/31/2010	City Commission

Members:

Name	Last Name	Position/Title	Term Ends:	Appointed by:	Term Limit:
Barbara	Patchen		12/31/2009	City Commission	12/31/12
David	Alschuler		12/31/2010	City Commission	12/31/12
Elsa	Urquiza		12/31/2010	City Commission	12/31/12
Michael	Perlmutter		12/31/2009	City Commission	12/31/12
Evette Phillips		elected 09/01/07 exp. 7/31/09 Group III			
Glassome Wint		elected 01/13/09 exp 7/31/10 Group II			
Ramiro Inguanzo		Human Resources Director			
Renato Sejas		elected 06/27/08 exp. 7/31/11- Group I			

Applicants	Position/Title	Applicants	Position/Title
Elsa Orlandini		Gabriel Paez	
Gail Harris		Ray Breslin	

R9 - New Business and Commission Requests

R9B1	Dr. Stanley Sutnick Citizen's Forum. (1:30 p.m.)
R9B2	Dr. Stanley Sutnick Citizen's Forum. (5:30 p.m.)

AGENDA ITEM R9B1+2
DATE 4-22-09

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Jerry Libbin, Commissioner JL/er

DATE: March 24, 2009

SUBJECT: Agenda item for the April 22, 2009 Commission Meeting; a consideration to request a new RFP for the parking contract held by Impark.

Please place on the April 22, 2009 Commission meeting agenda a consideration to request the administration to bring back a resolution to the next commission meeting authorizing a new RFP for the parking contract currently held by Impark.

Please contact our office at ext. 6722 if you have any questions.

JL/er

Agenda Item R9C
Date 4-22-09

MIAMIBEACH

OFFICE OF THE CITY ATTORNEY

JOSE SMITH, CITY ATTORNEY

C.A.O. No. 09-03

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

FROM: Jose Smith, City Attorney

DATE: April 16, 2009

SUBJECT: Legal Opinion Regarding Termination for Convenience of Agreement between City of Miami Beach, Florida (City) and Imperial Parking, Inc. (Impark)

During a discussion of the Impark Contract at the March 18, 2009 City Commission Meeting, questions were raised regarding the legal implications of a termination for convenience of said contract prior to expiration of the initial term.

1. TERMINATION FOR CONVENIENCE

(a) The Contract

The initial term of the Impark Contract is for a period of three (3) years, commencing on August 11, 2008, and ending on August 10, 2011. The contract also provides for two (2) additional one year renewal terms, at the City's sole option and discretion.

Section 4.7.2 of the contract, which is titled "Termination for Convenience of the City", provides in relevant part:

> NOTWITHSTANDING THE LANGUANGE IN SUBSECTION 4.7.1, THE CITY MAY FOR ITS CONVENIENCE AND WITHOUT CAUSE TERMINATE THE SERVICES THEN REMAINING TO BE PERFORMED AT ANY TIME BY GIVING THIRTY (30) DAYS WRITTEN NOTICE TO CONTRACTOR OF SUCH TERMINATION, WHICH SHALL BECOME EFFECTIVE AS OF THE DATE SPECIFIED IN THE NOTICE TO CONTRACTOR.

(b) Legal Analysis

A "termination for convenience" clause is valid and enforceable. Rollins Services v. Metropolitan Dade County, 281 So. 2d 520 (Fla. 3rd D.C.A. 1973), (upheld the County's right to unilaterally terminate a contract for janitorial services at the airport); Avatar Development Corporation v. De Pani Construction, Inc., 834 So. 2d 873 (Fla. 4th D.C.A. 2003). Any legitimate business reason can justify a termination for convenience. See 5 Brunner & O'Connor Construction Law §18.47 (2008).

While the case law clearly provides that the City has considerable latitude in deciding to terminate a contract for convenience, it may not do so in bad faith or in an arbitrary or capricious manner. Id. See Rollins supra. The law implies a duty of "good faith and fair dealing". A wrongful termination is considered a breach of contract, allowing recovery of common law damages, including lost profits.

I agree with Impark's counsel that if "this is being done in order to give a disappointed bidder a second bite at the apple", the city would be breaching the contract and exposing itself to significant damages.

Based on the testimony presented at the March,18 2009 City Commission Meeting, and considering the high degree of deference given government decisions in this arena, I believe that the termination of Impark's contract for convenience would likely be upheld in court. See 5 Bruner & O'Connor on Construction Law §18.47 ("Contractors have rarely succeeded in demonstrating the government's bad faith").

(c) Damages for Termination

Before deciding whether to terminate the Impark Contract for convenience, the Commission should consider the damages that the City may potentially be required to pay. The measure of damages recoverable in this situation is often referred to as "reliance damages" or "recoupment damages". The philosophy underlying such recovery was well explained in the old but often cited case of Meyer v. Pulitzer, 136 S.W. 5 (Mo. App. 1911):

> Though the principal may revoke an agency so given for an indefinite time, the circumstances of the case not infrequently present a situation in which there inheres a right to some compensation against the principal on the precepts of natural justice alone, notwithstanding the abstract right of revocation which the law generously concedes. In this view, even where an indefinite agency has been revoked, if it appears the agent, induced by his appointment, has in good faith incurred expense, devoted time, and bestowed labor in the matter of the agency without having a sufficient opportunity to recoup such outlays from the undertaking, the principal will be required to compensate him in that behalf, for the law will not permit one to thus deprive another of value without awarding just compensation. But the just principle acted upon by the courts in the circumstances suggested requires no more than in every instance the agent shall be afforded a reasonable opportunity to avail himself of the preliminary expenditure and efforts put forward to the end of executing the authority conferred, and, if it is denied him, that the principal should make compensation accordingly.

In Sanchez v. Crandon Wholesale Drug Co., 194 So. 2d 646 (Fla. 3rd D.C.A. 1967), Florida's 3rd District Court of Appeal relied on Meyer in awarding a drug wholesaler his expenses preparing orders for shipment of drugs incurred up to the time the agreement was cancelled.

Numerous other cases have authorized "recoupment damages" under similar circumstances. Sofa Gallery, Inc. v. Stratford Company, 872 F. 2d 259 (8th Cir 1989) Allied Equipment Company v. Weber Engineered Products Inc., 237 F. 2d 879 (4th Cir. 1956); 5 Bruner & O'Connor Construction Law §18:45 (2008). These expenses can include advertising and promotional costs, rent on leases, unamortized equipment purchased, training, uniforms, and other items spent in good faith reliance upon the agreement prior to termination.

Impark counsel's letter, dated April 8, 2009, and attached as Exhibit "A" hereto, provides a comprehensive itemization of "unamortized start up costs", totaling approximately $320,806.00. Much of it includes attorneys fees, and lobbying expenses, which are not recoverable. In my opinion, most of the alleged charges (which need to be audited) seem excessive or are non-recoverable, as a matter of law. See Sofa Gallery supra (recoupment damages limited to unamortized capital expenditures that would have produced future profits had the distributorship continued in existence); Di Gennaro v. Rubbermaid, Inc. 214 F. Supp. 2d 1354 (S. Dist. Fla. 2002) (recoupment confined to the recovery of preliminary expenses in setting up the business.) Oddly, they exceed by four (4) times the amount stated in Impark's letter to the Commission, dated February 27, 2009:

> "Impark investment thus far in order to execute our proposed vision for the City of Miami Beach parking operations.
>
> Over $80,000.00 in equipment and start up costs."

In my opinion, if Impark's Contract is terminated for convenience, the City's legal exposure does not exceed $80,000.00.

2. CITY CHARTER ISSUES

The Impark Contract was obtained pursuant to City's Request For Proposals No. 11-07/08 to solicit proposals for Parking attendants, Cashiers and Supervisors for the City of Miami Beach Parking System (the "RFP").

Issues concerning the City Charter were discussed during the March 18, 2009 City Commission meeting. I will address those after a brief discussion of the relevant facts. Section II, B of the RFP mandates that:

> (2.K) "All cashiers, attendants, and supervisors must be trained in CPR and emergency procedures."

This requirement was re-stated in Addendum No. 1 to the RFP dated February 1, 2008, which responded to questions raised by prospective proposers:

> Q. #6 What kind or type of training must they have?
> A. the following skills are required:
>
> - Cashiering/Money Handling/Basic Arithmetic
> - Gated Revenue Control Systems
> - CPR (Cardio Pulmonary Resuscitation)
> - Traffic Control

There was testimony that during contract negotiations, a City official agreed to eliminate the CPR requirement in the RFP. Thereafter, when the contract was approved by the City Commission, with the requirement still in place, the official wrote a letter to Impark waiving the CPR requirement. There is no question that in granting a waiver, the City official exceeded his authority and that the action was inappropriate.

Notwithstanding the above, there was also compelling testimony that as an experienced vendor, Impark knew that the waiver was invalid and therefore should not have asked for it. Thus, it was argued that, as a deterrent to others, the appropriate sanction should be to terminate the contract.

Those arguing against termination stated that Impark had the right to rely on the waiver and that the CPR requirement was immaterial and not enforced with the prior vendor. When informed that the waiver was granted improperly, Impark promptly complied without additional expense to the City.

Section 2.03 of the City Charter establishes the power of the Commission:

> All powers of the City shall be vested in the City Commission except those powers specifically given to the Mayor, the City Manager, and to the City Attorney, as provided in this Charter and except those powers specifically reserved in this Charter to the electors of the City. Moreover, the City Commission shall have all powers and privileges not inconsistent herewith, granted to the City Commission of cities and towns by the general laws of the State of Florida, and shall have power to do and perform all things necessary for the government of the City not inconsistent with the Constitution and laws of the United States and the terms and provisions of this Charter.

It is well established that the City Commission is vested with the power to award contracts with City vendors and that City staff has no authority to alter or amend such contracts.

The relevant powers of the City Manager are set forth in Section 4.02 of the City Code;

> (d) To appoint and remove at will, all other officers or employees in the unclassified service of the City, except the Mayor and city Commissioners, and those individuals appointed by the Commission, the employees in the Mayor's Office who are in the unclassified service for whom the Mayor shall be the appointing authority, and the unclassified personnel in the Legal Department who shall be appointed and removed by the City Attorney.
>
> * * *
>
> (h) To have general and special supervision and control, subject to the control by the City Commission, of the several departments now existing, except for the Legal Department, or

hereafter to be created, and the City Manager shall be purchasing agent of the City, with authority to delegate such duty.

(i) To negotiate all contracts and agreements in which the City is a party subject to the approval of the City Commission.

(j) The City Manager shall account to the City Commission for the conduct and acts of several departments now existing, or hereafter to be created, and he/she shall have supervision and control of the heads of the said departments, and such heads as appointed by the City Manager shall be accountable to the City Manager for the conduct and acts of their departments except for the Legal Department.

While unauthorized actions of city staff (i.e. the waiver of a contract requirement) are subject to discipline and sanctions, as determined by the City Manager, they do not constitute a per se violation of the City Charter requiring that the contract be voided. Section 4.02 of the Charter governs the duties and responsibilities of the City Manager, not other City personnel. There is no suggestion that the City Manager himself did anything wrong.

As stated above, the City may properly terminate the Impark Contract for convenience, pursuant to 4.7.2 thereof, but not because Impark's actions, though arguably inappropriate, violated the Charter.

cc: Jorge Gonzalez, City Manager

JS/mem

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WEISS SEROTA HELFMAN PASTORIZA COLE & BONISKE, P.L.

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INCLUDING PROFESSIONAL ASSOCIATIONS

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MITCHELL J. BURNSTEIN, P.A.
JAMIE ALAN COLE, P.A.
STEPHEN J. HELFMAN, P.A.
GILBERTO PASTORIZA, P.A.
MICHAEL S. POPOK, P.A.
JOSEPH H. SEROTA, P.A.
SUSAN L. TREVARTHEN, P.A.
RICHARD JAY WEISS, P.A.
DAVID M. WOLPIN, P.A.

DANIEL L. ABBOTT
GARY L. BROWN
LYNN M. DANNHEISSER
IGNACIO G. DEL VALLE
ALAN L. GABRIEL
DOUGLAS R. GONZALES
MATTHEW H. MANDEL
BRETT J. SCHNEIDER

LORI ADELSON*
LILLIAN M. ARANGO*
JEFF P.H. CAZEAU
ARYE P. CORBETT
RAQUEL ELEJABARRIETA
CHAD S. FRIEDMAN

MACADAM J. GLINN
R. BRIAN JOHNSON
JOHN J. KENDRICK III
HARLENE SILVERN KENNEDY
KAREN LIEBERMAN*
JOHANNA M. LUNDGREN
KATHRYN M. MEHAFFEY
HARRIS S. NIZEL
ALEXANDER L. PALENZUELA-MAURI*
MATTHEW PEARL
JOHN J. QUICK
ANTHONY L. RECIO
SCOTT A. ROBIN
AMY J. SANTIAGO
DANIEL A. SEIGEL
GAIL D. SEROTA*
JONATHAN C. SHAMRES
ESTRELLITA S. SIBILA
ANTHONY C. SOROKA
EDUARDO M. SOTO
MICHAEL L. STINES
NANCY STUPARICH*
GLORIA M. VELAZQUEZ-MEITIN
CHRISTOPHER J. VOLK
MICHELLE D. VOS
MARLON J. WEISS
LAURA K. WENDELL*
JAMES E. WHITE

*OF COUNSEL

April 8, 2009

VIA E-MAIL & U.S. MAIL

RECEIVED
09 APR -9 PM 2:55
CITY ATTORNEY'S OFFICE

Jose Smith, Esquire
City Attorney
City of Miami Beach
1700 Convention Center Drive – 4th Floor
Miami Beach, FL 33139

Re: City of Miami Beach ("City") Contract with Impark for Parking Cashiers and Supervisors ("Contract")

Dear Jose,

Thank you for meeting with me to discuss my client, Impark's Contract, with the City. You asked me to provide the instant letter outlining Impark's position regarding the actions discussed at the last City commission meeting. As we discussed, Impark opposes any action by the City Commission that would effectively terminate the Contract and such action is completely unwarranted by current circumstances.

From our discussion I believe we agree that the City reserved to itself the right (under section 4.7.1 of the Contract) to terminate for convenience. I also believe we are in agreement that to the extent such a provision may be legally invoked in this instance, the City would be obligated to reimburse Impark its unamortized start up costs and pay for any portion of the Contract that Impark performed up to the effective date of the termination. We agree that the City would not be liable for prospective contract damages or lost profits under those circumstances.

For your convenience, we have provided the attached summary of those costs. We project the amount is in the neighborhood of $320,000.00. You asked me why the amount is higher than the previously quoted $85,000 figure. The lower figure includes only hard capital

costs for the equipment, namely 2 vehicles, uniforms and the "Parker Pete" vehicle. It does not include the personnel and professional costs associated with the start up or incurred as a direct result of the City's contemplated action, nor several other items of equipment and materials. Florida and Federal law support the right of a vendor to receive such compensation in the event the government terminates a contract solely for its own convenience. *Sanchez v. Crandon Wholesale Drug Co.* and *see Jacobs Engineering v. US*, 434 F.3d. 1378, 1381 (Fed. Cir. 2006) ("A contractor is not supposed to suffer as the result of a termination for convenience of the Government, nor to underwrite the Government's decision to terminate.")

Nevertheless, please do not conclude from the fact that we are providing the instant information that we believe that the Contract may be terminated for convenience under these circumstances. Section 4.7.1 is overbroad and in direct conflict with other clear provisions of the contract. It also lacks consideration and mutuality of obligation and may thus be deemed to be unenforceable. *See Lauren v. Marc & Melfa*, 446 So.2d 1138 (Fla. App. 3rd DCA, 1984).

In any case, all contracts are subject to an implied duty of good faith and fair dealing. *See Generally Bruner and O'Connor* on *Construction Law*, §18:47. *Sepe v. City of Safety Harbor*, 761 So. 2d 1182, (Fla. App. 2nd DCA, 2000). Sole discretion does not permit a party to make a discretionary decision that violates the covenant of good faith. *Mesler v. Holly,* 318 So.2d 530 (Fla. 2d DCA 1975) (grant of "absolute discretion" to trustee does not relieve trustee of duty of good faith.) Furthermore, while local government agencies enjoy broad discretion in decisions relating to procurement, such discretion must be exercised within the legal confines of the agency's own rules and may not be exercised arbitrarily and capriciously. *City of Sweetwater v. Solo Construction Corp.,* 823 So. 2d 798, 802 (3d DCA 2002). Florida's competitive bid statutes are enacted for the protection of the public, and "under this system, the public authority may not arbitrarily or capriciously discriminate between bidders, or make the bid based upon personal preference." *Marriott Corporation vs. Metropolitan Dade County*, 383 So.2d 662 (Fla. 3d DCA 1980)

If it were judicially determined, as stated by at least two commissioners at the last meeting, that the termination is being done in order to give a disappointed bidder a "second bite at the apple," then we believe the City could be liable for full contract damages including any lost revenue and possible consequential damages incurred by Impark as a result of the City's actions. Any contrary authority that does not involve a contract between a vendor and a government agency is likely inapplicable to the instant situation where government agencies have obligations that may not be incumbent upon private entities.

We understand that at least one City commissioner has requested an opinion as to whether the City charter was violated as a result of the negotiation of the CPR training

requirement. We believe most emphatically that it was not, and it certainly was not violated by Impark.

The City Commission approved the evaluation committee recommendation to contract with Impark and authorized staff to negotiate the contract. Staff did so and determined that it could live without the CPR training as it apparently did through the entire length of the predecessor contract with Standard Parking. That requirement, which was included in the Standard contract but never enforced, was negotiated out of the Impark contract during negotiations and Impark agreed to lower its price by approximately $ 18,000.00 in consideration of the change.

City staffed showed Impark the proposed contract prior to forwarding it to the City Commission for approval. After review by its counsel, Impark noted to staff that there was no specific waiver of CPR training in the Contract, and staff indicated the matter would be addressed subsequently. However, the Contract was approved by the Commission without a specific waiver of CPR training. In order to insure that Impark was in full compliance with the Contract as of the start date, Impark requested and was provided written confirmation that Impark was not required to perform CPR training as was agreed during Contract negotiations.

Subsequently, the City Attorney informed staff that it did not have the authority to waive or excuse CPR training without a Commission-approved amendment. The City staff then advised Impark that the City would reinstate CPR training under the Contract, and Impark complied, as expeditiously as possible, but did not reinstate the charge of $18,000.00 for providing CPR training to its employees over the term of the Contract.

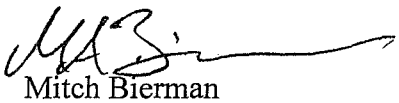
Accordingly, the City, received the service as stated in the Contract, but did not have to pay for it. These facts do not constitute a charter violation, because, to the extent there was an error, it was avoided and the City received the services required under the Contract as approved by the Commission. Impark has paid a price for the mix up in having to absorb the cost of CPR without compensation from the City. To now terminate Impark's contract would be grossly disproportionate and unfair where Impark negotiated in good faith and actually raised the issue of the authority to waive the CPR requirement.

In conclusion, Impark considers this to be a partnership and wishes to continue. While every service contract has occasional issues, the transition bugs have now been ironed out of this one, and as the City Manager stated during the meeting, it is too early in this contract to consider terminating at this time. In fact, to our knowledge, the City has never taken this type of action before. The message that it would send to the business community would be very negative and would likely result in the City having fewer options in the future as fewer quality vendors choose

to take the risk that their contracts might be cancelled prematurely despite meeting contractual requirements.

We look forward to continuing our partnership and putting this episode behind us. Please feel free to call me if you have questions about this or any other matter.

Your good friend,



Mitch Bierman

MAB/ms
1756.001
Enclosures
cc: Chester Escobar
Brian May
Robert Parcher, City Clerk

Start up Cost

Item	*Description*	*Cost*	*Date acquired*
Vehicles	Two (2) Honda Odysseys Minivans	$48,000	8/11/2008
Uniforms	All new Uniforms for all Personnel.	$17,171	8/11/2008
Copiers/Printers	Two Copiers for the MB Operations. This cost includes termination charges for a three year lease for the equipment.	$15,277	8/11/2008
CPR	CPR training Cost	$5,090	2/21/2009
CPR	CPR non-billable hours to the City	$4,553	2/21/2009
Transitional Team Expenses for the August 11th take over day	Travel, Accommodations, and time spent by all local and Visiting staff (Except Mike McKeon and Chester Escobar) during 8/11/08 transition.	$30,000	8/11/2008
Parker Pete	Parker Pete start up cost.Signs, Cell phone contracts, Van Branding, Battery Chargers.	$22,188	8/11/2008
Proposal Production	Supplies, binders, sample uniforms, and shipping costs	$1,875	8/11/2008
Legal Review of all RFP	Legal Hours spent from our internal Legal Department	$4,500	8/11/2008
Consultants/PR Fees	Consultant Fees to provide Public Relations during the Bidding process	$22,500	8/11/2008
Laptops for Supervisors	Two Brand New Dell Laptops for the Senior Project Manager and HR Coordinator	$4,571	8/11/2008
Take over day services	Take over day we provided Water, newspaper, Candy, and Parker Pete flyer to all patrons. Each facility had a decorated table at each elevator lobby	$3,672	8/11/2008
New Signage for Boat Show	Four signs for Boat Show	$997	8/11/2009

Payroll Costs	Cost includes all personnel from Impark involved in the contract bidding, negotiation and preparation, presentations, and recent coucil discussions regarding curret contract	$100,762	on-going
Travel and Accomodations	Mike McKeon during proposal, preparation, and negotiations. Also includes impark team during presentations to the City.	$15,000	Several dates throughout 2008
Safes	Small safes at all locations and a heavy duty safe at the 17th street garage. Also includes transportation and re-keying of all safes.	$6,150	8/11/2009 & 4/03/09
Travel and Accomodations	Chris Johnson - Time, Travel and Accommodations for recent contract discussions.	$2,000	on-going
Legal Representation	Legal Representation during Contract Termination Discussions by the City Commission	$9,000	on-going
PR Fees	Additional Public Relations Firm hired during Contract termination Discussions.	$7,500	on-going
	Total:	***$320,806***	

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Ed Tobin, Commissioner

DATE: April 6, 2009 ET/BT

SUBJECT: Status report on citywide WiFi.

Please place on the April 22, 2009 Commission meeting agenda a detailed status report of the citywide WiFi.

Please provide a time certain, preferably after 5 p.m. if possible.

Should you have any questions, please contact my aide, Ben Torter at ext. 6274.

ET/bt

Agenda Item R9D

Date 4-22-09

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Ed Tobin, Commissioner ET/BT

DATE: April 6, 2009

SUBJECT: Status report on utility under grounding for Palm and Hibiscus Islands.

Please place on the April 22, 2009 Commission meeting agenda a detailed status report of where Palm and Hibiscus Islands stand towards their goal of under grounding utilities.

Please include a time certain, preferably after 5 p.m. if possible.

Should you have any questions, please contact my aide, Ben Torter at ext. 6274.

ET/bt

Agenda Item R9E

Date 4-22-09

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Ed Tobin, Commissioner ET/BT

DATE: April 6, 2009

SUBJECT: Status report on city's progress in putting its checkbook on the city's website.

Please place on the April 22, 2009 Commission meeting agenda a detailed status report of the city's efforts to put the city's checkbook on the city's website as recommended by TRAC.

Please provide a time certain, preferably after 5 p.m. if possible.

Should you have any questions, please contact my aide, Ben Torter at ext. 6274.

ET/bt

Agenda Item R9F

Date 4-22-09

We are committed to providing excellent public service and safety to all who live, work, and play in our

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Victor M. Diaz, Jr., Commissioner

DATE: April 2, 2009

SUBJECT: Resolution Supporting Passage of HB 397/SB2012

Please place a resolution on the April Commission agenda supporting the passage of HB397/SB2012 which would amend the Florida anti-discrimination statute to prohibit discrimination based on sexual orientation and gender identity of expression, and directing the City of Miami Beach lobbyist to undertake best efforts for the passage of this legislation.

VMD/sm

Agenda Item R9G

Date 4-22-09

RESOLUTION NO.: _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SUPPORTING HOUSE BILL 397 AND SENATE BILL 2012 WHICH PROHIBIT DISCRIMINATION AGAINST PERSONS BASED UPON SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, PREGNANCY, AND FAMILIAL STATUS UNDER THE FLORIDA CIVIL RIGHTS ACT OF 1992 AND THEREBY CREATING A PROHIBITION AGAINST THOSE WHO DISCRIMINATE ON THESE IMPERMISSIBLE GROUNDS; DIRECTING THE CITY CLERK TO TRANSMIT CERTIFIED COPIES OF THIS RESOLUTION TO GOVERNOR CHARLIE CRIST, THE PRESIDENT OF THE FLORIDA SENATE, AND THE SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES; AND DIRECTING THE CITY ADMINISTRATION TO INCLUDE THE SUPPORT OF THESE BILLS IN ITS 2009 LEGISLATIVE PRIORITIES.

WHEREAS, House Bill 397 and companion Senate Bill 2012 seek to identify additional discriminatory practices in the treatment of persons based upon sexual orientation, gender identity or expression, pregnancy, and familial status which would be recognized within the Florida Civil Rights Act of 1992; and

WHEREAS, the general purpose of the Florida Civil Rights Act of 1992 is to secure for all individuals within the State freedom from discrimination, and to protect their interest in personal dignity, to make available to the State their full productive capacities, to secure the State against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the State; and

WHEREAS, House Bill 397 and companion Senate Bill 2012 propose important and essential amendments to the Florida Civil Rights Act of 1992, which would further allow protection and security to those individuals who are wrongfully, and with prejudicial intent, discriminated against based upon their sexual orientation, gender identity or expression, pregnancy, and familial status; and

WHEREAS, the Mayor and City Commission of the City of Miami Beach embrace the equal treatment of all individuals, and deplore discrimination against individuals based upon sexual orientation, gender identity or expression, pregnancy, and familial status in the City of Miami Beach and the State of Florida; and

WHEREAS, the amendment to the Florida Civil Rights Act of 1992 would protect those discriminated individuals, and preserve and promote the interests, rights, and privileges of persons based upon sexual orientation, gender identity or expression, pregnancy, and familial status in the City of Miami Beach and the State of Florida.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Florida Legislature is hereby urged to adopt House Bill 397 and companion Senate Bill 2012 which identify additional discriminatory practices in the treatment of persons based upon sexual orientation, gender identity or expression, pregnancy, and familial status as set forth and would be recognized within the Florida Civil Rights Act of 1992 in the State of Florida. In addition, the City Clerk is hereby directed to transmit certified copies of this Resolution to Governor Charlie Crist, the President of the Florida Senate, and the Speaker of the Florida House of Representatives, and to direct the City Administration to include the support of these bills in its 2009 legislative priorities.

PASSED AND **ADOPTED** this _____ day of April, 2009.

ATTEST:

_____
MATTI HERRERA BOWER
MAYOR

_____
ROBERT PARCHER
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/15/09
Date

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Victor M. Diaz, Jr., Commissioner

DATE: April 2, 2009

SUBJECT: Resolution in Support of Passage of SB500/HB413

Please place a resolution on the April Commission agenda in support of the passage of SB500/HB413 which would revoke the ban preventing gay people from adopting children and directing the lobbyist for the City of Miami Beach to undertake best efforts for the passage of this legislation.

Thank you.

VMD/sm

Agenda Item R9H

Date 4-22-09

RESOLUTION NO.: _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, SUPPORTING HOUSE BILL 413 AND SENATE BILL 500 WHICH WOULD REPEAL THE RESTRICTION ON ADOPTION BY HOMOSEXUAL INDIVIDUALS; DIRECTING THE CITY CLERK TO TRANSMIT CERTIFIED COPIES OF THIS RESOLUTION TO GOVERNOR CHARLIE CRIST, THE PRESIDENT OF THE FLORIDA SENATE, AND THE SPEAKER OF THE FLORIDA HOUSE OF REPRESENTATIVES; AND DIRECTING THE CITY ADMINISTRATION TO INCLUDE THE SUPPORT OF THESE BILLS IN ITS 2009 LEGISLATIVE PRIORITIES.

WHEREAS, House Bill 413 and companion Senate Bill 500 would eliminate the unjustified prohibition against adoption by homosexual individuals in the State of Florida; and

WHEREAS, House Bill 413 and companion Senate Bill 500 are important measures which seek to address, and ultimately correct, the unfounded and discriminatory prohibition against homosexual individuals who seek to legally adopt a minor or an adult pursuant to Section 63.042 of the Florida Statutes; and

WHEREAS, the Mayor and City Commission of the City of Miami Beach denounce the unjustified and discriminatory prohibition against homosexual individuals from adopting in the State of Florida; and

WHEREAS, the repealing of subsection (3) of Section 63.042 of the Florida Statutes would allow homosexual individuals the legal right to adopt a minor or an adult in the State of Florida, and correct the unjustified, unfounded and discriminatory prohibition against this class of persons.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Florida Legislature is hereby urged to adopt House Bill 413 and companion Senate Bill 500 which would repeal subsection (3) of Section 63.042 of the Florida Statutes, and thereby legally authorize homosexual individuals to adopt a minor or an adult in the State of Florida. In addition, the City Clerk is hereby directed to transmit certified copies of this Resolution to Governor Charlie Crist, the President of the Florida Senate, and the Speaker of the Florida House of Representatives, and to direct the City Administration to include the support of these bills in its 2009 legislative priorities.

PASSED AND **ADOPTED** this _____ day of April, 2009.

ATTEST:

_____
MATTI HERRERA BOWER
MAYOR

_____
ROBERT PARCHER, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 4/15/09 Date

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Ed Tobin, Commissioner

DATE: April 8, 2009

ET/BT

SUBJECT: Venetian Islands Neighborhood Improvement Project.

Please give a time certain of 5:30 p.m. to the Venetian Islands Neighborhood Improvement Project item referred to the April 22 Commission meeting from the April 6 CIPOC meeting. It is important that this item be given a time certain of 5:30 or later because of heavy resident interest.

Should you have any questions, please contact my aide, Ben Torter at ext. 6274.

ET/bt

Agenda Item R9I

Date 4-22-09

We are committed to providing excellent public service and safety to all who live, work, and play in

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Mayor Matti Herrera Bower
Members of the City Commission
City Manager Jorge Gonzalez

FROM: Victor M. Diaz, Jr., Commissioner VD/sm

DATE: April 22, 2009

SUBJECT: Discussion - Request for Special City Commission Meeting Re: Expansion of Ethics Reform/Transparency in Government.

I request that the following issues concerning expansion of the City's ethics reform legislation/providing greater transparency in government, be placed on the City Commission agenda of April 22, 2009 for discussion -- all of these proposals have been discussed with, and reviewed for legal sufficiency by the City Attorney. Rather than presenting these measures in Ordinance form for first reading, I have placed these matters on the agenda for discussion purposes in order to achieve consensus approval of the scheduling of a Special City Commission Meeting to be held for the exclusive purpose of continuing review and expansion of City of Miami Beach ethics reform. The proposed Special Commission meeting would consider my colleagues' pending ethics initiatives, as well as my following suggestions:

1- Ethics in Government: amend "Citizens' Bill of Rights" section of Miami Beach City Charter, establishing the public's right to public servants' accountability and responsibility in abiding by applicable codes of ethical conduct in the performance of official duties.

2- Automatic Removal from Office: amend Miami Beach City Code to provide for automatic removal of unclassified city personnel and elected officials for conviction of crimes involving "violation of the public trust".

3- Transparency in Government: amend Miami Beach City Code to expand upon existing conflict disclosure requirements applicable to City's elected and appointed officials:

a) require disclosure of conflict after conflicting relationship has ended -- for a period of 24 months after the subject relationship has ended, require disclosure of business relationships which were the subject of prior conflict, which relationship gave rise or could have given rise to the conflict.

b) require disclosure of certain existing relationships -- mandate disclosure of conflict if Commissioner/board member has family or business relationship with a party directly benefited or affected by subject Commission/board action, regardless of legal conflict.

4- Revolving Door: amend Miami Beach City Code to proscribe certain post-service activities of city personnel:

a) doubling County's 2 year lobbying restriction -- for a period of 4 years after leaving city service, elected officials and city employees will be prohibited from directly lobbying city personnel.

b) prohibiting elected officials for a period of 2 years after leaving city service from becoming City employee/consultant or having any contract with City in which City Commission approval is required.

Agenda Item R9J
Date 4-22-09

c) prohibiting elected officials and city employees for a period of 2 years after leaving city service from working for third party re: matters in which subject city personnel was personally and substantially involved with during the 1 year period prior to leaving the City.

5- Campaign Finance Reform: amend Miami Beach City Code to expand upon City's existing rules prohibiting campaign contributions by vendors, lobbyists for vendors, real estate developers, and lobbyists for real estate developers, by extending the applicability of such prohibited donations to incumbent members of the City Commission who are candidates for non-Federal elected office.

VMD/JO/sc

cc: Robert Parcher, City Clerk

F:\atto\OLIJ\CMEMO\Expansion of Ethics Reform Transparency in Gov.doc

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez

FROM: Commissioner Saul Gross

DATE: April 17, 2009

SUBJECT: Agenda Item

Please place on the agenda of the April Commission Meeting a request to approve a resolution urging the school district to adopt green procurement specifications for cleaning supplies.

This request has been voted on and approved at the March Sustainability Committee Meeting.

If you have any questions, please feel free to contact my Aide, Wanda Ortiz at extension 7104.

Thank you.

SG:wo

Agenda Item R9K
Date 4-22-09

RESOLUTION TO BE SUBMITTED

R10 - City Attorney Reports

R10A Notice of Closed Executive Session.
Pursuant To Section 447.605, Florida Statutes, A Closed Executive Session Will Be Held During Recess Of The City Commission Meeting On Wednesday, April 22, 2009 In The City Manager's Large Conference Room, Fourth Floor, City Hall, For A Discussion Relative To Collective Bargaining.

AGENDA ITEM R10A
DATE 4-22-09

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OFFICE OF THE CITY ATTORNEY

City of Miami Beach

F L O R I D A

JOSE SMITH
City Attorney

Telephone: **(305) 673-7470**
Facsimile: **(305) 673-7002**

COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower
Members of the City Commission
City Manager Jorge M. Gonzalez

DATE: April 22, 2009

FROM: Jose Smith, City Attorney

SUBJECT: City Attorney's Status Report

LAWSUITS FILED BY OR AGAINST THE CITY OF MIAMI BEACH SINCE THE LAST REPORT

1) Bank of America, N.A. vs. Luc Giroux, et. al, Case No. 09-18065 CA 06 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

   This is an action to foreclose a mortgage on real property located at 9188 Bay Drive, Miami Beach Florida. The Summons and Complaint were served on the City on March 10, 2009.

   The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on was filed on March 20, 2009.

2) RBC Bank (USA) vs. Beatrice L. Martin, et. al, Case No. 09-10666 CA 10 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

   This is an action to foreclose a mortgage on real property located at 6770 Indian Creek Drive, Unit T-F, Miami Beach, Florida. The Summons and Complaint were served on the City on March 10, 2009.

   The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

3) JPMorgan Chase Bank vs. Jaime Costa, et. al, Case No. 09-18215 CA 10 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

   This is an action to foreclose a mortgage on real property located at 325 Ocean Drive, Unit 305, Miami Beach, Florida. The Summons and Complaint were served on the City on March 11, 2009.

   The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

4) HSBC Bank, USA vs. William H. Gomez, et. al, Case No. 09-18860 CA 27 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

   This is an action to foreclose a mortgage on real property located at 3025 Indian Creek Drive, Unit 206, Miami Beach, Florida. The Summons and Complaint were served on the City on March 11, 2009.

   The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

5) Countrywide Home Loans, Inc. vs. Fred Viera, et. al, Case No. 09-18290 CA 03 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

   This is an action to foreclose a mortgage on real property located at 8080 Tatum Waterway, Unit 5, Miami Beach, Florida. The Summons and Complaint were served on the City on March 11, 2009.

   The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

6) HSBC Bank, USA vs. Gigi Olga Kamberos, et. al, Case No. 09-18638 CA 03 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

   This is an action to foreclose a mortgage on real property located at 1458 Ocean Drive, #226, Miami Beach, Florida. The Summons and Complaint were served on the City on March 11, 2009.

   The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

7) JPMorgan Chase Bank vs. Alba O. Yanez, et. al, Case No. 09-19408 CA 31 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

   This is an action to foreclose a mortgage on real property located at 5601 Collins Avenue, Unit 1614, Miami Beach, Florida. The Summons and Complaint were served on the City on March 12, 2009.

   The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

8) National City Bank vs. Ramon A. Santiago, et. al, Case No. 09-19195 CA 25 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

   This is an action to foreclose a mortgage on real property located at 2899 Collins Avenue, Unit 1201, Miami Beach, Florida. The Summons and Complaint were served on the City on March 12, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

9) Countrywide Home Loans, Inc. vs. Jimmy Cabrera, et. al, Case No. 09-19415 CA 27 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 1319 Meridian Avenue, #308, Miami Beach, Florida. The Summons and Complaint were served on the City on March 12, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

10) ITAL Construction Inc. v. CMB , a Florida municipal corporation al in the Circuit Court of the 11th Judicial Circuit in and for Miami-Dade County, Florida Civil Action, Case No. 09-18793 CA15 09CMB00020-1461 031209

This case was served on the City on March 12, 2009. It is alleged that plaintiff, the general contractor for the Old City Hall renovation was wrongfully terminated. It is a breach of contract action. An answer was recently filed by the City and discovery has yet to commence.

11) JPMorgan Chase Bank vs. Decomar, LLC, et. al, Case No. 09-16790 CA 02 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 925-35, 945-55 and 965 Marseille Drive, Miami Beach, Florida. The Summons and Complaint were served on the City on March 11, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

12) SunTrust Bank vs. Wireless Product, Inc, et. al, Case No. 09-18201 CA 21 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a commercial mortgage and security agreement on real property located at 1680 Michigan Avenue, Suites 900 A – D, Miami Beach, Florida. The Summons and Complaint were served on the City on March 13, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 20, 2009.

13) BankUnited, FSB vs. Luis E. Fajardo, et. al, Case No. 09-19222 CA 27 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 5255 Collins Avenue, Unit 12-B, Miami Beach, Florida. The Summons and Complaint were served on the City on March 16, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

14) Vladimir P. Chirileanu vs. Tremont Towing and the City of Miami Beach, et. al, Case No. 09-02179 SP 05 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

The Plaintiff alleges that his vehicle sustained damage when it was towed by Tremont Towing from 4512 Alton Road, Miami Beach, Florida. The Summons and Complaint were served on the City on March 17, 2009. The pre-trial conference was scheduled for March 25, 2009 and, at that time, a settlement was reached.

15) HSBC Mortgage Corporation vs. Pablo Martinez, et. al, Case No. 09-15639 CA 21 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 1385 NE 128th Street, Miami, Florida. The Summons and Complaint were served on the City on March 17, 2009. The Plaintiff improperly sued the Code Enforcement Board of the City of Miami Beach.

The City's Motion to Dismiss was filed on March 19, 2009.

16) Countrywide Home Loan Service, LP vs. Eduardo Torres, et. al, Case No. 09-18887 CA 20 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 9433 SW 140 Ct. Miami, Florida. The Summons and Complaint were served on the City on March 17, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on March 19, 2009.

17) Countrywide Home Loan Service, LP vs. Iris Roca, et. al, Case No. 09-21068 CA 20 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 6039 Collins Avenue, Unit 730, Miami Beach, Florida. The Summons and Complaint were served on the City on March 18, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

18) CitiMortgage, Inc. vs. Rafael Garcia, et. al, Case No. 09-20983 CA 02 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 1120 Pennsylvania Avenue, #210, Miami Beach, Florida. The Summons and Complaint were served on the City on March 18, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

19) Sergio Rivas, a Florida Resident, and Robert Navarette, a Florida Resident v. Eric Figueroa and Roberto Azicri Individually, and the City of Miami Beach, a Florida Municipal corporation, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami Dade County, Florida General Jurisdiction Division Case No. 09-21828 CA 31 09CMB00020-1470 (SR) 031909

This is a tort case against the City and several police officers in which Messrs. Rivas and Navarette allege that they were unlawfully arrested and battered and that police officers maliciously caused them to be charged and prosecuted for disorderly conduct. The City has moved to dismiss the Complaint.

20) CitiMortgage, Inc. vs. Andrea K. Silverthorne, et. al, Case No. 09-21710 CA 08 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 1610 Lenox Avenue, Unit 506, Miami Beach, Florida. The Summons and Complaint were served on the City on March 19, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

21) JPMorgan Chase Bank. vs. Marlen Ximena Polania, et. al, Case No. 09-23280 CA 23 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 4779 Collins Avenue, Unit 2508, Miami Beach, Florida. The Summons and Complaint were served on the City on March 24, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

22) Deutsche Bank vs. Jorge Acevedo-Crespo, et. al, Case No. 09-20694 CA 25 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 100 South Pointe Drive, Unit 3605, Miami Beach, Florida. The Summons and Complaint were served on the City on March 19, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

23) Regions Bank vs. Armando Pozo, et. al, Case No. 09-017020 (12) (Circuit Court – 17th Judicial Circuit in and for Broward County, Florida)

This is an action to foreclose a mortgage on real property located at 2271 Dorado Avenue, Davie, Florida. The Summons and Complaint were served on the City on March 26, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

24) Bank of America vs. Hans J. Bachmann, et. al, Case No. 09-16912 CA 21 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 20 Island Avenue, #101, Miami Beach, Florida. The Summons and Complaint were served on the City on March 26, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

25) Countrywide Home Loans Servicing, L.P. vs. Jose Rodriguez, et. al, Case No. 09-20097 CA 30 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 20900 SW 258 Street, Homestead, Florida. The Summons and Complaint were served on the City on March 26, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

26) Countrywide Home Loans vs. Orlando Garcia, et. al, Case No. 09-24211 CA 30 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 8440 SW 8 Street, Miami, Florida. The Summons and Complaint were served on the City on March 30, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 2, 2009.

27) IndyMac Federal Bank vs. Taciana Karina Coppos, et. al, Case No. 09-24545 CA 25 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 6422 Collins Avenue, Unit 1702, Miami Beach, Florida. The Summons and Complaint were served on the City on March 30, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes was filed on April 1, 2009.

28) Countrywide Home Loans Servicing vs. Leopoldo Silva, et. al, Case No. 09-22257 CA 2 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 22431 SW 93 Passage, Miami, Florida. The Summons and Complaint were served on the City on April 1, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

29) Deutsche Bank Trust Company vs. Carlos Manuel Hernandez, et. al, Case No. 09-25163 CA 22 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 6355 SW 22 Street, Miami, Florida. The Summons and Complaint were served on the City on April 1, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

30) IndyMac Federal Bank vs. Maximo Linares, et. al, Case No. 09-24071 CA 02 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 5601 Collins Avenue, Unit 610, Miami Beach, Florida. The Summons and Complaint were served on the City on April 2, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

31) National City Bank vs. Ramon A. Santiago, Jr., et. al, Case No. 09-25682 CA 15 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 2899 Collins Avenue, Unit 531, Miami Beach, Florida. The Summons and Complaint were served on the City on April 2, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

32) Marathon Structured Finance Fund, L.P. vs. South Beach Resorts, LLC et. al, Case No. 09-26999 CA 13 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 740 Ocean Drive, Miami Beach, Florida. The Summons and Complaint were served on the City on April 7, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

33) Countrywide Home Loans Servicing vs. Jorge A. Gonzalez, et. al, Case No. 09-27482 CA 08 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 16450 NW 2 Avenue, Miami Lakes, Florida. The Summons and Complaint were served on the City on April 9, 2009.

The Complaint is devoid of any allegation pertaining to the City of Miami Beach. The Plaintiff improperly joined the City of Miami Beach. The real party in interest is the City of Miami. The Motion to Dismiss and Motion for Sanctions was filed on April 14, 2009.

34) Deutsche Bank Trust Company vs. Raul G. Gonzalez, et. al, Case No. 09-27651 CA 15 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 1154 SW 149 Path, Miami, Florida. The Summons and Complaint were served on the City on April 13, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

35) Wells Fargo Bank vs. Andre V. Texeira, et. al, Case No. 09-27345 CA 31 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 1920 Michigan Avenue, Unit 5, Miami Beach, Florida. The Summons and Complaint were served on the City on April 9, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

36) U.S. National Bank vs. Rick Blanco, Jr., et. al, Case No. 09-28110 CA 15 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 6917 Collins Avenue, Unit 1103, Miami Beach, Florida. The Summons and Complaint were served on the City on April 10, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

37) Chase Home Finance, LLC vs. Jose Manuel Rodriguez et. al, Case No. 09-28098 CA 24 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 13191 SW 18 Terrace, Miami, Florida. The Summons and Complaint were served on the City on April 10, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

38) JPMorgan Chase Bank vs. Penka Nikolova et. al, Case No. 09-29150 CA 06(Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on real property located at 6345 Collins Avenue, Unit TH-3, Miami Beach, Florida. The Summons and Complaint were served on the City on April 13, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

39) IndyMac Federal Bank vs. Jose Rodriguez, et. al, Case No. 09-29139 CA 05 (Circuit Court – 11th Judicial Circuit in and for Miami-Dade County, Florida)

This is an action to foreclose a mortgage on vacant land located at 213xx SW 168 Street, Miami, Florida. The Summons and Complaint were served on the City on April 10, 2009.

The City's Answer and Affirmative Defense, asserting priority for any special assessments, including, but not limited to, utility water and sewer services, demolition or board-up liens, and resort taxes will be timely filed.

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MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **PARKING STATUS REPORT – FEBRUARY 2009**

During the month of January the Parking Department received revenue from different sources outlined in the categories listed below:

REVENUE SOURCE	FEBRUARY 2008	FEBRUARY 2009	%INC/(DEC)
I. Meters (Single & Multi Space)	**$1,088,781.20**	**$1,229,694.94**	**12.94%**
II. Garages & Attended Lots	**$1,050,030.71**	**$954,794.65**	**(9.07%)**
a. 17th Street Garage	$350,576.76	$330,501.06	(5.73%)
b. 7th Street Garage	$183,609.11	$172,228.72	(6.20%)
c. 17th Street Lots (E & W)	$103,929.67	$74,163.92	(28.64%)
d. 12th Street Garage	$38,714.70	$34,376.69	(11.21%)
e. 13th Street Garage	$85,100.22	$91,888.26	7.98%
f. 42nd Street Garage	$51,441.40	$45,140.20	(12.25%)
g. 16th Street Garage	$236,658.85	$206,495.80	(12.75%)
III. Enforcement	**$270,551.43**	**$262,199.46**	**(3.09%)**
a. M-D Cty Pkg Violations	$250,938.93	$246,349.46	(1.83%)
b. Towing	$19,612.50	$15,850.00	(19.18%)
IV. Permit Sales	**$270,067.23**	**$233,575.72**	**(13.51%)**
a. Municipal Monthly Permits	$90,288.04	$62,616.42	(30.65%)
b. Valet & Space Rental	$115,495.46	$99,273.00	(14.05%)
c. Residential Permits	$34,171.23	$34,141.30	(0.09%)
d. Smart Card Sales (0 cards)	$7,822.50	$0.00	(100.00%)
e. Hotel Hang Tags (3,180 tags)	$22,290.00	$19,080.00	(14.40%)
f. In Vehicle Parking Meter (397 iParks)	0.00	$18,465.00	100.00%

Meters: the increase of meter revenue is primarily due to: 1) the increase in the hourly parking meter rate in the South Beach Parking Zone (metered parking south of 23rd Street) from $1.00/hour to $1.25/hour; and 2) the upgrade to wireless communication of all multi-space meters.

Agenda Item B
Date 4-22-09

Garages & Attended Lots: The overall revenue in the garages and lots decreased by 9.07%; however, this number is negatively impacted by the closure of 75% of the 17th Street lots for the construction of the New World Symphony Garage. If this revenue is not taken into consideration, the remaining garages would reflect an overall decrease in revenue of 6.92% which is a result in lower attendance numbers for the boat show.

Enforcement: the decrease in revenue represents minimal fluctuation in enforcement activity.

Permit Sales: the decrease in sales is a continuation of the revenue decrease trend as a result of the reduction in construction and valet space rentals, in addition to the discontinuation of the current smart card. In-Vehicle Parking Meter (IVPM or iPark) sales began on November 24, 2008.

BOAT SHOW 2009

The Parking Department attended parking lots, park and ride locations, and garages earned total gross revenues of $157,556 for the Boat Show this year. Gross revenue from Convention Center area parking was $79,189 and the attended park and ride lots was $78,367. Exhibit space and meter rental revenue was $124,661. Total gross revenue was $282,217 ($263,754 net of sales tax); a decrease of $4,971 from last year. Expenses for operations (parking attended labor and security personnel), shuttle bus rental, and printed maps totaled $114,230, resulting in net income of $149,525, an increase of $14,652 from last year.

Attached are detailed reports for each category listed above that comprises the total monthly revenue.

Weather: 19 partially sunny, 8 partially cloudy, and 1 cloudy day.

JMG/[illegible]/SF/RAR
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City of Miami Beach
Parking Department
2009 Boat Show

	2008 Feb	2009 Feb	Increase (Decrease)
REVENUE			
Attended Locations			
Convention Center Area Facilities	109,541.00	79,188.80	-30,352.20
Park and Ride Area Facilities	94,702.00	78,367.30	-16,334.70
Sub-Total	**$204,243.00**	**$157,556.10**	**($46,686.90)**
Meter/Space Rentals			
NMMA - Boat Show	54,935.09 *	95,622.50	40,687.41
Yacht Brokerage	28,010.50	29,038.60	1,028.10
Sub-Total	**$82,945.59**	**$124,661.10**	**$41,715.51**
Total Revenue	**$287,188.59**	**$282,217.20**	**($4,971.39)**
Revenue Net of Sales tax	**$268,400.55**	**$263,754.39**	**($4,646.16)**
EXPENSES			
Off-Street Division			
CMB Supervision	4,584.46	5,289.27	704.81
Attendant Labor	59,309.93	54,008.00	-5,301.93
Boat Show Flyer	5,787.50	5,787.00	-0.50
Shuttle Bus Rental	24,595.00	16,819.00	-7,776.00
Sub-Total	**$94,276.89**	**$81,903.27**	**($12,373.62)**
On-Street Division			
Enforcement Labor - Overtime	28,580.81	12,523.34	-16,057.47
Maintenance Labor - Overtime	9,574.08	12,941.29	3,367.21
Meter Maintenance Labor - Overtime	1,096.21	6,861.80	5,765.59
Sub-Total	**$39,251.10**	**$32,326.43**	**($6,924.67)**
Total Expenses	**$133,527.99**	**$114,229.70**	**($19,298.29)**
Net Income	**$134,872.57**	**$149,524.69**	**$14,652.13**

** The 2008 Space Rental revenue from NMMA was renegotiated due to the partial closure of the 17th Street Lots for the NWS construction.*

City of Miami Beach
Parking Department
2009 Boat Show
Revenue Comparison by Location

	2008 Feb 14-18	2009 Feb 16-20	Increase (Decrease)
ATTENDED LOCATIONS			
Convention Center Area Facilities			
2G - 17th St. Garage	$69,411	$57,516	($11,895)
5AE - 17th St. Lot	25,415	21,673	($3,742.10)
5AW - 17th St. Lot	0	0	$0.00
5F - 18th St. & Meridian Ave.	0	0	$0.00
5C - 17th & Convention Ctr Dr.	14,715	0	($14,715.00)
Sub-Total	**$109,541**	**$79,189**	**($30,352)**
Attended Park & Ride Faciliites			
9B-72nd St. & Collins Ave	5,090	3,215	($1,875)
26A-80th St. & Collins Ave	130	0	($130)
26B-84th St. & Collins Ave	0	995	$995
26C-79th st & Ccollins Ave	180	0	($180)
8A - 42nd St. Garage	11,542	7,293	($4,249)
6B - 21st St. & Collins Ave. Lot	11,700	14,523	$2,823
16D - 34th St. & Collins Ave. Lot	2,180	2,000	($180)
16E - 35th St. & Collins Ave. Lot	2,650	2,290	($360)
19X - 46th St. & Collins Ave. Lot	41,520	28,346	($13,174)
19B - 53rd St. & Collins Ave. Lot	12,830	12,528	($302)
18A - 64th St. & Collins Ave. Lot	3,070	4,065	$995
20X-27th St. & Collins Avel Lot	3,810	3,112	($698)
Sub-Total	**94,702**	**$78,367**	**($16,335)**
TOTAL	**$204,243**	**$157,556**	**($46,687)**

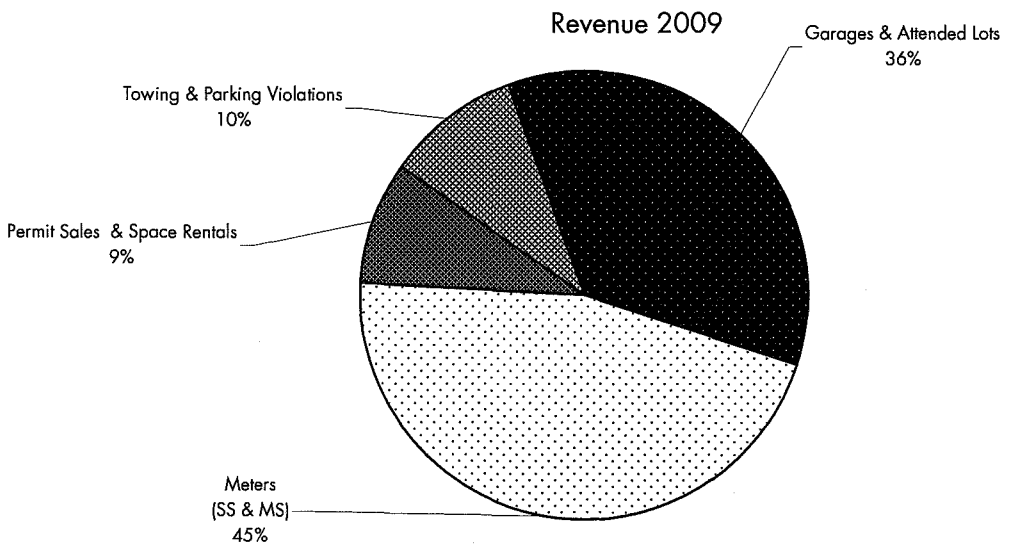
Shuttle Ridership

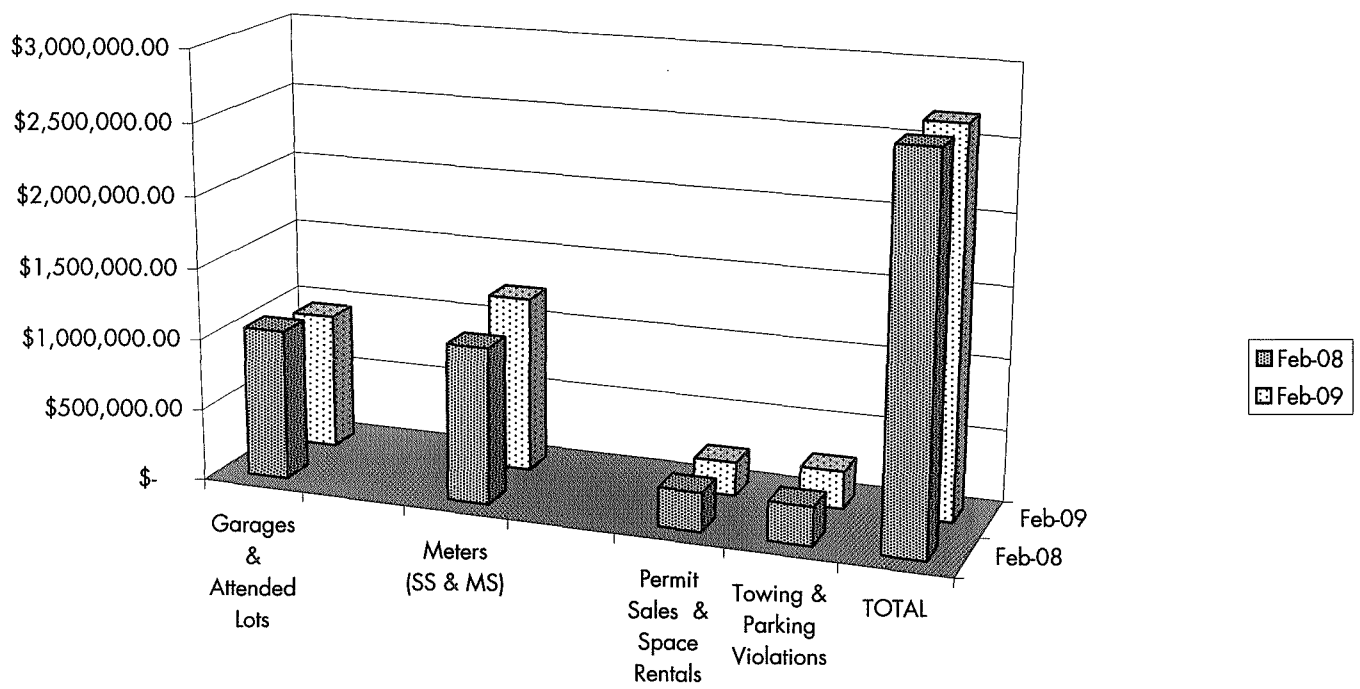
	2008 Feb 14-18	2009 Feb 12-16		Variance	Percentage
Thursday	350	298		-52	-14.86%
Friday	506	296		-210	-41.50%
Saturday	965	243		-722	-74.82%
Sunday	813	266		-547	-67.28%
Monday	300	126		-174	-58.00%
	2,934	**1,229**	**0**	**-1,705**	**-138.73%**

PARKING DEPARTMENT REVENUE

February-09

	Garages & Attended Lots	Meters (SS & MS)	Permit Sales & Space Rentals	Towing & Parking Violations	TOTAL
Feb-08	$ 1,050,030.71	$ 1,088,781.20	$ 270,067.23	$ 270,551.43	$ 2,679,430.57
Feb-09	$ 954,794.65	$ 1,229,694.94	$ 233,575.72	$ 262,199.46	$ 2,680,264.77
Diff	$ (95,236.06)	$ 140,913.74	$ (36,491.51)	$ (8,351.97)	$ 834.20
%	-9.07%	12.94%	-13.51%	-3.09%	0.03%

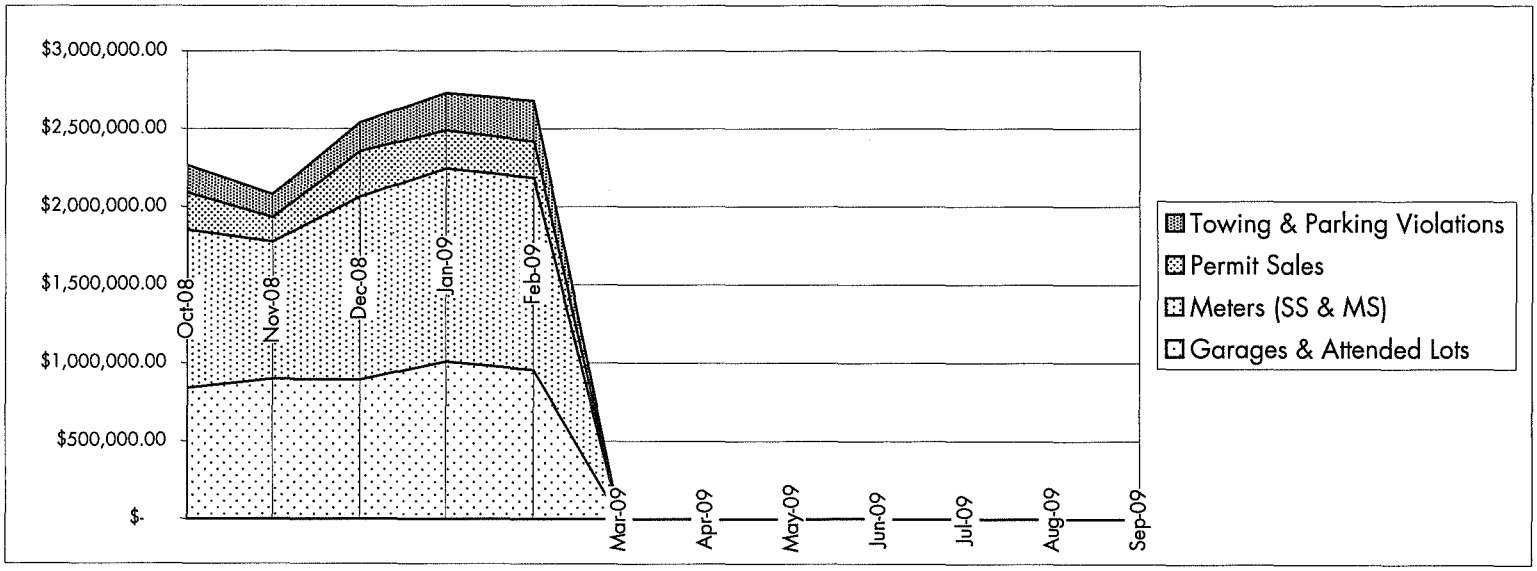




PARKING DEPARTMENT REVENUE YTD

February-09

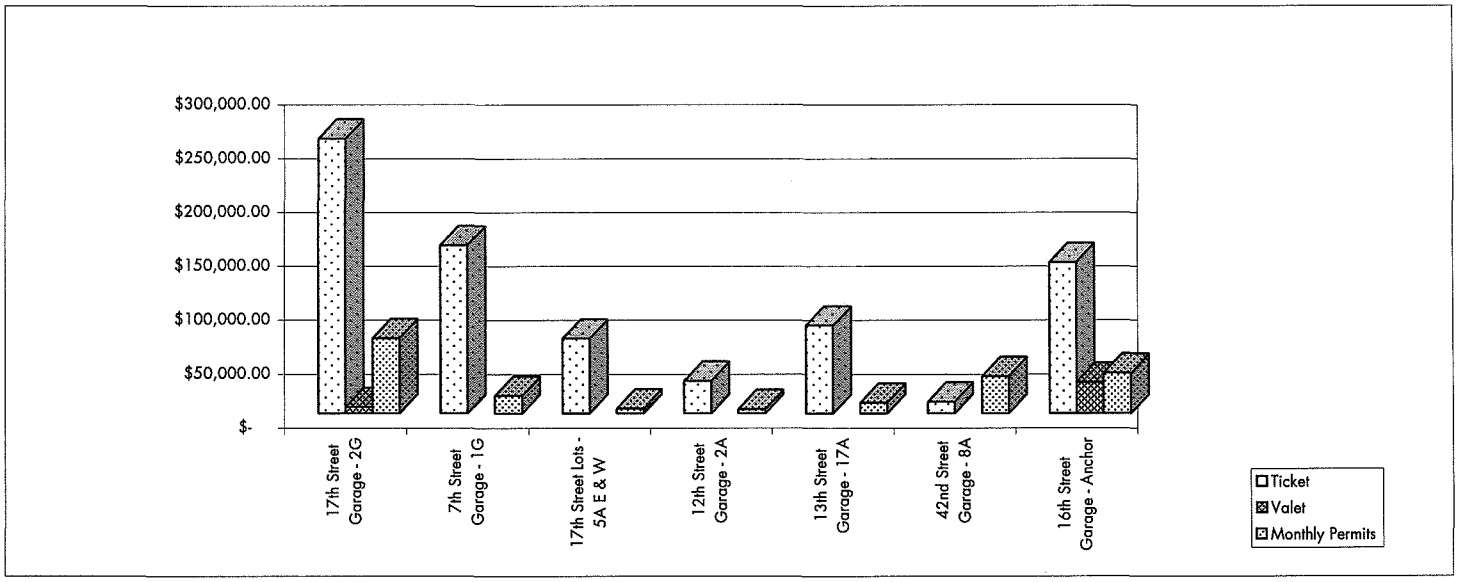
	Garages & Attended Lots	Meters (SS & MS)	Permit Sales	Towing & Parking Violations	TOTAL
Oct-08	$ 839,507.39	$ 1,011,911.34	$ 240,276.94	$ 174,467.02	$ 2,266,162.69
Nov-08	$ 898,793.27	$ 875,193.68	$ 155,507.61	$ 146,992.60	$ 2,076,487.16
Dec-08	$ 893,069.67	$ 1,170,449.78	$ 293,409.81	$ 185,371.96	$ 2,542,301.22
Jan-09	$ 1,007,957.38	$ 1,236,078.10	$ 246,859.60	$ 238,035.19	$ 2,728,930.27
Feb-09	$ 954,794.65	$ 1,229,694.94	$ 233,575.72	$ 262,199.46	$ 2,680,264.77
Mar-09					$ -
Apr-09					$ -
May-09					$ -
Jun-09					$ -
Jul-09					$ -
Aug-09					$ -
Sep-09					$ -
YTD	$ 4,594,122.36	$ 5,523,327.84	$ 1,169,629.68	$ 1,007,066.23	$ 12,294,146.11



PARKING GARAGE REVENUE CATEGORIES

February-09

	17th Street Garage - 2G	7th Street Garage - 1G	17th Street Lots - 5A E & W	12th Street Garage - 2A	13th Street Garage - 17A	42nd Street Garage - 8A	16th Street Garage - Anchor	TOTAL
Ticket	$ 254,971.06	$ 155,803.72	$ 69,543.92	$ 30,246.69	$ 81,738.26	$ 10,840.20	$ 139,902.85	$ 743,046.70
Valet	$ 5,950.00						$ 29,064.95	$ 35,014.95
Monthly Permits	$ 69,580.00	$ 16,425.00	$ 4,620.00	$ 4,130.00	$ 10,150.00	$ 34,300.00	$ 37,528.00	$ 176,733.00
	$ 330,501.06	$ 172,228.72	$ 74,163.92	$ 34,376.69	$ 91,888.26	$ 45,140.20	$ 206,495.80	$ 954,794.65



City of Miami Beach

Parking Department

Daily Vehicle Entry Report - February 2009

		17th Street Garage - 2G			7th St Garage - 1G			16th Street Garage - ANCHOR		
Date	Day	Total Vehicle Entries	Peak Period	Peak Vehicle Count	Total Vehicle Entries	Peak Period	Peak Vehicle Count	Total Vehicle Entries	Peak Period	Peak Vehicle Count
1	SU	3321	15:00-15:59	677	778	15:00-15:59	148	735	17:00-17:59	115
2	MO	2953	17:00-17:59	564	452	14:00-14:59	80	790	17:00-17:59	130
3	TU	2914	17:00-17:59	519	513	19:00-19:59	116	788	17:00-17:59	136
4	W	2954	14:00-14:59	497	502	13:00-13:59	93	896	18:00-18:59	126
5	TH	3058	16:00-16:59	522	645	19:00-19:59	103	801	17:00-17:59	125
6	F	4239	17:00-17:59	583	768	23:00-23:59	156	1051	17:00-17:59	144
7	SA	4013	19:00-19:59	712	1380	23:00-23:59	189	1205	23:00-23:59	201
8	SU	3986	16:00-16:59	745	1352	16:00-16:59	233	1006	00:00-00:59	216
9	MO	2855	17:00-17:59	476	521	14:00-14:59	98	793	17:00-17:59	113
10	TU	3209	17:00-17:59	537	626	12:00-12:59	113	732	17:00-17:59	136
11	W	3404	17:00-17:59	578	428	15:00-15:59	174	890	17:00-17:59	168
12	TH	3156	17:00-17:59	602	827	13:00-13:59	147	1075	11:00-11:59	146
13	F	3960	20:00-20:59	624	1169	15:00-15:59	205	1275	23:00-23:59	163
14	SA	4636	20:00-20:59	706	2101	16:00-16:59	281	1465	11:00-11:59	197
15	SU	3719	19:00-19:59	649	1712	00:00-00:59	316	1467	17:00-17:59	233
16	MO	3006	17:00-17:59	629	1029	16:00-16:59	250	1074	17:00-17:59	190
17	TU	3111	17:00-17:59	503	618	15:00-15:59	128	788	14:00-14:59	124
18	W	3051	17:00-17:59	492	727	15:00-15:59	162	837	17:00-17:59	135
19	TH	3360	17:00-17:59	533	1010	13:00-13:59	218	1134	19:00-19:59	169
20	F	4028	17:00-17:59	528	1433	13:00-13:59	254	1421	12:00-12:59	189
21	SA	4582	19:00-19:59	739	1965	17:00-17:59	284	1276	23:00-23:59	229
22	SU	3653	17:00-17:59	632	1687	16:00-16:59	275	1207	00:00-00:59	219
23	MO	2527	17:00-17:59	440	596	14:00-14:59	115	808	17:00-17:59	125
24	TU	2846	17:00-17:59	448	640	13:00-13:59	117	805	17:00-17:59	133
25	W	3090	17:00-17:59	464	619	16:00-16:59	112	875	17:00-17:59	147
26	TH	3379	17:00-17:59	546	821	19:00-19:59	140	1055	18:00-18:59	150
27	F	4371	17:00-17:59	587	1273	16:00-16:59	201	1304	14:00-14:59	187
28	SA	5149	19:00-19:59	829	1899	16:00-16:59	288	1719	13:00-13:59	232
		98530			28091			29272		

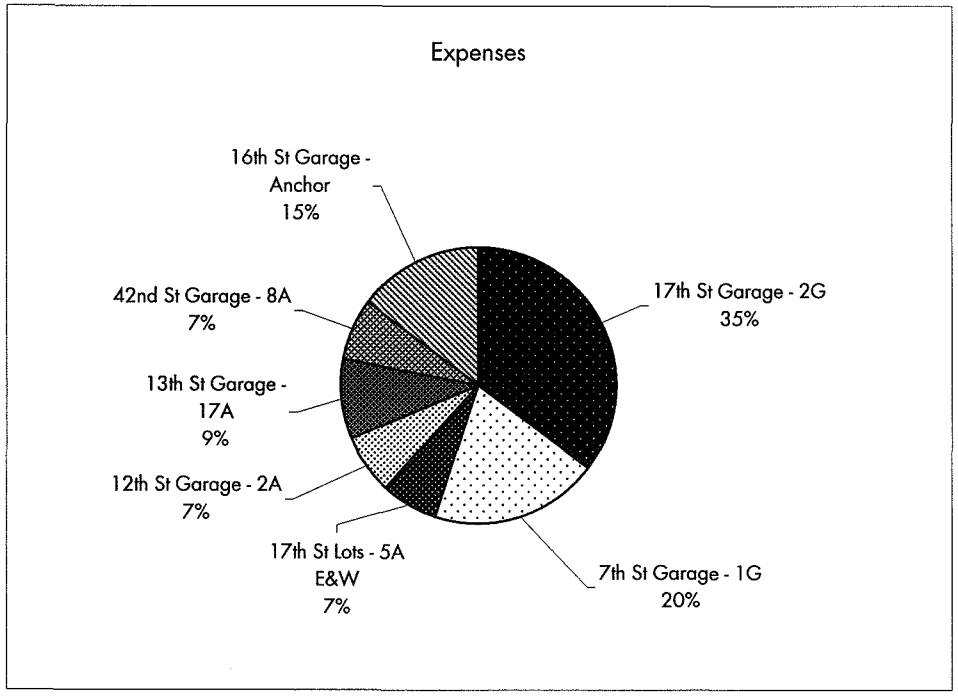
City of Miami Beach
Parking Department
Daily Vehicle Entry Report - February 2009

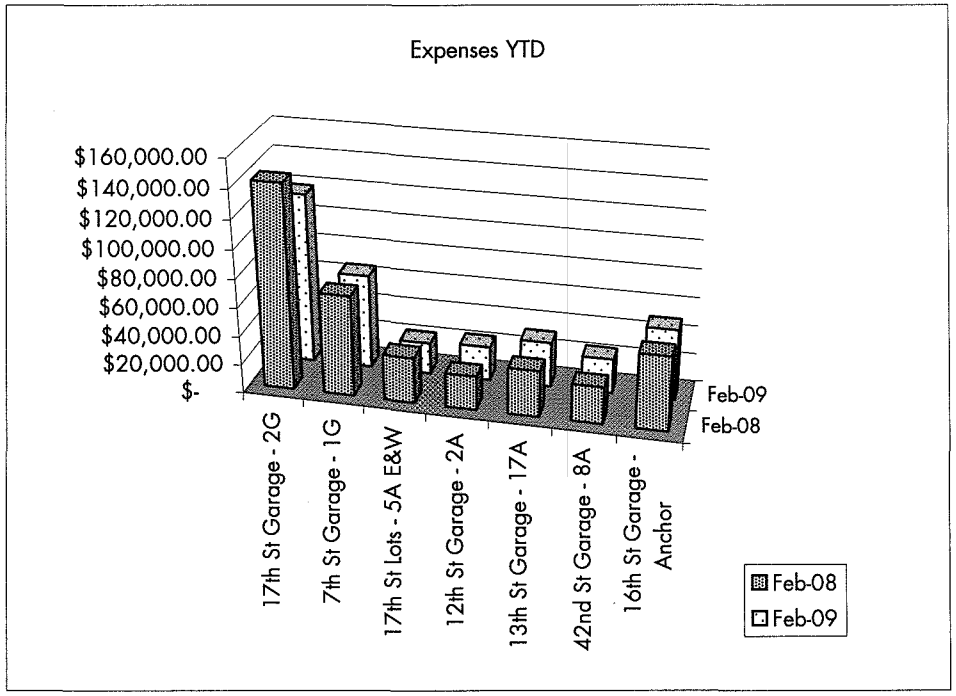
		12th St Garage - 2A			13th St Garage - 17A			42nd St Garage - 8A		
Date	Day	Total Vehicle Entries	Peak Period	Peak Vehicle Count	Total Vehicle Entries	Peak Period	Peak Vehicle Count	Total Vehicle Entries	Peak Period	Peak Vehicle Count
1	SU	112	01:00-01:59	37	365	00:00-00:59	67	130	14:00-14:59	36
2	MO	95	17:00-17:59	21	261	14:00-14:59	51	437	17:00-17:59	93
3	TU	87	12:00-12:59	18	290	15:00-15:59	64	441	08:00-08:59	78
4	W	115	14:00-14:59	20	246	18:00-18:59	40	417	16:00-16:59	80
5	TH	130	15:00-15:59	20	292	15:00-15:59	54	449	08:00-08:59	78
6	F	170	22:00-22:59	23	424	23:00-23:59	64	454	08:00-08:59	94
7	SA	253	23:00-23:59	52	560	23:00-23:59	94	173	06:00-06:59	40
8	SU	106	04:00-04:59	33	452	16:00-16:59	87	121	06:00-06:59	32
9	MO	108	17:00-17:59	18	332	15:00-15:59	58	439	17:00-17:59	94
10	TU	93	15:00-15:59	24	315	16:00-16:59	66	474	16:00-16:59	98
11	W	131	17:00-17:59	25	385	17:00-17:59	57	460	16:00-16:59	87
12	TH	182	13:00-13:59	29	535	12:00-12:59	84	661	09:00-09:59	118
13	F	210	13:00-13:59	32	517	18:00-18:59	83	745	14:00-14:59	137
14	SA	321	16:00-16:59	49	627	16:00-16:59	94	420	14:00-14:59	75
15	SU	202	16:00-16:59	44	552	17:00-17:59	97	365	19:00-19:59	68
16	MO	131	15:00-15:59	29	461	15:00-15:59	87	525	08:00-08:59	100
17	TU	122	14:00-14:59	27	393	15:00-15:59	91	454	16:00-16:59	86
18	W	170	17:00-17:59	38	417	06:00-06:59	73	405	08:00-08:59	79
19	TH	202	17:00-17:59	30	513	15:00-15:59	93	452	16:00-16:59	85
20	F	270	12:00-12:59	68	551	17:00-17:59	85	470	14:00-14:59	86
21	SA	346	23:00-23:59	59	600	18:00-18:59	96	180	14:00-14:59	43
22	SU	223	11:00-11:59	47	504	17:00-17:59	99	131	14:00-14:59	30
23	MO	115	13:00-13:59	19	375	15:00-15:59	74	403	14:00-14:59	74
24	TU	132	13:00-13:59	26	346	14:00-14:59	61	438	16:00-16:59	78
25	W	137	17:00-17:59	25	321	11:00-11:59	48	242	08:00-08:59	84
26	TH	153	13:00-13:59	23	400	18:00-18:59	68	123	17:00-17:59	82
27	F	254	23:00-23:59	44	609	15:00-15:59	87	436	13:00-13:59	76
28	SA	349	16:00-16:59	54	775	18:00-18:59	105	196	14:00-14:59	43
		4919			12418			10641		

PARKING GARAGE EXPENSES

February-09

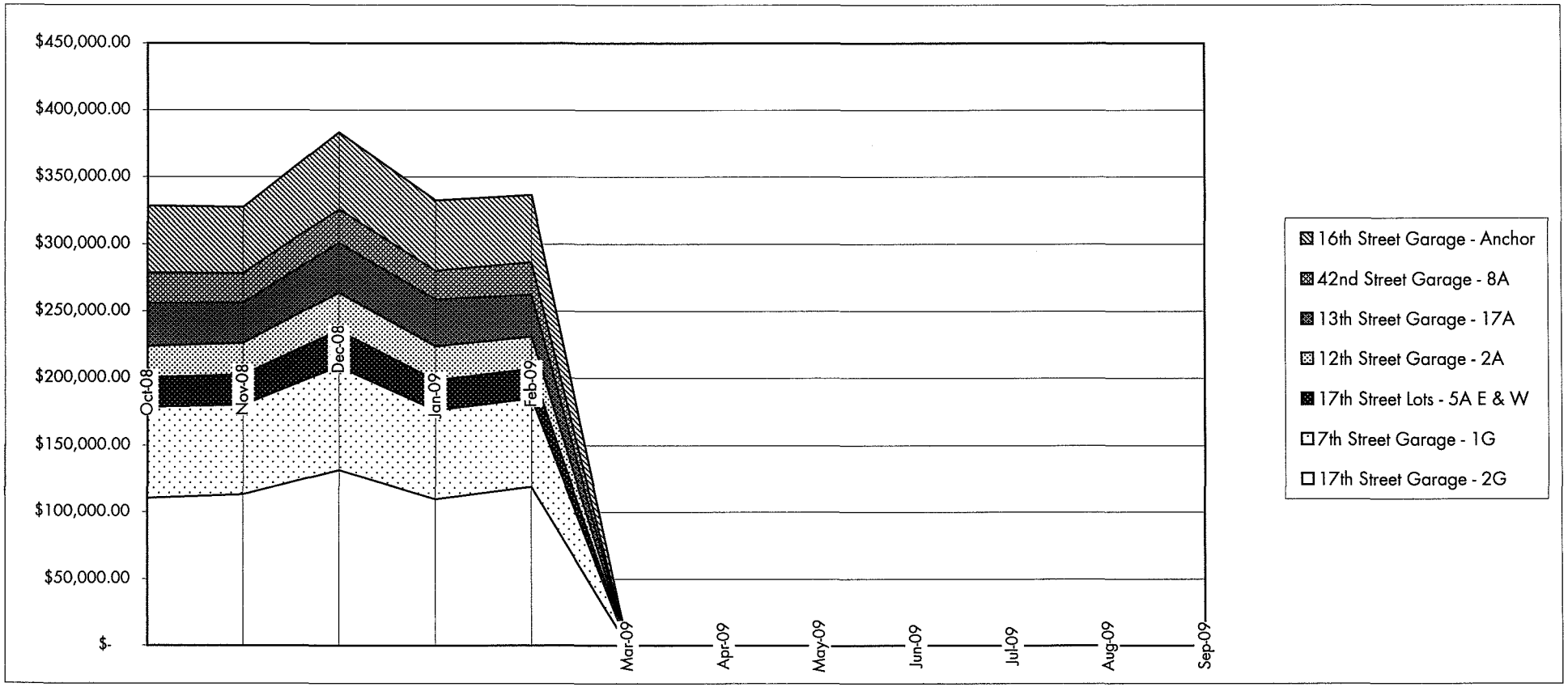
	17th St Garage - 2G	7th St Garage - 1G	17th St Lots - 5A E&W	12th St Garage - 2A	13th St Garage - 17A	42nd St Garage - 8A	16th St Garage - Anchor	TOTAL
Feb-08	$ 142,268.96	$ 70,256.55	$ 31,940.22	$ 23,788.11	$ 32,385.93	$ 25,974.68	$ 52,072.25	$ 378,686.70
Feb-09	$ 118,948.76	$ 65,859.36	$ 22,214.01	$ 23,847.91	$ 31,586.14	$ 24,261.34	$ 49,735.03	$ 336,452.55
DIFF	$ (23,320.20)	$ (4,397.19)	$ (9,726.21)	$ 59.80	$ (799.79)	$ (1,713.34)	$ (2,337.22)	$ (42,234.15)
%	-16.39%	-6.26%	-30.45%	0.25%	-2.47%	-6.60%	-4.49%	-11.15%





PARKING GARAGE EXPENSES YTD

	17th Street Garage - 2G	7th Street Garage - 1G	17th Street Lots - 5A E & W	12th Street Garage - 2A	13th Street Garage - 17A	42nd Street Garage - 8A	16th Street Garage - Anchor	TOTAL
Oct-08	$ 110,380.09	$ 68,081.19	$ 21,943.35	$ 23,157.77	$ 32,370.85	$ 22,667.71	$ 49,628.13	$ 328,229.09
Nov-08	$ 113,105.11	$ 66,863.63	$ 22,512.43	$ 23,402.60	$ 30,237.67	$ 22,456.42	$ 48,792.47	$ 327,370.33
Dec-08	$ 131,604.36	$ 76,712.92	$ 27,113.65	$ 28,483.54	$ 37,253.72	$ 24,629.36	$ 57,676.56	$ 383,474.11
Jan-09	$ 109,662.72	$ 66,596.37	$ 22,269.53	$ 25,116.60	$ 35,516.68	$ 21,293.81	$ 51,928.56	$ 332,384.27
Feb-09	$ 118,948.76	$ 65,859.36	$ 22,214.01	$ 23,847.91	$ 31,586.14	$ 24,261.34	$ 49,735.03	$ 336,452.55
Mar-09								$ -
Apr-09								$ -
May-09								$ -
Jun-09								$ -
Jul-09								$ -
Aug-09								$ -
Sep-09								$ -
	$ 583,701.04	$ 344,113.47	$ 116,052.97	$ 124,008.42	$ 166,965.06	$ 115,308.64	$ 257,760.75	$ 1,707,910.35

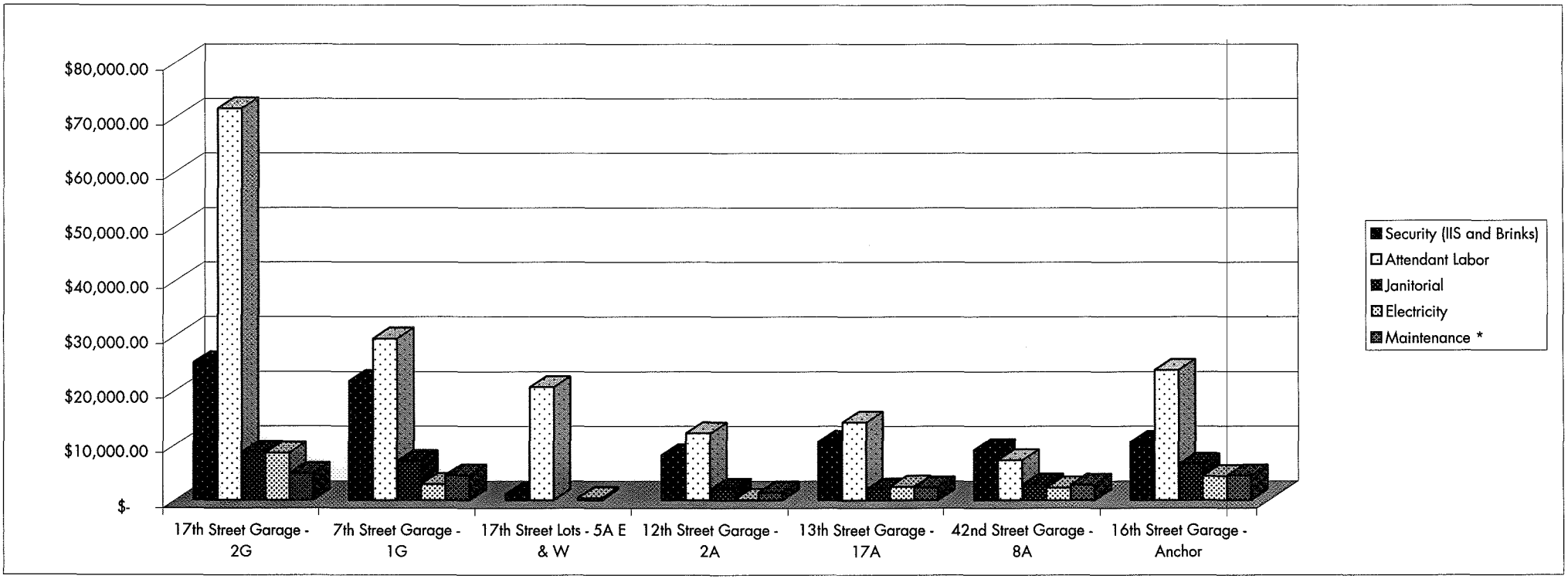


PARKING GARAGE EXPENSES CATEGORIES

February-09

	17th Street Garage - 2G	7th Street Garage - 1G	17th Street Lots - 5A E & W	12th Street Garage - 2A	13th Street Garage - 17A	42nd Street Garage - 8A	16th Street Garage - Anchor	TOTAL
Security (IIS and Brinks)	$ 25,151.49	$ 21,804.73	$ 1,144.80	$ 8,153.76	$ 10,655.44	$ 9,134.41	$ 10,603.18	$ 86,647.81
Attendant Labor	$ 71,660.21	$ 29,523.38	$ 20,677.73	$ 12,209.75	$ 14,205.01	$ 7,239.79	$ 23,798.62	$ 179,314.49
Janitorial	$ 8,706.67	$ 7,086.13		$ 1,951.00	$ 1,951.00	$ 2,799.80	$ 6,528.20	$ 29,022.80
Electricity	$ 8,573.00	$ 2,917.06	$ 391.48	$ 108.54	$ 2,463.16	$ 2,265.80	$ 4,339.44	$ 21,058.48
Maintenance *	$ 4,857.39	$ 4,528.06		$ 1,424.86	$ 2,311.53	$ 2,821.54	$ 4,465.59	$ 20,408.97
	$ 118,948.76	$ 65,859.36	$ 22,214.01	$ 23,847.91	$ 31,586.14	$ 24,261.34	$ 49,735.03	$ 336,452.55

* Includes Landscape, Revenue Control, Elevator & Surveillance



CITY OF MIAMI BEACH
PARKING DEPARTMENT
FINANCIAL REPORT SUMMARY
FEBRUARY 2009

	REVENUE				EXPENSES				PROFIT/(LOSS)			
LOCATION	2008 February	2009 February	Increase/ (Decrease)	Percent of Increase/ (Decrease)	2008 February	2009 February	Increase/ (Decrease)	Percent of Increase/ (Decrease)	2008 February	2009 February	Increase/ (Decrease)	Percent of Increase/ (Decrease)
17 St. Garage	350,576.76	330,501.06	(20,075.70)	-5.73%	142,268.96	118,948.76	(23,320.20)	-16.39%	208,307.80	211,552.30	3,244.50	1.56%
7th St. Garage	183,609.11	172,228.72	(11,380.39)	-6.20%	70,256.55	65,859.36	(4,397.19)	-6.26%	113,352.56	106,369.36	(6,983.20)	-6.16%
17th St. Lots	103,929.67	74,163.92	(29,765.75)	-28.64%	31,940.22	22,214.01	(9,726.21)	-30.45%	71,989.45	51,949.91	(20,039.54)	-27.84%
12th St. Garage	38,714.70	34,376.69	(4,338.01)	-11.21%	23,788.11	23,847.91	59.80	0.25%	14,926.59	10,528.78	(4,397.81)	-29.46%
13th St. Garage	85,100.22	91,888.26	6,788.04	7.98%	32,385.93	31,586.14	(799.79)	-2.47%	52,714.29	60,302.12	7,587.83	14.39%
42nd St. Garage	51,441.40	45,140.20	(6,301.20)	-12.25%	25,974.68	24,261.34	(1,713.34)	-6.60%	25,466.72	20,878.86	(4,587.86)	-18.02%
16th St. - Anchor	236,658.85	206,495.80	(30,163.05)	-12.75%	52,072.25	49,735.03	(2,337.22)	-4.49%	184,586.60	156,760.77	(27,825.83)	-15.07%
Totals	1,050,030.71	954,794.65	(95,236.06)	-9.07%	378,686.70	336,452.55	(42,234.15)	-11.15%	671,344.01	618,342.10	(53,001.91)	-7.89%

	Revenue Per Space	Expenses Per Space	Profit/(Loss) Per Space	
17 St. Garage	226.37	81.47	144.90	The 17th Street Garage has 1,460 spaces.
7th St. Garage	266.61	101.95	164.66	The 7th Street Garage has 646 spaces.
17th St. Lots	146.57	43.90	102.67	The 17th Street Lots have 506 spaces.
12th St. Garage	256.54	177.97	78.57	The 12th Street Garage has 134 spaces.
13th St. Garage	321.29	110.44	210.85	The 13th Street Garage has 286 spaces.
42nd St. Garage	72.81	39.13	33.68	The 42nd Street Garage has 620 spaces.
16th St. - Anchor	257.16	61.94	195.22	The 16th Street - Anchor Garage has 803 spaces.

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CITY OF MIAMI BEACH
PARKING DEPARTMENT
FINANCIAL REPORT SUMMARY-YEAR TO DATE
FEBRUARY 2009

LOCATION	REVENUE 2008 February YTD	REVENUE 2009 February YTD	REVENUE Increase/ (Decrease)	REVENUE Percent of Increase/ (Decrease)	EXPENSES 2008 February YTD	EXPENSES 2009 February YTD	EXPENSES Increase/ (Decrease)	EXPENSES Percent of Increase/ (Decrease)	PROFIT/(LOSS) 2008 February YTD	PROFIT/(LOSS) 2009 February YTD	PROFIT/(LOSS) Increase/ (Decrease)	PROFIT/(LOSS) Percent of Increase/ (Decrease)
17 St. Garage	1,534,607.60	1,598,147.48	63,539.88	4.14%	645,239.96	583,701.04	(61,538.92)	-9.54%	889,367.64	1,014,446.44	125,078.80	14.06%
7th St. Garage	802,114.96	806,487.61	4,372.65	0.55%	358,342.72	344,113.47	(14,229.25)	-3.97%	443,772.24	462,374.14	18,601.90	4.19%
17th St. Lots	954,627.81	328,517.84	(626,109.97)	-65.59%	199,490.88	116,052.97	(83,437.91)	-41.83%	755,136.93	212,464.87	(542,672.06)	-71.86%
12th St. Garage	158,666.51	171,596.87	12,930.36	8.15%	114,273.95	124,008.42	9,734.47	8.52%	44,392.56	47,588.45	3,195.89	7.20%
13th St. Garage	374,992.19	462,138.95	87,146.76	23.24%	160,168.14	166,965.06	6,796.92	4.24%	214,824.05	295,173.89	80,349.84	37.40%
42nd St. Garage	185,679.47	207,106.51	21,427.04	11.54%	111,993.17	115,308.64	3,315.47	2.96%	73,686.30	91,797.87	18,111.57	24.58%
16th St. - Anchor	1,009,108.85	1,020,127.10	11,018.25	1.09%	268,079.14	257,760.75	(10,318.39)	-3.85%	741,029.71	762,366.35	21,336.64	2.88%
Totals	5,019,797.39	4,594,122.36	(425,675.03)	-8.48%	1,857,587.96	1,707,910.35	(149,677.61)	-8.06%	3,162,209.43	2,886,212.01	(275,997.42)	-8.73%

	Revenue Per Space	Expenses Per Space	Profit/(Loss) Per Space	
17 St. Garage	1,094.62	399.80	694.83	The 17th Street Garage has 1,460 spaces.
7th St. Garage	1,248.43	532.68	715.75	The 7th Street Garage has 646 spaces.
17th St. Lots	649.24	229.35	419.89	The 17th Street Lots have 506 spaces.
12th St. Garage	1,280.57	925.44	355.14	The 12th Street Garage has 134 spaces.
13th St. Garage	1,615.87	583.79	1,032.08	The 13th Street Garage has 286 spaces.
42nd St. Garage	334.04	185.98	148.06	The 42nd Street Garage has 620 spaces.
16th St. - Anchor	1,270.39	321.00	949.40	The 16th Street - Anchor Garage has 803 spaces.

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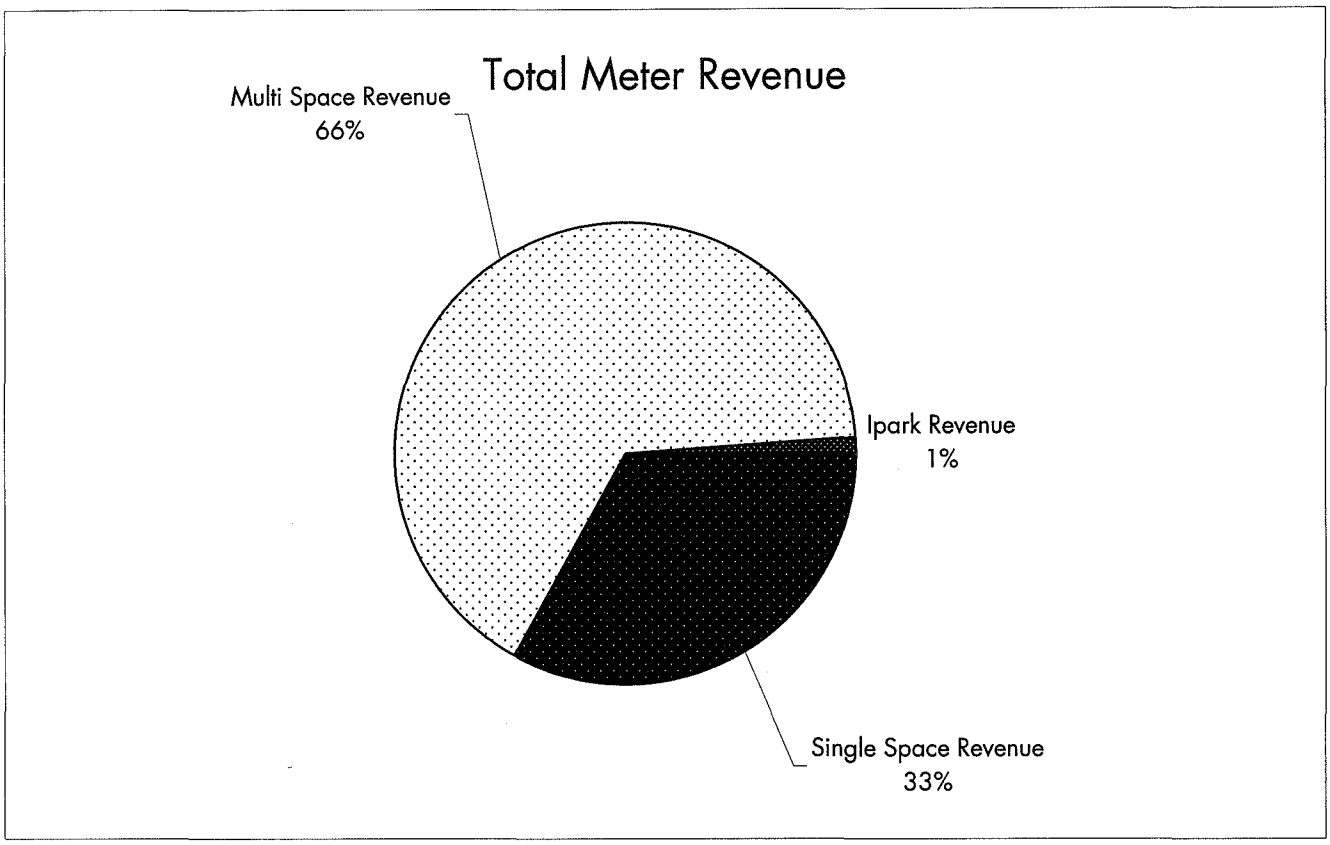
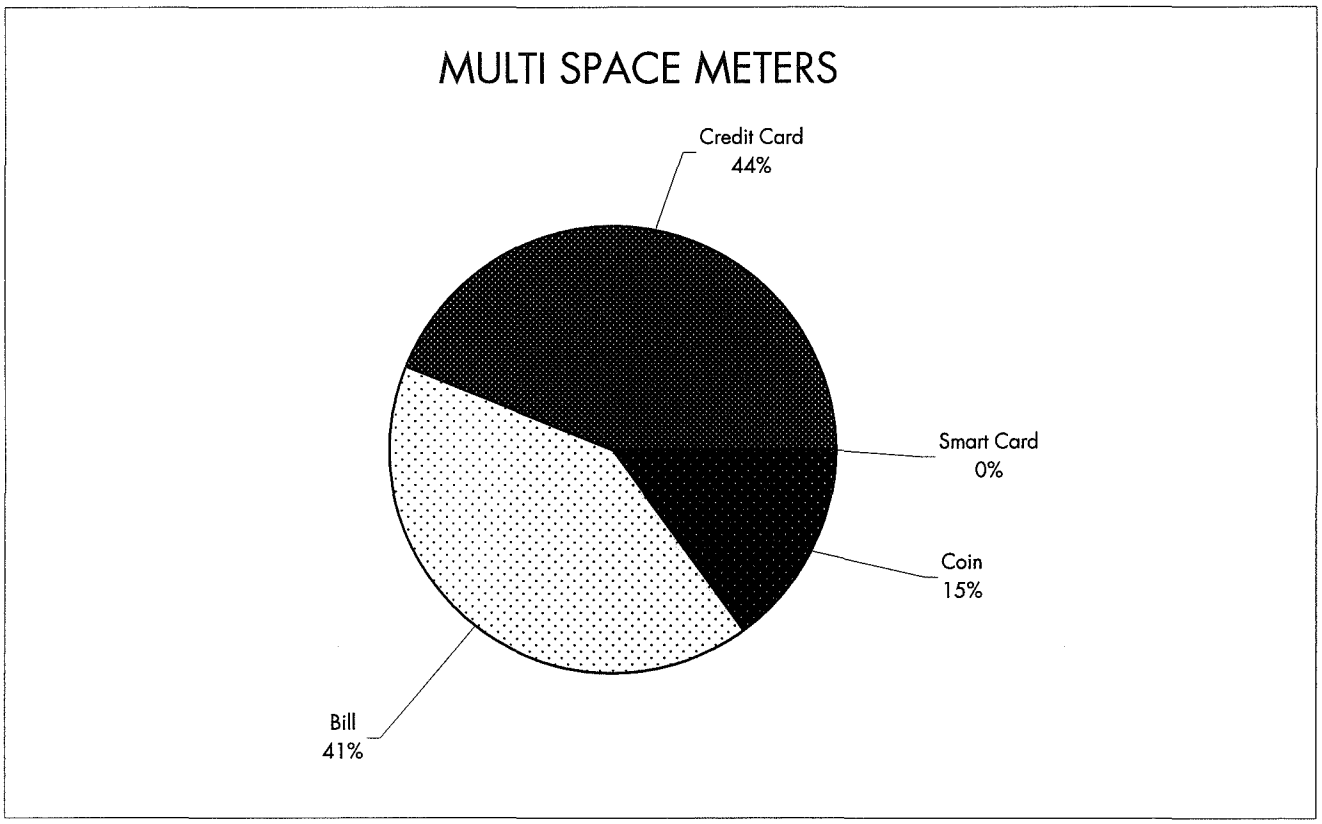
PARKING DEPARTMENT METER REVENUE

% of USAGE

Feb-09





IPARK SALES

Feb-09

	IPARK DEVICE SALES		$25 - RELOAD SALES		$50 - RELOAD SALES		TOTAL RELOADS	GRAND TOTAL
	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT		
RESIDENT	344	$ 6,880.00	117	$ 2,925.00	107	$ 5,350.00	$ 8,275.00	**$ 15,155.00**
NON-RESI	53	$ 1,060.00	34	$ 850.00	28	$ 1,400.00	$ 2,250.00	**$ 3,310.00**
	397	**$ 7,940.00**	**151**	**$ 3,775.00**	**135**	**$ 6,750.00**	**$ 10,525.00**	**$ 18,465.00**

IPARK SALES

YTD

	IPARK DEVICE SALES			$25 - RELOAD SALES		$50 - RELOAD SALES		TOTAL REVENUE
	Resident	Non-Resident	Total	Resident	Non-Resident	Resident	Non-Resident	
Oct-08	0	0	0	0	0	0	0	$ -
Nov-08	44	5	49	4	0	2	1	$ 1,230.00
Dec-08	589	52	641	114	23	67	13	$ 20,245.00
Jan-09	374	50	424	101	41	71	23	$ 16,730.00
Feb-09	344	53	397	117	34	107	28	$ 18,465.00
Mar-09								
Apr-09								
May-09								
Jun-09								
Jul-09								
Aug-09								
Sep-09								
YTD	**1351**	**160**	**1511**	**336**	**98**	**247**	**65**	**$ 56,670.00**

NOTE: IPark sales began on November 24, 2008.

CITY OF MIAMI BEACH
PARKING DEPARTMENT
ELECTRONIC METER REVENUE COMPARISON
February 2009

LOCATION	Accounting Code	# of Spaces	2008 February	2009 February	Increase/ (Decrease)	% of Inc/(Dec)
1X - (Washington - 4th & Lincoln) - On Street	*480-8000-344501*	*291*	*$33,957.86*	*$60,575.91*	*26,618.05*	*78.39%*
1A - (1st Street & Ocean Dr.) - Off Street	480-8000-344502	62	*$4,052.49*	*$4,313.64*	*261.15*	
1A - (1st Street & Ocean Dr.) - Attended	480-8000-344502	0	*$24,205.61*	*$20,285.07*		
Total		62	28,258.10	24,598.71	(3,659.39)	-12.95%
1B - (78 Washington Avenue) - Off Street	480-8000-344617	12	$834.90	$671.53	(163.37)	-19.57%
2X - (Washington - 5th & Lincoln) - On Street	*480-8000-344503*	*370*	$48,926.77	$63,469.31	*14,542.54*	*29.72%*
2B - (6/7 & Meridian) - Off Street	480-8000-344505	25	$677.46	$391.04	(286.42)	-42.28%
3X - (Collins & Euclid Ave.) On Street	*480-8000-344507*	*68*	$9,932.55	$11,958.30	*2,025.75*	*20.40%*
4X - (Alton 7th St.- Dade Blvd.) - On Street	*480-8000-344509*	*491*	$99,188.24	$130,560.40	*31,372.16*	*31.63%*
4B - (Alton & 20th St.-Purdy-Dade Blvd.) - On Street	480-8000-344511	213	$16,556.37	$15,359.41	(1,196.96)	-7.23%
4C - (West Ave & 17th St.) - Off Street	480-8000-344512	66	$10,715.03	$12,068.53	1,353.50	12.63%
4D - (West Ave & Lincoln Rd.) - Off Street	480-8000-344513	30	$3,832.62	$3,716.07	(116.55)	-3.04%
5C - (Convention Ctr. Dr. & 17th Street) - Off Street	480-8000-344517	85	$1,972.89	$4,374.13	2,401.24	
5C - (Convention Ctr. Dr. & 17th Street) - Attended	480-8000-344517	0	13,752.34	0.00		
Total		85	15,725.23	4,374.13	(11,351.10)	-72.18%
5F - (Meridian Ave & 18th Street) - Off Street	480-8000-344519	97	$0.00	$0.00		
5F - (Meridian Ave & 18th Street) - Attended	480-8000-344519	0	0.00	0.00		
Total		97	0.00	0.00	0.00	#DIV/0!
5H - (19th Street & Meridian Ave) - Off Street	480-8000-344521	27	$8.14	$0.00	(8.14)	-100.00%
5M - (17th & Meridian Ave) - Off Street (TEMP P-LOT)	*480-8000-344506*	*27*	$1,876.91	$187.65		
5M - (17th & Meridian Ave) - Attended	*480-8000-344506*	*0*	0.00	0.00		
			1,876.91	*187.65*	(1,689.26)	-90.00%
6X - (Collins - 20th to 24th St) - On Street	480-8000-344522	236	$25,066.93	$37,841.23	12,774.30	50.96%
6A - (22nd Street & Park) - Off Street	480-8000-344523	14	$919.93	$1,272.41	352.48	38.32%
6A - (22nd Street & Park) - Attended	480-8000-344523	0		$19,334.54		
Total			$919.93	$20,606.95	19,687.02	2140.06%
6B - (Collins Ave & 21st Street) - Off Street	480-8000-344524	190	$17,776.55	$6,932.56	(10,843.99)	-61.00%
6B - (Collins Ave & 21st Street) - Attended	480-8000-344524	0	10,934.57	45,981.31		
Total		190	28,711.12	52,913.87	24,202.75	84.30%
7X - (Ocean - Biscayne - 15th St) - On Street	*480-8000-344525*	*442*	*$81,128.62*	*$100,292.17*	*19,163.55*	*23.62%*
7A - (Collins Ave, 4th to 15th St) - On Street	*480-8000-344526*	*591*	*$125,032.56*	*$150,418.17*	*25,385.61*	*20.30%*
7C - (Collins Ave & 6th St) - Off Street	480-8000-344528	14	*$429.00*	*$901.47*		
7C - (Collins Ave & 6th St) - Attended	480-8000-344528	0	0.00	0.00		
Total		14	429.00	901.47	472.47	110.13%
8X - (Pinetree-Alton - 40th to 42nd St) - On Street	480-8000-344530	386	$17,648.53	$16,990.98	(657.55)	-3.73%
8A - (42nd Street Garage) - Off Street Meters	480-8000-344531	11	$480.49	$483.12	2.63	0.55%
8B - (42nd Street & Royal Palm) - Off Street	480-8000-344532	173	$3,776.27	$3,682.89		
8B - (42nd Street & Royal Palm) - Attended	480-8000-344532	0	0.00	0.00		
Total		173	3,776.27	3,682.89	(93.38)	-2.47%
8C - (40/41 Street & Chase) - Off Street	480-8000-344533	88	$1,956.49	$0.00	(1,956.49)	-100.00%
8D - (47th Street & Pinetree) - Off Street	480-8000-344534	16	$30.12	$39.66	9.54	31.67%
8E - (41st Street & Alton) - Off Street	480-8000-344535	40	$553.22	$2,226.98	1,673.76	302.55%
8F - (41st Street & Jefferson) - Off Street	480-8000-344536	30	$389.73	$483.50	93.77	24.06%
9X - (Collins - 64th to 79th St) - On Street	480-8000-344537	527	$30,974.88	$33,418.41	2,443.53	7.89%
9A - (Harding & 71st St) - Off Street	480-8000-344538	48	$2,784.91	$1,361.34	(1,423.57)	-51.12%
9B - (72nd St. & Collins) - Off Street	*480-8000-344539*	*0*	$2,366.47	$4,799.19		
9B - (72nd St. & Collins) - Attended	*480-8000-344539*	*0*	*16,541.12*	*7,588.78*		
Total		0	*18,907.59*	*12,387.97*	(6,519.62)	-34.48%
9C (Carlyle & 71st St) - Off Street	480-8000-344540	14	$36.00	$58.69	22.69	63.03%

CITY OF MIAMI BEACH
PARKING DEPARTMENT
ELECTRONIC METER REVENUE COMPARISON
February 2009

LOCATION	Accounting Code	# of Spaces	2008 February	2009 February	Increase/ (Decrease)	% of Inc/(Dec)
9D - (Collins & 76th St) - Off Street	480-8000-344541	33	$1,361.75	$1,422.40	60.65	4.45%
9E - (71st St. & Harding) - Off Street	480-8000-344542	31	$461.47	$749.65	288.18	62.45%
9F - (75th & Collins) - Off Street	480-8000-344543	106	$3,660.15	$3,330.77	(329.38)	-9.00%
9F - (75th & Collins) - Attended	480-8000-344543	106	$1,442.99	$1,542.06		
Total			5,103.14	4,872.83	(329.38)	-6.45%
10A - (Lincoln Lane & Lenox) - Off Street	480-8000-344544	70	$20,230.46	$24,982.50	4,752.04	23.49%
10B - (Lincoln Lane & Michigan) - Lease	480-8000-344545	0	$14,583.33	$14,583.33		
10B - (Lincoln Lane & Michigan) - Attended	480-8000-344545	0	0.00	0.00		
Total		0	14,583.33	14,583.33	0.00	0.00%
10C - (Lincoln Lane & Meridian) - Off Street	480-8000-344546	141	$45,559.59	$47,926.31	2,366.72	5.19%
10D - (Lincoln Lane & Jefferson - W) - Off Street	480-8000-344547	62	$17,677.93	$19,447.50	1,769.57	10.01%
10E - (Lincoln Lane & Jefferson - E) - Off Street	480-8000-344548	19	$6,794.59	$6,427.68	(366.91)	-5.40%
10F - (Lincoln Lane & Euclid) - Off Street	480-8000-344549	36	$11,179.15	$13,160.89	1,981.74	17.73%
10G - (Lincoln Lane & Michigan) - Off Street	480-8000-344550	21	$4,973.97	$6,593.02	1,619.05	32.55%
11X - (Collins & 11th Street) - Off Street	480-8000-344551	0	$0.00	$0.00		
11X - (Collins & 11th Street) - Attended	480-8000-344551	0	0.00	0.00		
Total		0	0.00	0.00	0.00	#DIV/0!
12X - (Washington & 9th Street) - Off Street	480-8000-344552	23	$3,523.89	$4,366.75	842.86	23.92%
12X - (Washington & 9th Street) - Attended	480-8000-344552	0	0.00	0.00		
Total		23	3,523.89	4,366.75	842.86	23.92%
13X - (Washington & 10th Street) - Off Street	480-8000-344553	33	$6,701.79	$6,288.45		
13X - (Washington & 10th Street) - Attended	480-8000-344553	0	0.00	0.00		
Total		33	6,701.79	6,288.45	(413.34)	-6.17%
15X - (16th to 18th East of Collins) - On Street	480-8000-344556	43	$19,246.25	$23,321.90	4,075.65	21.18%
15A - (Washington, 17th to 20th) - On Street	480-8000-344557	91	$11,765.26	$14,405.58	2,640.32	22.44%
15B - (Convention Center Drive) - On Street	480-8000-344558	46	$665.75	$1,123.82	458.07	68.81%
16X - (25th to 32nd, E of Collins) - On Street	480-8000-344559	78	$5,562.56	$6,365.57	803.01	14.44%
16A - (35th to 43rd, E of Collins) - On Street	480-8000-344560	117	$4,809.11	$6,810.45	2,001.34	41.62%
16B - (Indian Crk Dr, 27th to 32nd) - On Street	480-8000-344561	219	$5,844.91	$6,101.68	256.77	4.39%
16C - (Indian Crk - 33rd to 43rd) - On Street	480-8000-344562	230	$13,410.02	$11,814.10	(1,595.92)	-11.90%
16D - (Collins Ave & 34th St) - Off Street	480-8000-344563	64	$2,846.94	$1,765.66		
16D - (Collins Ave & 34th St) - Attended	480-8000-344563	0	2,037.39	2,000.01		
Total		64	4,884.33	3,765.67	(1,118.66)	-22.90%
16E - (Collins Ave & 35th St) - Off Street	480-8000-344564	72	$11,106.74	$2,665.04		
16E - (Collins Ave & 35th St) - Attended	480-8000-344564	0	2,476.63	2,289.72		
Total		72	13,583.37	4,954.76	(8,628.61)	-63.52%
17X - (Collins & 13th Street) - Off Street	480-8000-344565	54	$6,189.76	$4,556.59		
17X - (Collins & 13th Street) - Attended	480-8000-344565	0	14,523.35	15,378.51		
Total		54	20,713.11	19,935.10	(778.01)	-3.76%
18X - (Indian Crk & 65th St) - Off Street	480-8000-344567	53	$2,558.90	$0.00	(2,558.90)	-100.00%
18X - (Indian Crk & 65th St) - Attended	480-8000-344567	53	$336.45	$0.00		
Total			2,895.35	0.00	(2,895.35)	-100.00%
18A - (Collins & 64th St) - Off Street	480-8000-344568	67	$3,715.03	$3,118.33		
18A - (Collins & 64th St) - Attended	480-8000-344568	0	7,657.94	4,065.43		
Total		67	11,372.97	7,183.76	(4,189.21)	-36.83%
19X - (Collins & 46th Street) - Off Street	480-8000-344569	449	$1,673.42	$12,154.03		
19X - (Collins & 46th Street) - Attended	480-8000-344569	0	102,758.88	56,261.67		
Total		449	104,432.30	68,415.70	(36,016.60)	-34.49%
19A - (Collins & 46th Street) - On Street	480-8000-344570	19	$538.92	$694.53	155.61	28.87%
19B - (Collins & 53rd Street) - Off Street	480-8000-344571	158	$5,723.65	$2,747.42		
19B - (Collins & 53rd Street) - Attended	480-8000-344571	0	11,990.66	15,359.82		
Total		158	17,714.31	18,107.24	392.93	2.22%

CITY OF MIAMI BEACH
PARKING DEPARTMENT
ELECTRONIC METER REVENUE COMPARISON
February 2009

LOCATION	Accounting Code	# of Spaces	2008 February	2009 February	Increase/ (Decrease)	% of Inc/(Dec)
20X - (Collins Ave & 27th St) - Off Street	480-8000-344572	121	$2,153.38	$5,548.20		
20X - (Collins Ave & 27th St) - Attended	480-8000-344572	0	3,560.75	3,112.15		
Total		121	5,714.13	8,660.35	2,946.22	51.56%
22X - (Carlyle & 72nd St) - Off Street	480-8000-344574	45	$595.52	$1,238.03	642.51	107.89%
23X - (83rd & Abbott) - Off Street	480-8000-344575	25	$57.39	$210.31	152.92	266.46%
24X - (Normandy Isle & Bay Dr) - On Street	480-8000-344576	102	$4,906.92	$5,638.47	731.55	14.91%
24A - (Normandy Isle & Bay Dr) - Off Street	480-8000-344577	26	$449.64	$1,238.37	788.73	175.41%
24B - (Normandy Isle & Vendome) - Off Street	480-8000-344578	22	$835.52	$473.72	(361.80)	-43.30%
24C - (Normandy Isle & Bay Rd S/S) - Off Street	480-8000-344579	33	$609.70	$1,129.40	519.70	85.24%
25X - (Bonita Drive & 71st St) - Off Street	480-8000-344580	15	$301.50	$592.71	291.21	96.59%
26X - (Collins, 79th to 87th Terr) - On Street	480-8000-344581	283	$2,822.35	$5,257.20	2,434.85	86.27%
26Z - (Collins & 87th Street) - Off Street	480-8000-344616	15	$76.20	$74.94	(1.26)	-1.65%
10X - (Lincoln Lane & Lenox) - Off Street	*480-8000-344582*	*99*	*$32,876.99*	*$35,135.77*		
10X - (Lincoln Lane & Lenox - Attended	*480-8000-344582*	*0*	*0.00*	*0.00*		
Total		99	32,876.99	35,135.77	2,258.78	6.87%
26A - (Collins & 80th Street) - Off Street	480-8000-344584	62	$933.21	$4.16		
26A - (Collins & 80th Street) - Attended	480-8000-344584	0	121.49	0.00		
		62	1,054.70	4.16	(1,050.54)	-99.61%
26B - (Collins & 84th Street) - Off Street	480-8000-344585	62	$1,235.86	$1,128.77	(107.09)	-8.67%
4E (Purdy & 18th Street) - Off Street	480-8000-344586	39	$7,140.13	$7,339.80		
4E (Purdy & 18th Street) - Attended	480-8000-344586	0	0.00	4,481.30		
Total		39	7,140.13	11,821.10	4,680.97	65.56%
8G - (40th Street & Royal Palm) - Off Street	480-8000-344592	43	$2,525.87	$2,485.61	(40.26)	-1.59%
8H - (40th Street & Prairie) - Off Street	480-8000-344594	71	$3,188.07	$2,790.67	(397.40)	-12.47%
26C - (Collins & 79th Street) - Off Street	480-8000-344600	34	$276.20	$70.41		0.00%
26C - (Collins & 79th Street) - Attended	480-8000-344600	34	$168.23	$0.00		
Total			$444.43	$70.41	(374.02)	-84.16%
26D - (Collins & 83rd Street) - Off Street	480-8000-344601	95	$329.93	$55.88		0.00%
26D - (Collins & 83rd Street) - Attended	480-8000-344601	0	$0.00	$0.00		
		95	329.93	55.88	(274.05)	-83.06%
SLSP00 - (South Point Lot) - Off Street	480-8000-344602	215	$0.00	$0.00		
SLSP00 - (South Point Lot) - Attended	480-8000-344602	0	0.00	0.00		
Total		215	0.00	0.00	0.00	#DIV/0!
4th & Alton Lot - Off Street	480-8000-344604	21	$1,205.00	$994.48	(210.52)	-17.47%
4A - 1833 Bay Road - Off Street	480-8000-344608	0	$0.00	$0.00	0.00	#DIV/0!
7D - 10-11th & Collins (Lease)	480-8000-344529	0	$3,500.00	$3,500.00	0.00	0.00%
10H - (Lincoln Rd. So. & Lenox) - Off Street	480-8000-344611	0	$5,493.23	$287.14	(5,206.09)	-94.77%
14A - 16th Street & Washington (Lease)	480-8000-344555	0	$14,583.33	$14,583.33	0.00	0.00%
P4 - (137 Washington Avenue) - Off Street	480-8000-344516	0	$3,833.64	$4,390.52	556.88	14.53%
P50 - (24th Street & Flamingo Drive) - Off Street	480-8000-344619	23	$0.00	$0.00	0.00	#DIV/0!
P51 - (23rd Street & Liberty Avenue East) - Off Street	*480-8000-344620*	*20*	$4,761.03	$7,252.15		
P51 - (23rd Street & Liberty Avenue East) - Attended	*480-8000-344620*	*0*	*0.00*	*1,420.56*		
Total			*4,761.03*	*8,672.71*	*3,911.68*	82.16%
P52 - (23rd Street & Liberty Avenue West) - Off Street	*480-8000-344621*	*35*	*$4,901.87*	*$10,634.98*		
P52 - (23rd Street & Liberty Avenue West) - Attended	*480-8000-344621*	*0*	*0.00*	*2,766.35*		
Total			*4,901.87*	*13,401.33*	8,499.46	173.39%
P85 - (71st Street & Byron) - Off Street	*480-8000-344618*	*0*	*$432.10*	*$0.00*		
P85 - (71st Street & Byron) - Attended	*480-8000-344618*	*0*	*0.00*	*0.00*		
Total		0	*432.10*	*0.00*	(432.10)	-100.00%
TOTAL			**$1,088,781.20**	**$1,229,694.94**	**$140,913.74**	**12.94%**

NOTE: SLSP00-(SOUTH POINT LOT) CLOSED DURING AUGUST/2007.
NOTE: ZONES WITH MULTI-SPACE PAYSTATIONS ARE ITALICIZED.

City of Miami Beach Parking Department
Profit & Loss Statement
Garages & Lots - FY07/08

17th Street Garage - 2G

LOCATION	ACCOUNTING CODE	2007 October	2007 November	2007 December	2008 January	2008 February	2008 March	2008 April	2008 May	2008 June	2008 July	2008 August	2008 September	FY 2007/2008 TOTAL
17th Street Garage - 2G														
Revenue-Ticket	480-8000-344583	172,964.95	248,676.03	227,109.19	244,550.67	268,996.76	315,338.12	282,459.79	288,067.39	212,902.00	242,251.62	236,683.98	199,089.91	2,939,090.41
Revenue - Space Rental	480-8000-344583	7,800.00	7,800.00	5,950.00	5,950.00	7,800.00	5,950.00	5,950.00	5,950.00	5,950.00	5,950.00	5,950.00	5,950.00	76,950.00
Revenue-Monthly Permits	480-8000-344514	58,680.00	60,000.00	68,530.00	76,020.00	73,780.00	73,920.00	75,880.00	76,650.00	76,230.00	73,360.00	73,430.00	72,170.00	858,650.00
	17th St. - 2G REVENUE (Sales Tax Excluded)	239,444.95	316,476.03	301,589.19	326,520.67	350,576.76	395,208.12	364,289.79	370,667.39	295,082.00	321,561.62	316,063.98	277,209.91	3,874,690.41
Expenses														
Security Personnel		17,087.26	17,358.83	21,826.73	17,688.75	19,461.23	21,987.01	17,509.88	20,083.65	19,516.36	30,612.08	24,623.48	30,300.49	258,055.75
Attendant/Cashier Labor		65,919.00	79,302.99	91,415.50	83,562.98	98,445.18	95,749.06	68,929.83	71,115.35	67,267.26	84,984.07	61,368.63	80,559.37	948,619.22
FP&L		8,440.30	7,765.98	8,901.56	9,101.02	7,804.31	8,204.25	8,288.84	8,204.78	9,293.17	8,691.11	8,744.84	9,215.73	102,655.89
Revenue Control Equipment Maintanance		1,891.66	3,577.66	8,500.66	1,891.66	4,443.66	1,891.66	8,817.66	1,891.66	5,519.22	4,553.47	2,522.22	2,522.22	48,023.41
Armed Guard Revenue Pickup		455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	5,460.00
Elevator Maintenance		425.00	425.00	3,300.00	8,562.39	731.25	2,489.40	972.78	885.28	425.00	425.00	498.78	797.78	19,937.66
Landscape and Lot Maintenance		108.33	601.08	108.33	108.33	108.33	108.33	108.33	108.33	362.50	362.50	362.50	362.50	2,809.39
Garage Cleaning/Maintenance		10,820.00	10,820.00	10,820.00	10,820.00	10,820.00	10,820.00	10,820.00	10,820.00	10,820.00	10,820.00	10,820.00	10,820.00	129,840.00
	17th St. - 2G EXPENSES	105,146.55	120,306.54	145,327.78	132,190.13	142,268.96	141,704.71	115,902.32	113,564.05	113,658.51	140,903.23	109,395.45	135,033.09	1,515,401.32
	17th St. PROFIT/(LOSS)	134,298.40	196,169.49	156,261.41	194,330.54	208,307.80	253,503.41	248,387.47	257,103.34	181,423.49	180,658.39	206,668.53	142,176.82	2,359,289.09

7th Street Garage - 1G

LOCATION	ACCOUNTING CODE	2007 October	2007 November	2007 December	2008 January	2008 February	2008 March	2008 April	2008 May	2008 June	2008 July	2008 August	2008 September	FY 2007/2008 TOTAL
7th Street Garage - 1G														
Revenue-Ticket	142-8000-344404	120,475.70	129,544.85	155,689.73	147,320.57	167,184.11	230,020.55	179,418.67	186,345.77	138,309.34	146,124.28	146,497.21	109,613.08	1,856,543.86
Revenue-Monthly Permits	142-8000-344404	16,350.00	16,350.00	16,350.00	16,425.00	16,425.00	16,425.00	16,350.00	16,500.00	16,500.00	16,500.00	16,500.00	16,425.00	197,100.00
	7th Street Garage - 1G R (Sales Tax Excluded)	136,825.70	145,894.85	172,039.73	163,745.57	183,609.11	246,445.55	195,768.67	202,845.77	154,809.34	162,624.28	162,997.21	126,038.08	2,053,643.86
Expenses														
Security		20,705.79	20,789.25	25,936.89	20,805.16	21,075.67	26,211.16	21,174.83	21,214.59	21,465.02	26,640.47	21,337.81	26,592.76	273,949.40
Attendant/Cashier Labor		30,407.91	29,548.99	36,762.56	31,133.52	30,740.60	39,380.12	31,377.21	31,559.94	29,872.67	48,853.25	40,485.20	35,446.40	415,568.37
Landscape Maintenance		918.67	918.67	2,244.67	918.68	918.67	2,208.67	918.67	918.67	3,709.25	3,709.25	3,709.25	3,709.25	24,802.37
FP&L		3,400.85	3,465.97	3,453.00	3,633.57	3,244.31	3,190.63	3,376.86	3,094.72	3,428.87	3,692.34	3,907.14	3,991.78	41,880.04
Revenue Control Equipment Maintenance		775.00	775.00	775.00	775.00	775.00	775.00	775.00	775.00	775.00	775.00	775.00	775.00	9,300.00
Garage Cleaning/Maintenance		9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	110,904.00
Armed Guard Revenue Pickup		455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	5,460.00
Elevator Maintenance		1,135.89	1,283.89	2,215.89	1,686.61	3,193.89	1,135.89	1,135.89	2,431.89	2,490.56	3,125.60	1,209.26	1,573.26	22,618.52
Surveillance System Maintenance		611.41	611.41	2,997.51	611.41	611.41	611.41	611.41	611.41	611.41	0.00	0.00	0.00	7,888.79
	7th St. Garage - 1G EXPE	67,652.52	67,090.18	84,082.52	69,260.95	70,256.55	83,209.88	69,066.87	70,303.22	72,049.78	96,492.91	81,120.66	81,785.45	912,371.49
	7th St. - 1G Estimated De	59,500.00	59,500.00	59,500.00	59,500.00	59,500.00	59,500.00	59,500.00	59,500.00	59,500.00	59,500.00	59,500.00	59,500.00	714,000.00
	7th St. - 1G PROFIT/(LOS	9,673.18	19,304.67	28,457.21	34,984.62	53,852.56	103,735.67	67,201.80	73,042.55	23,259.56	6,631.37	22,376.55	(15,247.37)	427,272.37

City of Miami Beach Parking Department
Profit & Loss Statement
Garages & Lots - FY07/08

17th Street Lots - 5A E & W

LOCATION	ACCOUNTING CODE	2007 October	2007 November	2007 December	2008 January	2008 February	2008 March	2008 April	2008 May	2008 June	2008 July	2008 August	2008 September	FY 2007/2008 TOTAL
17th Street Lots - 5A East and West														
Revenue-Ticket	480-8000-344515	197,948.14	224,573.98	252,588.94	122,387.08	99,239.67	98,055.35	73,172.89	86,176.52	58,671.85	66,031.49	59,224.42	36,016.62	1,374,086.95
Revenue-Valet	480-8000-344515	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Revenue-Monthly Permits	480-8000-344596	17,520.00	16,080.00	15,050.00	4,550.00	4,690.00	4,690.00	4,690.00	4,690.00	4,690.00	5,040.00	5,320.00	5,040.00	92,050.00
	17th Lots - 5A REVENUE (Sales Tax Excluded)	215,468.14	240,653.98	267,638.94	126,937.08	103,929.67	102,745.35	77,862.89	90,866.52	63,361.85	71,071.49	64,544.42	41,056.62	1,466,136.95
Expenses														
Security Personnel		1,144.80	1,144.80	1,431.00	1,144.80	1,144.80	1,431.00	1,144.80	1,900.05	1,144.80	1,144.80	1,144.80	1,144.80	15,065.25
Attendant/Cashier Labor		36,458.49	39,719.54	46,287.05	26,076.94	25,209.61	31,250.67	24,633.91	24,830.85	23,535.52	27,834.35	18,527.31	25,872.32	350,236.56
Revenue Control Equipment Maintenance		1,891.66	1,891.66	1,891.66	4,691.66	4,691.66	1,891.66	1,891.66	1,891.66	0.00	0.00	0.00	0.00	20,733.28
Landscape and Lot Maintenance		502.67	502.67	502.67	702.67	502.67	502.67	502.67	502.67	0.00	0.00	0.00	0.00	4,221.36
FP&L		391.48	391.48	391.48	391.48	391.48	391.48	391.48	391.48	391.48	391.48	391.48	391.48	4,697.76
	17th Lots - 5A EXPENSES	40,389.10	43,650.15	50,503.86	33,007.55	31,940.22	35,467.48	28,564.52	29,516.71	25,071.80	29,370.63	20,063.59	27,408.60	394,954.21
	17th Lots PROFIT/(LOSS)	175,079.04	197,003.83	217,135.08	93,929.53	71,989.45	67,277.87	49,298.37	61,349.81	38,290.05	41,700.86	44,480.83	13,648.02	1,071,182.74

12th Street Garage - 2A

LOCATION	ACCOUNTING CODE	2007 October	2007 November	2007 December	2008 January	2008 February	2008 March	2008 April	2008 May	2008 June	2008 July	2008 August	2008 September	FY 2007/2008 TOTAL
12th Street Garage - 2A														
Revenue-Ticket	480-8000-344504	24,796.25	25,780.39	25,704.67	27,350.50	34,304.70	52,913.08	35,982.25	35,030.86	25,411.15	28,635.88	28,149.53	18,293.46	362,352.72
Revenue-Monthly Permits	480-8000-344593	3,720.00	3,780.00	4,410.00	4,410.00	4,410.00	3,920.00	3,920.00	3,360.00	3,360.00	3,710.00	3,710.00	4,270.00	46,980.00
	12th St. - 2A REVENUE (Sales Tax Excluded)	28,516.25	29,560.39	30,114.67	31,760.50	38,714.70	56,833.08	39,902.25	38,390.86	28,771.15	32,345.88	31,859.53	22,563.46	409,332.72
Expenses														
Security Personnel		7,254.39	7,266.30	9,074.93	6,972.16	9,154.05	9,039.16	7,262.34	12,411.90	9,634.51	9,550.44	7,669.05	9,576.98	104,866.21
Attendant/Cashier Labor		12,739.25	11,656.30	14,694.20	13,200.91	12,664.71	15,341.82	11,266.80	12,333.44	11,736.19	14,749.80	10,924.93	15,028.69	156,337.04
FP&L		108.54	108.54	108.54	108.54	108.54	108.54	108.54	108.54	108.54	108.54	108.54	108.54	1,302.48
Elevator Maintenance		143.33	143.33	143.33	143.33	143.33	143.33	143.33	143.33	152.58	152.58	152.58	152.58	1,756.96
Garage Cleaning/Maintenance		1,717.48	1,592.48	1,592.48	1,717.48	1,717.48	1,592.48	1,982.28	1,786.18	2,632.18	1,786.18	1,786.18	1,786.18	21,689.06
Landscape Maintenance		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	225.00	225.00	225.00	225.00	900.00
Armed Guard Revenue Pickup		0.00	0.00	0.00	0.00	0.00	0.00	455.00	455.00	455.00	455.00	455.00	455.00	2,730.00
	12th St. - 2A EXPENSES	21,962.99	20,766.95	25,613.48	22,142.42	23,788.11	26,225.33	21,218.29	27,238.39	24,944.00	27,027.54	21,321.28	27,332.97	289,581.75
	12th St. - 2A PROFIT/(LO	6,553.26	8,793.44	4,501.19	9,618.08	14,926.59	30,607.75	18,683.96	11,152.47	3,827.15	5,318.34	10,538.25	-4,769.51	119,750.97

City of Miami Beach Parking Department
Profit & Loss Statement
Garages & Lots - FY07/08

13th Street Garage - 17A

LOCATION	ACCOUNTING CODE	2007 October	2007 November	2007 December	2008 January	2008 February	2008 March	2008 April	2008 May	2008 June	2008 July	2008 August	2008 September	FY 2007/2008 TOTAL
13th Street Garage - 17A														
Revenue-Ticket	480-8000-344566	59,413.08	61,568.24	68,486.90	64,603.75	75,440.22	105,373.81	88,571.97	92,432.72	75,740.15	83,343.94	89,434.56	61,384.13	925,793.47
Revenue-Monthly Permits	480-8000-344527	8,340.00	8,160.00	9,660.00	9,660.00	9,660.00	9,660.00	9,030.00	9,450.00	8,680.00	10,360.00	10,430.00	10,430.00	113,520.00
	13th St. - 17A REVENUE (Sales Tax Excluded)	67,753.08	69,728.24	78,146.90	74,263.75	85,100.22	115,033.81	97,601.97	101,882.72	84,420.15	93,703.94	99,864.56	71,814.13	1,039,313.47
Expenses														
Security Personnel		8,907.98	9,198.15	11,463.91	9,420.77	11,272.74	11,527.67	9,030.00	11,068.36	11,463.01	12,738.19	10,179.61	12,678.13	128,948.52
Attendant/Cashier Labor		14,076.87	13,664.00	17,642.58	14,966.89	14,665.93	22,952.43	14,442.30	14,107.28	13,849.27	17,688.60	12,641.63	17,399.15	188,096.93
Landscape Maintenance		216.67	216.67	216.67	216.67	216.67	216.67	216.67	216.67	237.50	487.50	237.50	237.50	2,933.36
FP&L		2,234.51	2,213.27	2,413.21	2,426.83	2,121.45	1,838.44	2,131.87	2,200.32	2,274.46	2,384.33	2,446.70	2,531.01	27,216.40
Revenue Control Equipment Maintenance		1,891.66	1,891.66	1,891.66	3,741.66	1,891.66	1,891.66	1,891.66	1,891.66	2,939.72	2,522.22	2,522.22	21,302.47	46,269.91
Elevator Maintenance		170.00	170.00	170.00	170.00	170.00	170.00	170.00	170.00	170.00	542.78	170.00	170.00	2,412.78
Armed Guard Revenue Pickup		455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	5,460.00
Garage Cleaning/Maintenance		1,592.48	1,592.48	1,592.48	1,592.48	1,592.48	1,592.48	1,857.28	1,656.18	2,502.18	1,656.18	1,656.18	1,656.18	20,539.06
	13th St. - 17A EXPENSES	29,545.17	29,401.23	35,845.51	32,990.30	32,385.93	40,644.35	30,194.78	31,765.47	33,891.14	38,474.80	30,308.84	56,429.44	421,876.96
	13th St. -17A PROFIT/(LO	38,207.91	40,327.01	42,301.39	41,273.45	52,714.29	74,389.46	67,407.19	70,117.25	50,529.01	55,229.14	69,555.72	15,384.69	617,436.51

42nd Street Garage - 8A

LOCATION	ACCOUNTING CODE	2007 October	2007 November	2007 December	2008 January	2008 February	2008 March	2008 April	2008 May	2008 June	2008 July	2008 August	2008 September	FY 2007/2008 TOTAL
42nd Street Garage - 8A														
Revenue-Ticket	480-8000-344531	5,527.10	4,512.14	4,568.25	5,520.58	17,351.40	5,258.88	4,257.00	3,949.53	3,727.10	5,291.58	4,719.64	4,401.88	69,085.08
Revenue-Monthly Permits	480-8000-344595	26,880.00	25,140.00	29,610.00	32,480.00	34,090.00	32,200.00	31,010.00	31,150.00	30,660.00	30,870.00	31,010.00	31,710.00	366,810.00
	42nd St. - 8A REVENUE (Sales Tax Excluded)	32,407.10	29,652.14	34,178.25	38,000.58	51,441.40	37,458.88	35,267.00	35,099.53	34,387.10	36,161.58	35,729.64	36,111.88	435,895.08
Expenses														
Security Personnel		7,055.63	7,266.30	8,846.36	7,158.99	9,070.59	8,955.69	7,238.49	9,148.43	9,074.04	11,388.84	9,228.39	11,544.16	105,975.91
Attendant/Cashier Labor		4,874.52	4,707.86	6,128.19	4,741.95	7,843.92	5,851.69	4,446.52	4,590.45	4,616.96	5,810.03	4,404.99	5,447.90	63,464.98
FP&L		3,137.09	3,073.18	2,730.21	3,188.57	2,636.51	2,584.60	2,670.68	2,728.25	2,081.57	2,307.84	2,703.38	2,446.58	32,288.46
Revenue Control Equipment Maintenance		1,891.66	1,891.66	1,891.66	1,891.66	2,601.66	1,891.66	1,891.66	1,891.66	2,522.22	2,522.22	2,522.22	2,522.22	25,932.16
Elevator Maintenance		430.00	430.00	685.00	430.00	430.00	871.00	1,030.00	430.00	430.00	430.00	758.78	430.00	6,784.78
Landscape Maintenance		0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	462.50	462.50	462.50	462.50	1,850.00
Garage Cleaning/Maintenance		3,392.00	3,392.00	3,392.00	3,392.00	3,392.00	3,654.50	3,392.00	3,392.00	3,392.00	3,392.00	3,392.00	3,392.00	40,966.50
	42nd St. - 8A EXPENSES	20,780.90	20,761.00	23,673.42	20,803.17	25,974.68	23,809.14	20,669.35	22,180.79	22,579.29	26,313.43	23,472.26	26,245.36	277,262.79
	42nd St. PROFIT/(LOSS)	11,626.20	8,891.14	10,504.83	17,197.41	25,466.72	13,649.74	14,597.65	12,918.74	11,807.81	9,848.15	12,257.38	9,866.52	158,632.29

City of Miami Beach Parking Department
Profit & Loss Statement
Garages & Lots - FY07/08

16th Street Garage - Anchor

LOCATION	ACCOUNTING CODE	2007 October	2007 November	2007 December	2008 January	2008 February	2008 March	2008 April	2008 May	2008 June	2008 July	2008 August	2008 September	FY 2007/2008 TOTAL
16th Street - Anchor Garage														
Revenue-Ticket	463-8000-344911	107,202.81	136,751.39	145,044.84	137,743.91	164,224.26	221,795.17	170,168.25	167,833.64	133,274.74	162,766.37	180,031.77	128,583.16	1,855,420.31
Revenue - Valet	463-8000-344587	11,143.93	15,946.74	24,931.79	18,034.59	28,934.59	18,564.96	14,208.89	19,475.24	13,032.25	24,176.18	31,811.22	23,478.52	243,738.90
Revenue-Monthly Permits	463-8000-344903	45,900.00	45,850.00	42,250.00	41,650.00	43,500.00	43,800.00	41,025.00	45,375.00	44,375.00	43,975.00	48,200.00	48,250.00	534,150.00
	16th St. Anchor - REVENL (Sales Tax Excluded)	164,246.74	198,548.13	212,226.63	197,428.50	236,658.85	284,160.13	225,402.14	232,683.88	190,681.99	230,917.55	260,042.99	200,311.68	2,633,309.21
Expenses														
Security Personnel		9,751.96	9,928.29	12,564.99	10,287.31	9,643.36	12,387.39	10,136.26	10,013.03	10,390.65	13,876.54	10,128.30	13,960.21	133,068.29
Attendant/Cashier Labor		23,195.62	24,287.95	30,156.63	26,066.48	25,757.04	31,811.14	25,352.50	25,319.74	24,408.20	29,447.30	21,926.35	29,432.86	317,161.81
FP&L		4,033.28	3,948.27	4,328.04	4,043.86	4,152.71	3,917.28	3,750.17	4,080.32	4,220.44	4,635.10	4,893.35	4,872.58	50,875.40
Revenue Control Equipment Maintanance		775.00	775.00	775.00	775.00	775.00	775.00	775.00	1,133.75	775.00	1,133.75	775.00	775.00	10,017.50
Armed Guard Revenue Pickup		455.00	433.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	455.00	5,438.00
Elevator Maintenance		1,353.84	2,169.84	1,833.84	1,833.84	1,353.84	1,441.30	3,553.30	1,441.30	1,945.30	1,441.30	1,441.30	2,050.30	21,859.30
Landscape and Lot Maintenance		152.00	152.00	152.00	1,072.00	152.00	152.00	190.00	152.00	190.00	152.00	152.00	190.00	2,858.00
Garage Cleaning/Maintenance		9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	9,242.00	110,904.00
Sanitation (Waste Removal)		215.77	215.77	215.77	221.18	221.18	221.18	221.18	221.18	221.18	221.18	221.18	221.18	2,637.93
Fire Alarm Service		250.00	250.00	520.00	940.36	320.12	863.00	250.00	250.00	920.12	250.00	250.00	955.50	6,019.10
	16th St. - Anchor EXPENS	49,424.47	51,402.12	60,243.27	54,937.03	52,072.25	61,265.29	53,925.41	52,308.32	52,767.89	60,854.17	49,484.48	62,154.63	660,839.33
	16th St. PROFIT/(LOSS)	114,822.27	147,146.01	151,983.36	142,491.47	184,586.60	222,894.84	171,476.73	180,375.56	137,914.10	170,063.38	210,558.51	138,157.05	1,972,469.88

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MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **STATUS REPORT ON THE NORMANDY SHORES GOLF COURSE CLUB HOUSE**

The City opened bids on April 9, 2009 for the construction of a club house that replicates the previous August Geiger designed club house. Following administrative review, a recommendation will be sent to the City Commission for its consideration at its next available meeting.

If the City Commission were to award a contract at its May 13th meeting, then club house construction may begin in July 2009 with completion in the autumn of 2010. If the City Commission rejects the bids or if the item does not make the May meeting, the project timeline would be extended by the time it takes to retain a contractor. The Commission still has the option to approve the Guaranteed Maximum Price (GMP) previously negotiated with Coastal Construction, the construction manager at risk for all golf course facilities.

A JOC contractor has demolished the old club house, removed the debris, and leveled the site in preparation for the new construction. Soil borings and additional testing have also been completed.

Architeknics, Inc., the consultant for the golf course facilities, delivered one hundred percent completed documents on September 19, 2008 for the design of the replica club house, parking lot, and related facilities. Coastal Construction participated in constructability reviews and advised the consultant on construction values as part of its contracted pre-construction services.

Per the agreement, Coastal Construction and City staff negotiated a GMP of $3,015,000, which includes the club house, parking lot, and landscaping, as well as builders risk insurance, payment and performance bonding, and an allowance for permitting. For this same scope, Architeknics provided an estimate of probable cost of $3,098,261, while a third party estimator provided a cost of $3,432,478.

Coastal Construction has a proven record in the City. It has recently completed the cart barn, maintenance facility, and restrooms at the Normandy Shores Golf Course with a high level of quality, on budget, and ahead of schedule.

Nevertheless, given the current market conditions, it is anticipated that this work can be done at a lower cost. Therefore, a determination was made to place the Coastal Construction GMP on hold and competitively bid this work.

JMG\TH\FHB\JCC\RWS
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Agenda Item C
Date 4-22-09

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MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **STATUS REPORT ON THE PALM & HIBISCUS ISLANDS UNDERGROUND UTILITIES PROJECT**

The Palm-Hibiscus-Star Islands Association (HOA) has asked the City to establish Special Assessment Districts to fund the undergrounding of overhead utilities on Palm and Hibiscus Islands. These overhead utilities are electric (FPL), telephone (AT&T), and cable TV (Atlantic Broadband). Construction plans are complete, but binding estimates and funding are still needed. Until the binding estimate from FPL is received, the final cost of this project could be higher than the current estimated cost of $4,285,179.

Legal Process

Chapter 170 of the Florida Statutes allows a municipality to provide payment for the relocation of utilities by levying and collecting special assessments on abutting, contiguous, and specially benefited properties. A benefit funded by a special assessment must be different in type or degree from benefits provided to the whole community. Conversion of overhead utilities to underground meets this criterion.

Special Assessment formulas are determined by either front footage of the properties or by another method prescribed by the governing body. Preliminarily, the benefit of this conversion has determined to be equal for all properties on each Island. Therefore, each folio will be assessed equally.

Chapter 170 also requires that the City adopt three separate resolutions in order to create special assessment districts. In addition, the City previously indicated that it would require a vote of the affected property owners. Therefore, the following outlines the process for creating these Special Assessment Districts.

1. The Commission adopts a resolution declaring its intent to create Special Assessment Districts. This resolution needs to include the nature of the improvements, the public areas to be improved, the portion to be paid by special assessment and the portion paid by the City, the manner in which the assessments will be made, the boundaries of the districts, and the total estimated cost of the improvements including soft costs.

   Upon passage of the resolution, the City:

   - Makes available for public inspection an assessment plat showing the areas to be assessed, plans and specifications of the proposed improvements, and cost estimates of the improvements,
   - Publishes the resolution in a newspaper of general circulation, and
   - Prepares a Preliminary Assessment Roll that shows the lots and lands

Agenda Item D
Date 4-22-09

assessed, the amount they are each proposed to be assessed, and the number of annual installments in which the assessment is divided.

2. Palm and Hibiscus Island property owners vote for or against the creation of Special Assessment Districts. The City will mail ballots to the property owners and provide some time for their return. The City will also provide the names of non-respondents to the HOA.

3. The Commission adopts a second resolution setting a public hearing to hear comments on the propriety and advisability of creating the proposed Special Assessment Districts including the proposed improvements, proposed costs, manner of payments, and the amount to be assessed against each improved property.

   Upon passage of the resolution, the City:

   - Sends thirty (30) days notice of the hearing to the property owners within the proposed Districts, and
   - Publishes notice of the hearing two times in a newspaper of general circulation. These notices must be one week apart with the last one occurring at least one week prior to the date of the hearing.

4. At the public hearing, the Commission acts as an equalizing board that can adjust and equalize assessments. It considers complaints as to the special assessments and may adjust and equalize the assessments on a basis of justice and right.

   After the public hearing is closed, the Commission adopts a resolution that makes a final decision on whether to levy special assessments and approve the Final Assessment Roll, which reflects any adjustments and equalizations made by the Commission.

   The Final Assessments then stand confirmed and remain legal, valid, and binding first liens upon the properties until paid in full.

Costs

The total cost includes the estimates from the utility companies along with the fees for the City's JOC contractor and an FPL-certified private contractor along with project management, financial consultant, and the HOA reimbursable expenses. However, FPL must provide a new binding estimate to cover its changed scope. Further, the cost associated with the vote by the property owners is not included.

In December 2008, the HOA advised the City that the binding estimates from the utilities were much higher than anticipated. Responding to a request from the HOA, the City negotiated with FPL to move the trenching and conduit work from FPL to an FPL-certified private contractor and to test and inspect the work privately. FPL must still install the wiring and transformers. This reduced the FPL cost by $1,523,871, from $2,583,997 to an estimated $1,060,126, pending receipt of a new binding estimate. The City had to negotiate costs for the FPL-certified contractor and with a firm providing testing and inspection services. It also had to add a contingency to cover unforeseen conditions. These costs total $891,878. The total estimated savings is $631,993, a 24% savings.

The City is attempting to negotiate a similar arrangement with AT&T and Atlantic Broadband.

For each Island, the total estimated project cost and estimated cost per folio per year, based upon a 10-year and 4.75% rate for the assessment, are as follows:

- Palm Island $1,812,994 $2,408/folio/year
- Hibiscus Island $2,472,185 $1,771/folio/year

The detailed cost breakdown is as follows:

	Palm Island	Hibiscus Island	Both Islands
City JOC Contractor	$198,135	$158,607	$356,741
City Management Fee	$25,285	$31,275	$56,560
City JOC Fees	$2,972	$2,379	$5,351
City Contingency	$41,253	$44,771	$86,024
FPL-certified private Contractor	$281,115	$421,672	$702,787
Inspection and Testing Services	$47,525	$71,287	$118,812
Contingency Fee for Contractor's Proposal	28,112	42,167	70,279
Financial Consultant	$9,863	$9,863	$19,726
Pedestrian Lighting	$214,400	$289,100	$503,500
City Survey to FPL	12,500	12,500	25,000
FPL Labor/Vehicle Estimate	$108,000	$192,000	$300,000
FPL Materials Estimates	$91,965	$163,494	$255,459
FPL Engineering, Supervision, & Support	$169,932	$302,102	$472,034
FPL Net Book Value	$11,748	$20,885	$32,633
AT&T Cost Estimate	$372,570	$283,327	$655,897
ABB Cost Estimate	$177,619	$396,755	$574,375
HOA Administration Fees	$19,600	$30,000	$49,600
Estimated Total Cost	**$1,812,594**	**$2,472,184**	**$4,284,778**

The following descriptions more fully describe the above costs.

City

The City received a proposal from a JOC contractor for protective bollards, new raised curbs and fill for the transformer pads on Palm Island, removing landscaping encroachments and restoring sod where needed, replacing damaged curb by utility trenching, using roadway cold patch over FPL trenched areas, and striping within the project limits.

The City has management fees to cover staff costs for coordination and construction management related to the JOC contractor, private contractor, and CEI Firm.

The JOC fees are for the Gordian Group, which manages the City JOC program.

A contingency is added to cover unforeseen conditions during construction.

The City received a proposal from a private contractor certified by FPL for trenching, conduit installation, and backfilling per the scope of work and drawings provided by FPL.

The City received a third proposal from a firm qualified to conduct Construction Engineering and Inspection Services to supervise the work submitted by the private contractor.

The City hired Burton & Associates to develop the methodology for determining the assessments and to calculate the assessments.

The City also has an estimate for the streetlights that need to be installed on the Islands once the existing poles are removed. The City is offsetting this cost with a $95,000 credit from the GO Bond money that was previously slated for lighting on these Islands.

Finally, FPL requires a survey from the City. The cost of this work is estimated at $25,000.

FPL

FPL submitted the binding cost estimate, known as the Contribution in Aid of Construction (CIAC) and drawings for the underground installation of the existing aerial electrical system. The binding estimate amount, without any applicable Engineering Fees and Government Adjustment Factors (GAF) totaled $2,583,997 with the cost of Palm Island at $930,831 and Hibiscus Island at $1,653,166. This estimate was for the total customer contribution as specified in Tariff 12.2.3. The scope of work submitted by FPL included the installation of a complete underground electrical backbone system utilizing rapid trench construction, providing backfill compaction with no temporary or permanent patching of the roadway and Maintenance of Traffic in accordance with City's Standard Design requirements. This binding cost estimate was valid for 180 days, expiring on April 25, 2009. However, as requested by the HOA, FPL agreed to eliminate the trenching, installation of conduits and junction boxes and backfilling from their labor/Vehicle item in the amount of $1,523,871. FPL must now provide a revised binding estimate which could potentially lower the total amount from $2,583,997 to $1,060,126. If all residences convert to the underground system, the binding estimate would be reduced by the 25% CIAC waiver to $795,095.

ATT

ATT submitted a scope of work that includes the installation of a complete underground communication backbone system utilizing trench construction, providing backfill compaction and restoration of the roadway.

The HOA is now requesting the removal of the trenching, conduits, junction boxes, and backfilling in order to obtain quotes from private contractors to reduce the cost of the project.

ABB

ABB submitted a scope of work that includes the installation of a complete underground cable backbone system utilizing trench construction, backfill compaction, and restoration of the roadway.

The HOA is now requesting the removal of trenching, conduits, junction boxes, and backfilling in order to obtain quotes from private contractors to reduce the cost of the project.

HOA

The HOA indicated that it had expenses related to its effort to underground these utilities. It requested inclusion of these expenses in the Special Assessments.

Schedule

The City has been working with the HOA, utility companies, and financial consultant to develop the following anticipated schedule for the construction of these improvements. These dates have slipped one month from the last memorandum due to the difficulty in obtaining financing for the project. These dates are predicated on the supposition that financing will be available in May 2009. Otherwise, these dates could slip further.

Apr 2009	Presentation to the Finance and Citywide Committee
May 2009	City initiates Special Assessment District creation pursuant to Chapter 170, Florida Statutes and creates a Preliminary Assessment Roll (First resolution)
Jun 2009	City to assist and oversee resident elections on accepting the assessment
Jul 2009	City passes a resolution and advertises for a public hearing to discuss the special assessment districts (Second Resolution)
Sep 2009	City holds a Public Hearing and then votes to finalize creation of the special assessment districts (Third Resolution)
Oct 2009	City executes all required agreements with utility companies for work on City ROW
	City executes contracts with JOC contractor and FPL-certified private contractor
Nov. 2009	JOC and FPL-certified private contractors begin construction at Palm Island
Jan 2010	FPL starts pulling wire and installing transformers at Palm Island
	Homeowners begin installations on private property at Palm Island
Apr 2010	JOC contractor, FPL-certified private contractor, and FPL complete construction at Palm Island
	AT&T and ABB start construction at Palm Island
May 2010	JOC and FPL-certified private contractors begin construction at Hibiscus Island
Jul 2010	FPL starts pulling wire and installing transformers at Hibiscus Island
	Homeowners begin installations on private property at Palm Island
Aug 2010	JOC Contractor & FPL complete construction at Hibiscus Island
	AT&T and ABB complete construction at Palm Island
Sep 2010	AT&T and ABB start construction at Hibiscus Island
Nov 2010	AT&T and ABB complete construction at Hibiscus Island

Recommendation

The HOA is prepared to establish Special Assessment Districts to fund the undergrounding of overhead utilities on the Islands for the estimated amount of $4,285,179. Staff is attempting to obtain binding estimates for this work before the next Commission meeting. At its April 14, 2009 meeting, the Finance and Citywide Projects Committee recommended that, upon securing financing for this project, the City Commission adopt the first resolution and require that 60% of the folios of each proposed special assessment district vote in favor of the creation of the districts as a condition for advancing the undergrounding project.

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MIAMIBEACH

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

COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: April 22, 2009

SUBJECT: **INFORMATIONAL REPORT TO THE MAYOR AND CITY COMMISSION, ON FEDERAL, STATE, MIAMI-DADE COUNTY, U.S. COMMUNITIES, AND ALL EXISTING CITY CONTRACTS FOR RENEWAL OR EXTENSIONS IN THE NEXT 180 DAYS.**

The City Commission adopted Resolution No. 2000-24141, which provided that all existing City contracts for renewal or extensions, which by their terms or pursuant to change orders exceed $10,000, and all extensions or renewals of such contracts, shall be presented as an informational report to the Mayor and City Commission, at least 180 days prior to the contract extension or renewal date. Subsequent thereto, the City Commission adopted Resolution No. 2001-24332, changing the reporting requirement from $10,000 to $25,000.

The Administration in addition to reporting on all existing City contracts, will now report information relative to Miami-Dade County, State of Florida, U.S. Communities and Federal GSA contracts that are approved for utilization by the City Manager. Pursuant to information contained in Miami-Dade County, State of Florida, U.S. Communities and Federal General Services Administration (GSA) bid list, the following are contracts that will expire within the next 180 days:

	DESCRIPTION	VENDOR	EXPIRATION DATE	RENEWAL TERMS
1.	FOR THE USE OF THE CARL FISHER CLUBHOUSE FOR CULTURAL PROGRAMMING FOR RESIDENTS	Mystery Park Arts Company, Inc. D/B/A Sobe Music Institute	08/31/2009	One year option to renew
2.	RENTAL OF SCHOOL BUSES FOR THE CITY'S SUMMER CAMP PROGRAMS	Franmar Corporations	9/30/2009	None
3.	PIPE AND FITTING, CAST DUCTLE IRON AND CAST GRAY IRON	HD Supply Waterworks, Ltd	10/11/2009	None

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DATE 4-22-09

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	DESCRIPTION	VENDOR	EXPIRATION DATE	RENEWAL TERMS
4.	PIPE AND FITTING, CAST DUCTLE IRON AND CAST GRAY IRON	Ferguson Enterprises, Inc.	10/11/2009	None
5.	PURCHASE OF SPITTER TICKETS, SCRATCH-OFF HANG TAGS AND TWO PART TICKETS	Southland Printing	9/30/2009	2 One year options to renew
6.	PURCHASE OF SPITTER TICKETS, SCRATCH-OFF HANG TAGS AND TWO PART TICKETS	Toledo Ticket, Co.	9/30/2009	2 One year options to renew
7.	PURCHASE OF SPITTER TICKETS, SCRATCH-OFF HANG TAGS AND TWO PART TICKETS	Rydin Decal	9/30/2009	2 One year options to renew
8.	BROKER/AGENT FOR EMPOYEE BENEFITS	Gallagher Benefit Services, Inc.	9/30/2009	One year options to renew
9.	REMOVAL AND CONSTRUCTION DEBRIS AND ASPHALT	Austin Tupler Trucking, Inc.	9/30/2009	None
10.	GROUND MAINTENANCE; JULIA TUTLE CAUSEWAY MACARTHUR CAUSEWAY; FIFTH STREET COLLINS AVE. (FROM 40TH TO 60TH STREET; PALM /HIBISCUS ISLAND ; STAR ISLAND; MARSEILLE DRIVE	Superior Landscaping & Lawn Services	9/8/2009	None
11.	GROUP EMPLOYEE BENEFITS-LIFE, AD & D AND SUPPLEMENTAL LIFE FOR THE CITY OF MIAMI BEACH	Standard Insurance Company	10/1/2009	None
12.	GROUP EMPLOYEE BENEFITS	Humana	9/30/2009	None

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Matti Herrera Bower, Mayor

DATE: April 8, 2009

SUBJECT: For Your Information-Provided by the Adrienne Arsht Center for the Performing Arts of Miami-Dade County

Attached please find the agenda for the March 31, 2009 PACT Board Meeting as well as the minutes of the January 27, 2009 meeting.

MHB/lw

Agenda Item F1

Date 4-22-09

Adrienne Arsht Center
FOR THE PERFORMING ARTS OF MIAMI-DADE COUNTY

AGENDA

PACT BOARD MEETING
Tuesday, March 31, 2009
B. and Donald Carlin Banquet Hall
1300 Biscayne Blvd.
8:30 AM

I. **Welcome – J. Ricky Arriola**

A. **Approval of Minutes from January 27, 2009 Board Meeting**
B. **Requests for Excused Absences**
C. **Resolutions Thanking Former PACT Board Members I. Stanley Levine and Bill Armstrong**
D. **Perfect Attendance Recognition**

II. **PACT Committee Reports**

A. **Executive Committee Report – J. Ricky Arriola**
Action to be taken by the Board
- Approval of the 2009 Sunset Review Submission

B. **Finance Committee Report – John Burnett**
Actions to be taken by Board
- Acceptance of January and February 2009 Financial Statements
- Programming Vision Statement – M. John Richard and Scott Shiller
- Approval of FY 2010 Budget

C. **Development Committee Report – Evelyn Greer and J. Ricky Arriola**

D. **Nominating and Governance Committee Report – Parker Thomson**
Action to be taken by Board
- Ratification of the appointment of Emery Sheer as Treasurer

III. **President's Report – M. John Richard**
- Scott Shiller, Executive Vice President
- Andrew Goldberg, Vice President of Marketing
- Ken Harris, Vice President of Operations

IV. **Special Reports**

V. **New Business**

VI. **Adjournment – J. Ricky Arriola**

Adrienne Arsht Center
FOR THE PERFORMING ARTS OF MIAMI-DADE COUNTY

1300 Biscayne Boulevard
Sanford and Dolores Ziff Ballet Opera House
B. and Donald Carlin Room

Performing Arts Center Trust Board of Directors Meeting
Tuesday, January 27, 2009
8:30 a.m.

Members of the Board In Attendance:
Matilde Aguirre
J. Ricky Arriola
Magalie Desroches Austin
Matti H. Bower
The Honorable Oscar Braynon II
Sonia Burini
Gilbert Cabrera
Mike Eidson
Alan H. Fein
Sergio M. Gonzalez
Rosie Gordon-Wallace
The Honorable Donald L. Graham
Evelyn Greer
James M. Herron
Hank Klein
Susie Krajsa
Stanley Levine
Florene Litthcut-Nichols
Richard C. Milstein
Jorge Plasencia
Jesus "Jay" Pons
Scott Robins
Adriana Sabino
Mario Ernesto Sanchez
Emery Sheer
Ronald A. Silver
Carole Ann Taylor *(via phone)*
Parker D. Thomson
Penny Thurer
Judy Weiser
David L. Wilson
Velia Yedra

PACF Member in Attendance:
Adrienne Arsht

Others in Attendance:
Dan Chang – Miami Herald
Zachary Fagenson – Miami Today
Carlos Garcia – Goldstein Schechter Koch
H. Bert Gonzalez – City of Miami
Aaron Gordon – Schwartz Media
Hubert Harriman
Ron Nelson – City of Miami
Robert Parente – City of Miami
James Quinlan – Rhythm Foundation
Carmen Schaffer
Tadd Schwartz – Schwartz Media
Mark Spanioli – Miami DDA
Mitch Stein – Goldstein Schechter Koch
Leo Zabezhinsky – Miami DDA

Arsht Center Staff in attendance:
John Richard
Trish Brennan
John Burnett
Suzette Espinosa
Jamil Farhardy
Andrew Goldberg
Ken Harris
Chantal Honoré
Valerie Riles
Scott Shiller
James Thomson
Liz Wallace
Christie Pageler Williams
Aaron Zimmerman

Absent Board Members:
Bill Armstrong
T. Willard Fair
Felix Garcia *(Out of Town)*
The Honorable Dan Gelber
Larry Rice *(Illness)*
The Honorable Marc D. Sarnoff

BOARD ACTION ITEMS:

- **A motion was made by Matti Bower for approval of the revised minutes from the November 18, 2008. T motion was seconded by James Herron and approved unanimously.**

- **A motion was made by Matti Bower for approval of the requests for excused absences. The motion was seconded by Richard Milstein and approved unanimously.**

- **A motion was made by James Herron for adoption of a resolution honoring Jeff Bartel for his many years of service to the Performing Arts Center Trust. The motion was seconded by Matti Bower and approved unanimously.**

- **A motion was made by Matti Bower for acceptance of the Independent Auditor's Report. The motion w seconded by Emery Sheer and approved unanimously.**

- **A motion was made by Florene Litthcut Nichols to approve the financial statements for the month of October, November and December 2008. The motion was seconded by David Wilson and approved unanimously.**

The meeting of the Board of Directors of the Performing Arts Center Trust was held at the Adrienne Arsht Center fo the Performing Arts of Miami-Dade County in the B. and Donald Carlin Room of the Ziff Ballet Opera House locate at 1300 Biscayne Boulevard.

The meeting was called to order at 8:40 AM by Chairman J. Ricky Arriola.

Welcome and Introduction

Chairman Arriola welcomed new President and CEO M. John Richard to his first Board of Directors meeting and commended him on all his accomplishments in his first fifty days of employment. Accomplishments have included hosting a free Presidential Inaugural Simulcast at the Center which was attended by approximately 4,000 people and ensuring that the Center's new catering provider, Barton G., had a smooth and successful transition.

Approval of Minutes

Chairman Arriola requested an amendment to the minutes from the November 18, 2008, to reflect that "The Center fundraising responsibilities will be assumed by the Development Committee of the Trust while the Adrienne Arsht Center Foundation shall present the Annual Gala and other special events."

- **A motion was made by Matti Bower for approval of the revised minutes of the November 18, 2008 Boarc meeting. The motion was seconded by James Herron and approved unanimously.**

Requests for excused absence

The following requests were submitted:

- Board Members Felix Garcia (Out of Town), Dan Gelber, Larry Rice (Illness) and Marc Sarnoff (Out of Town) requested excused absences for this meeting.
- Additionally Board Members Matilde Aguirre (Illness) and I. Stanley Levine (Illness) requested retroactive absences for the meeting on November 18, 2008.

- **A motion was made by Matti Bower for approval of the requests for excused absences. The motion was seconded by Richard Milstein and approved unanimously.**

Jeff Bartel will be relocating to another city and therefore has resigned from the board.

- **A motion was made by James Herron for adoption of a resolution honoring Jeff Bartel for his service to the Performing Arts Center Trust. The motion was seconded by Matti Bower and approved unanimously.**

Executive Committee Report

Mr. Arriola thanked board member Penny Thurer for hosting a reception for John Richard at her home. Mr. Arriola updated the board on the following:

- The Center's new Development Committee will be co-chaired by Chairman Arriola and Evelyn Greer. The committee is presently working on a prospective donors list as well as sponsorship opportunities. The Committee will present its detailed plan of action at a future meeting and will also be contacting fellow PACT board members to help recruit committee members.
- The Lukens Group has been retained and will help produce the Center's first major membership acquisition program for gifts of $75 - $5,000.
- The Executive Committee has been working along with Mr. Richard and Ken Harris, Vice President of Operations, on the transition of the Center's new food and beverage operator Barton G.
- The Board and staff will begin working on a strategic plan to address the future growth of the Center and the surrounding neighborhood.
- Board Members will continue to receive monthly talking points highlighting the Center's current events and progress.

Audit Committee Report

Committee Chair Matilde Aguirre thanked Center staff for their hard work. The Audit Committee reviewed the management letter and audited financial statements. The independent auditors have issued an unqualified opinion and did not find any significant issues.

Vice President of Finance and CFO, John Burnett further reported that a comparison of the 2007 and 2008 financials revealed the following:

- The number of shows presented at the Center increased to 543 in 2008 from 419 in 2007 primarily due to summer programming.
- Because of an increase in presentations, tickets sales and facility rentals revenues for 2008 were up by over $2 million from 2007 while event expenses were down.
- Despite the increase in shows, occupancy costs were lower than budgeted due to the renegotiation of several contracts. These savings were passed on to Miami-Dade County.
- The Foundation's subsidy payment increased in 2008 to $4.5 million. This increase was $1million more than was budgeted.
- Because the Center was fully staffed in 2008, salaries and benefits were higher than in 2007. This was also the case for marketing expenses because of the increase in shows.
- It should also be noted that in 2008, the Center made payments totaling $1.5 million to Miami-Dade County for the Sunshine State Loan while ending the fiscal year with an operating surplus of $818,000.

- **A motion was made by Matti Bower for acceptance of the Independent Auditor's Report. The motion was seconded by Emery Sheer and approved unanimously.**

Finance Committee Report
Mr. Burnett informed the board of the following:

Comparison of First Quarter FY2009 versus FY2008:

- Ticket sales are up by $400,000.
- Occupancy costs are $200,000 lower. These savings are passed on to Miami-Dade County
- Administration and overhead are slightly higher.

FY 2009 Budget to actual:

- Occupancy costs are $369,000 below budget.
- Ticket sales are 65% versus 60% budgeted and prior sales of 64%.
- The first quarterly payment of the Sunshine State loan for FY2009 was paid on December 5, 2008, three weeks before the due date.

Mr. Richard added that the organization's response to the current economic situation is to follow its business plan. The Center must execute its plan to be more aggressive and targeted in its fundraising activities. Center management is forecasting financial stability.

- **A motion was made by Florene Litthcut Nichols to approve the financial statements for the months of October, November and December 2008. The motion was seconded by David Wilson and approved unanimously.**

Nominating and Governance Committee Report
There are currently five vacancies on the Board. Committee Chair Parker Thomson reported that the committee will have a slate of candidates for the board's consideration at a future meeting. The Nominating and Governance Committee will ask Board Members to submit names of potential Board members for consideration.

President's Report
President and CEO John Richard thanked Adrienne Arsht, Ricky Arriola and all of the board members for the warm welcome he has received. Mr. Richard delivered the following report:

- The Performing Arts Center Foundation's $14,000,000 loan that was guaranteed by Miami-Dade County was paid in full in December 2008, which is 7 years earlier than due. The loan was taken by the Foundation in order to meet its private sector obligation to pay for a portion of the Center's constructions costs. The Center now has no outstanding loans.
- The Broadway hit *Cats* performed better than projected with fifty percent of sales happening in the last two weeks of performance.
- The management team will be reviewing designs to convert the Carlin Banquet Room into a full-time restaurant. The restaurant should be ready by next season.
- Designs are also being reviewed for the Bombay Sapphire Lounge which will be located in the Carnival Art Tower.
- The Development team will launch in March 2009 a membership campaign with the assistance of the Lukens Group.
- The search for a Vice President of Development is ongoing. Board member Sergio Gonzalez has been most helpful in this effort.
- The Center has rolled out the marketing campaigns for *Defendiendo al Cavernicola* and for *Liberty City.*

Additionally, Mr. Richard introduced the following new staff members:

- Sarah Evans, Programming Coordinator
- Jodi Gracey, Executive Administrative Assistant
- Roberta Llorente, Receptionist
- Christie Pageler Williams, Public Relations Coordinator
- Aaron Zimmerman, Director of Programming

Parking Update

Vice President of Operations Ken Harris reported that he met with representatives from American Airlines Arena, Bayfront Park and Downtown NET regarding the traffic congestion created when simultaneous events occur at the Center and other downtown venues. Possible short-term solutions discussed:

- The City of Miami will increase communication with venues to keep abreast of all events.
- Two additional officers will be placed on 2nd Avenue and I-395 on high traffic nights.
- E-blasts will be sent to patrons and resident companies alerting them to potential traffic issues.

Long-term solutions include way-finding signage for alternate routes as well as plans for permanent parking.

Programming Report

Executive Vice President Scott Shiller updated the board on the following upcoming events and performances:

- *Defendiendo al Cavernicola*, which is the Spanish version of *Defending the Caveman*, the longest running solo play on Broadway, will be at the Center February 4th through February 15th.
- *Liberty City* will be presented by the Center February 18th through March 1st. This one-woman show recounts the experiences of the playwright's childhood in Miami's Liberty City at a time of political upheaval.
- The Center's *Flamenco Festival* returns during the month of February for a second season. This year's festival features a full production of *Carmen* as well as performances by renowned Flamenco stars Estrella Moriente and Los Farruco.
- *Family Fest* returns this year with *Carnival of the Animals*, presented in partnership with Miami City Ballet School on February 2nd, and *Peter and the Wolf*, presented in partnership with The Cleveland Orchestra on April 5th.
- Marvin Hamlisch featuring special guest Mark McVey will be presented at the Knight Concert Hall.
- The Center's *Miami-Made Festival*, featuring local artists, will feature play readings, workshops showcasing new pieces and *Here & Now* panel discussions.
- Kodo, an elite Japanese taiko drumming group, will round out the Center's world music series on March 15th.
- Top Chef Tom Colicchio continues the Center's *Celebrity Chef Series* on March 19th.
- Mandy Patinkin featuring Paul Ford on piano will be presented on March 21st.
- Juan de Marcos and the Afro-Cuban All-Stars perform on April 8th.
- Australian modern and cutting edge dance artist, Ros Warby will perform on April 24th and 25th.
- *Free Gospel Sundays*, for which the Center received a grant from the Knight Foundation, will continue to showcase the best local choirs and will feature Stellar-award winning gospel artist Byron Cage on February 15th.
- Free tours of the Center continue to be given twice weekly in English and Spanish.
- Remaining *Jazz Roots Series* concerts include Sonny Rollins, Patti Austin & the Count Basie Orchestra, Chick Correa & John McLaughlin.

- Upcoming Broadway shows include *Cirque Dreams Jungle Fantasy*, May 12 through May 17th and *Chicago*, May 26th through May 31st.
- *Babalu-cy*, the story of Desi Arnaz' arrival in Miami, is currently being developed for next season.

Other Business

- The Center is currently investigating and working to resolve acoustical issues in the Knight Concert Hall.
- Mr. Arriola thanked all board members for their generous donations which allowed the Center to present the Presidential Inaugural Simulcast as a free community event.
- Board members thanked and congratulated I. Stanley Levine, a loyal PACT Board member since 1991, who announced his retirement.

With no further items on the agenda, the meeting adjourned.

Reported by Chantal C. Honoré

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Matti Herrera Bower, Mayor

DATE: April 8, 2009

SUBJECT: For Your Information-Provided by the Wolfsonian-Florida International University

Attached please find the minutes from the December 2, 2008 Advisory Board Meeting and the agenda from the April 3, 2009 Advisory Board Meeting.

MHB/lw

Minutes
The Wolfsonian–Florida International University
Advisory Board Meeting
Conference Room, The Annex
December 2, 2008

Board present: Gonzalo Acevedo, Charles Cowles, Manuel Gonzalez, Rene Gonzalez, Susan Hakkarainen, Nasir Kassamali, Michael Kreitzer, Ray E. Marchman, Richard Massey, Finlay B. Matheson, Federico Sanchez, Philip Scaturro, Rob Schechter, Sandy Seligman, Gary Wasserman, Robert Wennett, James Zematis
Absent: André Balazs, Mehmet Bayraktar, Alberto Cardenas, Jacqueline Weld Drake, Marisa Fort, Nina Herrick, Mike Holden, Nissan Kasdin, Iran Issa-Khan, Michele Oka Doner, Chad Oppenheim, Aurelia Reinhardt, Susan Richard, David Schwarz, Pat Wallace, Louis Wolfson, Mitchell Wolfson, Jr., Bernard Zyscovich
Ex officio present: Matti Bower, Mayor of Miami Beach, Sandra B. Gonzalez-Levy, FIU Vice President for University and Community Relations and Executive Director of the FIU Foundation
Guest present: Rafael Paz, Associate General Counsel Office of General Consul FIU
Staff present: Cathy Leff, Regina Bailey, Jeanne Brace, Michael Hughes, Marianne Lamonaca, David Skipp

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Finlay Matheson, Chairman of the Wolfsonian Advisory Board, called the meeting to order at 12:10 pm.

Chairman's Report
Update on Miami Beach Women's Club
After the unanimous approval of minutes of the October 24th meeting, Finlay led a discussion on the status of the Miami Beach Women's Club. He has met with the women twice since the last Board meeting and feels negotiations are going well. The ladies have made him an honorary member of the Miami Beach Women's Club. Finlay said it would be not a conflict of interest since is only an honorary member and can not vote. Finlay reported that with Jeanne Brace and Rafael Paz, he had a meeting with the representatives of Hebrew Academy, their insurance company representative, and their insurance consultant in an effort to resolve the settlement. At this time there has been no resolution because the FBI report has not been received. (The fire was classified as a hate crime and therefore the FBI was called in to investigate.) Cathy Leff asked Mayor Bower's and Jorge Gonzalez's help in expediting this report so that the issue can be resolved soon.

Robert Wennett led a discussion on the state of the building's current insurance including liability. Cathy said that the FIU General Counsel's office advised the staff that the museum should not purchase liability insurance. Rafael confirmed this. Robert felt that for such a small amount of money it is not worth leaving the institution vulnerable and that this issue should be readdressed as soon as possible. Cathy said that the building could not be included in the university's policy, since it is owned by The Wolfsonian, Inc.

Robert thought the museum should seek the advice of an outside insurance consultant and review to assure that the museum receives equity in the settlement. Cathy noted that the General Counsel's office has been diligent in filing all the paperwork and organizing meetings with Hebrew Academy to pursue the claim. She stressed that we all want an amicable resolution and the Hebrew Academy is interested in buying the building and there may be others. Finlay passed around photos of the damage and noted that the insurance proceeds are likely to be less $385,000.

Robert felt the Board should work on removing the deed restrictions on the property, the liability insurance issue and the insurance and legal claims. Finlay will continue to meet with the members of the Miami Beach Women's Club and ask them to remove the deed restrictions that will make the property more valuable and appealing to buyers. Mayor Bower reminded the Board that whatever happens the building is historic and must be rebuilt. New Board member Michael Kreitzer volunteered to review all the related paperwork including the initial contract, general counsel office documents, and insurance documents to see if more can be done to move this settlement along and receive the maximum funds.

Revised Bylaws

Finlay Matheson discussed the proposed changes to the bylaws, which include reducing the mandatory board meetings from four to three, adding the sunshine requirements and changing the word "shall" to "may" regarding the number of committees.
No action was taken on theses changes because the changes to the bylaws require a two-thirds approval of the Board and not enough Board members were present.

Finlay discussed adding a governing committee to evaluate the board's annual achievements. This was followed by a discussion on how this might be achieved by an executive committee. Michael Kreitzer volunteered to head the evaluation committee. There was no final decision how the self evaluation might be completed. There was a brief discussion of how the Board might meet more often given the Board member's busy schedules. Susan Susan Hakkarainen suggested regional meetings, and Nasir Kassamali felt we might try an electronic or cyber meeting.

Finlay requested that everyone on the board, including the ex-official members, send a short biography and asked that they include not only their professional affiliations but also personnel information (family, interests, and passions). Sandra Gonzalez-Levy suggested they also include photos.

Finlay thanked Ray Marchman for agreeing to chair the Development Committee and asked others to join him.

Gary commented that members are involved because of a relationship to Cathy or Micky and suggested that the Board meeting be followed by a social event so that there would be more engagement between board members. He offered to host a meeting in Naples, and Sandy Seligman offered to host one in Detroit or at her home in Miami Beach. Finlay said that next Board meeting may be in Pensacola, to view the Lautner house and give the board a chance to interact. (Note: It would be a fund raising event.)

President Report

Ray Marchman reported to the Board that FIU President Modesto Maidique has announced he will step down as soon as a replacement is found. Ray said it is very much in the interest of the Wolfsonian to be involved in this process. Sandra Gonzalez-Levy briefly described the process of setting up the search committee, which David Parker chairs ,and includes university trustees Albert Dotson, Patricia Frost, Kirk Landon, Albert Maury, and Claudia Puig. Anyone interested in serving on the university and community committee should contact David Parker. Gonzalo Acevedo volunteered to be the Wolfsonian representative, and Finlay said he would send a letter to Chairman Parker recommending him.

Ray asked that Board members visit the new Frost Art Museum and see the explosion of activity on campus. Finlay noted that the Board is planning to hold a meeting on campus annually.

Director's report

Cathy announced that the Board has hired Raymond dela Vega, associate director of business and finance, and accountant Larry Wiggins. She informed the Board that financial report could not be completed because our new employees can not receive pass words and access to the university's accounting system until they complete their training, which is only available on certain dates. Staff will work with Robert and the Finance Committee to complete the reports by the end of the year. She stated until then the Board should trust that there are very tight controls on expenses. Cathy reminded the Board that the museum depends on the Board to meet their obligations. She is dedicated to preserving staff and the programming that makes the museum a leader.

Cathy was pleased to announce that the museum has just received $45,000 from the MacArthur Foundation to supplement a 2-year grant of $500,000 that we received last year from the Institute of Museum and Library Services (IMLS). MacArthur has agreed to be an intellectual and financial partner in a national conference that the museum is organizing with IMLS February 2009 in Washington DC. The funds will allow us to enhance the content of the conference, which will examine the impact and potential of technology on museums and libraries. She thanked Phil Scaturro for introducing us last year to MacArthur President Jonathan Fanton and arranging for him to be the key note speaker at the 2008 conference.

She is also grateful to Phil for opening the doors to the Andrew W. Mellon Foundation. On December 17th she will hear about the application submitted to them for $500,000 to further faculty and student research on the collection. Cathy noted that this will build on our current program and allow us to hire a staff member to work with the faculty and an additional registrar to facilitate student and faculty requests.

She announced the Frank, Luca Chief Librarian, has overseen a student curated exhibition in the Library. Frank assigned the students in his New Deal class in the history department to develop themes and select material from the library for the exhibition. The exhibition continues through January and then moves to the Green Library on campus.

Cathy stated that although this is a scary time financially she did not want to send out a message the museum is cutting costs by reducing museum hours. Right now we have contracts for major exhibitions with Stanford and the Canada Center for Architecture, Getty and the Hammer, and the Museum of Fine Arts in Boston. If we do not feel we can make the fundraising goals to present these exhibitions, we may have to consider the cost of contract buyout vs. mounting the exhibition.

She reminded the Board that December 5th is our Art Basel Event and thanked Gary for all his generosity. She stated that if he did not give the money for our event, he raised it. He is also responsible for making the Smart cars available to take Board members to Art Basel events. She reminded the Board that at the event there will be a rare opportunity to have a Martin Parr portrait taken and all proceeds benefit the museum. Martin Parr is also donating the sale his Art Basel portfolio, *Credit Crunch,* to the museum. *Thoughts on Democracy* portfolios will also be available for sale at the event.

She asked the Board to plan to attend one of the fundraising dinners and wine auctions February 21 and 22 with famed chef Daniel Boulud. The first dinner will benefit FIU School of Hospitality and Tourism Management and the museum, and the second will benefit the museum only. Based on Gary's suggestion, we will also auction support opportunities for the Wolfsonian. One hundred percent of the cost of these events are being paid for by Mouton Rothschild, so all proceeds will benefit the museum and School of Hospitality and Tourism.

Sunshine Law

Rafael Paz made a brief presentation on the State's sunshine law. He said that even though the Wolfsonian Board does not have the full responsibilities of other university boards, because its role is to advise the FIU President and the director on fiscal matters, it must operate in the "sunshine". He said the purpose of the law is to insure transparency in all decision making. To fulfill the requirements of this law the museum staff will continue to post all meetings and agendas on the Wolfsonian website seven days in advance; all meetings must be open to the public; and Board members may not discuss matters that are coming before the Board for vote outside of the formal meeting.

Development Strategy Report

David Skipp gave a brief report on the museum development strategy. He reported that we are at 65% of our goal for the year. He noted that during these difficult financial times it may be hard to maintain all the museums corporate funding and asked the Board's help in soliciting individual donors. David suggested that Board members host small dinner parties to solicit individuals for $1,000 donations, bring friends to the museum for a tour, and assist the development staff in reviewing the existing donor list. He thanked the university's advancement office for all their donor research. He announced that the museum has just hired a new grants person, which will free Michael Hughes to assist the Board with more donor solicitations. David ended his report by reminding the Board to join Ray on the development committee.

Nominating Committee Report

Rob Schechter asked the Board approve to the nominating committee's recommendation of Michael Kreutzer as a new member. The Board ratified his appointment unanimously.

The meeting was adjourned at 1:40pm.

THE WOLFSONIAN-ADVISORY BOARD MEETING

April 3, 2009 4:00PM

The Wolfsonian-FIU
2nd Floor Conference Room

I. Call to order

II. Approval of Minutes

III. Chairman's Report
   a. Bylaw Revisions

IV. President's Report
   a. Development Working Group
   b. Donor Wall

V. Financial Report – Robert Wennett

VI. Director's Update
   a. Presentation of FY 09/10 Budget

VII. Nominating Committee

VIII. Old Business

IX. New Business

X. Curatorial Update

XI. Adjournment