# City Commission Meeting

**City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive**
**June 3, 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 Contracts Pursuant To Invitation To Bid (ITB) No. 30-08/09, For Concrete Curbing/Sidewalk Construction And The Purchase Of Asphaltic Concrete Related Materials, And The Striping Of City Streets And Parking Lots; Awards Shall Be Based On Firms' Unit Prices As Follows: Group I: For Concrete Curbing/Sidewalk Construction, F&L Construction, Inc. As Primary Vendor And GC Works As Secondary Vendor; Group II: For Milling And Resurfacing Of Asphalt Concrete And The Purchase Of Asphaltic Related Materials, H& R Paving, Inc. As Primary Vendor And Metro Express As Secondary Vendor; Group III: For Asphaltic Concrete/Related Material To Be Picked-Up Or Delivered To The City, H&R Paving, Inc. As Primary Vendor And Community Asphalt As Secondary Vendor; And Group IV: For Striping Of City Streets And Parking Lots, High Tech Striping, Inc. As Primary Vendor And GC Works As Secondary Vendor In The Estimated Total Annual Amount Of $1,000,000. (Page 209)
(Public Works)

R2B Request For Approval To Reject All Bids Received 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; And The Re-Issuance Of A New Invitation To Bid. (Page 215)
(Capital Improvement Projects)

## R5 - Ordinances

R5A An Ordinance Amending Miami Beach City Code Chapter 2, Article III, Division 27 Entitled "Beach Preservation Committee" By Changing The Committee's Name To The "Waterfront Protection Committee" And Expanding Upon The Committee's Advisory Powers So As To Include Baywalk, Beachwalk And Cutwalk Review/Recommendation Within Its Jurisdiction; Providing For Repealer, Severability, Codification, And An Effective Date. **10:20 a.m. Second Reading Public Hearing** (Page 231)

(Requested by Commissioner Saul Gross/City Attorney's Office)
(First Reading on May 13, 2009)

R5B An Ordinance Amending Miami Beach City Code Chapter 2, Article III, Section 2-22 Thereof Regarding General Requirements Related To Membership On City Of Miami Beach's Agencies, Boards And Committees, By Adding Thereto Subsection (19) To Provide That At-Large Appointment Of Board Members To Fill Categories Shall Be By Separate Vote For Each Category; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading** (Page 235)

(Requested by Commissioner Victor M. Diaz, Jr./City Attorney's Office)

R5C An Ordinance Amending Miami Beach City Code Chapter 2, Article III, By Adding Section 2-27 Entitled: "Commission Committee Draft Minutes -- City Commission Approval," Reciting Applicable Parliamentary Procedure Concerning City Commission Review And Acceptance Of Draft Minutes From Commission Committee Meetings; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading** (Page 239)

(Requested by Mayor & Commission/City Attorney's Office)

R5D An Ordinance Amending Section 82-385(L) Of The City's Sidewalk Café Ordinance, As Codified In Chapter 82, Article IV, Division 5, Sections 82-366 Through 82-385 Of The City Code; Said Amendment Allowing Sidewalk Café Operators/Permittees For Sidewalk Cafes On Lincoln Road Mall To Maintain Tables, Chairs, And Closed-Up Umbrellas Within The Permit Area When The Café Is Not In Operation; And Closed-Up Umbrellas Within The Permit Area When The Café Is Not In Operation; Also Creating And Adding A New Section 82-387, Entitled "Prohibited 'No Table' Zones," And Subsection (A) Thereof, Prohibiting Sidewalk Cafes From Being Permitted And Placed In A Pre-Defined Area On The 1100 Block Of Lincoln Road, Between Lenox Avenue And Alton Road; Providing For Repealer, Codification, Severability, And An Effective Date. **First Reading** (Page 245)

(Requested by Mayor Matti Herrera Bower/City Attorney's Office/Public Works)

**R5 - Ordinances** (Continued)

R5E Ethics Proposal Ordinances (Page 259)

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/City Attorney's Office)

R5F 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 267)
(Requested by Commissioner Saul Gross/City Attorney's Office)
(Deferred from May 13, 2009)

R5G An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 5 Entitled "Campaign Finance Reform," By Adding Thereto Section 2-491 Entitled "Prohibited Lobbying By Campaign Consultants," Prohibiting Campaign Consultants And Certain Affiliated Persons Or Entities From Lobbying City Commission For 12 Months Subsequent To Swearing In Of Subject Elected Official(S), Establishing Definitions And Prospective Application Of This Ordinance; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading** (Page 277)
(Requested by Commissioner Deede Weithorn/City Attorney's Office)
(Deferred from May 13, 2009)

R5H An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, By Adding Section 2-461 Entitled: "City Commission: Automatic Removal Due To Excessive Recusals," Providing That Commencing December 1, 2011, Any Member Of The City Commission Who Has Not Voted On Any Commission Matter Due To Conflict More Than Four Times Within A One Year Period Shall Be Automatically Removed From Office; Providing For Repealer, Severability, Codification, And An Effective Date. **First Reading** (Page 281)
(Requested by Commissioner Jonah Wolfson/City Attorney's Office)

**R5 - Ordinances** (Continued)

R5I An Ordinance Amending Chapter 46 Of The Miami Beach City Code, Entitled "Environment," By Amending Article III, Entitled "Litter," By Amending Section 46-92, Entitled "Throwing Litter In Public Places; Possession Of Glass Or Metal Containers On Beaches Unlawful; Sweeping Or Throwing Litter In Gutters; Garbage Containers Required For Take-Out Restaurants; Rebuttable Presumptions; Civil Fines For Violations; Seizure; Removal; Definition Of Litter," By Clarifying The Prohibitions On Litter And Amending The Definition Of Litter, Amending The Fines And Penalties For A Violation Of Section 46-92, And Amending The Provisions Regarding Enforcement By Code Compliance Officers; By Repealing Division 2 Entitled "Handbills," But Incorporating Provisions Relative To Special Master Appeals And Additional Means Of Enforcement Into Section 46-92; Providing For Repealer; Severability; Codification; And An Effective Date. **First Reading** (Page 285)
(Requested by Commissioner Jerry Libbin/City Attorney's Office)

**R7 - Resolutions**

R7A A Resolution Following A Duly Noticed Public Hearing To Hear Public Comment On Same, And Having Considered The City Administration's Recommendation And The Criteria Pursuant To Section 82-94 Of The Miami Beach City Code, Granting A Revocable Permit To Mr. Ira M. Elegant, As Owner Of The Residential Property (Single Family Residence) Located At 1360 North View Drive; Said Permit To Retain The Northeastern Portion Of A Carport, Built Within And Over A Portion Of The Public Right-Of-Way Along North View Drive; Further Approving A One-Time Only Assignment Of Said Permit To Sun Trust Bank As Trustee For Land Trust U/A/D 01/01/2003 Trust Agreement, As The Buyer/New Owner Of The Property At 1360 North View Drive; Such Assignment Subject To And Contingent Upon The Closing Of The Sale Of The Property Occurring On Or Before June 5, 2009. **10:15 a.m. Public Hearing** (Page 295)
(Public Works)

R7B A Resolution Approving On Second Reading (And Final Approval), Following A Duly Noticed Public Hearing, An ATM Lease Agreement Between The City And SunTrust Bank, For Use Of Approximately Sixteen (16) Square Feet Of City-Owned Property, Located At 1700 Convention Center Drive (A.K.A. City Hall), Miami Beach, Florida; Said Lease Having An Initial Term Of Five Years, With An Additional Renewal Term Of Four (4) Years And Three Hundred Sixty Four (364) Days, At The City's Sole Discretion; Authorizing The Mayor And City Clerk To Execute The Lease Agreement. **10:30 a.m. Second Reading Public Hearing** (Page 313)
(Real Estate, Housing & Community Development)
(First Reading on May 13, 2009)

R7C A Resolution Waiving The Development Regulations For An Addition To A Temporary Parking Lot In Collins Park To Temporarily Replace Lost Parking While The East Parking Lot, Located On Collins Avenue Between 21st And 22nd Streets, Is Renovated, Pursuant To Section 142-425(D) Of The City Code. **10:35 a.m. Public Hearing** (Page 333)
(Capital Improvement Projects)

**R7 - Resolutions** (Continued)

R7D A Resolution Approving On Second Reading (And Final Approval), Following A Duly Noticed Public Hearing, 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 And Authorizing The Mayor And City Clerk To Execute The Lease Agreement. **10:45 a.m. Second Reading Public Hearing** (Page 343)
(Real Estate, Housing & Community Development)
(First Reading on May 13, 2009)

R7E A Resolution Approving, Following Second Reading And Public Hearing On June 3, 2009, A First Amendment To That Certain Development Agreement Between The City Of Miami Beach, Florida, And UIA Management, LLC (Developer), Dated April 11, 2007, As Required Pursuant To Sections 163.3220-163.3243, Florida Statutes (The "Florida Local Government Development Agreement Act"); Said Amendment Pertaining To The Developer's Art In Public Places (AIPP) Contribution And Prescribing Further Terms And Conditions For The Design, Fabrication, Installation And Maintenance Of The Artwork. **11:50 a.m. Second Reading Public Hearing** (Page 373)
(Tourism & Cultural Development)
(Firs Reading Public Hearing on May 13, 2009)

R7F A Resolution Approving On First Reading, A Lease Agreement Between The City And Roma Waxing, Inc. (D/B/A Uni.K Wax), For Use Of 1,290.59 Square Feet Of City-Owned Property, Located At 1701 Meridian Avenue, Unit 3 (A/K/A 771 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 July 15, 2009, For The Second Reading (And Final Approval) Of The Lease Agreement. **First Reading** (Page 399)
(Real Estate, Housing & Community Development)

R7G A Resolution Authorizing An Amendment To The FY 2008 One Year Action Plan To Include The Use Of Federal Community Development Block Grant Funds From Title Xii Of Division A Of The American Recovery And Reinvestment Act Of 2009 ("CDBG-R") To Be Used For The Following Two Activities: 1) The North Beach Senior Center Project Capital Improvements; And 2) The Teen Job Corps Program, As Approved By HUD; Authorizing That In The Event That HUD Disapproves Of The Aforestated Uses Of The CDBG-R Funding, Then The City Manager Is Authorized To Identify, With The Assistance Of The Local HUD Field Office, HUD-Eligible Project(s) Which Will Be Reported Back To The City Commission By Letter To The Commission; Authorizing The City Manager To Execute An Agreement And Any And All Necessary Documents Between The City And The Department Of Housing And Urban Development In Order To Receive The Grant Funds; Authorizing The Mayor And City Clerk To Execute Agreements With Providers Of Activities; And Further Authorizing The Appropriation Of CDBG-R Federal Funds In The Amount Of $467,896. (Page 429)
(Real Estate, Housing & Community Development)

**R7 - Resolutions** (Continued)

R7H A Resolution Approving (Following The Expiration Of The Initial Term On July 12, 2009), A Month To Month Extension Of The Contract With Standard Parking, Inc. For Parking Meter Collection Services For The City's Parking System; Said Extension Is Not To Exceed Six (6) Months, Commencing On July 13, 2009, And Terminating No Later Than January 12, 2010. (Page 485)
(Parking Department)

R7I A Resolution Approving And Authorizing The City Manager To Execute A Letter Agreement Between The City And 1 Washington Avenue Corp. (Smith And Wollensky Restaurant) Granting The Restaurant A Temporary Revocable Use Of An Approximately 581 Square Foot Paved Area In South Pointe Park, Adjacent To The Restaurant Building, For The Operation Of A Food And Beverage Concession And Outdoor Dining Area; With The Term Of Said Agreement Commencing On May 13, 2009, And Terminating On The Earlier Of 1.) Final Action By The City Commission As To A Proposed Concession Agreement Between The City And 1 Washington Avenue Corp. For The Use Of Said Area, Or 2.) September 30, 2009. (Page 491)
(Real Estate, Housing & Community Development)

R7J A Resolution Authorizing The Installation Of A "Dog Park" In South Pointe Park As Recommended By The Neighborhoods/Community Affairs Committee, To Be Located In The Area Of The Park West Of The Washington Avenue Fountain/Plaza And South Of Apogee, As Delineated In The Attached Concept Plan (See Attachment); And Further Appropriating $60,836 From The South Beach Quality Of Life Fund - 161 (To Be Repaid In The Future From The South Pointe Capital Fund 389) For The Design And Construction Of The Dog Park And Amenities. (Page 503)
(Parks & Recreation)

R7K A Resolution Approving And Authorizing The Mayor And City Clerk To Execute A Management Agreement With Altos Del Mar Sculpture Park, Incorporated, A Florida Not-For-Profit Corporation, As The Successful Proposer In Response To Request For Proposals No. 02-07/08 For Establishing A Cultural Arts Themed And/Or Passive Recreational Activities Program In Altos Del Mar Park; Said Agreement Having An Initial Term Of Ten (10) Years With Two (2) Additional Five (5) Year Renewal Options, At The City's Sole And Absolute Discretion. (Page 513)
(Tourism & Cultural Development)

## R9 - New Business and Commission Requests

R9A Board And Committee Appointments. (Page 571)
(City Clerk's Office)

R9A1 Board And Committee Appointments - City Commission Appointments. (Page 577)
(City Clerk's Office)

R9B1 Dr. Stanley Sutnick Citizen's Forum. (1:30 p.m.) (Page 597)
R9B2 Dr. Stanley Sutnick Citizen's Forum. (5:30 p.m.)

R9C Discussion Regarding A Proposed Settlement Agreement Between Club Madonna, Inc., The City Of Miami Beach, And Certain Named Individual Defendants, Involving Litigation Between These Parties In The U.S. District Court, Southern District Of Florida, Case No. 08-23469-CIV-MOORE/TURNOFF. (Page 599)
(City Attorney's Office)

R9D Discussion And Status Update On The 2009/10 Budget. (Page 609)
(Requested by Commissioner Deede Weithorn)

R9E The Committee Of The Whole Will Meet During Lunch Break In The City Manager's Large Conference Room To Discuss The City Attorney's Performance Evaluation. (Page 611)
(City Attorney's Office)

R9F The Committee Of The Whole Will Meet During Lunch Break In The City Manager's Large Conference Room To Discuss Fiscal Year (FY) 2009/10 Proposed Operating Budget Request For The Office Of The Mayor And City Commission. (Page 613)
(Budget & Performance Improvement)

R9G Discussion Regarding A Request For A Special City Commission Meeting Re: Expansion Of Ethics Reform/Transparency In Government. (Page 615)
(Requested by Commissioner Victor M. Diaz, Jr./City Attorney's Office)
(Deferred from May 13, 2009)

R9H Discussion Regarding A Resolution Urging Florida Department Of Education To Maintain The Existing Training Requirements For Teachers Of English Language Learners. (Page 617)
(Requested by Mayor Matti Herrera Bower)

## R10 - City Attorney Reports

R10A Notice Of Closed Executive Session. (Page 621)
Pursuant To Section 447.605, Florida Statutes, A Closed Executive Session Will Be Held At The Lunch Recess On Wednesday, June 3, 2009 In The City Manager's Large Conference Room, Fourth Floor, City Hall, For A Discussion Relative To Collective Bargaining.

R10B Attorney-Client Session (Page 623)
Pursuant To Section 286.011, Florida Statutes, The City Attorney Hereby Advises The Mayor And City Commission That He Desires Advice Concerning The Following Pending Litigation Matter:

MCZ/Centrum Flamingo II, LLC, Et Al. V. City Of Miami Beach U.S. District Court, Southern District Of Florida, Case No.: 08-22419-CIV-Altonaga/Brown

Therefore, A Private Closed Attorney-Client Session Will Be Held During The Lunch Recess Of The City Commission Meeting On June 3, 2009 In The City Manager's Large Conference Room, Fourth Floor, City Hall, To Discuss Settlement Negotiations And/Or Strategy Related To Litigation Expenditures With Regard To The Above-Referenced Litigation Matter.

The Following Individuals Will Be In Attendance: Mayor Matti Herrera Bower; Members Of The City Commission: Saul Gross, Jerry Libbin, Victor Diaz, Ed Tobin, Deede Weithorn, And Jonah Wolfson; City Attorney Jose Smith, City Manager Jorge Gonzalez, First Assistant City Attorney Gary Held, Outside Counsel Richard Ovelmen And Jason Kairalla.

## Reports and Informational Items

A City Attorney's Status Report. (Page 625)
(City Attorney's Office)

B Parking Status Report. (Page 629)
(Parking Department)

C Status Report Of The Normandy Shores Golf Course Club House. (Page 651)
(Capital Improvement Projects)

D 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 653)
(Procurement)

E Status Update On Wireless Miami Beach Project. (Page 655)
(Finance Department)

**Reports and Informational Items** (Continued)

F Report On The 2009 Florida Legislative Session. (Page 659)
(City Manager's Office)

G Status Report On Palm And Hibiscus Islands Underground Utilities Project. (Page 673)
(Capital Improvement Projects)

H Non-City Entities Represented By City Commission:

1. Minutes From The Miami-Dade County League of Cities Meeting On February 5, 2009. (Page 677)
(Requested by Commissioner Deede Weithorn)

2. Minutes From The Wolfsonian-Florida International University Advisory Board Meeting On April 3, 2009. (Page 691)
(Requested by Commissioner Deede Weithorn)

3. Minutes From The Miami-Dade Metropolitan Planning Organization (MPO) Meeting On April 30, 2009. (Page 699)
(Requested by Commissioner Deede Weithorn)

**End of Regular Agenda**

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**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.

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# CITY CLERK'S OFFICE
# LOBBYISTS LIST REPORT
# June 3, 2009

| LOBBYIST NAME | RETAINED BY | DATE REGISTERED | DISCLOSURE |
|---|---|---|---|
| **R2B** Approve Bids, ITB 17-08/09, ROW Improvement So. Pointe Phase III, IV & V | | | |
| **Carlos J. Gimenez** | **Pedro Munilla** | **04/22/2009** | **$350/hour** |
| **Roberto Sanchez, III** | **MCM Corp** | **04/22/2009** | **$250/hour** |
| | | | |
| **R5D** Amend City Code, Sidewalk Café Ordinance | | | |
| **Michael Larkin** | **Da Leo Trattoria** | **12/17/2008** | **$385/hour** |
| **Michael Marrero** | **Da Leo Trattoria/ Mario Patroni** | **12/16/2008** | **$310/hour** |
| | | | |
| **R7E** 2nd Rdg, Approve Development Agmt w/ UIA Management, LLC (Developer) | | | |
| **Carter McDowell** | **UIA Management, LCC** | **06/07/2007** | **$500/hour** |
| **Carter McDowell** | **Robert Wennett/UIA** | **02/12/2007** | **$500/hour** |
| | | | |
| **R7I** Execute LOA w/ Smith & Wollensky For Food & Beverage Concession | | | |
| **Jimmy Morales** | **Patina Restaurant** | **05/13/09** | **$400/hour** |

R2

**Condensed Title:**

Request For Approval To Award Contracts To The Lowest And Best Bidders; Authorize The Mayor And City Clerk To Execute Contracts Pursuant To ITB No. 30-08-09 For Concrete Curbing/Sidewalk Construction And The Purchase Of Asphaltic Concrete Related Materials, And The Striping Of City Streets And Parking Lots; Awards Shall Be Based On Firms' Unit Prices As Follows: Group I: For Concrete Curbing/Sidewalk Construction, F & L Construction, Inc. As Primary Vendor And GC Works As Secondary Vendor; Group II: For Milling And Resurfacing Of Asphalt Concrete And The Purchase Of Asphalt Related Materials, H & R Paving, Inc. As Primary Vendor And Metro Express As Secondary Vendor; Group III: For Asphaltic Concrete/Related Material To Be Picked-Up Or Delivered To The City, H & R Paving, Inc. As Primary Vendor And Community Asphalt As Secondary Vendor; And Group IV: For Striping Of City Streets And Parking Lots, High Tech Striping, Inc. As Primary Vendor And GC Works As Secondary Vendor In The Estimated Total Annual Amount Of $1,000,000.

**Key Intended Outcome Supported:**

Ensure Well-Maintained Infrastructure

**Supporting Data (Surveys, Environmental Scan, etc.):** 48% of residents and 37% of businesses rated the condition of roads as excellent or good.

**Issue:**

Shall the City Commission Approve the Award of Contract?

**Item Summary/Recommendation:**

The purpose of this bid is to establish a contract, by means of sealed bids, for concrete curbing/ sidewalk construction and the purchase of asphaltic concrete related materials and the striping of City streets and parking lots, as specified herein. This contract shall remain in effect for two (2) years from date of contract execution by the Mayor and City Clerk, and by mutual agreement by the City for two (2), one (1) year renewal options.

On March 31, 2009, the ITB was issued with an opening date of April 30, 2009. A Pre-bid conference to provide information to prospective bidders was held on April 15, 2009. BidNet sent notices to 25 prospective bidders; BidSync sent notices to 1154 prospective bidders from which 29 viewed the documentation; the result was the receipt of ten (10) bids.

The Minimum Specifications are broken down in four (4) separate groups from which bidders could bid on a single, any combination, or all groups of work as follows: Group I: Concrete/Curbing Sidewalk Construction. Group II: Milling and Resurfacing of Asphalt Concrete and the Purchase of Asphalt Related Materials. Group III: Asphaltic Concrete/Related Material to be picked-up or delivered to the City. Group IV: Striping City Streets and Parking Lots.

This Bid provides the scope of work for services under the above mentioned group categories for projects that will be performed on an "as-needed basis" for Public Works. Performance and Payment bonds for the contracted amounts under each group will be based on the budgetary amounts available for each category. Funding in the amount of $800,000 is available from Capital Projects and $200,000 from Public Works Operating Department in Fiscal Year 2008/09. Any future Fiscal Year funding will be determined during the annual budget development process.

**APPROVE THE AWARD OF CONTRACT.**

**Financial Information:**

| Source of Funds: | | Amount | Account | Approved |
|---|---|---|---|---|
| | 1. | $30,000 | 425-0410-000342 | |
| | 2. | $30,000 | 425-0420-000342 | |
| | 3. | $30,000 | 427-0427-000342 | |
| | 4. | $110,000 | 011-0840-000342 | |
| | 5. | $200,000 | 302-2623-069357 | |
| | 6. | $300,000 | 301-2562-064357 | |
| | 7. | $300,000 | 365-2562-064357 | |
| OBPI | Total | $1,000,000 | | |

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Gus Lopez, Ext: 6641

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| GL MA FB | TH PDW | JMG |

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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: June 3, 2009

SUBJECT: **REQUEST FOR APPROVAL TO AWARD CONTRACTS PURSUANT TO INVITATION TO BID (ITB) NO. 30-08/09, FOR CONCRETE CURBING/SIDEWALK CONSTRUCTION AND THE PURCHASE OF ASPHALTIC CONCRETE RELATED MATERIALS, AND THE STRIPING OF CITY STREETS AND PARKING LOTS; AWARDS SHALL BE BASED ON FIRMS' UNIT PRICES AS FOLLOWS: GROUP I: FOR CONCRETE CURBING/SIDEWALK CONSTRUCTION, F&L CONSTRUCTION, INC. AS PRIMARY VENDOR AND GC WORKS AS SECONDARY VENDOR; GROUP II: FOR MILLING AND RESURFACING OF ASPHALT CONCRETE AND THE PURCHASE OF ASPHALTIC RELATED MATERIALS, H& R PAVING, INC. AS PRIMARY VENDOR AND METRO EXPRESS AS SECONDARY VENDOR; GROUP III: FOR ASPHALTIC CONCRETE/RELATED MATERIAL TO BE PICKED-UP OR DELIVERED TO THE CITY, H&R PAVING, INC. AS PRIMARY VENDOR AND COMMUNITY ASPHALT AS SECONDARY VENDOR; AND GROUP IV: FOR STRIPING OF CITY STREETS AND PARKING LOTS, HIGH TECH STRIPING, INC. AS PRIMARY VENDOR AND GC WORKS AS SECONDARY VENDOR IN THE ESTIMATED TOTAL ANNUAL AMOUNT OF $1,000,000.**

## ADMINISTRATION RECOMMENDATION

Approve the Award of contracts.

## FUNDING

Funds in the amount of $1,000,000 are available from budgeted accounts of Public Works Department as follows:

| | |
|---|---|
| $30,000 | Public Works Water Account No. 425-0410-000342 |
| $30,000 | Public Works Sewer Account No. 425-0420-000342 |
| $30,000 | Public Works Storm Water Account No. 427-0427-000342 |
| $110,000 | Public Works Streets Account No. 011-0840-000342 |
| $200,000 | Public Works Capital Account No. Street Pavement Restoration 3022623069357 |
| $300,000 | Public Works Capital Account No. Alleyway Restoration 3012562064357 |
| $300,000 | Public Works Capital Account No. Alleyway Restoration 3652562064357 |
| **$1,000,000** | **Total (Estimated Annual Amount)** |

**ANALYSIS**

The purpose of this bid is to establish a contract, by means of sealed bids, for concrete curbing/ sidewalk construction and the purchase of asphaltic concrete related materials and the striping of City streets and parking lots, as specified herein. This contract shall remain in effect for two (2) years from date of contract execution by the Mayor and City Clerk, and by mutual agreement by the City for two (2), one (1) year renewal options.

The work specified in this bid consists of furnishing all labor, machinery, tools, means of transportation, supplies, equipment, materials, services necessary for Concrete/Curbing and Sidewalk Construction and the Purchase of Asphaltic Concrete/Related Materials and the Striping of City Streets and Parking Lots, in accordance with the bid documents.

The applicable portions of the Dade County Public Works Manual and the Standard Specifications for Road and Bridge Construction of the Florida Department of Transportation, Edition of 1991, and its supplements, as amended, are a part of this Contract and shall be further supplemented and amended by the General Specifications and Special Provisions contained herein.

As Task Orders are identified, substantial completion times will be mutually agreed upon between the successful contractor and the City. All pricing shall be based on firm unit prices as submitted by each Contractor as part of their bid price.

The Minimum Specifications are broken down in four (4) separate groups from which bidders could bid on a single, any combination, or all groups of work as follows:

- Group I Concrete/Curbing Sidewalk Construction.
- Group II Milling and Resurfacing of Asphalt Concrete and the Purchase of Asphalt Related Materials.
- Group III Asphaltic Concrete/Related Material to be picked-up or delivered to the City.
- Group IV Striping – City Streets and Parking Lots.

**BID PROCESS**

On March 31, 2009, the ITB was issued with an opening date of April 30, 2009. A Pre-bid conference to provide information to prospective bidders was held on April 15, 2009. BidNet sent notices to 25 prospective bidders; BidSync sent notices to 1154 prospective bidders from which 29 viewed the documentation; the result was the receipt of ten (10) bids from the following vendors:

| | |
|---|---|
| 1. Horizon Contractors | 2. F&L Construction Inc. |
| 3. CEB Construction | 4. High Tech Striping Inc. |
| 5. Quality Constructions | 6. GC Works |
| 7. Metro Express | 8. Budget Construction |
| 9. Community Asphalt | 10. H&R Paving Inc. |

The following tables provide bid results for each of the four (4) group categories showing the lowest and best bidders at the top of each group category:

**GROUP 1 - CONCRETE CURBING/SIDEWALK CONSTRUCTION**

| | |
|---|---|
| **1. F & L CONSTRUCTION INC.** | **322,800.00** |
| **2. GC WORKS** | **462,915.80** |
| QUALITY CONSTRUCTION | 563,200.00 |
| CEB CONSTRUCTION | 588,670.00 |
| BUDGET CONSTRUCTION | 679,100.00 |
| HORIZON CONTRACTORS | 782,750.00 |
| METRO EXPRESS | 815,800.00 |
| COMMUNITY ASPHALT | 1,127,850.00 |

**GROUP 2 - MILLING AND RESURFACING OF ASPHALT CONCRETE**

| | |
|---|---|
| **1. H & R PAVING INC.** | **2,566,000.00** |
| **2. METRO EXPRESS** | **3,276,200.00** |
| GC WORKS | 3,362,767.00 |
| BUDGET CONSTRUCTION | 4,348,000.00 |
| COMMUNITY ASPHALT | 4,783,000.00 |
| F & L CONSTRUCTION INC. | 5,143,650.00 |
| HORIZON CONTRACTORS | 6,506,500.00 |

**GROUP 3 - ASPHALTIC CONCRETE/RELATED MATERIAL TO BE PICKED-UP OR DELIVERED TO THE CITY**

| | |
|---|---|
| **1. H & R PAVING INC.** | **450,000.00** |
| **2. COMMUNITY ASPHALT** | **565,000.00** |
| HORIZON CONTRACTORS | 613,000.00 |
| METRO EXPRESS | 740,000.00 |
| GC WORKS | 768,400.00 |

**GROUP 4 - STRIPING – CITY ROADS PARKING LOTS**

| | |
|---|---|
| **1. HIGH TECH STRIPING INC.** | **110,505.50** |
| **2. GC WORKS** | **161,395.19** |
| METRO EXPRESS | 187,852.00 |
| HORIZON CONTRACTORS | 237,153.75 |
| COMMUNITY ASPHALT | 257,615.20 |

- F & L Construction Inc. has been in business for thirty-five (35) years under the present business name. The previous contract for concrete Curbing/Sidewalk Construction, Repair and Replacement was awarded to F & L Construction Inc. in the estimated amount of $356,300 Pursuant to Bid No. 23-04/05.

- GC Works has been in business for eight (8) years under the present business name.

- H & R Paving, Inc. has been in business for thirty-three (33) years under the present business name. The previous contract for Asphaltic Concrete/Related Materials and the Striping was awarded to H & R Paving, Inc. in the estimated amount of $1,709,000 Pursuant to Bid No. 23-04/05.

- Metro Express has been in business for thirteen (13) years under the present business name.

- Community Asphalt has been in business for twenty-eight (28) years under the present business name.

- High Tech Striping, Inc. has been in business for twelve (12) years under the present business name. The previous contract for Striping City Roads was awarded to High Tech Striping, Inc in the estimated amount of $115,596 Pursuant to Bid No. 23-04/05.

This Bid provides the scope of work for services under the above mentioned group categories for projects that will be performed on an "as-needed basis" for Public Works. Performance and Payment bonds for the contracted amounts under each group will be based on the budgetary amounts available for each category. Funding in the amount of $800,000 is available from Capital Projects and $200,000 from Public Works Operating Department in Fiscal Year 2008/09. Any future Fiscal Year funding will be determined during the annual budget development process.

## CONCLUSION

Based on the aforementioned, the Administration recommends that the Mayor and City Commission Award Contracts pursuant to ITB No. 30-08-09 For concrete curbing/sidewalk construction and the purchase of asphaltic concrete related materials, and the striping of city streets and parking lots; awards shall be based on firms' unit prices as follows: Group I: for Concrete Curbing/Sidewalk Construction, F & L Construction, Inc. as primary vendor and GC Works as secondary vendor; Group II: for Milling and Resurfacing of Asphalt Concrete and the Purchase of Asphalt Related Materials, H & R Paving, Inc. as primary vendor and Metro Express as secondary vendor; Group III: for Asphaltic Concrete/Related Material to be picked-up or delivered to the City, H & R Paving, Inc. as primary vendor and Community Asphalt as secondary vendor; and Group IV: for Striping of City Streets and Parking Lots, High Tech Striping, Inc. as primary vendor and GC Works as secondary vendor in the estimated total annual amount of $1,000,000.

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**Condensed Title:**

Request for Approval to Reject All Bids Received 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; and Re-Issuance of a New Invitation to Bid.

**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 rejection of bids?

**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.

Upon further consideration, due to procurement and potential scope of work issues, the Administration recommends rejection of all bids and the re-issuance of a new Invitation to Bid.

**APPROVE THE REJECTION OF BIDS.**

**Advisory Board Recommendation:**

N/A

**Financial Information:**

| Source of Funds: | | Amount | Account | Approved |
|---|---|---|---|---|
| | 1 | | | |
| | 2 | | | |
| | 3 | | | |
| OBPI | Total | | | |

**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

**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: June 3, 2009

SUBJECT: **REQUEST FOR APPROVAL TO REJECT ALL BIDS RECEIVED 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; AND THE RE-ISSUANCE OF A NEW INVITATION TO BID.**

**ADMINISTRATION RECOMMENDATION**

Upon further consideration, due to procurement and potential scope of work issues, the Administration recommends rejection of all bids and the re-issuance of a new Invitation to Bid.

**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.

## APRIL 22, 2008 CITY COMMISSION MEETING

On April 22, 2009, the City Manager's recommendation for the award of the construction contract to Central Florida Equipment was presented to the City Commission. The City

Commission deferred the item from the April 22, 2009 commission meeting to May 13, 2009. The item was subsequently withdrawn from the May 13, 2009 commission meeting.

**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**

Upon further consideration, the City Administration recommends the rejection of all bids, and the re-issuance of a new Invitation to Bid for the following reasons:

Following the bid opening and evaluation, the City Administration recommended the award of a contract to Central Florida Equipment. However, during the April 22, 2009, City Commission meeting, two other bidders, Ric-Man International, and MCM, presented arguments to the City Commission in favor of awarding the contract to their firms. Also, residents and the City Commission raised questions regarding the current project scope of work, including stormwater and pavement improvements. In addition, many of the bids received by the City were significantly lower than the available construction budget which provides the City an opportunity to include scope of work that may be necessary to address the concerns raised by residents and the City Commission.

ATTACHMENTS
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"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

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R5

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

SECOND READING

FROM: Jose Smith, City Attorney

DATE: June 3, 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 III, DIVISION 27 ENTITLED "BEACH PRESERVATION COMMITTEE" BY CHANGING THE COMMITTEE'S NAME TO THE "WATERFRONT PROTECTION COMMITTEE" AND EXPANDING UPON THE COMMITTEE'S ADVISORY POWERS SO AS TO INCLUDE BAYWALK, BEACH WALK AND CUTWALK REVIEW/RECOMMENDATION WITHIN ITS JURISDICTION; 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 Miami Beach City Code provisions governing the "Beach Preservation Committee." The proposed amendments will expand upon the advisory power of this Committee so as to include the power to review/recommend matters concerning not only beaches and boardwalks, but also baywalks, beachwalks and the City cutwalk along South Pointe Park, running parallel to Government Cut; it is accordingly further proposed that the Committee's name be changed from "Beachwalk Preservation Committee" to "Waterfront Preservation Committee."

The attached ordinance, having been approved on first reading on May 13, 2009, is thus ready for City Commission consideration on second reading.

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**Agenda Item** R5A
**Date** 6-3-09

**SECOND 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 III, DIVISION 27 ENTITLED "BEACH PRESERVATION COMMITTEE" BY CHANGING THE COMMITTEE'S NAME TO THE "WATERFRONT PROTECTION COMMITTEE" AND EXPANDING UPON THE COMMITTEE'S ADVISORY POWERS SO AS TO INCLUDE BAYWALK, BEACHWALK AND CUTWALK REVIEW/RECOMMENDATION WITHIN ITS JURISDICTION; 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 III, Division 27 entitled "Beach Preservation Committee", Sections 2-190.121 through and including 2-190.126, is hereby amended to read as follows:

**DIVISION 27. ~~BEACH PRESERVATION~~ WATERFRONT PRESERVATION COMMITTEE**

Sec. 2-190.121. Established.
There is hereby established the ~~beach preservation~~ Waterfront Preservation ~~c~~Committee whose purposes, powers and duties, composition, membership qualifications, and general governing regulations are as set forth in this division.

Sec. 2-190.122. Purpose.
The ~~beach preservation~~ Waterfront Preservation ~~c~~Committee aids the ~~c~~Commission in its desire to maintain, preserve, and protect the beaches, ~~and~~ City boardwalks, beachwalks, cutwalk (along South Pointe Park, running parallel to Government Cut) and baywalks ~~of~~ in the ~~c~~City and to promote and maintain a clean, safe, and ecologically sound environment to be enjoyed by its citizens and visitors.

Sec. 2-190.123. Powers and duties.
The ~~beach preservation~~ Waterfront Preservation ~~c~~Committee is vested with the power and authority to make recommendations to the ~~c~~City ~~c~~Commission upon the following matters:
(1) The investigation, development, and carrying out of plans for the preservation and renourishment of the beaches in the city, including, but not limited to, erosion control.
(2) To foster and maintain a clean, safe, and litter-free beach environment by exploring the availability of enforcement techniques, programs, or new legislation to accomplish these goals.
(3) The encouragement of a desire in the citizenry of the city to maintain and preserve the city's beaches.
(4) The recommendation of plans to the city commission, as well as to other local, state, and federal governmental agencies, for the preservation and renourishment of the city's beaches.
The Committee's power of review and recommendation set forth hereinabove shall apply as well to such matters concerning City boardwalks, beachwalks, cutwalk (along South Pointe Park, running parallel to Government Cut) and baywalks in the City.

Sec. 2-190.124. Composition.
(a) The committee shall consist of seven voting members, one appointed by the mayor and each commissioner, and three non-voting ex officio members to be comprised as follows:

(1) Seven citizens having an interest in the preservation of the city's beaches and the purposes of the committee.
(2) The city's environmental specialist as an ex officio member.
(3) An individual appointed by the Miami Dade County Department of Environmental Resources Management (DERM), natural resources division, who holds the position of special projects administrator II as an ex officio member.
(4) A member of the city's beach patrol, who shall receive the highest number of votes in an election by persons holding the positions of lifeguard I, lifeguard II, and lieutenant, as an ex officio member.
(b) The chairperson of the committee or his/her designee shall serve as a nonvoting ex officio member of the recreational centers and park facilities board (to be renamed the parks and recreational facilities board).

Sec. 2-190.125. Knowledge and experience.
See section 2-190.124.

Sec. 2-190.126. Supporting department.
The supporting department of the ~~c~~Committee is recreation, culture and parks.

**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

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 5/15/09
Date

_____
Robert Parcher
City Clerk
**Requested by Commissioner Saul Gross**

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MIAMIBEACH

# CITY OF MIAMI BEACH
# NOTICE OF PUBLIC HEARINGS

**NOTICE IS HEREBY** given that a second reading and public hearing will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, June 3, 2009 at 10:20 A.M.**, to consider An Ordinance Amending Miami Beach City Code Chapter 2, Article III, Division 27 Entitled "Beach Preservation Committee" By Changing The Committee's Name To The "Waterfront Protection Committee" And Expanding Upon The Committee's Advisory Powers So As To Include Baywalk Review/Recommendation Within Its Jurisdiction.

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

**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 this ordinance 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 #541**

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**

**FIRST READING**

**FROM:** **Jose Smith**
**City Attorney**

**DATE:** **June 3, 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 III, SECTION 2-22 THEREOF REGARDING GENERAL REQUIREMENTS RELATED TO MEMBERSHIP ON CITY OF MIAMI BEACH'S AGENCIES, BOARDS AND COMMITTEES, BY ADDING THERETO SUBSECTION (19) TO PROVIDE THAT AT-LARGE APPOINTMENT OF BOARD MEMBERS TO FILL CATEGORIES SHALL BE BY SEPARATE VOTE FOR EACH CATEGORY; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

---

Pursuant to the request of Commissioner Victor Diaz, and as recommended by the Land Use and Development Committee, the attached Ordinance reflects proposed amendments to Miami Beach City Code section 2-22, "General Requirements" concerning City of Miami Beach boards, committees and agencies. The proposed amendment will establish that City Commission at-large appointments of members filling particular categories shall be based upon separate vote for each particular category.

The attached ordinance is ready for City Commission review.

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**Agenda Item** R5B
**Date** 6-3-09

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 III, SECTION 2-22 THEREOF REGARDING GENERAL REQUIREMENTS RELATED TO MEMBERSHIP ON CITY OF MIAMI BEACH'S AGENCIES, BOARDS AND COMMITTEES, BY ADDING THERETO SUBSECTION (19) TO PROVIDE THAT AT-LARGE APPOINTMENT OF BOARD MEMBERS TO FILL CATEGORIES SHALL BE BY SEPARATE VOTE FOR EACH CATEGORY; 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 III, Section 2-22 entitled "General requirements" is hereby amended by adding thereto the following subsection (19) to read as follows:

**Sec. 2-22. General requirements.**

* * *

(19) **At-Large appointment of agency, board and committee members to fill categories: When an appointment involves the selection of individual member(s) to fill any specified category or categories, the City Commission vote(s) thereon shall be limited to the filling of each particular membership category by separate vote.**

**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

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 5/15/09
Date

Requested by Commissioner Victor Diaz

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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

FIRST READING

FROM: Jose Smith, City Attorney

DATE: June 3, 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 III, BY ADDING SECTION 2-27 ENTITLED: "COMMISSION COMMITTEE DRAFT MINUTES -- CITY COMMISSION APPROVAL," RECITING APPLICABLE PARLIAMENTARY PROCEDURE CONCERNING CITY COMMISSION REVIEW AND ACCEPTANCE OF DRAFT MINUTES FROM COMMISSION COMMITTEE MEETINGS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

---

At the May 13, 2009 City Commission meeting, I was directed to draft legislation concerning the procedure applicable to City Commission acceptance of Commission Committee minutes. The attached ordinance codifies the related procedure and effect of this type of Commission action.

The ordinance will formally acknowledge that, consistent with Robert's Rules of Order (adopted by Resolution No. 91-20386), City Commission acceptance of minutes from Commission Committees will serve only to allow said minutes to exist as the official record of actions taken at Committee level. However, in those limited instances in which the minutes reflect the Committee's request for City Administrative action on a ministerial matter not otherwise requiring a resolution, ordinance or public hearing, the requested action shall be effectively approved upon the Commission's minute approval.

Since this latter procedure deviates from Robert's Rules, the proposed ordinance has been drafted in recognition of the City's right (per Resolution No. 91-20386) to expand upon Robert's Rules "...where otherwise specifically provided for within the ...Code". Codifying these parliamentary rules will further make clear the subject policy for public review.

The attached ordinance is thus ready for City Commission review.

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Agenda Item RSC
Date 6-3-09

**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 III, BY ADDING SECTION 2-27 ENTITLED: "COMMISSION COMMITTEE DRAFT MINUTES -- CITY COMMISSION APPROVAL," RECITING APPLICABLE PARLIAMENTARY PROCEDURE CONCERNING CITY COMMISSION REVIEW AND ACCEPTANCE OF DRAFT MINUTES FROM COMMISSION COMMITTEE MEETINGS; 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:**

**WHEREAS**, in City of Miami Beach Resolution No. 91-20386, the City formally adopted Robert's Rules of Order as the general parliamentary law applicable to meetings of the Miami Beach City Commission, except where otherwise specifically provided for within the City Charter, Related Special Acts and Code; and

**WHEREAS**, the following parliamentary procedure is thus hereby adopted for inclusion within the Miami Beach City Code as Section 2-27 thereof, reflecting City parliamentary procedure with regard to City Commission consideration and acceptance of City Commission Committee draft minutes.

**SECTION 1.** That Miami Beach City Code Chapter 2, Article III, is hereby amended by creation of the following City Code Section 2-27 entitled: "Commission Committee Draft Minutes-City Commission Approval" to read as follows:

Section 2-27. Commission Committee Draft Minutes-City Commission Approval.

(a) *Procedure.* Draft minutes from meetings of each City Commission Committee shall be placed on the City Commission agenda following each such Committee meeting for the purpose of City Commission review and approval. The draft minutes are subject to correction, amendment, and approval by the City Commission, with any corrections or amendments to be reflected in those minutes. Once the draft minutes from the Commission Committee meeting have been approved by the City Commission, the "draft" notation shall be removed and the minutes shall be considered final.

(b) *Effect.* In general, approval of the minutes do not constitute the City Commission's substantive approval of actions taken at said Commission Committees, but shall serve only to allow the minutes to assume their essential status as the official record of the proceedings of the Commission Committee. However, those portions of minutes addressing a Commission Committee's request for City Administration action, which are ministerial and would not require a City Resolution or Ordinance, or otherwise invoke public hearing thereon, may be self-effectuating upon the City Commission's approval of said minutes. Such requested City administrative action shall be clearly identified within the particular Committee minutes. Additionally, each City Commission agenda shall contain language informing the public of the potential binding effect of specifically-noted Commission Committee action.

**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 5/26/09 DATE

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RESOLUTION NO. 91-20386

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA ADOPTING ROBERT'S RULES OF ORDER NEWLY REVISED (1990 Ed.) AS THE GENERAL PARLIAMENTARY LAW APPLICABLE TO MEETINGS OF THE MIAMI BEACH CITY COMMISSION.**

**WHEREAS,** the City of Miami Beach is bound to follow rules pertaining to parliamentary procedure as contained within its Charter, Related Laws and Code; and

**WHEREAS,** in those instances when the City's Charter, Related Laws and Code do not expressly dictate parliamentary procedure, it is appropriate to apply general parliamentary procedure as set forth within Robert's Rules of Order Newly Revised; and

**WHEREAS,** Robert's Rules of Order Newly Revised (1990 Ed.) (and all subsequent amendments thereto) is the recognized authority for general parliamentary law applicable to meetings of elected and appointed bodies such as the Miami Beach City Commission.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA** that Robert's Rules of Order Newly Revised (1990 Ed.) (and all subsequent amendments thereto) is hereby adopted as the general parliamentary law applicable to meetings of the Miami Beach City Commission and said Rules shall control in those instances with the City's Charter, Related Laws and Code do not expressly dictate parlimentary procedure.

**PASSED** and **ADOPTED** this 23rd day of October, 1991.

VICE-MAYOR

ATTEST:

# R O B E R T ' S  R U L E S  O F  O R D E R

ALR

OFFICE OF THE CITY ATTORNEY

# City of Miami Beach

F L O R I D A

LAURENCE FEINGOLD
CITY ATTORNEY

P.O. BOX O
MIAMI BEACH, FLORIDA 33119-2032
TELEPHONE (305) 673-7470
TELECOPY (305) 673-7002

**COMMISSION MEMORANDUM** No. 443-91

**DATE: OCTOBER 23, 1991**

**TO:** Mayor Alex Daoud and
Members of the City Commission

**FROM:** Laurence Feingold
City Attorney

**SUBJECT: RESOLUTION ADOPTING ROBERT'S RULES OF ORDER REVISED**

In accordance with prior actions of the Miami Beach City Commission applying rules of parliamentary procedure as set forth within Robert's Rules of Order Newly Revised in those instances when the City's Charter, Related Laws and Code do not expressly dictate such procedure, the attached resolution has been drafted as a housekeeping matter for the purpose of formally adopting Robert's Rules of Order Newly Revised to meetings of the Miami Beach City Commission. The proposed resolution is ready for City Commission review and carries with it the City Attorney's recommendation for passage thereof.

JKO/cnm
res.ord:s:\robrules.cm

**Condensed Title:**

An Ordinance Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Amending Section 82-385(L) Of The City's Sidewalk Café Ordinance, As Codified In Chapter 82, Article IV, Division 5, Sections 82-366 Through 82-385 Of The City Code; Said Amendment Allowing Sidewalk Café Operators/Permittees For Sidewalk Cafes On Lincoln Road Mall To Maintain Tables, Chairs, And Closed-Up Umbrellas Within The Permit Area When The Café Is Not In Operation; And Further Amending Section 82-387 Of The City's Sidewalk Café Ordinance Prohibiting Sidewalk Café Tables From Being Placed In A Pre-Defined Area On Lincoln Road Between Lenox Avenue And Alton Road; Providing For Repealer, Codification, Severability, And An Effective Date

**Key Intended Outcome Supported:**

Make City More Business Friendly. Increase Resident Satisfaction with Level of Code Enforcement.

**Supporting Data (Surveys, Environmental Scan, etc.):** 63% of businesses were either very satisfied or satisfied with the fairness and consistency of enforcement of zoning or ordinances by the City of Miami Beach government for businesses.

**Issue:**

Shall the Mayor and City Commission approve the Ordinance amendment?

**Item Summary/Recommendation:**

**First Reading**

SIDEWALK CAFÉ TABLES AND CHAIRS IN PERMIT AREAS

On February 20, 2009 the City received a letter from Michael Larkin on behalf of Da Leo Trattoria (Da Leo) Restaurant requesting for the Sidewalk Café Ordinance to be amended to allow sidewalk café operators/permittees for sidewalk cafes on Lincoln Road Mall to maintain tables, chairs, and closed up umbrellas within the permit area when the café is not in operation (see Attachment 1, Da Leo Letter 2-20-2009).

Pursuant to a request made by Mayor Bower at the May 13, 2009 Commission Meeting, the proposed amendment was deferred to the next Neighborhoods and Community Affairs Committee. The proposed amendment was discussed at the May 18, 2009 Neighborhoods and Community Affairs Committee meeting. The committee voted in favor of the proposed amendment, as long as the tables, chairs, and umbrellas are placed in an orderly manner. Also, any and all other sidewalk café furniture, including but not limited to rolling service stations, service carts, and bussing stations, may only be in the permit area during hours of operation.

PROHIBITED "NO TABLE" ZONE ALONG THE 1100 BLOCK OF LINCOLN RD

The City has also received a request to amend the Sidewalk Café Ordinance to prohibit sidewalk café tables and chairs from being placed in a pre-defined area on Lincoln Road between Lenox Avenue and Alton Road, as required by the City Commission at their February 14, 2007 City Commission Meeting (see Attachment 2, 1111 Lincoln Road Site Map). The City Commission is in favor of this requirement, since it will maintain public space and provide direct access between the north and south sides of Lincoln Road in this area. Codifying this requirement in the Sidewalk Café Ordinance will allow the City to execute compliance and enforcement responsibilities in that power.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THE ORDINANCE ON FIRST READING.**

**Advisory Board Recommendation:**

N/A

**Financial Information:**

| Source of Funds: OBPI | | Amount | Account |
|---|---|---|---|
| | 1 | | |
| | 2 | | |
| | Total | | |

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Fernando Vazquez, City Engineer ext 6399

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| FHB | TH | JMG |

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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: June 3, 2009 **FIRST READING**

SUBJECT: **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SECTION 82-385(L) OF THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS CODIFIED IN CHAPTER 82, ARTICLE IV, DIVISION 5, SECTIONS 82-366 THROUGH 82-385 OF THE CITY CODE; SAID AMENDMENT ALLOWING SIDEWALK CAFÉ OPERATORS/PERMITTEES FOR SIDEWALK CAFES ON LINCOLN ROAD MALL TO MAINTAIN TABLES, CHAIRS, AND CLOSED-UP UMBRELLAS WITHIN THE PERMIT AREA WHEN THE CAFÉ IS NOT IN OPERATION; AND FURTHER AMENDING SECTION 82-387 OF THE CITY'S SIDEWALK CAFÉ ORDINANCE PROHIBITING SIDEWALK CAFÉ TABLES FROM BEING PLACED IN A PRE-DEFINED AREA ON LINCOLN ROAD BETWEEN LENOX AVENUE AND ALTON ROAD; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

## ADMINISTRATION RECOMMENDATION

Approve the Ordinance.

## FUNDING

Non Applicable

## BACKGROUND

The City's new Sidewalk Café Ordinance was approved on first reading on February 13, 2008. On March 12, 2008, the Sidewalk Café Ordinance was approved on Second Reading with the following amendments:

1. Amend the proposed 14 feet-wide clear path to 12 feet-wide path (existing) for emergency and maintenance vehicles (see Sec. 82-385(e)).

2. Clarify in the Ordinance that at least the first floor must be a café or restaurant in order to take advantage of the sidewalk area (See Sec. 82-384(a)).

On February 20, 2009 the City received a letter from Michael Larkin on behalf of Da Leo Trattoria (Da Leo) Restaurant requesting for the Sidewalk Café Ordinance to be amended to allow sidewalk café operators/permittees for sidewalk cafes on Lincoln Road Mall to maintain tables, chairs, and closed up umbrellas within the permit area when the café is not in operation (see Attachment 1, Da Leo Letter 2-20-2009).

## ANALYSIS

### SIDEWALK CAFÉ TABLES AND CHAIRS IN PERMIT AREAS

Section 82-384(r) of the Sidewalk Café Ordinance requires that restaurants be open for business at 11:00 a.m. in order for the tables and chairs associated with their sidewalk cafes to be kept outside overnight. Da Leo states that it is unable to comply with this requirement because the interior space of the restaurant is too small to accommodate all of its tables, chairs and umbrella stands. While most restaurants on Lincoln Road serve lunch on a daily basis, Da Leo is unable to, since the bulk of the items on Da Leo's menu require a lengthy preparation time and therefore is not capable of offering the degree of quality food their clients demand. More importantly, the preparation time required for their dinner menu requires that their kitchen be dedicated to that function when it might otherwise be used to prepare a lunch menu. The City has also noted that other sidewalk cafes, such as La Lupa di Roma, are experiencing similar constraints.

Pursuant to a request made by Mayor Bower at the May 13, 2009 Commission Meeting, the proposed amendment was deferred to the next Neighborhoods and Community Affairs Committee. The proposed amendment was discussed at the May 18, 2009 Neighborhoods and Community Affairs Committee meeting. The committee voted in favor of the proposed amendment, as long as the tables, chairs and umbrellas are placed in an orderly manner. Also, any and all other sidewalk café furniture, including but not limited to rolling service stations, service carts, and bussing stations, may only be in the permit area during hours of operation.

### PROHIBITED "NO TABLE" ZONE ALONG THE 1100 BLOCK OF LINCOLN RD

The City has also received a request to amend the Sidewalk Café Ordinance to prohibit sidewalk café tables and chairs from being placed in a pre-defined area on Lincoln Road between Lenox Avenue and Alton Road, as required by the City Commission at their February 14, 2007 City Commission Meeting (see Attachment 2, 1111 Lincoln Road Site Map). The City Commission is in favor of this requirement, since it will maintain public space and provide direct access between the north and south sides of Lincoln Road in this area. Codifying this requirement in the Sidewalk Café Ordinance will allow the City to execute compliance and enforcement responsibilities in that power.

## CONCLUSION

The Administration recommends approval of the Ordinance on First Reading.

Attachments

1. Da Leo Letter 2-20-2009
2. 1111 Lincoln Road Site Map

JMG\RCM\FHB\FAV\DW

T:\AGENDA\2009\June 3\Regular\Sidewalk Cafe 1ST Reading MEMO.doc

Attachment 1

Direct: 305-377-6231
E-Mail: MLarkin@BRZoninglaw.com

**VIA HAND DELIVERY**

February 20, 2009

Gary Held, Esq.
First Assistant City Attorney
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, Florida 33139

Re: Proposal Concerning Amendment to Sidewalk Café Regulations

Dear Gary:

This law firm represents Da Leo Trattoria ("Da Leo") regarding various sidewalk café, permitting and code issues in the City of Miami Beach (the "City"). As you know, Da Leo has been operating at 819 Lincoln Road for approximately 15 years. It has been operating with a sidewalk café permit since the adoption of the original sidewalk café regulations. In fact, Da Leo's was the chief advocate for the adoption of the City's sidewalk café regulations. This is particularly ironic since these regulations could now harm this pioneer of fine dining on Lincoln Road, an entrepreneurial establishment that has survived bad times in the past and which is now suffering during this current economic downturn.

On December 3, 2008, Da Leo was cited by the City's Code Compliance Department for not taking tables, chairs and umbrella stands inside at the close of business, as required by Section 82-384(r), Code of the City of Miami Beach (the "Code"). Section 82-384(r) requires that restaurants be open for business at 11:00 a.m. in order for the tables and chairs associated with their sidewalk cafes to be kept outside overnight. Our review of the legislative history of this language revealed that this particular requirement was added to Ordinance 2007-3590, the ordinance that amended the sidewalk café regulations in 2007, at the conclusion of second reading with little discussion after the public hearing was closed. See Attached Ordinance.

Although Da Leo acknowledges that the requirement exists, it is unable to comply with the regulation because the interior space of the restaurant is too small to accommodate all of its tables, chairs and umbrella stands. Da Leo does take in all of its chairs, but is unable to accommodate the tables and umbrella stands in its very small indoor area. While most restaurants on Lincoln Road serve lunch on a daily basis, Da Leo does not find it can work with their operation plan, although it does serve brunch on Sundays. Since the bulk of the items on Da Leo's menu require a lengthy preparation time, it is not capable of opening for lunch and offering the degree of quality food their clients demand. More importantly, the preparation time required for their dinner menu requires that their kitchen be dedicated to that function when it might otherwise be used to prepare a lunch menu. Da Leo has been operating in this fashion since its opening 15 years ago. Additionally, La Lupa di Roma on Lincoln is facing a similar constraint. We believe that these are the two affected restaurants on Lincoln Road.

Based upon our discussions with City staff, we understand that it may have been the intent of the Commission to use this requirement to clear out space during the day to allow Public Works the ability to have access to and clean these sidewalk café permit areas. However, since only two restaurants do not open for lunch this policy goal has not been realized. We do not believe that it was the intent of the Commission to force restaurants without enough interior space to hire storage companies to pick up and redeliver their tables, chairs and umbrellas stands each day.

On December 17, 2008, we met with Assistant City Manager, Tim Hemstreet; Zoning Director, Richard Lorber; City Engineer, Fernando Vasquez; Code Compliance Director, Greg Tindle; and Code Compliance Administrator, Jose Alberto, to discuss a possible solution. Subsequently, we met with Mayor Matti Bower and Commissioner Ed Tobin. The Mayor and Commissioner Tobin expressed support for a means of grandfathering existing restaurants that have been and continue to remain closed for lunch. In the alternative, an amendment to the sidewalk café regulations may be necessary.

There is no question that a municipality has the right to exercise its police power as to zoning in order to promote the general welfare. However, the courts have held that it would be manifestly unjust to deprive the owner of property of a legal use when the ordinance became effective. See *City of Aurora v. Burns*, 149 N.E. 784 (Ill. 1925) This rule was further addressed in *Daoud v. City of Miami Beach,* 7 So.2d 585 (Fla. 1942), where the Florida Supreme Court held that a

lawfully established nonconforming use could continue to exist when a local government had language in its code permitting the retention of nonconforming uses. In the *Daoud* case, a City of Miami Beach auction hall was allowed to continue to operate following the adoption of an ordinance prohibiting auction halls, even though there was no clause in the prohibiting ordinance grandfathering existing uses. See also *Nicholson v. Wyatt,* 77 So.2d 632 (Fla. 1955). Similarly, in *Richbon, Inc. v. Miami-Dade County,* 791 So.2d 505 (Fla. 3d DCA 2001), the Third District Court of Appeal held that a nightclub that had properly obtained an adult entertainment license prior to the adoption of an ordinance prohibiting adult entertainment was "grandfathered" as to the adult entertainment use.

Similarly to the facts described in the caselaw, Da Leo held a valid occupational license and certificate of use well before the sidewalk café regulations were amended to require the storage of furniture indoors. In addition, they relied upon the validity of their permit when investing in outdoor street furniture. Moreover, Da Leo obtained a variance from the City's Board of Adjustment to serve alcoholic beverages because it does not have the required amount of seats based on limited interior space.

Furthermore, Florida courts have held that it is inequitable for a local government to apply a newly adopted regulation to a previously approved property when its effect would be to strip away existing entitlements. See *Hernando County v. Leisure Hills, Inc.*, 689 So.2d 1103 (Fla. 5th DCA 1997) In *Hernando County*, a developer made significant financial investments on a project relying on the County's conditional plat approval for a project. However, the County subsequently rejected the developer's final plat approval by creating more stringent requirements, effectively halting the development. In the case of Da Leo, the restaurant has made significant investments to its restaurant over the last 15 years and has relied on the City's existing sidewalk café regulations in doing so. But the current regulation could have the effect of extinguishing all of their rights because they cannot open for lunch or store the sidewalk furniture as required by the ordinance. Like in *Hernando County,* the doctrine of equitable estoppel should prevent the City from stripping away Da Leo's rights to operate its business as previously approved and licensed by the City.

In addition, the doctrine of commercial impracticability could be applied in this case. Although normally used in contract law, the basic elements of the doctrine apply here. Commercial impracticability applies when performance would cause extreme and unreasonable difficulty, expense, injury, or loss. A

finding of impracticability excuses a party from performing. See *Conner Brothers Const. Co., Inc. v. U.S.*, 65 Fed. Cl. 657 (2005). By the adoption of its 2007 sidewalk café regulations, the City has made it impractical, and virtually impossible, for Da Leo to comply with the specific regulation of storing sidewalk café furniture inside. Under the doctrine of commercial impracticability, a party should be excused from complying with a contract provision, or in this case a regulation, when it is unreasonably difficult and expensive to do so. Here, it is impossible for Da Leo to store all of its its sidewalk café furniture in the very limited interior space of the restaurant.

In light of the above, we respectfully request a meeting with you to discuss the grandfathering of Da Leo and any other existing Lincoln Road restaurants that are not open for lunch, from the requirement to store sidewalk café furniture. Based on the above, we believe that Da Leo should be permitted to continue to operate in the manner which it has for the last 15 years.

Thank you for your consideration of this request. Please feel free to contact me should you have any questions or concerns.

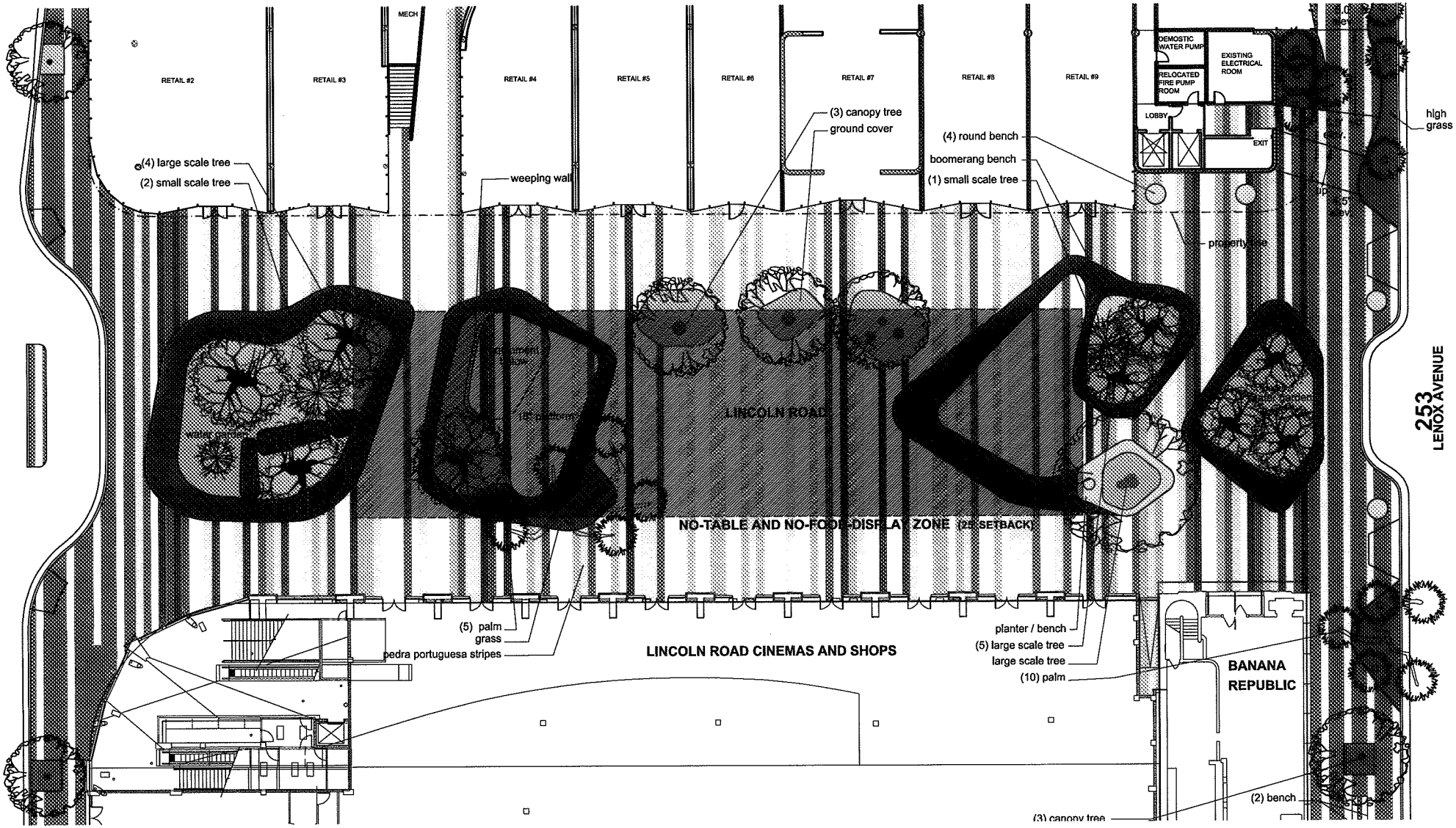
Sincerely,

Michael Larkin

MWL/mjm/bl

cc: Mayor Matti Herrera Bower
Commissioner Ed Tobin
A.C. Weinstein, Chief of Staff, Office of the Mayor
Greg Tindle, Director, Code Compliance Department
Mario Patroni, Partner, Da Leo Trattoria

ATTACHMENT 2




Attachment 2

**ORDINANCE NO. _____**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING SECTION 82-385(l) OF THE CITY'S SIDEWALK CAFÉ ORDINANCE, AS CODIFIED IN CHAPTER 82, ARTICLE IV, DIVISION 5, SECTIONS 82-366 THROUGH 82-385 OF THE CITY CODE; SAID AMENDMENT ALLOWING SIDEWALK CAFÉ OPERATORS/PERMITTEES FOR SIDEWALK CAFES ON LINCOLN ROAD MALL TO MAINTAIN TABLES, CHAIRS, AND CLOSED-UP UMBRELLAS WITHIN THE PERMIT AREA WHEN THE CAFÉ IS NOT IN OPERATION; AND CLOSED-UP UMBRELLAS WITHIN THE PERMIT AREA WHEN THE CAFÉ IS NOT IN OPERATION; ALSO CREATING AND ADDING A NEW SECTION 82-387, ENTITLED "PROHIBITED 'NO TABLE' ZONES," AND SUBSECTION (a) THEREOF, PROHIBITING SIDEWALK CAFES FROM BEING PERMITTED AND PLACED IN A PRE-DEFINED AREA ON THE 1100 BLOCK OF LINCOLN ROAD, BETWEEN LENOX AVENUE AND ALTON ROAD; PROVIDING FOR REPEALER, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

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

**SECTION 1.**

A. That Chapter 82, Article IV, Division 5, Section 82-385(l), of the Code of the City of Miami Beach, Florida, is hereby amended as follows:

**Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.**

* * * *

(l) The stacking or piling up~~,~~ of chairs shall be prohibited on the right-of-way. On Lincoln Road Mall, ~~T~~tables, chairs and closed-up umbrellas may only remain on the right-of-way (within the permit area) as long as they are placed in an orderly manner. ~~Tables and chairs may remain set up for business on sidewalk cafes on Lincoln Road Mall that are set up and open~~

~~for business before 11:00 a.m. Any sidewalk cafes not set up and open for business before 11:00 a.m. shall remove all chairs, and all other sidewalk cafe furniture, at the close of each business day and store them inside the premises. The permittee may maintain approved~~ Any and all other sidewalk cafe furniture including, without limitation, ~~such as~~ rolling service stations, service carts, and bussing stations, may only be maintained in the permit area ~~only~~ during hours of operation; provided however, that planters that cannot be readily removed may remain within the permit area subject to the provisions of subsection (s) hereof. On Lincoln Road Mall, rolling service stations, service carts, and bussing stations shall not be permitted to be placed within five (5) feet of the walls, columns, or posts of the ~~lapides~~ Lapidus structures, city planters, or in front of other storefronts and/or business establishments. Notwithstanding anything contained in this subsection (l), Tthe city manager may require a permittee to store its tables, chairs and/or umbrellas off of the right-of-way if, in his reasonable judgment and discretion, the city manager determines that the sidewalk cafe permit area and immediately adjacent public right-of-way are not being adequately maintained in accordance with this division.

* * * *

B. That a new Section 82-387 is hereby created and added, entitled "Prohibited 'No Table' Zones," and providing as follows:

**Sec. 82-387. Prohibited "No Table" Zones.**

(a) There shall be no sidewalk cafes permitted and or placed within a section of the 1100 Block of Lincoln Road Mall, between Lenox Avenue and Alton Road; said section as more specifically defined by the following legal description:

Land Description:

A portion of Lincoln Road lying between Alton Road and Lenox Avenue, as shown on "Commercial Subdivision", according to the plat thereof, as recorded in Plat Book 6, at page 5 of the public records of Miami/Dade county, Florida, being more particularly described as follows:

Commence at the southwest corner of Lot 6, Block 39 of said "Commercial Subdivision";

Thence south 89'08'55" west along the south line of Block 39 of said "Commercial Subdivision", a distance of 11.20 feet;

Thence south 00'51'05" east, a distance of 25.00 feet to the point of beginning;

Thence continue south 00'51'05" east, a distance of 50.00 feet;

Thence south 89'08'55" west along a line 25.00 feet north and parallel with the south right-of-way line of said Lincoln Road, a distance of 190.08 feet;

Thence north 00'51'05" west, a distance of 50.00 feet;

Thence north 89'08'55" east along a line 25.00 feet south and parallel with the north right-of-way line of said Lincoln Road, a distance of 190.08 feet to the point of beginning.

Said land situate, lying and being in the City of Miami Beach, Miami/Dade County, Florida; containing 9504 square feet, more or less.

**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 relettered 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:**

_____
**MAYOR**

_____
**CITY CLERK**

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 5/22/09
Date

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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:** **June 3, 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** R5E
**Date** 6-3-09



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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

# MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Jonah Wolfson, Commissioner

CC: Jose Smith, City Attorney

DATE: May 21, 2009

SUBJECT: Agenda Item

Please place on the June 3rd, 2009 Commission meeting agenda for first reading two ethics ordinances that deal specifically with Commission members and their financial relationships with City vendors. I further request that a morning time-certain be assigned for this item. This is my fourth attempt to have these proposed good government measures heard, as they were first put before the full Commission at the March 18, 2009 meeting.

If you have any questions, please contact John Heffernan at extension 6457.

JW/jh

**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

City Attorney 4/15/09 Date

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**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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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

FIRST READING

FROM: Jose Smith, City Attorney

DATE: June 3, 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.**

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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.

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**Agenda Item** R5F
**Date** 6-3-09

**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 <u>solicits for or</u> 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~~ <u>deposited</u> 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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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

FIRST READING

FROM: Jose Smith, City Attorney

DATE: June 3, 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 5 ENTITLED "CAMPAIGN FINANCE REFORM," BY ADDING THERETO SECTION 2-491 ENTITLED "PROHIBITED LOBBYING BY CAMPAIGN CONSULTANTS," PROHIBITING CAMPAIGN CONSULTANTS AND CERTAIN AFFILIATED PERSONS OR ENTITIES FROM LOBBYING CITY COMMISSION FOR 12 MONTHS SUBSEQUENT TO SWEARING IN OF SUBJECT ELECTED OFFICIAL(S), ESTABLISHING DEFINITIONS AND PROSPECTIVE APPLICATION OF THIS ORDINANCE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

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Pursuant to the request of Commissioner Deede Weithorn, the attached ordinance has been drafted for the purpose of amending the City's campaign finance laws so as to include therein a city law prohibiting campaign consultants from lobbying the City Commission.

The attached ordinance is thus ready for City Commission review.

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**Agenda Item** R5G
**Date** 6-3-09

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

# MEMORANDUM

TO: Jorge Gonzalez, City Manager
Jose Smith, City Attorney

FROM: Deede Weithorn, Commissioner DW/aks

DATE: April 28, 2009

SUBJECT: Agenda item for May 13 Commission meeting

Please draft an ordinance which prohibits any paid political consultants from lobbying the city during the term(s) of the elected official for whom they campaigned.

DW/aks

**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, DIVISION 5 ENTITLED "CAMPAIGN FINANCE REFORM," BY ADDING THERETO SECTION 2-491 ENTITLED "PROHIBITED LOBBYING BY CAMPAIGN CONSULTANTS," PROHIBITING CAMPAIGN CONSULTANTS AND CERTAIN AFFILIATED PERSONS OR ENTITIES FROM LOBBYING CITY COMMISSION FOR 12 MONTHS SUBSEQUENT TO SWEARING IN OF SUBJECT ELECTED OFFICIAL(S), ESTABLISHING DEFINITIONS AND PROSPECTIVE APPLICATION OF THIS ORDINANCE; 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," is hereby amended by adding the following City Code section 2-491 entitled "Prohibited Lobbying by Campaign Consultants" to read as follows:

Sec. 2-491. Prohibited Lobbying by Campaign Consultants.

A. Legislative Intent.

Corruption and the appearance of corruption in the form of campaign consultants exploiting their influence with City elected officials on behalf of private interests may erode public confidence in the fairness and impartiality of City governmental decisions. The City of Miami Beach has a paramount interest in preventing corruption or the appearance of corruption which could result in such erosion of public confidence. Prohibitions on campaign consultants lobbying current and former clients will protect public confidence in the electoral and governmental processes. It is the purpose and intent of the people of the City of Miami Beach in enacting this Ordinance to prohibit campaign consultants from exploiting or appearing to exploit their influence with City elected officials on behalf of private interests.

B. Prohibition.

No campaign consultant, individual who has an ownership interest of 10% or greater in the campaign consultant, or employee of the campaign consultant, shall lobby the City Commission for a period of 12 months following the swearing in of the elected official(s) for whom the campaign consultant provided within the past election cycle campaign consulting services.

C. Definitions.

(a) "Campaign consultant" means any person or entity that receives or is promised economic consideration for campaign consulting services to a candidate for elected office in the City of Miami Beach.

(b) "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.

(c) "Campaign management" means conducting, coordinating or supervising a campaign to elect a candidate.

(d) "Campaign strategy" means plans for the election of a candidate.

(e) "Candidate" means a person who has taken affirmative action to seek nomination or election to City of Miami Beach elected office.

(f) "Economic consideration" means any payments, fees, commissions, reimbursements for expenses, gifts, or anything else of value.

(g) "Past election cycle" means the immediately preceding City of Miami Beach General Election.

D. Prospective Application.

This section shall be applicable only to contracts for campaign consulting services entered into subsequent to the adoption of this Ordinance.

**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 5/6/09

Requested by Commissioner Deede Weithorn
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MIAMIBEACH

OFFICE OF THE CITY ATTORNEY
JOSE SMITH, CITY ATTORNEY

# COMMISSION MEMORANDUM

FIRST READING

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

FROM: Jose Smith, City Attorney

DATE: June 3, 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, BY ADDING SECTION 2-461 ENTITLED: "CITY COMMISSION: AUTOMATIC REMOVAL DUE TO EXCESSIVE RECUSALS," PROVIDING THAT COMMENCING DECEMBER 1, 2011, ANY MEMBER OF THE CITY COMMISSION WHO HAS NOT VOTED ON ANY COMMISSION MATTER DUE TO CONFLICT MORE THAN FOUR TIMES WITHIN A ONE YEAR PERIOD SHALL BE AUTOMATICALLY REMOVED FROM OFFICE; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

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Pursuant to the request of Commissioner Wolfson, the attached ordinance has been drafted for the purpose of providing for automatic removal of any member of the City Commission due to recusal from vote more than four times within a one year period, commencing December 1, 2011.

The attached ordinance is thus ready for City Commission review.

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**Agenda Item** R5H
**Date** 6-3-09

**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, BY ADDING SECTION 2-461 ENTITLED: "CITY COMMISSION: AUTOMATIC REMOVAL DUE TO EXCESSIVE RECUSALS," PROVIDING THAT COMMENCING DECEMBER 1, 2011, ANY MEMBER OF THE CITY COMMISSION WHO HAS NOT VOTED ON ANY COMMISSION MATTER DUE TO CONFLICT MORE THAN FOUR TIMES WITHIN A ONE YEAR PERIOD SHALL BE AUTOMATICALLY REMOVED FROM OFFICE; 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, is hereby amended by creation of the following City Code Section 2-461 entitled: "City Commission: Automatic Removal due to Excessive Recusals" to read as follows:

Section 2-461. City Commission: Automatic Removal due to Excessive Recusals.

Commencing December 1, 2011, any member of the City Commission who has not voted on any commission matter due to an actual or perceived conflict of interest more than four times within a one year period shall be automatically removed from office.

**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 5/26/09
Date

**Requested by Commissioner Jonah Wolfson.**

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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**

**FIRST READING**

**FROM:** **CITY ATTORNEY JOSE SMITH**

**DATE:** **June 3, 2009**

**SUBJECT:** **AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING SECTION 46-92, ENTITLED "THROWING LITTER IN PUBLIC PLACES; POSSESSION OF GLASS OR METAL CONTAINERS ON BEACHES UNLAWFUL; SWEEPING OR THROWING LITTER IN GUTTERS; GARBAGE CONTAINERS REQUIRED FOR TAKE-OUT RESTAURANTS; REBUTTABLE PRESUMPTIONS; CIVIL FINES FOR VIOLATIONS; SEIZURE; REMOVAL; DEFINITION OF LITTER," BY CLARIFYING THE PROHIBITIONS ON LITTER AND AMENDING THE DEFINITION OF LITTER, AMENDING THE FINES AND PENALTIES FOR A VIOLATION OF SECTION 46-92, AND AMENDING THE PROVISIONS REGARDING ENFORCEMENT BY CODE COMPLIANCE OFFICERS; BY REPEALING DIVISION 2 ENTITLED "HANDBILLS," BUT INCORPORATING PROVISIONS RELATIVE TO SPECIAL MASTER APPEALS AND ADDITIONAL MEANS OF ENFORCEMENT INTO SECTION 46-92; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

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Pursuant to the request of Commissioner Jerry Libbin, an Ordinance amending the provisions in Chapter 46 regarding litter prohibitions and definitions, enforcement, and the fines and penalties therefor, is submitted for consideration by the Mayor and City Commission for first reading.

F:\atto\TURN\COMMMEMO\Litter Ordinance.doc

**Agenda Item** R5I
**Date** 6-3-09

**ORDINANCE NO. _____**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 46 OF THE MIAMI BEACH CITY CODE, ENTITLED "ENVIRONMENT," BY AMENDING ARTICLE III, ENTITLED "LITTER," BY AMENDING SECTION 46-92, ENTITLED "THROWING LITTER IN PUBLIC PLACES; POSSESSION OF GLASS OR METAL CONTAINERS ON BEACHES UNLAWFUL; SWEEPING OR THROWING LITTER IN GUTTERS; GARBAGE CONTAINERS REQUIRED FOR TAKE-OUT RESTAURANTS; REBUTTABLE PRESUMPTIONS; CIVIL FINES FOR VIOLATIONS; SEIZURE; REMOVAL; DEFINITION OF LITTER," BY CLARIFYING THE PROHIBITIONS ON LITTER AND AMENDING THE DEFINITION OF LITTER, AMENDING THE FINES AND PENALTIES FOR A VIOLATION OF SECTION 46-92, AND AMENDING THE PROVISIONS REGARDING ENFORCEMENT BY CODE COMPLIANCE OFFICERS; BY REPEALING DIVISION 2 ENTITLED "HANDBILLS," BUT INCORPORATING PROVISIONS RELATIVE TO SPECIAL MASTER APPEALS AND ADDITIONAL MEANS OF ENFORCEMENT INTO SECTION 46-92; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Miami Beach is an internationally renowned tourist destination known for its miles of beautiful beaches, cultural and entertainment venues, and historical neighborhoods; and

**WHEREAS**, the visual and sanitary blight cause by litter dropped on the City's beaches and on other public and private areas harm the City's goals of promoting tourism and maintaining its reputation as an acclaimed resort destination; and

**WHEREAS**, it would serve substantial government interests, and be in the interests of the public health, safety, and welfare, for the Mayor and City Commission to amend the litter provisions in the City Code to strengthen and expand the definition of litter, to clarify the prohibitions on litter, to strengthen the enforcement of littering, and to provide additional penalties for littering.

**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 46-92, entitled "Throwing litter in public places; possession of glass or metal containers on beaches unlawful; sweeping or throwing litter in gutters; garbage containers required for take-out restaurants; rebuttable presumptions; civil fines for violations; seizure; removal; definition of litter," of Division 1, entitled "Generally," of Article III, entitled "Litter," of the Miami Beach City Code is hereby amended as follows:

## CHAPTER 46

## ENVIRONMENT

* * *

## ARTICLE III. Litter

## DIVISION 1. Generally

* * *

**Sec. 46-92. Prohibitions on litter ~~Throwing litter in public places~~; possession of glass or metal containers on beaches unlawful; sweeping or throwing litter in gutters; garbage containers required for take-out restaurants; rebuttable presumptions; civil fines for violations; seizure; removal; definitions; enforcement; appeals; liens. ~~of litter.~~**

(a) It shall be unlawful for any person or benefactor to throw, discard, place or deposit, or cause to be thrown, discarded, placed, or deposited, litter in any manner or amount whatsoever in or on any public highway, sidewalk, road, street, alley, thoroughfare, beach, park, baywalk, beachwalk, cutwalk, or any other public place, except in containers or areas lawfully provided therefor. It shall be unlawful for any person to throw, discard, place or deposit any garbage, cans, bottles or containers in or on any freshwater lakes, rivers, streams, canals, or tidal or coastal waters within the city. In addition, it shall be unlawful for any person to throw, discard, place or deposit litter in any manner or amount whatsoever on any private real or personal property, unless prior consent of the owner has been given and unless such litter will not cause a public nuisance or be in violation of any other state or local laws, rules or regulations.

(b) It shall be unlawful for any person to carry onto any beach within the city a glass or metal bottle or other glass or metal container.

(c) It shall be unlawful for any person to sweep, cast or throw, or cause to be cast or thrown, into any of the gutters, drains or sewers within the city any garbage, litter, paper, handbill, trash, tree or grass cuttings or other objects or substances.

(d) All restaurants with take-out service shall have up to four garbage containers, as need requires, based on the determination of the city manager or his designee. The containers shall be located in front of and within 50 feet in each direction of the premises at locations approved by the city manager or his designee. These containers shall be kept in clean and sanitary condition at all times and shall be emptied daily or more frequently if necessary to prevent overflowing. The garbage containers required by this section are in addition to those required by chapter 90 of this Code.

(e) The following civil fines shall be imposed for violations of this section except as provided in subsections (f) below.

(1) First offense, $50.00 fine.

(2) Second offense, $100.00 fine.

(3) Third offense, $500.00 fine.

In lieu of a fine, the Special Master may accept voluntary community service removing litter in the City equivalent to one hour of community service for each $5.00 of an imposed fine. If the community service is not completed within six (6) months of an adjudication of guilt, the fine shall be reinstated.

(f) If a violation of this section resulted from the throwing, discarding, placing, or depositing, or causing to be thrown, discarded, placed, or deposited, of commercial handbills as litter, then the following civil fines shall be imposed. The special master shall not have discretion to alter these prescribed penalties except as to the per handbill fine of $50.00 provided in (f)(1).

(1) If the offense is the first offense, $100.00 fine plus $50.00 per handbill;

(2) If the offense is the second offense within the preceding 12 months, $500.00 fine plus $50.00 per handbill;

(3) If the offense is the third or subsequent offense within the preceding 12 months, $1,500.00 fine plus $50.00 per handbill.

(4) Notwithstanding subsections (f)(1)--(3), no person or benefactor shall receive more than one offense within any one-day period, however, the $50.00 per handbill fine shall apply to all littered handbills found during that one-day period.

(g) At any prosecution for violation of this section when the litter involved is a commercial handbill, if ten or more commercial handbills advertising the same business are found in plain view as litter under circumstances that make it more likely than not that the commercial handbills were placed there, or caused to be placed there, by an agent, employee, contractor, promoter, or other representative of the business advertised on the face of the commercial handbills, the special master shall apply a rebuttable presumption that the business advertised on the face of the handbills threw, discarded, placed or deposited the commercial handbills as litter.

(h) If a person is found littering with commercial handbills, the code compliance officer is authorized to seize, for use as evidence in the prosecution of the violator before the special master, all commercial handbills in the possession of the violator.

(i) The city may cause the removal, at the violator's expense, of all litter distributed or placed in violation of this section.

(j) Definitions:

(1) *Benefactor* means the owner of the business advertised in the commercial handbill whose agent, employee, contractor, promoter, or other representative did or caused the throwing, discarding, placing or depositing.

(2) *Business* means any commercial or industrial activity, entity, or event in or for which any goods or services are made, sold or offered for sale or other consideration, pecuniary or otherwise.

(3) *Handbill* means any handbill, flyer, paper, document, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter or object that conveys any information, except that "handbill" shall not include a newspaper or its contents.

(4) *Commercial handbill* means any handbill that conveys any information about any good or service provided by a business.

(5) *Litter* means any paper, handbill, commercial handbill, garbage, tobacco product, or other waste that has been placed or deposited ~~and left~~ on a public sidewalk, street, road, avenue, beach, swale, median, building, fence, wall, boardwalk, beachwalk, baywalk, cutwalk, park, or any other public place ~~area~~, or on any object located on public property, or on the kneewall, window ledge or sill of any public or private building, or on a motor vehicle, or on any other type of private real or personal property ~~as prohibited by sections 46-117 and 46-118~~. Handbills and commercial handbills attached to a trash receptacle, but not within the trash receptacle in the usual manner, shall also be considered litter.

(6) *One day* means a 24-hour period from noon to noon.

(7) *Person, benefactor,* or *owner* include, within their respective meanings, either an individual or an entity.

(k) Enforcement by code compliance officers; notice of violation. If a code compliance officer ~~as defined in chapter 30~~, finds a violation of this article, such code compliance 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 for which the violator may be ~~is~~ liable, instructions and due date for paying the fine, 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 a hearing.

(l) Rights of violators; payment of fine; right to appeal; 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 appointed by the city commission upon recommendation of the city manager to appeal the decision of the code compliance officer which resulted in 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 102-384 and 102-385 of the City Code.

~~(2)~~(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 violators 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 penalties may be assessed accordingly.

~~(3)~~(4) Any party aggrieved by the decision of the special master may appeal the decision in accordance with law.

(m) 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 such lien which remains unpaid, the city may foreclose or otherwise execute upon the lien.

(n) Nothing in this article shall limit or restrict any condition or limitation imposed by the planning board.

(o) Injunctive relief. As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to revoke a business tax receipt and/or certificate of use as set forth in chapters 14, 18 and 102 of the City Code when there are more than three offenses by the same violator within a calendar year.

**SECTION 2**. That Division 2, entitled "Handbills," of Article III, entitled "Litter," of Chapter 46, entitled, "Environment," be repealed as follows:

~~**DIVISION 2. HANDBILLS**~~

~~**Sec. 46-116. Definitions.**~~

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Handbill* means any handbill, dodger, circular, folder, booklet, letter, card, pamphlet, sheet, poster, sticker, banner, notice or other written, printed or painted matter circulated to attract the attention of the public, whether commercial or noncommercial.~~

~~*Motor vehicle* means every self-propelled device n, upon or by which any person or property is or may be transported or drawn upon a public right-of-way, excepting devices moved by human power or exclusively upon rails or tracks.~~

~~*Offense* means either an uncontested notice of violation issued by a code compliance officer or a finding of violation by a special master.~~

~~*Person* means any individual, trust, labor union, partnership, limited partnership, corporation or other business entity.~~

~~*Public parking lot* means a parking area open for motor vehicle parking for use by members of the public for a fee or charge. It may be metered or attendant or valet operated.~~

**~~Sec. 46-117. Distributing on premises of another; when prohibited.~~**

~~It shall be unlawful for any person to distribute or place any handbills upon the premises of another if requested orally or in writing not to do so by the owner or manager of such premises or if forbidden to do so by an appropriate sign posted in a conspicuous place on such premises.~~

**~~Sec. 46-118. Placing on motor vehicles prohibited.~~**

~~(a) It shall be unlawful for any person to distribute or place any handbill on any motor vehicle by any means whatsoever, when such motor vehicle is parked, standing, stopped or located in a public street, highway, parking lot or place.~~
~~(b) It shall be unlawful for any person to knowingly authorize or employ any person to distribute or place any handbill on any motor vehicle by any means whatsoever when such motor vehicle is parked, standing, stopped or located in a public street, highway, parking lot or place.~~

**~~Sec. 46-119. Enforcement; penalties.~~**

~~(a) *Enforcement by code compliance officer; notice of violation.* If a code compliance officer finds a violation of this article, he 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 for which the violator may be liable, instructions and due date for paying the fine, 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 a hearing.~~
~~(b) *Civil fines for violators.* The following civil fines shall be imposed for each violation of this article:~~
~~(1) First offense . . . $ 50.00~~
~~(2) Second offense (within one year of the first offense) . . . 250.00~~
~~(3) Third offense/additional offenses (within one year of the first offense) . . . 500.00~~
~~(c) *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 appointed by the city commission upon recommendation of the city manager to appeal the decision of the code compliance officer that resulted in 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 102-384 and 102-385.~~
~~(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 penalties may be assessed accordingly.~~
~~(4) Any party aggrieved by the decision of a special master may appeal that decision to a court of competent jurisdiction.~~
~~(d) *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 such lien remaining unpaid, the city may foreclose or otherwise execute upon the lien.~~
~~(e) *Injunctive relief.* As an additional means of enforcement, the city may seek injunctive relief and/or follow procedures to 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 a calendar year.~~

**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 5/27/09 Date

Underline denotes additions and ~~strike through~~ denotes deletions
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R7

**Condensed Title:**

A Resolution of the Mayor and City Commission of the City of Miami Beach, Florida, Following A Duly Noticed Public Hearing To Hear Public Comment On Same, And Having Considered The City Administration's Recommendation And The Criteria For Granting Revocable Permits Pursuant To Section 82-94 Of The Miami Beach City Code, To Consider Revocable Permit Request By Mr. Ira M. Elegant, As Owner Of The Residential Property Located At 1360 North View Drive, To Retain The Northeastern Portion Of A Carport, Built Within And Over A Portion Of The Public Right-Of-Way Along North View Drive In Sunset Island No. 1 And Previously Permitted In 1986.

**Key Intended Outcome Supported:**

Increased Satisfaction With Neighborhood Character

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

Appendix A/Site Survey

2007 Community Satisfaction Survey reports fairness and consistency in Code Enforcement as key driver

**Issue:**

Shall a Revocable Permit be granted to retain the Northeastern portion of carport, built within and over a portion of the public right of way along North View Drive in Sunset Island No. 1 and previously permitted in 1986?

**Item Summary/Recommendation:**

Mr. Ira Elegant and his late wife purchased the property located at 1360 North View Drive, (W. 29 Street) Sunset Island No. 1, in 1986. After the property was purchased, plans were submitted for the construction of a triple carport built within and over a portion of the public right of way along North View Drive. The Applicant applied for a Revocable Permit for a de-minimus extension of the carport roof into City owned air-space. The physical encroachment in the right of way measures as a right triangle a total area of 44 square feet. The matter was considered by the City Commission, and a Revocable Permit was granted for 20 years; however, the permit expired in 2006. In 2006, the Applicant did not seek a renewal of this Revocable Permit. Through the years, the carport has been maintained in good condition.

Mr. Elegant indicated to the City that his property is currently under contract and his sale is pending upon the resolution of these issues. The Applicant has suggested that he will not be able to close his property until this issue is resolved. Since a sale of the property is scheduled to close on or before June 5, 2009, The Applicant has requested that such Revocable Permit include or extend to the Applicant, as well as his immediate grantee, Sun Trust Bank, as trustee of the Land Trust U/A/D 01/01/2003 Trust Agreement.

**THE ADMINISTRATION RECOMMENDS ADOPTING THE RESOLUTION.**

**Advisory Board Recommendation:**

N/A

**Financial Information:**

| Source of Funds: | | Amount | Account |
|---|---|---|---|
| | 1 | | |
| | 2 | | |
| | 3 | | |
| OBPI | Total | | |

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Fernando Vazquez, City Engineer, x.6399

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| FHB | TH | JMG |

T:\AGENDA\2009\June 3\Consent\Revocable Permit.1360 N View Dr.Summary.doc

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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

**PUBLIC HEARING**

DATE: June 3, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY NOTICED PUBLIC HEARING TO HEAR PUBLIC COMMENT ON SAME, AND HAVING CONSIDERED THE CITY ADMINISTRATION'S RECOMMENDATION AND THE CRITERIA PURSUANT TO SECTION 82-94 OF THE MIAMI BEACH CITY CODE, GRANTING A REVOCABLE PERMIT TO MR. IRA M. ELEGANT, AS OWNER OF THE RESIDENTIAL PROPERTY (SINGLE FAMILY RESIDENCE) LOCATED AT 1360 NORTH VIEW DRIVE; SAID PERMIT TO RETAIN THE NORTHEASTERN PORTION OF A CARPORT, BUILT WITHIN AND OVER A PORTION OF THE PUBLIC RIGHT-OF-WAY ALONG NORTH VIEW DRIVE; FURTHER APPROVING A ONE-TIME ONLY ASSIGNMENT OF SAID PERMIT TO SUN TRUST BANK AS TRUSTEE FOR LAND TRUST U/A/D 01/01/2003 TRUST AGREEMENT, AS THE BUYER/NEW OWNER OF THE PROPERTY AT 1360 NORTH VIEW DRIVE; SUCH ASSIGNMENT SUBJECT TO AND CONTINGENT UPON THE CLOSING OF THE SALE OF THE PROPERTY OCCURRING ON OR BEFORE JUNE 5, 2009.**

## ADMINISTRATION RECOMMENDATION

Adopt the Resolution to retain the Northeastern portion of a carport, built within and over a portion of the public right-of-way along North View Drive in Sunset Island No. 1 and previously permitted in 1986.

## BACKGROUND

Mr. Elegant and his late wife purchased the property located at 1360 North View Drive (W. 29 Street) Sunset Island No. 1, in 1986. After the property was purchased, plans were submitted for the construction of a triple carport in the front of their house, which faced North View Drive, formerly identified as W. 29 Street (Exhibit A).

The applicant then applied for a Revocable Permit for a de-minimus extension of the carport roof into City owned air-space. The physical encroachment in the right-of-way measures as a right triangle a total area of 44 square feet (Exhibit B). The matter was then brought forth and considered by the City Commission, and a Revocable Permit was granted to the property owners on September 29, 1986 through Resolution No. 86-18587. The Revocable Permit was granted for 20 years; however, the permit expired in 2006 (Exhibit C). In 2006, the applicant did not seek a renewal of this revocable permit.

Through the years, the carport has been maintained in good condition. The carport is as was originally built and no variations, additions or reductions have been performed on the permitted encroachment.

Mr. Elegant indicated to City that his property is currently under contract and his sale is pending upon the resolution of this issue. The Applicant has also suggested that he will not be able to close his property until this issue is resolved. Since a sale of the property is scheduled to close on or before June 5, 2009, the Applicant has requested that such Revocable Permit include or extend to the Applicant, as well as his immediate grantee, Sun Trust Bank, as trustee of the Land Trust U/A/D 01/01/2003 Trust Agreement.

## ANALYSIS

Pursuant to the criteria established under Section 82-94 of the City of Miami Beach Code of Ordinances for the granting/denying of revocable permits, the City has concluded the following:

1) That the Applicant's need is substantially satisfied.

   Satisfied. The Applicant constructed this carport and was subsequently granted a Revocable Permit by the City Commission Commencing on September 29, 1986 for a period of twenty (20) years. The applicant's permit period expired in 2006. The encroachment has always constituted a de-minimus impact upon the right-of-way and has been maintained in good condition throughout the period of issuance. The applicant is seeking an exact approval of the same encroachment as a condition of his property sale.

2) That the Applicant holds title to an abutting property.

   Satisfied. The Applicant is the Fee Simple Owner of the property located at 1360 North View Drive (1360 W. 29 Street); the property is adjacent to W 29 Street. The applicant is seeking that such Revocable Permit include or extend to the Applicant, as well as his immediate grantee, Sun Trust Bank, as trustee of the Land Trust U/A/D 01/01/2003 Trust Agreement.

3) That the proposed improvements comply with Applicable codes, ordinances, regulations, and neighborhoods plans and laws.

   Satisfied. The applicant was granted a Revocable Permit in 1986, therefore making this encroachment legal for 20 years. The applicant is seeking an exact approval of the same encroachment as before.

4) That the grant of such application will have no adverse effect on government/utility easements and uses of the property.

   Satisfied. The encroachment constitutes a de-minimus aerial impact in the right-of-way and there are no physical impacts or adverse conditions created as result of this encroachment.

5) Alternatively:

   a) That an unnecessary hardship exits that deprives the applicant of a reasonable use of the land, structure or building for which the Revocable Permit is sought arising out of special circumstances and conditions that exist and were not self-created and are peculiar to the land, structures or buildings in the same zoning district and the grant of the application is the minimum that will allow reasonable use of the land, structures or building.

      Satisfied. Even though this carport projects minimally into the right-of-way, the applicant was, however, granted a revocable permit in 1986; which expired in 2006. The applicant is now seeking a new revocable permit for the same carport extension with the intent to be able to sell his property.

   b) That the grant of the revocable permit will enhance the neighborhood and/or community by such amenities as, for example, enhanced landscaping, improved drainage, improved lighting and improved security.

      Satisfied. Even though this carport projects minimally into the right-of-way, granting this permit consists of use of the airspace over and into the right-of-way; with no impacts to the neighborhood or community.

6) That granting revocable permit requested will not confer on the applicant any special privilege that is denied to other owner of land, structures, or buildings subject to similar conditions.

   Satisfied. This carport projects minimally into the right-of-way. The Applicant was granted a Revocable Permit in 1986 for the same encroachment and has maintained such encroachment in good condition throughout the period of issuance. A new permit would not bestow any special privilege that any applicant with a de-minimus aerial encroachment under the same past approved conditions would not have been granted.

7) That granting the revocable permit will be in harmony with the general intent and purpose of Article III of the City Code, and that such revocable permit will not be injurious to surrounding properties, the neighborhood, or otherwise detrimental to the public welfare.

   Satisfied. Granting a revocable permit for the carport roof extending into the right-of-way will not devalue any adjacent properties or cause the neighborhood to be less in any way aesthetically out of harmony with the surrounding properties, with no detrimental effect to the public welfare.

## CONCLUSION

The Administration's analysis above shows that 8 of the 8 criteria are satisfied. Taking into consideration that a past revocable permit was issued for this same encroachment, the fact that the encroachment is both aerial and de-minimus in nature, and the fact that the applicant has maintained the encroachment in good condition, and that the issuance of a revocable permit is a condition of the sale of his property, the Administration recommends

the approval of the Revocable Permit and as such, recommends that the City Commission adopt the attached resolution.

The Administration recommends that the City Commission adopt the attached Resolution.

Attachments

JMG/TH/FHB/FV

T:\AGENDA\2009\June 3\Consent\Revocable Permit.1360 N View Drive.Memo.fav.doc

RESOLUTION NO.

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, FOLLOWING A DULY NOTICED PUBLIC HEARING TO HEAR PUBLIC COMMENT ON SAME, AND HAVING CONSIDERED THE CITY ADMINISTRATION'S RECOMMENDATION AND THE CRITERIA PURSUANT TO SECTION 82-94 OF THE MIAMI BEACH CITY CODE, GRANTING A REVOCABLE PERMIT TO MR. IRA M. ELEGANT, AS OWNER OF THE RESIDENTIAL PROPERTY (SINGLE FAMILY RESIDENCE) LOCATED AT 1360 NORTH VIEW DRIVE; SAID PERMIT TO RETAIN THE NORTHEASTERN PORTION OF A CARPORT, BUILT WITHIN AND OVER A PORTION OF THE PUBLIC RIGHT-OF-WAY ALONG NORTH VIEW DRIVE; FURTHER APPROVING A ONE-TIME ONLY ASSIGNMENT OF SAID PERMIT TO SUN TRUST BANK AS TRUSTEE FOR LAND TRUST U/A/D 01/01/2003 TRUST AGREEMENT, AS THE BUYER/NEW OWNER OF THE PROPERTY AT 1360 NORTH VIEW DRIVE; SUCH ASSIGNMENT SUBJECT TO AND CONTINGENT UPON THE CLOSING OF THE SALE OF THE PROPERTY OCCURRING ON OR BEFORE JUNE 5, 2009.**

**WHEREAS**, Ira M. Elegant (Applicant), owns the residential property located at 1360 North View Drive, Sunset Island No. 1 (Property); and

**WHEREAS**, the Property has a de-minimus encroachment that consist of a portion of an existing carport that projects into the public right of way adjacent to North View Drive; and

**WHEREAS**, the City approved and granted a revocable permit for this same carport expansion in September 29, 1986; the permit expired in 2006; and

**WHEREAS**, the Applicant was not aware that the permit had expired until recently, when Applicant sought to sell the Property; and

**WHEREAS**, Applicant has entered into a contract for sale of the Property with Sun Trust Bank, as trustee for Land Trust U/A/D 01/01/2003 Trust Agreement (buyer/new owner) and, prior to closing on the sale of the Property, Applicant has requested that the City approve and grant a new revocable permit to be allowed to continue to maintain the referenced carport encroachment; and

**WHEREAS,** concurrent with the granting of the permit to Applicant, Applicant also requests that the City approve an assignment of the new permit from Applicant to the buyer/new owner; and

**WHEREAS**, provided the City Commission grants the permit, the City Administration does not object to a one-time only assignment of the permit to the buyer/new owner, provided that Applicant and buyer/new owner close on the sale of the Property on or before June 5, 2009; and

**WHEREAS,** in the event that the permit is granted to Applicant, and Applicant and buyer/new owner do not close on the sale of the Property on or before June 5, 2009, then the one-time only assignment shall be null and void, and any subsequent owner of the Property

(including buyer/new owner if it closes with Applicant after June 5, 2009) will be required to submit a new application requesting a revocable permit to maintain the subject encroachment; and

**WHEREAS**, the City Administration has reviewed Applicant's request in accordance with the criteria for granting/denying revocable permits pursuant to Section 82-94 of the City Code; the Administration's review is set forth in the Commission Memorandum accompanying this Resolution; and

**WHEREAS**, at its regular meeting on June 3, 2009, the City Commission held a duly noticed public hearing to hear public comment on the request for revocable permit, as required pursuant to Section 82-93 (b) of the City Code; and

**WHEREAS**, the Administration's analysis has determined that the Applicant has satisfied the criteria for granting a revocable permit, and recommends granting said permit.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission, following a duly noticed public hearing to hear public comment on same, and having considered the City Administration's recommendation and the criteria pursuant to Section 82-94 of the Miami Beach City Code, grant a Revocable Permit to Mr. Ira M. Elegant, as owner of the residential property (single family residence) located at 1360 North View Drive; said permit to retain the northeastern portion of a carport, built within and over a portion of public right-of-way along North View Drive; further approving a one-time only assignment of said permit to Sun Trust Bank Trustee for Land Trust U/A/D 01/01/2003 Trust Agreement as the buyer/new owner of the property at 1360 North View Drive; such assignment subject to and contingent upon the closing for the sale of the property occurring on or before June 5, 2009.

**PASSED AND ADOPTED** this ____ day of June, 2009.

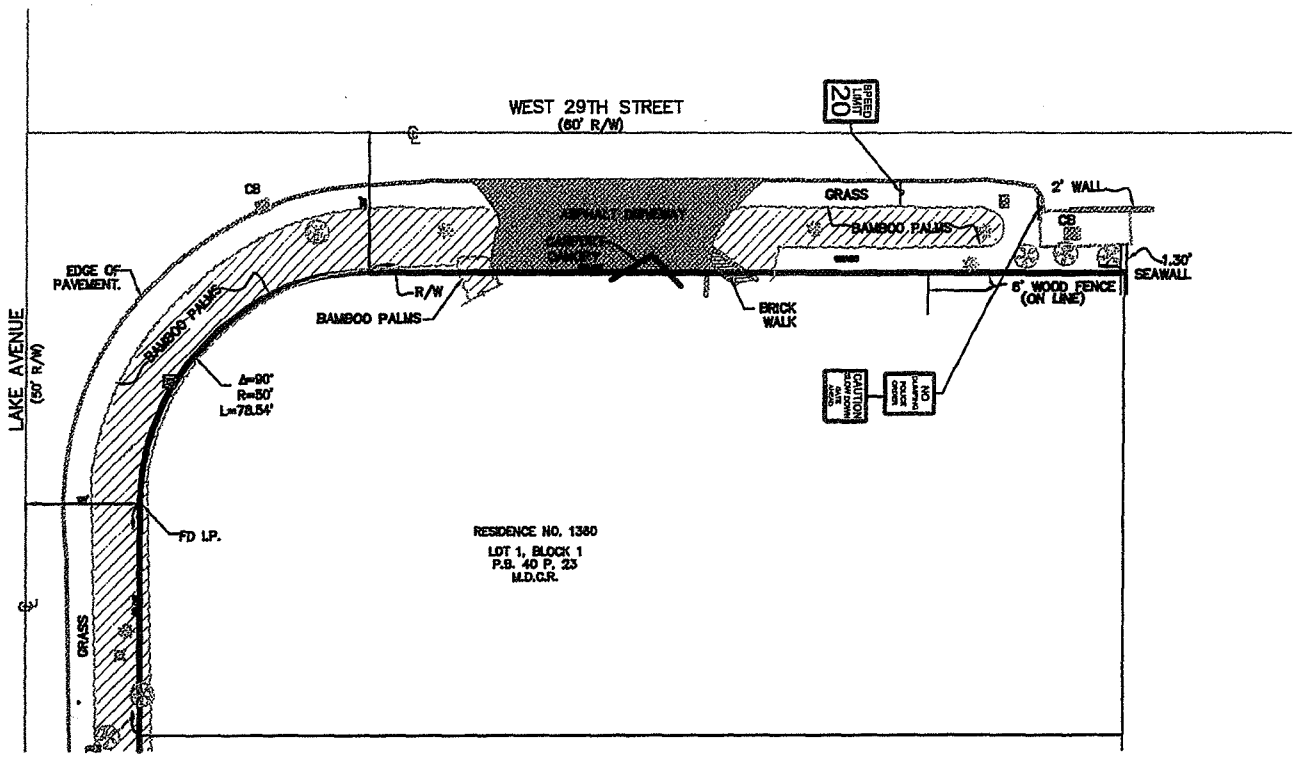
**ATTEST:**

| | |
|---|---|
| **CITY CLERK** | **MAYOR** |

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

5/22/09
City Attorney Date

T:\AGENDA\2009\June 3\Consent\Revocable Permit.1360 N View Dr.Reso.doc




# SKETCH OF SURVEY

SCALE: 1"=40'

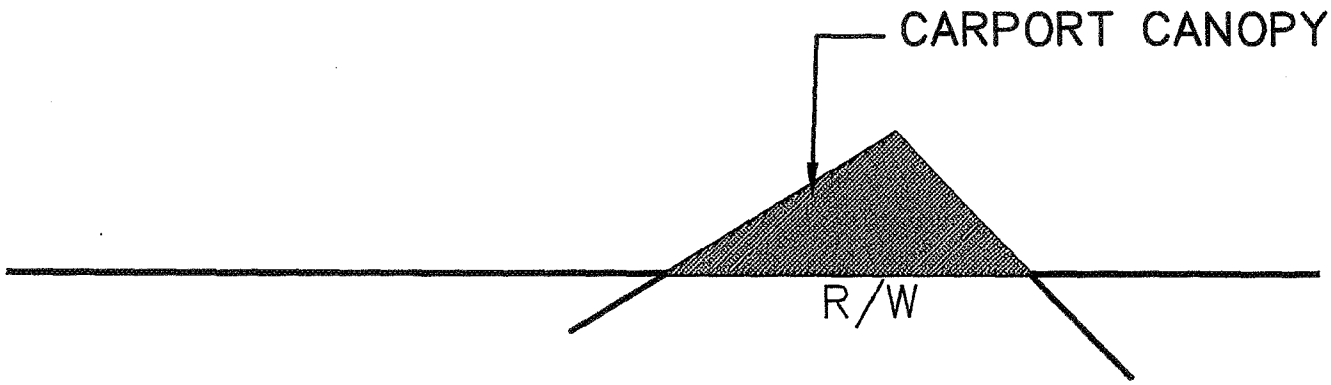
## EXHIBIT "A"

# LEGAL DESCRIPTION

A portion of land bounded by the North and West property line of Lot 1, Block 1 and bounded by the center lines of West 29th Street and Lake Avenue, as shown in SUNSET LAKE EXTENSION, Plat Book 40, Page 23, Public Records of Miami–Dade County, Florida.

F:\work\$ALL\CAD-DWG\PROJECTS\SM\SM-2009V(As Built 1360 North View Drive)

| | | | | |
|---|---|---|---|---|
| MIAMIBEACH PUBLIC WORKS DEPARTMENT 1700 CONVENTION CENTER DRIVE, MIAMI BEACH, FL 33139 | APPROVED 05/04/2009 | REVISED | TITLE: SKETCH OF SURVEY | 1 SHEET 1 OF 1 |




TOTAL AREA 44 SQ.FT.

## SKETCH OF SURVEY

SCALE: 1"=5'

## EXHIBIT "B"

## LEGAL DESCRIPTION

A portion of land bounded by the North and West property line of Lot 1, Block 1 and bounded by the center lines of West 29th Street and Lake Avenue, as shown in SUNSET LAKE EXTENSION, Plat Book 40, Page 23, Public Records of Miami–Dade County, Florida.

F:\work\$ALL\CAD-DWG\PROJECTS\SM\SM-2009V(As Built 1360 North View Drive)

| | | | | |
|---|---|---|---|---|
| MIAMIBEACH PUBLIC WORKS DEPARTMENT 1700 CONVENTION CENTER DRIVE, MIAMI BEACH, FL.33139 | APPROVED 05/04/2009 | REVISED | TITLE: EXHIBIT B | 1 SHEET 1 OF 1 |

RESOLUTION NO. 86-18587

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF MIAMI BEACH AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE A REVOCABLE PERMIT BETWEEN THE CITY OF MIAMI BEACH AND IRA AND SHARON ELEGANT FOR THE MAINTENANCE OF A CARPORT IN A PORTION OF THE RIGHT-OF-WAY OF 1360 WEST 29TH STREET, SUNSET ISLAND #1

WHEREAS, the City, wishes to execute a Revocable Permit between the City of Miami Beach and Ira and Sharon Elegant for the maintenance of a carport in a portion of the right-of-way of 1360 West 29th Street, Sunset Island #1.

WHEREAS, a Revocable Permit has been prepared and the City Manager has recommended its execution and the City Attorney has approved it as to form.

NOW THEREFORE, BE IT DULY RESOLVED BY THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and the City Clerk are authorized and directed to execute the Revocable Permit for the maintenance of a carport in a portion of the right-of-way of 1360 West 29th Street, Sunset Island #1.

PASSED AND ADOPTED this 17th day of September, 1986.

Mayor

Attest:

City Clerk

FORM APPROVED

LEGAL DEPARTMENT

EXHIBIT "C"

1986 OCT -9 PM 3:56 6R349603

OFF. REC. 13047 PG 172

to DR

1986 OCT 20 PM 4:48 CITY OF MIAMI BEACH PUBLIC WORKS DEPARTMENT

**REVOCABLE PERMIT**

THIS AGREEMENT, made on this 29th day of September, 1986, by and between the CITY OF MIAMI BEACH, hereinafter called the "City" and Ira and Sharon Elegant hereinafter called the "Permittee".

elegant

**WITNESSETH**

That the City, for and in consideration of the restrictions and covenants herein contained, hereby permits the exclusive use of a City right-of-way easement as described in Exhibit A attached hereto for the period of twenty (20) years commencing on September 29, 1986; but shall automatically terminate at such time as the existing carport roof deteriorates or is removed. This permit shall not apply to any replacement carport roof.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

That the recitations, statements, covenants, warranties and agreements hereinabove captioned and set forth hereinabove and in the attached articles are true and binding upon the respective parties hereto.

**ARTICLE I**

**USE OF DEMISED PREMISES BY PERMITTEE**

The Permittee shall use the demised premises for the maintenance of an existing carport roof along a portion of right-of-way of 1360 West 29th Street, Sunset Island #1 in the exact configuration as described in Exhibit A, attached hereto and incorporated herein, only if approved by the City Commission or other City Agency.

**ARTICLE II**

**IMPROVEMENTS BY PERMITTEE**

The Permittee shall have sole responsibility for obtaining all regulatory approvals, permits or licenses required for the maintenance of such improvements upon the demised premises. All improvements made by the Permittee shall be removed from the premises at the expiration or termination of this permit. Removal by the City of any improvements made by the Permittee shall be at the sole expense of the Permittee and governed by Article XI hereunder.

**ARTICLE III**

**CONDITION OF PREMISES AND MAINTENANCE**

The Permittee, at its own expense, shall cause the demised premises to be in a state of good condition from the commencement of this permit. The Permittee shall maintain and keep the entire demised premises in a neat, clean condition, free of refuse and debris. Determination of the condition of said premises shall be made by the City.

Note - Complete file expired and given to MW - 12/18/86

## ARTICLE IV

## INDEMNIFICATION AND HOLD HARMLESS

The Permittee does hereby agree to indemnify and save the City harmless from any and all claims, liability, losses, damages and causes of actions which may arise out of this revocable permit, or the Permittee's activity on the demised premises.

## ARTICLE V

## NO LIABILITY FOR PERSONAL PROPERTY

All personal property placed or moved on the demised premises shall be at the risk of the Permittee or the owner thereof. The City shall not be liable to the Permittee or owner for any damage to said personal property.

## ARTICLE VI

## CITY'S RIGHT OF ENTRY

The City or any of its agents, shall have the right to enter upon the demised premises during all reasonable working hours for the purpose of inspecting or to gain access to or repair any utilities located within any City right-of-way. Such right of entry shall, likewise, exist for the purpose of removing structures, improvements or alterations which do not conform to this permit. Any removal of the above, or damage to the allowed improvement made by the City and necessitated by the Permittee's use of said premises, shall be at the sole expense of the Permittee. Further, the City shall not be responsible for the restoration of the premises; in the event such is damaged by the City in order to inspect, repair or gain access to its utilities located on the land which is the subject of this revocable permit. Additionally, any expenses incurred by the City, but not paid by the Permittee, in removing such improvements or landscaping shall become a lien upon the Permittee's abutting property, which may be foreclosed within one year of its filing.

## ARTICLE VII

## REVOCATION AND TERMINATION OF PERMIT

It is understood and agreed between the parties hereto, that the City may, upon ninety (90) days written notice to the Permittee, cancel or terminate this permit if the City in its sole discretion needs the property. This permit shall automatically terminate at such time as the existing carport roof becomes deteriorated or is removed.

ARTICLE VIII

NOTICES

It is understood and agreed between the parties hereto that written notice addressed to Permittee Ira and Sharon Elegant, 1360 West 29th Street, Sunset Island #1, shall constitute sufficient notice to the Permittee, and written notice addressed to the City Manager and mailed or delivered to the City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, shall constitute sufficient notice to the City to comply with the terms of this permit.

ARTICLE IX

ASSIGNMENT

Without the written consent of the City first obtained in each case, the Permittee shall not sublet, assign, transfer, mortgage, pledge, or dispose of this permit for the term hereof.

ARTICLE X

PAYMENT OF EXPENSES

It is understood and agreed between the parties hereto that all fees for issuances of this Revocable Permit, including recordation thereof, shall be borne by the Permittee.

ARTICLE XI

SURRENDER OF PREMISES

At the expiration of this permit or cancellation thereof, Permittee shall, without demand, quietly and peaceably deliver possession of the demised premises free of any walls, fences or other like fixtures. The Permittee shall be responsible for the expenses of putting the premises in said condition. If said premises are not in such condition, at the expiration or cancellation of this permit, Permittee hereby agrees to allow the City to restore the premises to such condition. The expenses incurred by the City in so doing shall become a lien upon the Permittee's abutting property and may be foreclosed within one year from the filing of such a lien.

PERMITTEE FURTHER STATES THAT HE HAS CAREFULLY READ THE FOREGOING REVOCABLE PERMIT AND KNOWS THE CONTENTS THEREOF AND FULLY REALIZES ITS MEANING AND SIGNS THIS REVOCABLE PERMIT OF HIS OWN FREE WILL.

IN WITNESS WHEREOF, the parties have hereunto executed this Revocable Permit for the purposes herein expressed the day and year first above written.

CITY OF MIAMI BEACH

By _____
Mayor

ATTEST:

_____
City Clerk

_____
Witness

_____
Witness

SWORN TO AND SUBSCRIBED before me this 29th day of September, 1986.

_____
Notary Public, State of Florida at Large

MY Commission Expires: May 20, 1989

_____
Ira Elegant

_____
Witness

_____
Sharon Elegant

_____
Witness

_____
Notary Public, State of Florida at Large

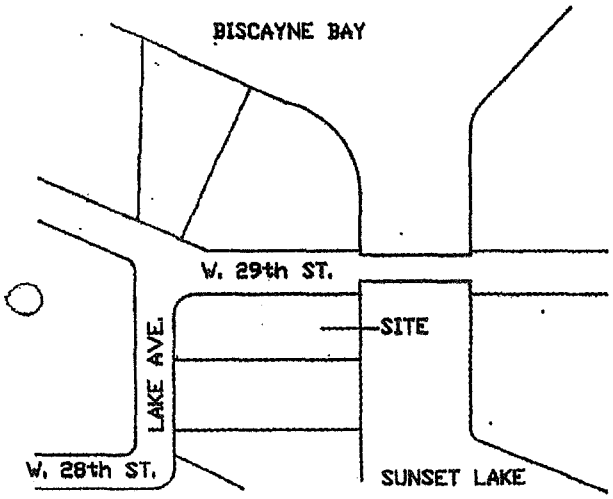
MY Commission Expires: 5/19/87

/mlw

FORM APPROVED
LEGAL DEPT.
By _____
Date 9-15-86

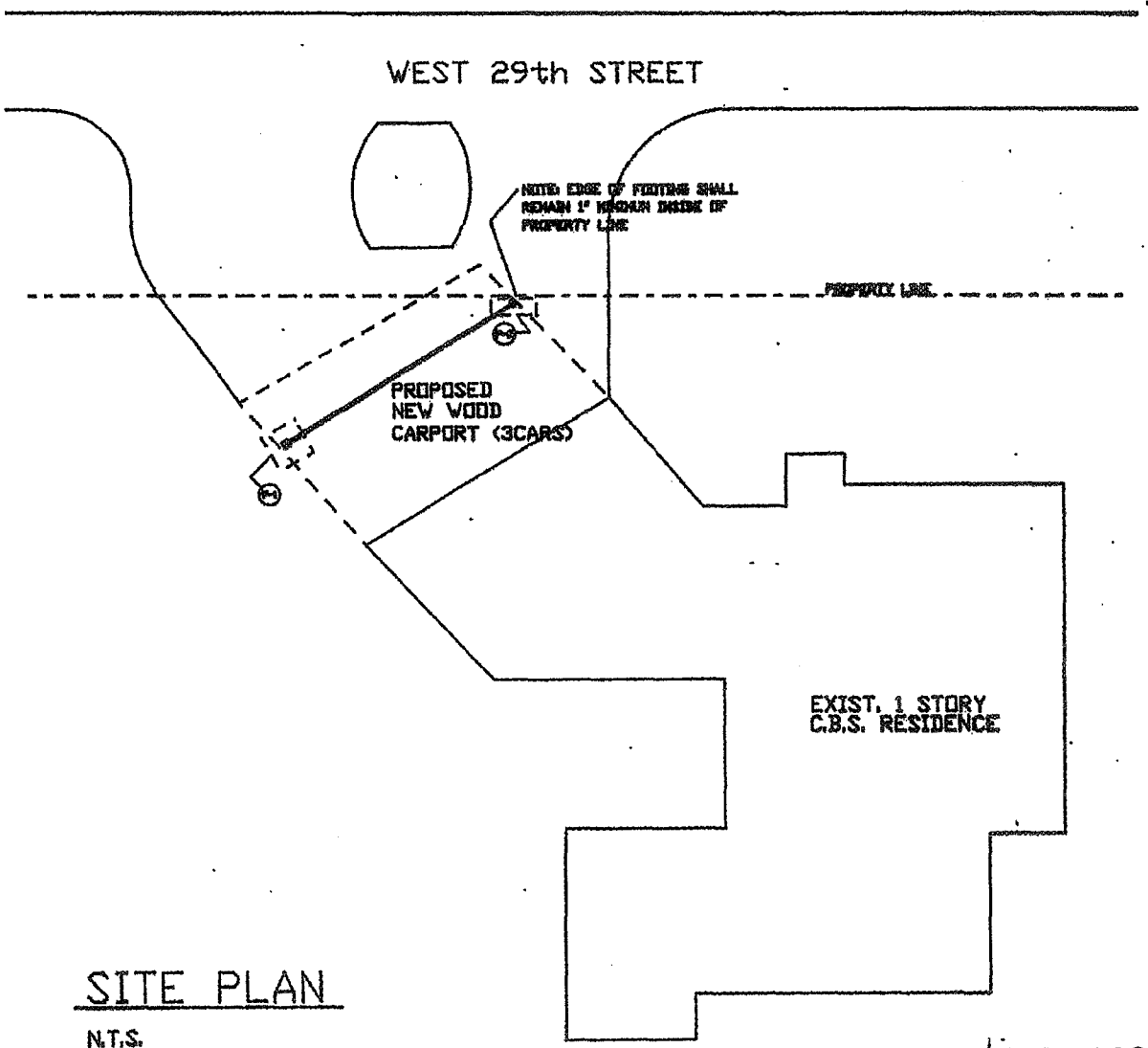
OFF. REC. 13047 PG 176

# EXHIBIT A




LOCATION SKETCH

N.T.S.



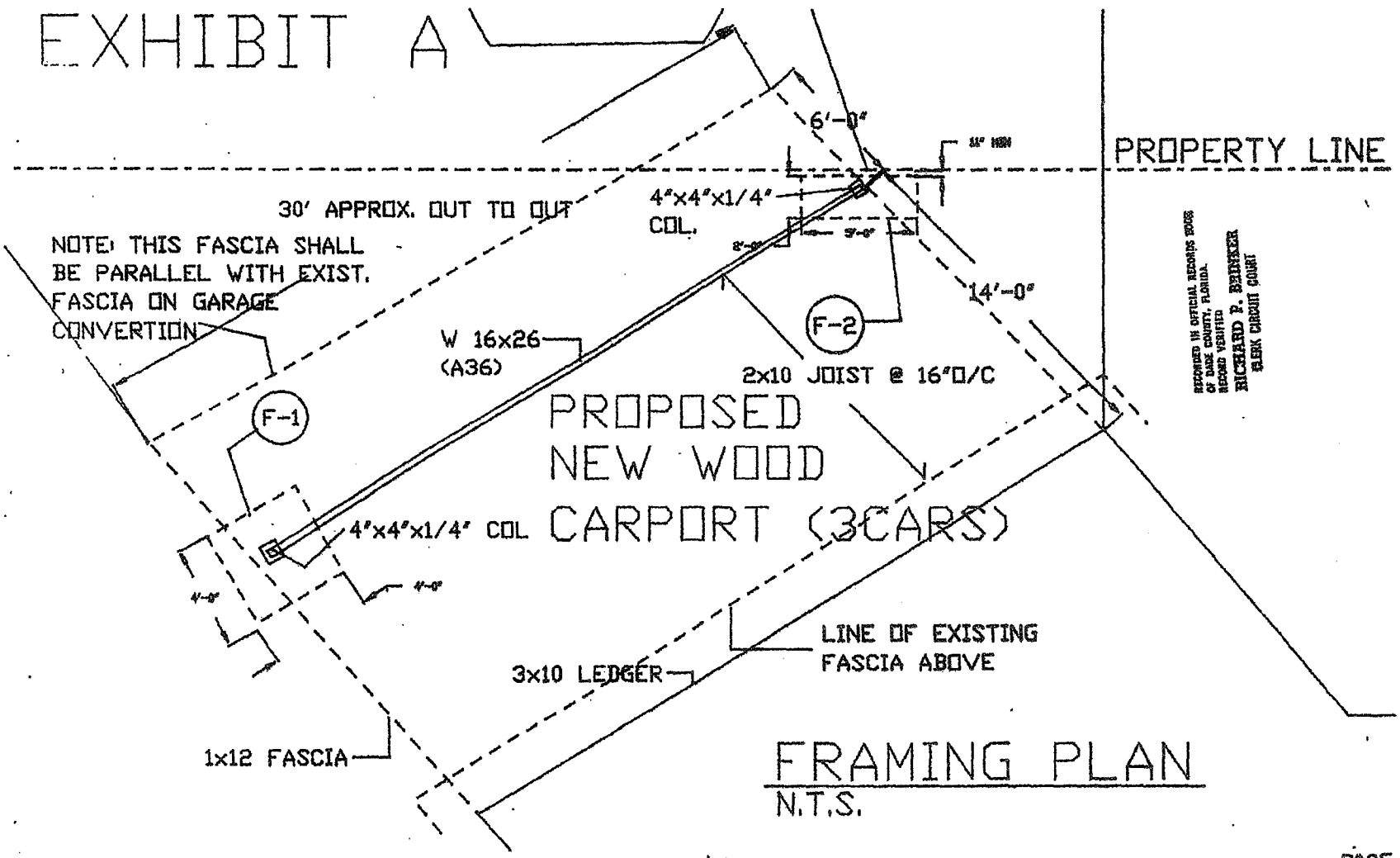

SITE PLAN

N.T.S.



3108

# EXHIBIT A




FRAMING PLAN
N.T.S.

RECORDED IN OFFICIAL RECORDS BOOK OF DADE COUNTY, FLORIDA. RECORD VERIFIED RICHARD P. BRINKER CLERK CIRCUIT COURT

OR: 13047 PG 177

MIAMIBEACH

# CITY OF MIAMI BEACH
# NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY** given that a first reading and first 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, June 3, 2009 at 10:15 A.M.,** to consider A Revocable Permit Request By Mr. Ira M. Elegant, As Owner Of The Residential Property Located At 1360 North View Drive, To Retain The Northeastern Portion Of A Carport, Built Within And Over A Portion Of The Public Right-Of-Way Along North View Drive In Sunset Island No. 1 And Previously Permitted In 1986.

Inquiries may be directed to the Public Works Department at (305) 673-7080.

**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 #540**

**Condensed Title:**

A resolution approving on second reading and following a duly noticed public hearing, a Lease Agreement between the City and SunTrust Bank, for approximately 16 SF located at in the lobby of 1700 Convention Center Drive.

**Key Intended Outcome Supported:**

Improve the City's overall financial health and maintain overall bond rating.

Supporting Data (Surveys, Environmental Scan, etc.): 46% of residents and 55% of businesses ranked the City either excellent or good for the overall value of the City Services

**Issue:**

Should the City approve the Lease Agreement for an ATM Machine with SunTrust Bank?

**Item Summary/Recommendation:**

**SECOND READING & PUBLIC HEARING**

In September 2007, the City passed Resolution 2007-26614 accepting the City Manager's recommendation pertaining to the ranking of proposals pursuant to RFP 37-06/07 for banking services. This resolution authorized the Administration to enter into negotiations with top-ranked proposer, SunTrust Bank. The RFP required the winning bidder to install in City Hall an ATM machine at no charge to the City. In addition, SunTrust's proposal stated that they were pleased to offer the City of Miami Beach a no-cost City Hall ATM for the convenience of the City's employees and residents.

The SunTrust ATM machine will be located on the ground floor of City Hall located at 1700 Convention Center Drive. The term of this lease will be for five (5) years with the option of one additional term of four (4) years and three hundred sixty four (364) days. The lease rent will be $1.00 per lease year. This ATM machine will be accessible only during the time that City Hall is open for business. It will be accessible to all City employees, residents and all those who come to City Hall on a daily basis.

On May 13, 2009, pursuant to Resolution No. 2009-27074, the Mayor and City Commission approved the Lease Agreement on first reading; waived by 5/7$^{ths}$ vote the appraisal requirement; and set the public hearing on June 3, 2009, for second reading and final approval of the Lease Agreement.

The Administration recommends that the Mayor and City Commission hereby approve on second reading (and final approval), following a duly noticed public hearing, an ATM Lease Agreement between the City and SunTrust Bank for use of approximately sixteen (16) square feet of City-owned property, located at 1700 Convention Center Drive (a/k/a City Hall), Miami Beach, Florida for an initial term of five years, with an additional renewal term of four years and three hundred sixty four (364) days, at the City's sole discretion, and authorizing the Mayor and City Clerk to execute the Lease Agreement.

**Advisory Board Recommendation:**

N/A

**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 | HF | JMG |

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AGENDA ITEM R7B
DATE 6-3-09

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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

**PUBLIC HEARING**

DATE: June 3, 2009

SUBJECT **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, AN ATM LEASE AGREEMENT BETWEEN THE CITY AND SUNTRUST BANK, FOR USE OF APPROXIMATELY SIXTEEN (16) SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1700 CONVENTION CENTER DRIVE (A.K.A. CITY HALL), MIAMI BEACH, FLORIDA; SAID LEASE HAVING AN INITIAL TERM OF FIVE YEARS, WITH AN ADDITIONAL RENEWAL TERM OF FOUR (4) YEARS AND THREE HUNDRED SIXTY FOUR (364) DAYS, AT THE CITY'S SOLE DISCRETION; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE LEASE AGREEMENT**

## ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

## KEY INTENDED OUTCOMES SUPPORTED

Improve the City's overall financial health and maintain overall bond rating.

## BACKGROUND

On September 5, 2007, the City passed Resolution 2007-26614 accepting the City Manager's recommendation pertaining to the ranking of proposals pursuant to RFP 37-06/07 for banking services. This resolution authorized the administration to enter into negotiations with top-ranked proposer, SunTrust Bank. The RFP required the winning bidder to install an ATM machine, in City Hall, at no charge to the City. Additionally, SunTrust's proposal stated that they were pleased to offer the City of Miami Beach a no-cost City Hall ATM for the convenience of the City's employees and residents.

The SunTrust ATM machine will be located on the ground floor of City Hall located at 1700 Convention Center Drive. The term of this lease will be for five

(5) years, with an additional renewal term, at the City's sole discretion, of four (4) years and three hundred and sixty four (364) days. The lease rent will be $1.00 per lease year. This ATM machine will be accessible only during the time that City Hall is open for business. It will be accessible to all City employees, residents and all those who come to City Hall on a daily basis.

Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, requires a competitive bidding process, a Planning Department analysis, and an independent appraisal to determine the value of the leasehold interest, as well as two (2) readings of the proposed lease, with the second (and final) reading followed by an advertised public hearing to obtain citizen input.

Additionally, 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.

On May 13, 2009, pursuant to Resolution No. 2009-27074, the Mayor and City Commission approved the Lease Agreement on first reading; waived by 5/7$^{ths}$ vote the appraisal requirement; and set the public hearing on June 3, 2009, for second reading and final approval of the Lease Agreement.

**CONCLUSION**

The Administration recommends that the Mayor and City Commission hereby approve on second reading (and final approval), following a duly noticed public hearing, an ATM Lease Agreement between the City and SunTrust Bank for use of approximately sixteen (16) square feet of City-owned property, located at 1700 Convention Center Drive (a/k/a City Hall), Miami Beach, Florida for an initial term of five years, with an additional renewal term of four years and three hundred sixty four (364) days, at the City's sole discretion, and authorizing the Mayor and City Clerk to execute the Lease Agreement.

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MIAMI BEACH

# PLANNING DEPARTMENT
# INTEROFFICE MEMORANDUM

TO: Anna Parekh, Real Estate, Housing & Comm. Development Director

FROM: Jorge G. Gomez, Planning Director RGL for JGG

DATE: May 13, 2009

SUBJECT: Analysis of Proposed ATM Lease Agreement between the City and SunTrust Bank – City Hall, 1700 Convention Center Drive

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Pursuant to your request, this memorandum will serve as a planning analysis of the proposed ATM lease agreement between The City and SunTrust Bank, for use approximately 16 s.f. of City-owned space within City Hall at 1700 Convention Center Drive, said lease having an initial term of five (5) 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, 1700 Convention Center Drive, is currently used as the City of Miami Beach City Hall. The Future Land Use Map of the City's Comprehensive Plan designates the site as PF Public Facility.

   The Lease Agreement between the City and SunTrust Bank, for use of the space for an ATM 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 within City Hall. The property has been and is currently in use as a municipal government office building. 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 ATM lease will generate an income stream for the City, and the ATM will provide convenient financial services for workers and citizens in City Hall and the surrounding area. It should become 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** – An ATM is a typical feature within public buildings, and should not create negative effects on the surrounding neighborhood.

5. **The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.**
   **Consistent** – There is no impact on adjacent properties. 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.

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 proposed ATM does not affect 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 SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, AN ATM LEASE AGREEMENT BETWEEN THE CITY AND SUNTRUST BANK, FOR USE OF APPROXIMATELY SIXTEEN (16) SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1700 CONVENTION CENTER DRIVE (A.K.A. CITY HALL), MIAMI BEACH, FLORIDA; SAID LEASE HAVING AN INITIAL TERM OF FIVE YEARS, WITH AN ADDITIONAL RENEWAL TERM OF FOUR (4) YEARS AND THREE HUNDRED SIXTY FOUR (364) DAYS, AT THE CITY'S SOLE DISCRETION; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE LEASE AGREEMENT**

**WHEREAS**, on September 5, 2007 the City Commission adopted Resolution No. 2007-26614, accepting the City Manager's recommendation pertaining to the ranking of proposals pursuant to Request for Proposals (RFP) 37-06/07 for banking services, and further authorizing the Administration to enter into negotiations with top-ranked proposer, SunTrust Bank; and

**WHEREAS**, the RFP required the winning bidder to install an ATM machine in City Hall, at no charge to the City; and

**WHEREAS**, SunTrust and the City have negotiated a Lease Agreement having and initial term of five (5) years, with an additional renewal term, at the City's sole discretion, of four (4) years and three hundred sixty four (364) days; and

**WHEREAS**, Section 82-39 of the Miami Beach City Code, governing the sale/lease of public property, requires a competitive bidding process, a Planning Department analysis, and an independent appraisal to determine the value of the leasehold interest, as well as two (2) readings of the proposed lease, with the second (and final) reading followed by an advertised public hearing to obtain citizen input; and

**WHEREAS**, on May 13, 2009, pursuant to Resolution No. 2009-27074, the Mayor and City Commission approved the Lease Agreement on first reading; waived by 5/7$^{ths}$ vote, the appraisal requirement; and set the public hearing on June 3, 2009, for second reading and final approval of the Lease Agreement; and

**WHEREAS**, said public hearing was held on June 3, 2009.

**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), following a duly noticed public hearing, an ATM Lease Agreement between the City and SunTrust Bank for use of approximately sixteen (16) square feet of City-owned property, located at 1700 Convention Center Drive (a/k/a City Hall), Miami Beach, Florida for an initial term of five years, with an additional renewal term of four years and three hundred sixty four (364) days, at the City's sole discretion, and authorizing the Mayor and City Clerk to execute the Lease Agreement.

**PASSED and ADOPTED** this 3rd day of June, 2009.

**ATTEST:**

| | |
|---|---|
| **Robert Parcher, CITY CLERK** | **Matti Herrera Bower, MAYOR** |

JMG\HMF\AP\ACV\rlr

**APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION**

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5-13-09

**City Attorney** **Date**

# ATM LEASE

**THIS LEASE**, dated as of the ____ day of _____, 2009, between **SUNTRUST BANK**, a Georgia banking corporation ("Tenant"), and the **CITY OF MIAMI BEACH**, a Florida municipal corporation ("Landlord"), provides as follows:

**THAT** for and in consideration of the mutual promises and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant and Landlord hereby agree as follows:

1. **BASIC LEASE PROVISIONS.**
The following constitute the basic terms, definitions and provisions of this Lease:

| | | |
|---|---|---|
| (a) | **PREMISES:** | Approximately sixteen (16) square feet of space, as more particularly shown and described on Exhibit A attached hereto (the "**Premises**"), for the installation, operation, maintenance, replacement and removal of an automated teller machine, or any similar machine or terminal (collectively, the "**ATM**"), in the building known as Miami Beach City Hall and located at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "**Building**"). |
| (b) | **INITIAL TERM:** | Five (5) years (the "**Initial Term**"). |
| (c) | **COMMENCEMENT DATE:** | August 1, 2009 (the "**Commencement Date**"). |
| (d) | **TERMINATION DATE:** | July 31, 2014 (the "**Termination Date**"). |
| (e) | **RENT:** | $1.00 per year, payable on or before the Commencement Date and on the anniversary thereof for each lease year thereafter (the "**Rent**"). |
| (f) | **RENEWAL TERMS:** | One (1) additional term of four (4) years three hundred sixty four (364) days (the "**Renewal Term**"). |
| (g) | **LANDLORD'S ADDRESS:** | City of Miami Beach<br>1700 Convention Center Drive<br>Miami, Florida 33139<br>Attn: Juan Rodriguez<br>Phone: (305) 673-6000 Ext. 6920<br>Fax: (786) 394-4259 |
| (h) | **TENANT'S ADDRESS:** | SunTrust Bank<br>Corporate Real Estate<br>200 S. Orange Avenue, MC 2032<br>Orlando, FL 32801<br>Attn: Beau Davis<br>Phone: (407) 237-4281<br>Fax: (407) 237-1718 |

2. **PREMISES.**

Landlord hereby leases the Premises to Tenant, together with the non-exclusive right of access to and from the Premises and the non-exclusive right to use all parking areas, sidewalks and other common areas inside and outside of the Building, upon the terms and conditions set forth herein.

3. **TERM.**

(a) The Initial Term of this Lease shall be for the period set forth in Section 1 and shall commence on the Commencement Date and terminate on the Termination Date, unless earlier terminated or extended as provided herein. Landlord shall, immediately after the execution of this Lease, deliver possession of the Premises to Tenant for installation of the ATM. For purposes hereof, the "Term" shall mean the Initial Term and any Renewal Term exercised by Tenant as provided herein.

(b) Tenant shall have the option to renew this Lease for the Renewal Term set forth in Section 1. Tenant may exercise such renewal option by sending written notice of such exercise to the Landlord at least sixty (60) days prior to the end of the Initial Term. In the event Tenant elects to renew the Term, the Renewal Term shall be upon the same terms and conditions as set forth in this Lease.

(c) Notwithstanding any other provision of this Lease to the contrary, either party may terminate this Lease at any time, with or without cause, by providing at least ninety (90) days prior written notice of such termination to the other party, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein) after the termination of this Lease. Notwithstanding any other provision of this Lease to the contrary, Tenant shall have the right to terminate this Lease by providing at least thirty (30) days prior written notice of such termination to the Landlord, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein), if at any time during the Term (i) the Building is not open for business to the public for a period of more than sixty (60) consecutive days, (ii) the normal hours the Building is open for business to the public is restricted by Landlord to the extent that Tenant is unable to operate the ATM in a manner satisfactory to Tenant, (iii) Landlord is no longer the owner or operator of the Building and the new owner or operator of the Building is not acceptable to Tenant, (iv) the type of business being conducted in the Building or the trade name under which such business is being conducted on the date of this Lease is subsequently changed and such new business or trade name is not acceptable to Tenant, (v) Tenant determines in its sole discretion that the ATM is not generating sufficient use to justify the continued operation of the ATM in the Building, or (vi) any governmental authority having jurisdiction over Tenant or the Premises adopts, issues or promulgates any law, statute, ordinance, rule or regulation that prohibits or restricts Tenant's ability to charge a fee in

connection with the use of the ATM or limits the amount of any such fee that Tenant may charge the user of the ATM.

(d) Notwithstanding any other provision of this Lease to the contrary, Tenant's obligations under this Lease are expressly subject to the Tenant's receipt of all necessary governmental and regulatory approvals to install and operate the ATM in the Premises (collectively, the "Approvals"). Tenant agrees to exercise commercially reasonable efforts to obtain the Approvals promptly after the execution of this Lease. If the Approvals are denied or have not been received within ninety (90) days after the date hereof, this Lease shall become null and void at Tenant's option, in which event neither party shall have any further rights or obligations hereunder.

(e) Notwithstanding any other provision of this Lease to the contrary, Tenant shall have the right at any time after the first (1st) anniversary of the Commencement Date to terminate this Lease in the event the total number of monthly transactions performed at the ATM is less than fifty (50) transactions per month for any three (3) successive month period, by providing at least thirty (30) days prior written notice of such termination to the Landlord, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein) after the termination of this Lease.

4. **PAYMENTS.**
Tenant shall pay the Rent to the Landlord, at the Landlord's address identified in Section 1, with each installment thereof due in advance on the Commencement Date and each annual anniversary thereafter during the Term.

5. **USE AND OCCUPANCY.**
Tenant shall have the exclusive right to use and occupy the Premises for the installation, operation, maintenance, replacement and removal of the ATM, or any similar machine or terminal that may be initially or subsequently installed by the Tenant, and may provide or promote at the Premises any services the Tenant may lawfully offer including, without limitation, banking, insurance, consumer finance, trust services and investment services and products. Landlord agrees that during the Term the Tenant shall have the exclusive right to operate an ATM or any similar machine in the interior and exterior of the Building and in the adjacent parking lots serving the Building. Landlord acknowledges that a breach of Tenant's exclusive rights hereunder shall cause the Tenant irreparable harm and Tenant shall have the right, in addition to all other remedies available to the Tenant, to obtain injunctive or other relief for the enforcement of such exclusive rights, and Landlord agrees to reimburse Tenant for all reasonable attorneys' fees and other costs incurred by Tenant in connection with the enforcement of such exclusive rights. Further, Landlord represents, warrants and agrees that:

(a) No lease or other agreement for the Building recognizes or grants an exclusive right or privilege to any other tenant, or other person or entity, to

offer any product or service that conflicts with Tenant's exclusive rights hereunder;

(b) This Lease and the exercise by Tenant of its rights hereunder will not cause a breach or default to occur under any lease, mortgage, agreement or other encumbrance affecting the Landlord, the Premises or the Building;

(c) Provided Tenant performs all of its obligations under this Lease, Tenant shall have and enjoy peaceful and quiet possession of the Premises during the Term; and

(d) Landlord shall not limit or obstruct access to and from the ATM or obscure the visibility of the ATM to Landlord's customers, employees and invitees in the Building during normal business hours.

6. **SIGNS.**

Tenant may place signs identifying itself and its operations and the names and logos of network providers on the ATM and the Premises and in prominent locations on the interior and exterior of the Building in accordance with the signage plans attached hereto as Exhibit B. Any change to such approved signage shall be subject to the prior written consent of the Landlord, which consent shall not be unreasonably withheld. Tenant shall be obligated, at its expense, to obtain all required consents and approvals for such exterior signs from the applicable local governmental authorities. Tenant may conduct its operations at the Premises under its current trade name or any other trade name that Tenant may lawfully use in the jurisdiction in which the Building is located.

7. **FIXTURES AND EQUIPMENT.**

Tenant, at its expense, may provide all fixtures and equipment that it deems necessary or desirable for the operation of the ATM and all such fixtures and equipment shall at all times during the Term remain the property of the Tenant. Tenant agrees that if any mechanics' or similar liens shall be filed against the Building by any contractor, subcontractor, materialman or laborer for work performed or materials furnished at the request of Tenant in connection with the installation of the ATM, Tenant shall, within thirty (30) days after it is provided with written notice of such lien, cause such lien to be released or bonded off and removed of record. Landlord expressly waives and releases any right the Landlord may have to a lien under the common or statutory laws of the jurisdiction in which the Building is located upon the ATM or any other fixtures, machinery or equipment installed by Tenant on the Premises. Landlord agrees to execute any document necessary to evidence such waiver and release as may be required from time to time by Tenant.

8. **MAINTENANCE AND REPAIR.**

(a) Tenant, at its expense, shall keep and maintain the ATM in good order and repair. Landlord agrees to provide Tenant and its employees and

contractors with access to the Premises at reasonable times for the purposes of maintaining and servicing the ATM.

(b) Landlord, at its expense, shall (i) install a new power outlet or replace the existing power outlet within the Premises to accommodate the ATM, (ii) keep and maintain the Building and the Premises in good order and repair, and (iii) furnish all necessary utilities including, without limitation, lighting, air conditioning, heating, electricity and other utilities (but excluding telephone), for the Premises. Landlord agrees that the supply of electrical service to the ATM shall be continuous and shall not be interrupted for any reason, except in the event of an emergency or as a result of reasons beyond the Landlord's control.

9. **INSURANCE.**

(a) Tenant, at its expense, shall (i) insure the ATM against damage by casualty, and (ii) maintain commercial general liability insurance, including public liability and property damage, with respect to its operation of the ATM, with a minimum combined single limit of liability of $2,000,000 for personal injury or death of persons occurring on the Premises.

(b) Landlord, at its expense, shall keep the Building and the Premises insured with broad form property damage insurance, with extended coverage, in the amount of the replacement value of the Building. Landlord, at its expense, shall also maintain commercial general liability insurance, including public liability and property damage, with a minimum combined single limit of liability of $2,000,000 for personal injury or death of persons occurring in or around the Building or the Premises. Notwithstanding the foregoing, Landlord may elect to self-insure with respect to any of the coverages required hereunder.

(c) The Landlord may self-insure by means of an adequate insurance fund set aside and maintained for that purpose as it relates the insurance requirements under this Agreement.

10. **INDEMNIFICATION.**

Tenant agrees to indemnify, defend and hold the Landlord, and its officers, directors, employees and agents, harmless from any and all claims for injury, death, damages or expenses (including reasonable attorneys' fees) caused by Tenant's use and occupancy of the Premises, except for any such injury, death, damages or expenses caused by the negligence or willful misconduct of Landlord or any employee, agent or contractor of Landlord. ~~To the extent permitted under applicable laws, Landlord agrees to indemnify, defend and hold Tenant, and its officers, directors, employees and agents, harmless from any and all claims for injury, death, damages or expenses (including reasonable attorneys' fees) caused by the activities or business of Landlord, any employee of Landlord or any contractor of Landlord at the Building.~~ Notwithstanding the foregoing indemnification provisions, Landlord and Tenant, on behalf of

themselves and all others claiming under them (including any insurers), hereby waive all claims against each other (including all rights of subrogation) for loss or damage to their respective property arising from fire and any other casualty that are coverable under an extended coverage insurance policy.

11. **TAXES.**
Landlord shall pay all real estate taxes, if any, assessed against the Building and the Premises, and Tenant shall pay all personal property taxes imposed specifically against the ATM.

12. **TERMINATION BY LANDLORD.**
If Tenant fails to pay any installment of the Rent when it becomes due and payable and such failure continues for ten (10) days after written notice of such failure from the Landlord to the Tenant or, if Tenant breaches any other covenant of this Lease and fails to cure same within thirty (30) days after written notice of such breach from the Landlord to Tenant or, if such breach cannot be cured within such thirty (30) day period and Tenant fails to pursue diligently the curing of such breach within a reasonable period of time thereafter, then Landlord may, at its option, terminate this Lease by providing ten (10) days prior written notice of such termination to Tenant, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein).

13. **TERMINATION BY TENANT.**
If Landlord breaches any covenant of this Lease and fails to cure same within thirty (30) days after written notice of such breach from the Tenant to Landlord or, if such breach cannot be cured within such thirty (30) day period and Landlord fails to pursue diligently the curing of such breach within a reasonable period of time thereafter, then Tenant may, at its option, terminate this Lease by providing ten (10) days prior written notice of such termination to Landlord, in which event neither party shall have any further rights or obligations hereunder (except as specifically provided herein).

14. **SURRENDER.**
Landlord acknowledges and agrees that the ATM and any other fixtures, machinery or equipment installed by Tenant on the Premises shall remain the property of Tenant. Within thirty (30) days after any termination or expiration of the Term, Tenant, at its expense, shall remove the ATM and repair any damages to the Premises caused by Tenant's installation or removal of the ATM, and surrender possession of the Premises to Landlord in good condition, reasonable wear and tear excepted.

15. **CASUALTY.**
If the Premises or the Building is destroyed by fire or other casualty or the Building is destroyed or damaged to such an extent that Tenant is unable to operate the ATM in a manner satisfactory to Tenant, then Tenant shall have the right to terminate this Lease as of the date such casualty occurred by providing written notice thereof to Landlord, in which event neither party shall have any

further rights or obligations hereunder (except as specifically provided herein).

16. **CONDEMNATION.**
If the whole or any part of the Building shall be taken or condemned by any competent authority (including, without limitation, sale under the threat of such a condemnation) to such an extent that Tenant is unable to operate the ATM in a manner satisfactory to Tenant, then Tenant shall have the right to terminate this Lease as of the date such condemnation is officially announced by providing written notice thereof to Landlord. Upon such termination, neither party shall have any further rights or obligations under this Lease (except as specifically provided herein). All awards made by reason of condemnation shall be made to Landlord, and Tenant shall assign to Landlord all of its rights, title and interest in and to any such award. Landlord shall, however, pay to the Tenant any portion of an award which may be allocable to permanent improvements to the Premises or the Building made by Tenant. Further, if any award includes an amount of compensation for moving expenses, the Tenant shall be entitled to a portion of such amount in the amount of the Tenant's actual moving expenses.

17. **ASSIGNMENT AND SUBLEASE.**
Except as otherwise provided in this Section, Tenant may assign its interests in this Lease or sublease the Premises only with the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Tenant may assign this Lease or sublease all or part of the Premises, without Landlord's consent, (i) to any entity that is a parent, subsidiary or affiliate of Tenant, and (ii) to any successor in interest to Tenant by merger, consolidation, acquisition or reorganization.

18. **ENTIRE AGREEMENT.**
This Lease and any exhibits attached hereto set forth the entire agreement between the parties hereto with respect to Tenant's right to install, operate, replace, maintain and remove the ATM. There are no promises, agreements or understandings, whether oral or written, between the parties regarding such matters other than as set forth in this Lease. Any amendment or modification to this Lease shall not be binding upon either party unless such amendment or modification is reduced to writing and signed by both parties. This Lease does not create a partnership, agency or joint venture relationship between Landlord and Tenant for the operation of the ATM or for any other purpose.

19. **CAPTIONS.**
The captions of the sections of this Lease are not part of the context of this Lease and shall be ignored in construing this Lease. They are intended only as aids in locating various provisions of this Lease.

20. **SEVERABILITY.**
Each provision contained in this Lease shall be independent and severable from all other provisions hereof and the invalidity of any such provision shall in no way affect the enforceability of the other provisions hereof.

21. **GOVERNING LAW.**
This Lease shall be governed by and construed in accordance with the laws of the jurisdiction in which the Building is located without regard to conflict of laws principles.

22. **BINDING EFFECT.**
This Lease shall be binding upon and shall inure to the benefit of the Landlord and the Tenant and their respective legal representatives, successors and permitted assigns.

23. **NOTICES.**
All notices and communications under this Lease shall be in writing and signed by a duly authorized representative of the party sending the same. All notices shall be deemed effective when delivered personally or on the next business day after being sent by a guaranteed overnight delivery service (such as UPS) or on the third (3rd) day after being sent by certified mail, return receipt requested, postage prepaid, to the addresses listed in Section 1. Either party may change its address by giving written notice of such change to the other party in the manner provided herein. Until any such written notice is actually received, the most recent address of record shall be deemed to continue in effect for all purposes.

24. **NO BROKERS.**
Landlord and Tenant represent and warrant to each other that there are no claims for brokerage commissions or finder's fees in connection with the execution of this Lease. Landlord and Tenant each agree to indemnify, defend and hold the other party harmless from and against all liabilities, expenses, fees, commissions and/or costs (including reasonable attorneys' fees) arising from any such claims asserted by anyone claiming by, through or against the indemnifying party.

25. **AUTHORIZATION.**
Each party to this Lease hereby represents that this Lease has been duly authorized, executed and delivered by all necessary action on behalf of such party, constitutes the valid and binding agreement of such party and is enforceable in accordance with its terms.

26. **WAIVER OF JURY TRIAL.**
Landlord and Tenant hereby waive, to the extent permitted by law, the right to trial by jury in any action or proceeding or counterclaim between the parties hereto, or their successors or permitted assigns, arising out of or in any way connected with this Lease or any of its provisions, Tenant's use or occupancy of the Premises and/or any claim of injury or damage.

27. **COUNTERPARTS.**
This Lease may be executed in two or more counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument.

28. **AUTOMATIC TERMINATION.**
This Lease shall automatically terminate and become null and void in the event this Lease has not been executed on behalf of the Landlord and returned to the Tenant no later than 5:00 p.m. local Orlando, Florida time on _____, 2009, TIME BEING OF THE ESSENCE.

**IN WITNESS WHEREOF**, Tenant and Landlord have executed or caused this Lease to be executed on their behalf by their duly authorized representatives as of the date set forth above.

**WITNESSES:**

**TENANT:**

**SUNTRUST BANK,**
a Georgia banking corporation

By: _____

Name: _____

By: _____

Name: _____

Title: _____

Federal Tax ID No: 58-0466330

**LANDLORD:**

**CITY OF MIAMI BEACH,**
a Florida municipal corporation

By: _____

Name: _____

By: _____

Name: _____

Title: _____

Federal Tax ID No: 59-6000372

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 5/6/09 Date

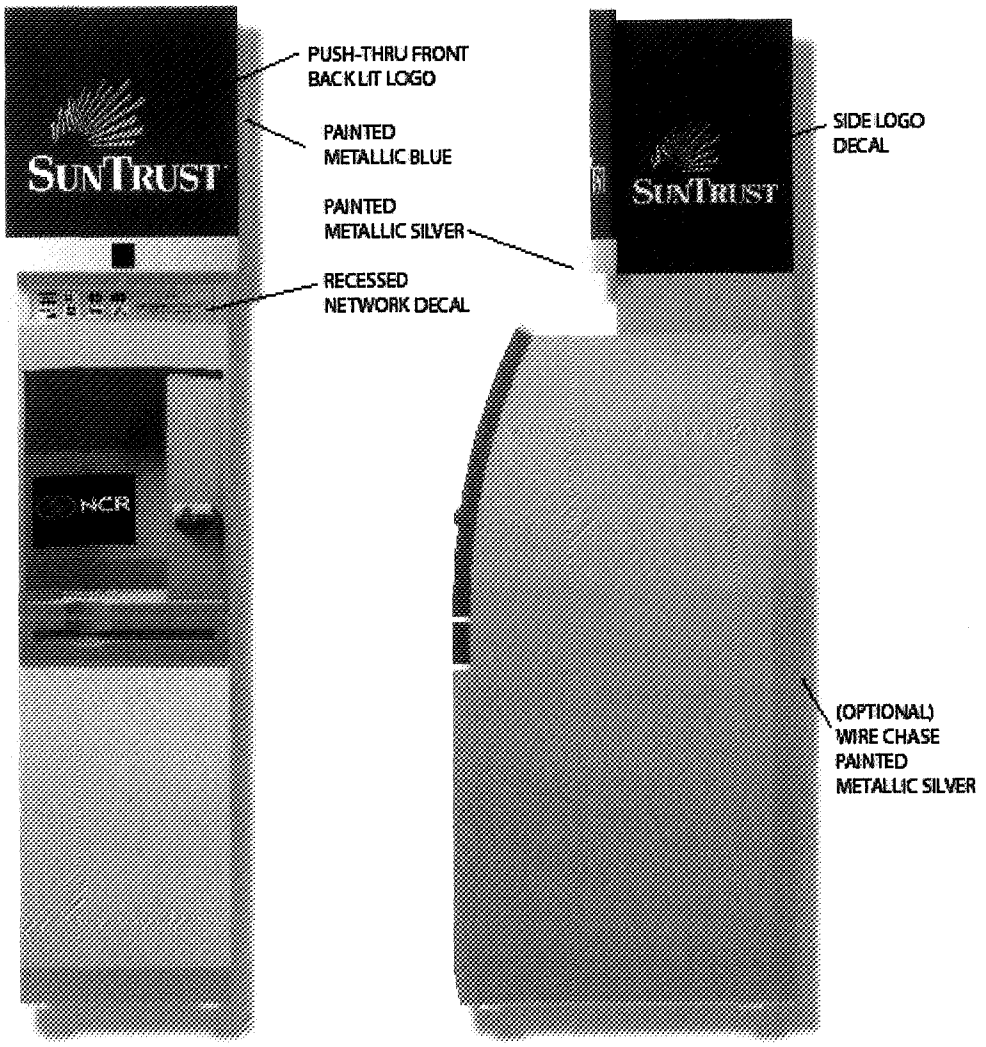
# EXHIBIT A

ATTACH PLAN SHOWING LOCATION OF THE PREMISES

**TO BE SUBMITTED**

# EXHIBIT B
(Tenant's Signage Plans)

SUNTRUST
3002 TOPPER
NCR P - 77 ATM




NORTHSTAR WHITE
#100W0817
NORTHSTAR METALLIC
BLUE #928L1118
NORTHSTAR METALLIC
SILVER #9285ST02

Created For: SUNTRUST

Sterling

3584 West 1820 South
Salt Lake City, Utah 84104
Phone: (801) 433 - 0444
Fax: (801) 433 - 0445

Date:
03 / 03 / 2006
Created by:
Russell S. Gee

Notes:

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, June 3, 2009 at 10:30 A.M.,** to consider A Resolution Approving An ATM Lease Agreement Between The City And Suntrust Bank, For Use Of Approximately Sixteen (16) Square Feet Of City-Owned Property, Located At 1700 Convention Center Drive (A.K.A. City Hall), Miami Beach, Florida; Said Lease Having An Initial Term Of Five Years, With An Additional Renewal Term Of Four (4) Years And Three Hundred Sixty Four (364) Days, At The City's Sole Discretion; Waiving By 5/7ths Vote, The 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 #538**

**Condensed Title:**

A resolution of the Mayor and City Commission of the City of Miami Beach, Florida, waiving the development regulations for an addition to a temporary parking lot in Collins Park to temporarily replace lost parking while the East Lot is renovated, pursuant to section 142-425(d) of the City Code.

**Key Intended Outcome Supported:**

Ensure well designed quality capital projects.

**Supporting Data (Surveys, Environmental Scan, etc.):** Available parking is ranked #5 by residents as one of the changes that will make Miami Beach a better place to live, work, play or visit; 77% of residents rated availability of parking across Miami Beach as too little or much too little.

**Issue:**

Should the City Commission adopt the Resolution?

**Item Summary/Recommendation:**

**PUBLIC HEARING**

The Collins Park Improvements project includes a complete renovation of Collins Park, adjacent streets, and the East Parking Lot, which is located just east of Collins Park. This work is divided into two phases. Phase One of the project is the reconstruction and improvement of the East Parking Lot and the Rotunda within Collins Park. Phase Two will be the renovation and improvements of Collins Park proper and the surrounding streets to match the improvements previously completed for the Regional Library, the Miami City Ballet, and the Bass Museum. As part of Phase Two, the temporary parking lot will be demolished.

On September 10, 2008, the City Commission passed Resolution No. 2008-26841 waiving development regulations and authorizing the construction of a temporary parking lot within Collins Park and in front of the Bass Museum. The temporary parking lot has approximately one hundred ten (110) parking spaces.

Complaints about the lack of parking were raised during the May 13, 2009 City Commission meeting. Discussion followed about expanding the temporary parking lot within Collins Park.
In order to construct a temporary parking lot for the limited time contemplated and to save funds by not constructing the parking lot to the temporary parking lot standards, certain waivers from the City Code will be required. Pursuant to Section 142-145 (d), following a public hearing, the development regulations required by the City Code, except for the historic preservation and design review processes, may be waived by a five-sevenths vote of the City Commission for developments pertaining to governmental owned buildings, uses, and sites which are wholly used by, open and accessible to the general public.

The projected scope of work with the recommended waivers includes the following:

- Removal of 4" bottom layer and sod,
- The placement, compaction, and grading of a four inch (4") layer of crushed rock,
- Application of parking striping and symbols to accommodate the approximate 85 additional parking spaces, and
- Removal of the temporary parking lot upon completion of the East Parking Lot renovation.

A proposal for the above option, which essentially waives the requirements for asphalt, lighting and landscaping, has been secured from the Collins Park project contractor in the negotiated amount of $50,000. Funding is available from previously appropriated funds in City Center RDA Fund 365, for Construction, in Account number 365-2398-067357. This amount should be recovered through parking revenue at the lot.

**Advisory Board Recommendation:**

N/A

**Financial Information:**

| Source of Funds: | | Amount | Account |
|---|---|---|---|
| | 1 | $50,000 | 365-2398-067357 City Center RDA (Construction) |
| | 2 | | |
| | 3 | | |
| OBPI | Total | $50,000 | |

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Keith Mizell/ Jorge Gomez/ Mercy Lamazares

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| FHB | TH | JMG |



AGENDA ITEM R7C
DATE 6-3-09

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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: June 3, 2009 **PUBLIC HEARING**

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING THE DEVELOPMENT REGULATIONS FOR AN ADDITION TO A TEMPORARY PARKING LOT IN COLLINS PARK TO TEMPORARILY REPLACE LOST PARKING WHILE THE EAST PARKING LOT, LOCATED ON COLLINS AVENUE BETWEEN 21ST AND 22ND STREETS, IS RENOVATED, PURSUANT TO SECTION 142-425(d) OF THE CITY CODE.**

## ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

## FUNDING

Funding of $50,000 for the cost of constructing an addition to the temporary parking lot is available from previously appropriated funds in City Center RDA Fund 365, for construction, in account number 365-2398-067357. It is anticipated that these costs will be recovered through the collection of the City's standard parking rates at the lot.

## ANALYSIS

The Collins Park Project includes a complete renovation of Collins Park, adjacent streets, and the East Parking Lot which is located just east of Collins Park. This work is divided into two phases. Phase One of the project is the reconstruction and improvement of the East Parking Lot and the Rotunda within Collins Park. Phase Two will be the renovation and improvements of Collins Park proper and the surrounding streets to match the improvements previously completed for the Regional Library, the Miami City Ballet, and the Bass Museum. As part of Phase Two, the temporary parking lot will be demolished.

The Capital Improvement Projects Office (CIP) developed this phasing plan to accommodate the return of Art Basel and the ArtPositions placements in the vicinity of the East Parking lot. It is anticipated that this phase of the construction will be complete in September 2009 before Art Basel. Phase Two is scheduled to begin upon the end of Art Basel so that there is no construction during the events.

A temporary reduction in public parking during Phase One was anticipated by staff during the pre-construction coordination efforts. Staff met with area stakeholders to facilitate an understanding of the Collins Park Project construction impacts and to make some

arrangements to accommodate the businesses in the area. The major stakeholders such as the W Hotel, the Days Inn, the Regional Library, the Bass Museum, and the Miami City Ballet agreed that the arrangements made were satisfactory and that the scheduling of the parking lot improvements was acceptable. The W Hotel also made independent arrangements by leasing a private lot at Alton Road and 7th Street.

However, objections to the temporary loss of public parking were raised during the July 2, 2008 Project Pre-construction Public Meeting by area residents, some property and hotel owners, the Art Basel representative, and the Collins Park Neighborhood Association. In response, on September 10, 2008, the City Commission passed Resolution No. 2008-26841 waiving development regulations and authorizing the construction of a temporary parking lot within Collins Park and in front of the Bass Museum.

The temporary parking lot accommodates approximately one hundred ten (110) parking spaces; of which approximately one hundred five (105) are regular spaces and five (5) are handicapped parking spaces that comply with ADA standards.

Since construction of the temporary parking lot construction has commenced on the Collins Park Project and the East Parking lot was closed on May 4, 2009.

New complaints about the lack of parking were raised during the May 13, 2009 City Commission meeting. There was discussion at this meeting about providing additional parking in the temporary parking lot within Collins Park.

CIP has prepared a plan to expand the existing temporary parking lot that provides approximately eighty five (85) additional parking spaces.

It should be noted that the Collins Park property is zoned GU, Government Use. Sec. 142-422 of the City of Miami Beach Code lists parking lots as one of the main permitted uses. Additionally, Section 130-70, "Temporary parking lot standards", states that temporary parking lots may be operated in the GU government use district. Section 130-70(2) of the City Code requires that a temporary parking lot include no less than one inch of asphalt over a four-inch limerock base. Section 130-70(8) "Landscaping Requirements" of the Code requires a landscape plan that, at minimum, indicates a five foot wide landscaped area bordering the surface area along a property line, street, alley or sidewalk; one canopy tree every 20 feet of frontage; a hedge that is at least 36 inches in height at the time of planting; and an in-ground irrigation system that covers 100% of the landscaped areas.

Moreover, as a note of information, Section 142-425, "Development regulations," state that for the GU, Government Use District, the regulations shall be the average of the requirements contained in the surrounding zoning districts. The surrounding zoning district is CD-2 Commercial Medium Intensity and Section 142-307, "Setback Requirements," requires a five-foot side yard setback for a surface parking lot.

In order to construct a temporary parking lot for the very limited time contemplated and to save funds by not constructing the parking lot to the temporary parking lot standards, certain waivers from the City Code will be required. Pursuant to Section 142-145 (d), following a public hearing, the development regulations required by the City Code, except for the historic preservation and design review processes, may be waived by a five-sevenths vote of the City Commission for developments pertaining to governmental owned buildings, uses, and sites which are wholly used by, open and accessible to the general public. The waivers

would be for provisions found in the previously-cited Section130-70(2), Section 130-70(8) and Section 142-307.

The projected scope of work with the recommended waivers includes the following:

- Removal of 4" bottom layer and sod,
- The placement, compaction, and grading of a four inch (4") layer of crushed rock,
- Application of parking striping and symbols to accommodate the approximate 80 additional parking spaces, and
- Removal of the temporary parking lot upon completion of the East Parking Lot renovation.

A proposal for the above option, which essentially waives the requirements for asphalt, lighting and landscaping, has been secured from Metro Express, the Collins Park project contractor, in the negotiated amount of $50,000. This amount is anticipated to be recovered by our standard parking rates for use of the lot.

Section 142-425(e) requires a public notice to be advertised in a newspaper of general paid circulation in the city at least 15 days prior to the hearing. Fifteen days prior to the public hearing date, both a description of the request and the time and place of such hearing shall be posted on the property, and notice shall also be given by mail to the owners of land lying within 375 feet of the property. The notice of public hearing was published in the Miami Herald on May 20, 2009, a sign was posted on the site, and notices were sent to adjacent properties.

## CONCLUSION

The Administration recommends the adoption of a resolution waiving the development regulations for the construction of a temporary parking lot in Collins Park to temporarily replace lost parking while the lot is renovated, pursuant to Section 142-425(d) of the City Code.

A five-sevenths vote of the city commission is required to approve a waiver or use that is considered under this regulation.

JMG/TH/FHB/JCC/RWS/HKM

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**RESOLUTION NO._____**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING THE DEVELOPMENT REGULATIONS FOR AN ADDITION TO A TEMPORARY PARKING LOT IN COLLINS PARK TO TEMPORARILY REPLACE LOST PARKING WHILE THE EAST PARKING LOT, LOCATED ON COLLINS AVENUE BETWEEN 21ST AND 22ND STREETS, IS RENOVATED, PURSUANT TO SECTION 142-425(d) OF THE CITY CODE.**

**WHEREAS,** the Collins Park Improvements project, which includes a complete renovation of Collins Park, adjacent streets, and the East Parking Lot, located on Collins Avenue between 21st and 22nd Streets, is under construction; and

**WHEREAS,** due to the different aspects of the project, the Capital Improvement Projects Office (CIP) has developed a phasing schedule for the project with the contractor that takes into consideration the Art Basel event; and

**WHEREAS,** the prospect a temporary reduction in public parking was anticipated by staff during the pre-construction coordination efforts and meetings with stakeholders and surrounding property owners were held and efforts were made to mitigate the impact from the temporary loss of parking by providing temporary parking within Collins Park and in front of the Bass Museum; and

**WHEREAS,** on September 10, 2008, the City Commission passed Resolution No. 2008-26841 waiving development regulations and authorizing the construction of a temporary parking lot within Collins Park and in front of the Bass Museum; and

**WHEREAS,** new complaints about the lack of public parking were raised during the May 13, 2009 City Commission meeting; and

**WHEREAS,** there was discussion at the May 13, 2009 City Commission meeting about providing additional parking in the temporary parking lot within Collins Park; and

**WHEREAS,** the Collins Park property is zoned GU, Government Use and Section 142-422 of the City of Miami Beach Code lists parking lots as one of the main permitted uses and Section 130-70, "Temporary parking lot standards," states that temporary parking lots may be operated in the GU government use district; and

**WHEREAS,** Section 130-70(2), of the City Code requires that a temporary parking lot include no less than one inch of asphalt over a four-inch limerock base; and

**WHEREAS,** Section 130-70(8), "Landscaping Requirements" of the Code requires a landscape plan that, at minimum, indicates a five foot wide landscaped area bordering the surface area along a property line, street, alley or sidewalk; one canopy tree every 20 feet of frontage; a hedge that is at least 36 inches in height at the time of planting; and an in-ground irrigation system that covers 100 percent of the landscaped areas; and

**WHEREAS**, Section 142-425 (a), "Development regulations," state that for the GU, government use district, the regulations shall be the average of the requirements contained in the surrounding zoning districts. The surrounding zoning district is CD-2 commercial, medium

intensity and Section 142-307, "Setback requirements," requires a five-foot side yard setback for a surface parking lot; and

**WHEREAS,** this temporary parking lot accommodates a total of one hundred ten (110) parking spaces, of which one hundred five (105) are regular spaces and five (5) are handicap parking spaces; and

**WHEREAS,** CIP has prepared a plan to expand the existing temporary parking lot that provides approximately eighty five (85) additional parking spaces; and

**WHEREAS,** the temporary parking would then be removed after the East Parking Lot is completed, and ahead of the construction of the Collins Park improvements; and

**WHEREAS,** it is estimated that construction of the East Parking Lot should be complete in September 2009; and

**WHEREAS,** should the Commission desire to construct a parking facility, for the very limited time contemplated, and should there be a desire to save funds by not constructing the parking lot to the temporary parking lot standards, certain waivers from the City Code will be required; and

**WHEREAS,** pursuant to Section 142-145 (d), following a public hearing, the development regulations required by the City Code, except for the historic preservation and design review processes, may be waived by a five-sevenths vote of the City Commission for developments pertaining to governmental owned buildings, uses and sites which are wholly used by, open and accessible to the general public; and

**WHEREAS,** the waivers would be for provisions found in the previously-cited Section130-70(2), Section 130-70(8), and Section 142-307; and

**WHEREAS,** should the decision to construct the temporary parking lot with the recommended waivers be made, then the proposed project would be submitted to regulatory staff for their review and approval that would lead to a Certificate of Appropriateness for the project; and

**WHEREAS**, under this scenario, then the projected scope of work would include removal of existing sod material, the placement, grading, and compaction of a four-inch (4") layer of crushed rock, parking striping and symbols, and removal of the temporary parking lot upon completion of the East Parking Lot renovations; and

**WHEREAS,** a proposal for the above option has been secured from Metro Express, the Collins Park project contractor, in the negotiated amount of $50,000 from previously appropriated City Center RDA Fund 365.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA** that the Mayor and City Commission hereby adopt a resolution for the purpose of waiving the development regulations as specified above in sections 130-70(2), 130-70(8), and 142-307, for an addition to a temporary parking lot in Collins Park to temporarily replace lost parking while the East lot is being renovated, pursuant to Section 142-425(d) of the City Code.

**PASSED AND ADOPTED this ____ day of _____, 2009.**

_____
MATTI HERRERA BOWER, MAYOR

ATTEST:

_____
ROBERT H. PARCHER, CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____ 5/28/09
CITY ATTORNEY Date

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MIAMIBEACH

# CITY OF MIAMI BEACH
# NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY** given that a public hearing will be held by the Mayor and City Commission of the City of Miami Beach, Florida, in the Commission Chambers, 3rd floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, June 3, 2009 at 10:35 A.M.**, To Waive The Development Regulations For An Addition To A Temporary Parking Lot In Collins Park To Temporarily Replace Lost Parking While The East Parking Lot, Located On Collins Avenue Between 21st And 22nd Street, Is Renovated, Pursuant To Section 142-425(d) Of The City Code.

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. This meeting may be opened and continued and under such circumstances additional legal notice would not be provided.

Pursuant to Section 286.0105, FL Statutes, 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 #542**

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**Condensed Title:**

A Resolution approving, on second reading, following a duly noticed public hearing, 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 and waiving by 5/7th vote the competitive bidding and appraisal requirements as required by Section 82-39.

**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.

**Issue:**

Should the City approve the lease agreement?

**Item Summary/Recommendation:**

**SECOND READING & PUBLIC HEARING**

Subject space is one of four retail ground floor units in the City-owned building at 1701 Meridian Avenue purchased In 2001 to address the City's ongoing need for administrative office expansion. When the City purchased the building, Vidal Tan Soon, Inc. had been an existing tenant of the subject retail space since 1994. The Mayor and City Commission approved 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. The proposed new lease will incorporate the following terms:

- Square Footage: 1802.89 per updated 2008 City survey.
- Rent: Tenant has agreed to a rent increase from the currently paid $37.40 per SF to $40 per SF, including Common Area Maintenance (which includes maintenance, real estate taxes, and insurance);
- Security Deposit: Upon execution of the Agreement, the Tenant will furnish the City a Security Deposit in the sum of $6,000.
- Use and Possession: The leased Premises would be used for the purpose of providing a variety of services relating to building development, including 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;

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.

On May 13, 2009, pursuant to Resolution No. 2009-27073, the Mayor and City Commission approved the Lease Agreement on first reading; waived by 5/7ths vote the competitive bidding and appraisal requirements; and set the public hearing on June 3, 2009, for second reading and final approval of the Lease Agreement.

**Advisory Board Recommendation:**

**Financial Information:**

| Source of Funds: n/a | | Amount | Account |
|---|---|---|---|
| | 1 | n/a | |
| Financial Impact Summary: | | | |

**City Clerk's Office Legislative Tracking:**

Anna Parekh ext. 6471

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| AP_____ | HF_____ | JMG_____ |

F:\RHCD\$ALL\ECON\$ALL\ASSET\777-17th Street\Permit Doctor _ Damian Gallo\GALLO Lease Agreement 2nd Reading.SUM.doc



AGENDA ITEM R7D
DATE 6-3-09

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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: June 3, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, 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 AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE LEASE AGREEMENT.**

### ADMINISTRATION RECOMMENDATION
Adopt the Resolution.

### KEY INTENDED OUTCOMES SUPPORTED
To ensure well-maintained facilities.

### ANALYSIS
The subject leaseable space is one of four retail ground floor units in the City-owned building at 1701 Meridian Avenue (a.k.a. 775 17th Street) purchased in 2001 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 that retention of the retail space was 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 retail tenant 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 and the rent had been adjusted over the term with CPI increases to the current rental rate of $37.40 per SF, including CAM costs.

Gallo has remained in the space on a month-to-month tenancy and 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. The Tenant will continue providing a variety of services relating to building development, including 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, roof inspections, lien searches, fire and building compliance, permit administration, occupancy load calculations, special event permitting, and recording services) in its current space, and has agreed to the terms outlined below.

**Summary of Terms:**

Square Footage: 1802.89 per updated 2008 City survey.

Rent: Tenant has agreed to increase the rent from the current rate of $37.40 per SF, including CAM, to $40 per SF, including CAM. The annual rent to the City is $72,105.44 or $6,008.79 per month.

Common Area Maintenance (CAM) costs: Amended to $13.60 per SF (increased from current $12.65 per SF) to reflect current costs, and which includes payment of maintenance, real estate taxes, and insurance.

Security Deposit: Tenant shall furnish the City a Security Deposit in the sum of $6,000.

Use and Possession: The leased premises will 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 it is in any way acting as an agent and/or representative of the City of Miami Beach, nor that, by virtue of this Agreement, it derives any special benefit and/or consideration from the City.

**Review of Comparable Market Analysis:**

A review of nearby available space revealed that the asking price for ground floor retail space at 1680 Meridian Avenue is $30 per SF NNN. Retail space at 1560 Lenox Avenue is being marketed at $38-$40 per SF Gross.

Additionally, City staff consulted area real estate brokers who focus on this market (including the Lincoln and Alton Road corridors) regarding realistic area comparables in the current market and were informed that the realistic range for rents in the retail portion of the 1701 Meridian Avenue building could run from $35-$45 per SF NNN, with the lower end of the spectrum being more realistic in today's environment. It was suggested that due to

the absence of tourist traffic in the area, the focus on leasing any new space should remain local service oriented, such as the City's current retail tenants. Therefore, the proposed rent of $40 per SF Gross for Gallo is within the range of market rates, and the use of the retail space is feasible for market and area conditions.

**CONCLUSION**

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 (see attached);
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.

On May 13, 2009, pursuant to Resolution No. 2009-27073, the Mayor and City Commission approved the Lease Agreement on first reading; waived by 5/7$^{ths}$ vote, the competitive bidding and appraisal requirements; and set the public hearing on June 3, 2009, for second reading and final approval of the Lease Agreement. At the same meeting the City Commission also adopted Resolution No. 2009-27071 allowing Gallo to assume the lease of tenant, Dade County Federal Credit Union, which ceased its Miami Beach operations effective May 1, 2009. Gallo's assumption of the additional space allows for the expansion of its operations.

Based on the aforementioned, the favorable experience and payment history with the current Tenant, and the current market conditions, the Administration recommends that the Mayor and City Commission approve on second reading (and final approval), following a duly noticed public hearing, 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 City Code and authorize the Mayor and City Clerk to execute the Lease Agreement.

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# LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 3rd day of June, 2009, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **DAMIAN J. GALLO & ASSOCIATES, INC.** (d/b/a Permit Doctor), 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" and more fully described as follows:

> 1,802.89 square feet of City-owned property (the "Building"), located at 1701 Meridian Avenue, Unit 2 (a.k.a. 767 17th Street), Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of three (3) years, commencing on the 1st day of July, 2009 (the "Commencement Date"), and ending on the 30th day of June, 2012. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1st day of July, and ending on the 30th day of June.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for one (1) additional three (3) year renewal term. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Lease Agreement (upon expiration of the initial term or any renewal term), the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.

3. Rent.

3.1 Base Rent:
Base Rent for the Demised Premises shall begin to accrue on the Commencement Date.

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Forty Seven Thousand Five Hundred Ninety Six Dollars and 30/100 ($47,596.30) per year, payable in monthly installments of Three Thousand Nine Hundred Sixty Six Dollars and 36/100 ($3,966.36), commencing on the Commencement Date and, thereafter, on each first day of subsequent months.

3.1.2 Concurrent with the payment of the Base Rent, Tenant shall also include any and all additional sums for all applicable sales and use tax, now or hereafter prescribed by Federal, State or local law.

3.1.3 The Base Rent amount pursuant to this Section 3.1 shall be increased annually, on the anniversary of the Commencement Date of the Lease, in increments of three (3%) percent per year.

3.2 Additional Rent:
In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Operating Expenses:
Tenant shall pay Six Hundred Dollars and 96/100 ($600.96) per month, for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint

use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

"Common Facilities" shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

Tenant agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Tenant's share of Operating Expenses shall increase or decrease accordingly.

3.2.2 Property Taxes:
The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The 2008 Property Tax Payment is Fifteen Thousand Six Hundred Seventy Four Dollars and 98/100 ($15,674.98), payable in monthly installments of One Thousand Three Hundred Six Dollars and 25/100 ($1,306.25).

3.2.3 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 One Hundred Thirty Five Dollars and 22/100 ($135.22). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility.

3.3 Sales Taxes:
Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4 Enforcement.
Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.
All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Revenue Manager
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.
Tenant may request, from the City's Parking Department, the use of no more than four (4) parking spaces, if available, at Municipal Parking Garage 2-G located on 17th Street and Meridian Court. Rates for said spaces are subject to change, and are currently Seventy ($70.00) Dollars per month, plus applicable sales and use tax per space.

6. Security Deposit.
Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Six Thousand ($6,000.00) Dollars. Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the aforestated, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant solely for the purpose(s) 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, roof inspections, lien searches, fire and building compliance, permit administration, occupancy load calculations, special event permitting, and recording services).

Tenant's uses and/or services provided upon the Demised Premises may require Tenant to interact, from time to time, with City of Miami Beach officials and employees, acting in their regulatory capacity. Notwithstanding the preceding, 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 this Agreement, Tenant derives 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 Tenant shall be deemed as an

automatic default under this Agreement and, notwithstanding any other provision set forth herein, shall entitle the City to automatically terminate this Agreement, without further notice to Tenant, and without liability to the City.

Said Premises shall be open for operation a minimum of five (5) days a week, with normal hours of operation being as follows:

Monday - Friday: 7:00 AM to 5:00 PM

Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever. Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided 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.

7.3 Exclusive Use:
Provided that Tenant is in actual occupancy of the Demised Premises and using the Demised Premises for the permitted use(s) set forth in Subsection 7.1, then the City hereby agrees that it shall not lease space in the Building with persons or entities whose primary principal business is providing building plan and permit processing services, where "primary principal business" means that greater than fifty (50%) percent of such other tenant's gross revenue shall be derived from providing one or more of the services set forth in Subsection 7.1. Notwithstanding the foregoing, Tenant acknowledges that other space in the office portion of the Building (i.e. floors 2 through 5, but excluding ground floor retail spaces) may be leased by the City to persons or entities whose primary principal business is providing architectural and/or engineering services. The provisions of this Subsection 7.3 shall not apply to the City of Miami Beach, and/or its officers, employees, agents, and/or consultants as or when any and all such individuals may be engaged in the provision of building plan permit and permit processing services on behalf of the City.

8. Improvements.

8.1 Tenant accepts the Demised Premises in their present **"AS IS"** condition

and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, 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 expense and responsibility. 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. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred ($500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, 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. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his 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.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.

9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability, in the minimum amount of One Million ($1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.

10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including without limitation 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 this Agreement).

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). 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.

11. Property Taxes and Assessments.
For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

12. Assignment and Subletting.
Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the 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.

13. Operation, Maintenance and Repair.

13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Building, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

Tenant agrees and understands, that if the City provides a separate air-conditioning unit for the Demised Premises, the City, at its sole discretion, may require that Tenant obtain, at any time during the Term of this Agreement, and continuously maintain in good standing, at Tenant's expense, throughout the Term of this Agreement, a maintenance and repair contract, approved by the City, with a service company previously approved in writing by the City, providing for the preventative maintenance and repair of all heating/ventilation/air-conditioning (HVAC) equipment servicing the Demised Premises. In the event that the City notifies Tenant that it will require Tenant to contract for said maintenance and repair services, Tenant shall provide to the City, in writing, within ten (10) business days, the name(s) and telephone number(s) of service company(ies) for the City's review and approval. Tenant shall provide a copy of a current, enforceable and fully executed maintenance and repair contract, no later than ten (10) business days after receipt of the City's approval of the service company, as proof of Tenant's compliance with this provision.

If the City provides a separate air-conditioning unit for the Demised Premises, as provided herein, Tenant may request that the City inspect same to ensure that it is in proper working order. If the unit is not in proper working order, the City shall, at its sole discretion, repair or replace the unit.

13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the satisfaction of the City.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than 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 Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.

13.5 It shall be Tenant's sole obligation and responsibility 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 Tenant Responsibilities for Utilities (not included within Operating Expenses). Tenant is solely responsible for, and shall promptly pay when due, all charges and impact fees for any and all utilities for the Demised Premises **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations.
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 expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.
Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall

have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, 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 Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

17.2 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, 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.

18. Default.

18.1 Default by Tenant:
At the City's option, any of the following shall constitute an Event of Default under this Agreement:

18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due within fifteen (15) days of due date, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;

18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;

18.1.3 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 the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;

18.1.4 Receipt of notice of violation from any governmental authority having

jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;

18.1.5 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;

18.1.6 Tenant shall become insolvent;

18.1.7 Tenant shall make an assignment for benefit of creditors;

18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or

18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

19.1 Rights on Default:
In the event of any default by Tenant as provided herein, 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;

19.1.1 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 the Demised Premises and expel or remove Tenant and its 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 Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.

19.1.2 Declare the entire amount of the Base Rent and Additional 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.

19.1.3 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, the 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.

19.1.4 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 Tenant liable for the deficiency, if any.

19.1.5 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 from the due date. In addition, there will be a late charge of Fifty ($50.00) Dollars for any payments submitted after the grace period.

19.1.6 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 the City on the first day of the month following the payment of the expense by the City.

19.1.7 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.

19.2 Default by City:

The failure of the City to perform any of the covenants, conditions and

agreements of this 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 Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 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; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 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 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.

20.2 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.

21. Indemnification Against Claims.

21.1 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 other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.

21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

22. Signs and Advertising.
Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, 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.

23. Effect of Conveyance.
The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises 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 Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such

damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenantable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

24.2 If the Demised Premises shall be rendered wholly untenantable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, 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, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.

24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

25. 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.

26. Waiver.

26.1 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.

26.2 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.

26.3 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.

27. 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:

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

With copy to:
Asset Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

TENANT:
Damian J. Gallo, President
Damian J. Gallo & Associates, Inc.
2400 Red Road
Miami, Florida 33155

With copy to:
Office Manager
Permit Doctor
767 17th Street
Miami Beach, Florida 33139

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of $10,000.00. 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 $10,000.00 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 the City's liability as set forth in Florida Statutes, Section 768.28.

33. 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 Section. 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 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, 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 Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.
Time is of the essence in every particular and particularly where the obligation to pay money is involved.

35. Venue:
This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. 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.**

36. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

37. No Dangerous Materials.
Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

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

**Attest:** **CITY OF MIAMI BEACH, FLORIDA**

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

**Attest:** **DAMIAN J. GALLO & ASSOCIATES, INC.**

Signature/Secretary

Damian J. Gallo, President

Print Name

CORPORATE SEAL
(affix seal here)

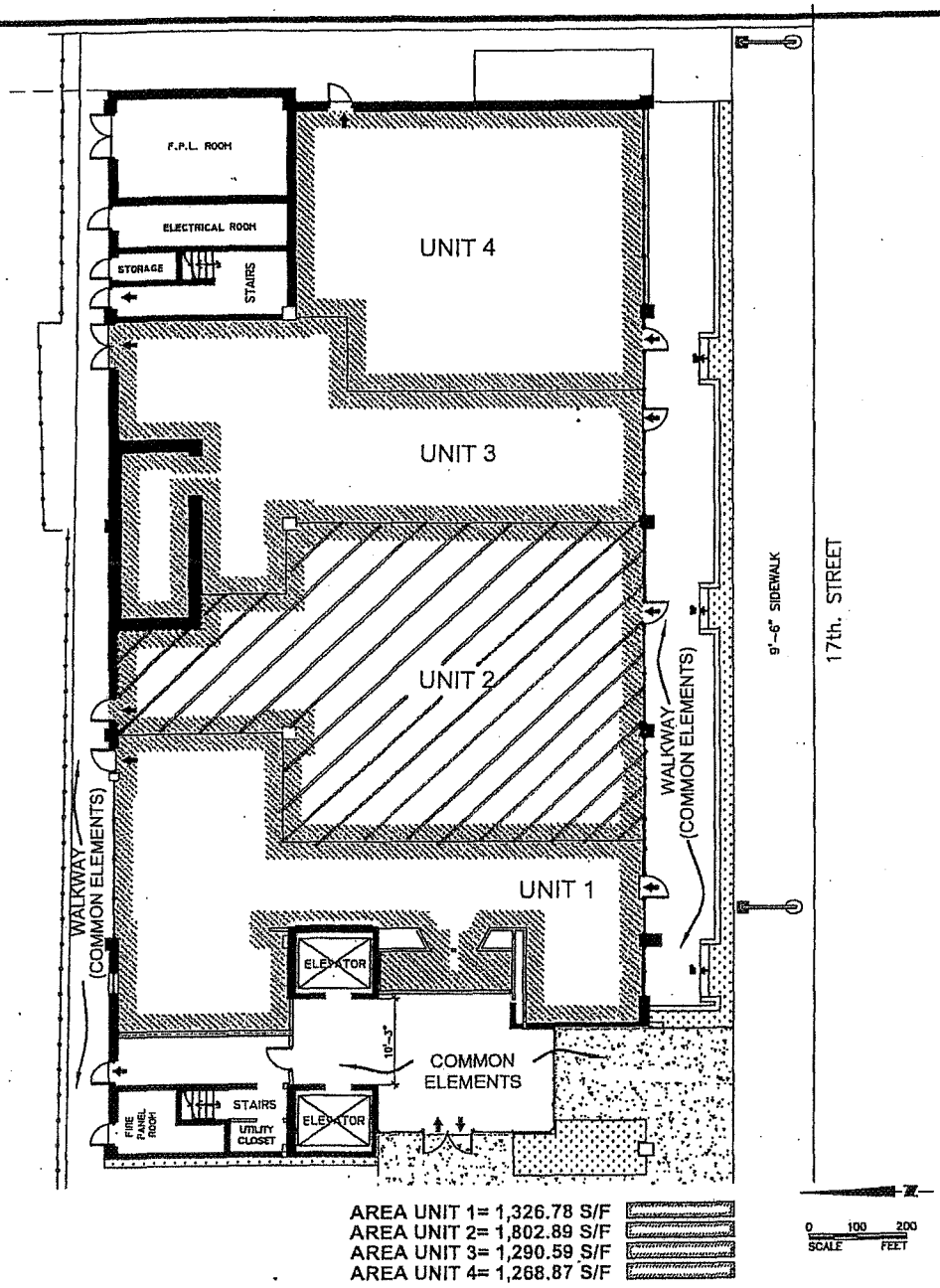
F:\RHCD\$ALL\ECON\$ALL\ASSET\777-17th Street\Permit Doctor _ Damian Gallo\GALLO Lease Agreement.FINAL.doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 5/5/09 Date

# EXHIBIT 1

Demised Premises




SURVEYOR'S NOTE:
DETAILS OF INTERIORS WALLS WERE BASED IN ORIGINAL DRAWINGS AND BEST INFORMATION OBTAIN FROM FIELD SURVEY

## First Floor Plan

Prepared by:

*City of Miami Beach*
*Public Works Department*
*Engineering Division*
*1700 Convention Center Drive*
*Miami Beach, Florida 33139*
*Phone (305) 673-7080*

**1701 MERIDIAN BUILDING CONDOMINIUM**

Page 4 of 9

Exhibit "B"

*Date: 4/17/2007*

**RESOLUTION NO. _____**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING ON SECOND READING (AND FINAL APPROVAL), FOLLOWING A DULY NOTICED PUBLIC HEARING, 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; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE 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**, on September 6, 2006, the City Commission adopted Resolution No. 2006-26282 approving a Second Amendment and Assignment of a Lease Agreement with Vidal Tan Soon, Inc. to Damian J. Gallo & Associates commencing September 15, 2006 and expiring April 14, 2009 for 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**, Damien J. Gallo & Associates has requested a new lease for those premises, for an initial term of three years, commencing July 1, 2009 and ending June 30, 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**, on May 13, 2009, pursuant to Resolution No. 2009-27073, the Mayor and City Commission approved the Lease Agreement on first reading; waived by 5/7ths vote, the competitive bidding and appraisal requirements; and set the public hearing on June 3, 2009, for second reading and final approval of the Lease Agreement; and

**WHEREAS**, said public hearing was held on June 3, 2009.

**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), following a duly noticed public hearing, 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 authorizing the Mayor and City Clerk to execute the Lease Agreement.

**PASSED and ADOPTED** this 3rd day of June, 2009.

**ATTEST:**

| | |
|---|---|
| **Robert Parcher, CITY CLERK** | **Matti Herrera Bower, MAYOR** |

JMG\HMF\AP\ACV\rlr

F:\RHCD\$ALL\ECON\$ALL\ASSET\777-17th Street\Permit Doctor _ Damian Gallo\GALLO Lease Agreement 2nd Reading.RES.doc

**APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION**

City Attorney 5-13-09 Date

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, June 3, 2009 at 10:45 A.M.**, to consider A Resolution Approving 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.

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 #537**

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**Condensed Title:**

A resolution approving, following a second public hearing on June 3, 2009, a First Amendment to that certain Development Agreement between the City of Miami Beach, Florida, and UIA Management, LLC (Developer), dated April 11, 2007, as required pursuant to Sections 163.3220-163.3243, Florida Statutes (the "Florida Local Government Development Agreement Act"); said Amendment pertaining to the Developer's Art in Public Places (AiPP) contribution and prescribing further terms and conditions for the design, fabrication, installation, and maintenance of the Artwork.

**Key Intended Outcome Supported:**

Increase community rating of cultural activities.

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

The 2009 Community Satisfaction Survey shows that 73.3 % of residents and 58.7 % of businesses feel the City has the "right amount" of cultural events available. Residents also attend cultural activities (such as art shows, film festivals and live performances) 10.61 times per year on average.

**Issue:**

Shall the City Commission approve the Resolution?

**Item Summary/Recommendation:**

On December 6, 2006, the City Commission passed Resolution 2006-26422, approving a conceptual plan for the closure of Lincoln Rd. to vehicles between Lenox Ave. and Alton Rd., and construction of a pedestrian mall. Subsequently on March 14, 2007, the City approved a development agreement between the City and UIA for the development of improvements to the 1100 Block of Lincoln Road. The approval included the inclusion of a public art project to be partially funded by the developer.

On October 7, 2008, the City Commission passed Resolution 2008-26924 approving the AiPP project and authorizing the City Manager to negotiate a an agreement with the Developer for the fabrication, installation and certain ongoing maintenance of the AiPP Project.

As per Florida State Statute, amendments to a development agreement require two public hearings. To that end, the City and Developer agreed on the terms to amend the Development Agreement, as more particularly set forth in the attached Amendment, to set forth the terms and conditions of the design, fabrication, installation and maintenance of the AiPP Project.

This item, as well as the associated Covenant running with the land, were approved on First Reading at the May 13, 2009 Commission Meeting.

**Advisory Board Recommendation:**

Art in Public Places on June 17, 2008; Neighborhoods/Community Affairs on July 20, 2008; and Design Review Board on Sept. 2, 2008; have recommended in favor of the selected art project respectively. Although not an advisory board of the City, on August 20, 2008, the Lincoln Road Merchants Association Executive Board unanimously passed a motion endorsing the project.

**Financial Information:**

| Source of Funds: | | Amount | Account |
|---|---|---|---|
| | 1 | $75,000 | Art in Public Places Fund 147 – Funding was previously appropriated in the FY 2007/08 Capital Budget as part of the 1100 Lincoln Road (between Lenox and Alton) Project and pursuant to Resolution 2008-26924 |
| OBPI | Total | $75,000 | |

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Max Sklar, Tourism & Cultural Development Director

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| | Hilda M. Fernandez | |

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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

**SECOND READING PUBLIC HEARING**

DATE: June 3, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, FOLLOWING SECOND READING AND PUBLIC HEARING ON JUNE 3, 2009, A FIRST AMENDMENT TO THAT CERTAIN DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA, AND UIA MANAGEMENT, LLC (DEVELOPER), DATED APRIL 11, 2007, AS REQUIRED PURSUANT TO SECTIONS 163.3220-163.3243, FLORIDA STATUTES (THE "FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT"); SAID AMENDMENT PERTAINING TO THE DEVELOPER'S ART IN PUBLIC PLACES (AIPP) CONTRIBUTION AND PRESCRIBING FURTHER TERMS AND CONDITIONS FOR THE DESIGN, FABRICATION, INSTALLATION AND MAINTENANCE OF THE ARTWORK.**

## ADMINISTRATION RECOMMENDATION

Adopt the resolution.

## BACKGROUND

On December 6, 2006, the City Commission adopted Resolution No. 2006-26422, approving a conceptual plan for the closure of Lincoln Road to vehicles between Lenox Avenue and Alton Road, and construction of a pedestrian mall. The Lincoln Road pedestrian mall, between Washington Avenue and Lenox Avenue, is the best known commercial corridor in the City, which promotes economic development and quality of life in the South Beach area. When the Design Review Board approved the new parking garage with ground level accessory commercial uses at the intersection of Lincoln Road and Alton Road, the applicant was encouraged to enter into discussions with the City relative to exploring the possibility of closing this block of Lincoln Road to vehicular traffic, and construction of a pedestrian mall all the way through to Alton Road. The Administration believed the extension of the very successful pedestrian mall would benefit this portion of Lincoln Road and reinforce the pedestrian experience of Lincoln Road from Washington Avenue to Alton Road. In addition, the Finance and Citywide Projects Committee approved the concept plan and recommended forwarding it to the City Commission for consideration and approval as a funded City project.

On March 14, 2007, the City Commission adopted Resolution No. 2007-26494, approving a Development Agreement between the City and UIA for the design, development, and construction of certain improvements to the 1100 Block of Lincoln Road, in conjunction with the project being developed by MBeach1, LLLP, an affiliate of UIA, at 1111 Lincoln Road, with the City to match funds, in an amount not to exceed $75,000 from the Art in Public Places (AiPP) Fund 147, for a public art project. The approval of this project by the City Commission resulted in the AiPP Program

receiving a contribution from the City Center RDA Capital Fund 365 as part of the FY 2007/08 Capital Budget.

Subsequently the AiPP, consistent with its established guidelines, established a Professional Advisory Committee (PAC) for the selection of a work of public art to be sited on Lincoln Road, between Lenox Avenue and Alton Road. The PAC and AiPP Committee discussed this project for more than a year, reviewing potential artists and their proposals. Dan Graham, Jeppe Hein, Jenny Holzer, and Rachel Whiteread were among those considered for this project. Dan Graham was selected after very extensive review as he was the most internationally recognized: his sense of aesthetics and conceptual nature of his body of work would respond best to the architectural environment: and his works have an interactive component. The PAC also knew that Dan Graham and Herzog et de Meuron (the architect for the 1111 Lincoln Road project) had been interested in collaborating with each other.

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT AND COVENANT RUNNING WITH THE LAND**

The Artwork was considered by the Neighborhoods/Community Affairs Committee on July 30, 2008, which unanimously passed a motion accepting the Art in Public Places Committee's recommendation. Subsequently, the Artwork was reviewed by the Design Review Board on August 5, 2008, and September 2, 2008, which also unanimously passed a motion accepting the Art in Public Places Committee's recommendation. The Lincoln Road Merchants Association also considered the project on August 20, 2008, and unanimously passed a resolution in support of the Artwork.

On October 7, 2008, the Mayor of the City and City Commission approved the Artwork pursuant to Resolution No. 2008-26924, and authorized the City Manager to negotiate an agreement with Developer for the design, fabrication, installation and certain ongoing maintenance.

Accordingly, the City and Developer have negotiated a First Amendment to the Development Agreement with the following major points:

- Developer shall be responsible for the design; fabrication; and installation of the Artwork; the City shall own the Artwork (upon acceptance by the City) and shall be responsible for Fifty (50%) of the current estimated cost, or $75,000;
- MBeach1, LLLP (MBeach1), an affiliate of the Developer and the fee simple owner of the property located at 1111 Lincoln Road and 1666 Lenox Avenue in Miami Beach, shall be responsible for: (i) cleaning, as frequently as it cleans its storefront glass: (ii) graffiti removal on the proposed artwork; and (iii) developing an annual maintenance program for the proposed Artwork, with the City being responsible for carrying out the maintenance of the proposed Artwork (other than cleaning and graffiti removal);
- MBeach1's obligations shall be memorialized in a Covenant Running with the Land, and to be recorded against the 1111 Lincoln Road property and binding all future owners;
- City (in addition to MBeach1's obligations under the Covenant) would enter into a 10 year agreement with UIA for the maintenance of the Artwork;
- UIA will provide the City with three additional sections (1 of each type) of glass at no additional costs to the City;
- UIA will store the additional sections of glass at their location;

- UIA will coordinate the installation of glass when needed and the City will reimburse the cost of labor;
- Once the three additional sections of glass are used, the City will have to reimburse UIA for the purchase of additional glass sections, if needed.
- Once the artwork has been installed and professional appraisal completed, pursuant to the approval received by the City Commission on October 7, 2008, via Resolution No. 2008-26924, the City is responsible for insuring the Artwork, either by including the Artwork in the City's Fine Arts insurance policy (if available and provided the insurer accepts coverage), or self insuring the Artwork. This specific item was negotiated extensively by the Administration and UIA Management. Ultimately, the determination whether to include the Artwork in the Fine Arts policy or whether to self insure shall at all times remain within the sole discretion and determination of the City, through the City Manager. However, if (at any time) the City elects to cover the Artwork under the Fine Arts Policy, such coverage shall cover the replacement cost of the Artwork (as determined by the last appraised value of the Work for insurance purposes). If (at any time) the City elects the option to self insure the Artwork, the amount that the City shall be responsible for shall be at least equal to the sum of $150,000 (which amount represents the estimated total cost for the design, fabrication, and installation of the Artwork as contemplated by the parties under the Development Agreement); provided however, that the City's self insurance obligation shall be further subject to and contingent upon the availability of such City funds.

The City Commission adopted Resolution No 2009-27075 at the May 13, 2009, City Commission meeting, which approved the First Amendment to the Development Agreement on First Reading and also approved the Covenant which runs with the land.

## CONCLUSION

The Administration recommends a resolution of the Mayor and City Commission of the City of Miami Beach, Florida, approving, following Second Reading and Public Hearing on June 3, 2009, a First Amendment to that Certain Development Agreement between the City of Miami Beach, Florida, and UIA Management, LLC (Developer), dated April 11, 2007, as required pursuant to Section 163.3220-163.3243, Florida Statutes (the "Florida Local Government Development Agreement Act"); said Amendment pertaining to the Developer's Art in Public Places (AiPP) contribution and prescribing further terms and conditions for the design, fabrication, installation and maintenance of the Artwork.

Attachments

T:\AGENDA\2009\June 3\Regular\Comm Memo Dan Graham Amendment Development Agreement (Final).doc.RTF

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

(For Recorder's Use Only)

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

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

## RECITALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. **AiPP Project.**

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

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

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

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

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

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

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

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

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

4. **Miscellaneous.**

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

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

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

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

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

[SIGNATURES TO FOLLOW ON NEXT PAGE]

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

WITNESSES:

**CITY:**

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

By: _____
Name: Matti Herrera Bower
Title: Mayor

_____
Sign

_____
Print Name

_____
Sign

_____
Print Name

**ATTEST:**

By: _____
Name: Robert Parcher
Title: City Clerk

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

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

_____
Notary Public, State of Florida

My commission expires:

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

5/14/09
City Attorney Date

**DEVELOPER:**

UIA MANAGEMENT, LLC, a Delaware limited liability company

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

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

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

_____
Sign

_____
Print Name

_____
Sign

_____
Print Name

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

The foregoing instrument was acknowledged before me this _____ day of_____, 2009, by Robert S. Wennett, the Managing Member of Wellspring Investments Management I, LLC, a Delaware limited liability company, the Managing Member of Urban Investments Advisors, LLC, a Delaware limited liability company, the Managing Member of UIA Management, LLC, a Delaware limited liability company, on behalf of such limited liability companies. He is personally known to me or produced valid Florida driver's licenses as identification.

_____
Notary Public, State of Florida

My commission expires:

# EXHIBIT "A"

# LEGAL DESCRIPTION OF PROJECT SITE

**EXHIBIT "B"**

**COVENANT**

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

---

## COVENANT RUNNING WITH THE LAND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Signed, witnessed, executed and acknowledged on this _____ day of _____, 2009.

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

_____ 5/14/09
City Attorney Date

_____ _____
City Planning Director Date

**[SIGNATURES CONTINUE ON NEXT PAGE]**

Witnesses:

MBEACH1, LLLP, a Delaware limited liability limited partnership

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

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

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

Sign:_____
Print Name:_____

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

Sign:_____
Print Name:_____

STATE OF FLORIDA )
)
COUNTY OF MIAMI-DADE )

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

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

_____
Notary Public-State of Florida

_____
Print Name

My Commission Expires:

## JOINDER BY MORTGAGEE
## CORPORATION

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

Signed, Sealed and Delivered
in the presence of:

Sign _____

Print Name _____

Sign _____

Print Name _____

Mellon United National Bank, a national
banking association

By: _____
Name: _____
Title: _____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____, as Vice President of Mellon United National Bank, a national bank association, on behalf of said bank. He/She is personally known to me or has produced a Florida driver's license as identification.

_____
Notary Public, State of Florida

My Commission Expires:

## EXHIBIT "A"

## LEGAL DESCRIPTION OF MBEACH1 PROPERTY

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

Together with:

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

Less and except:

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

Begin at the Northwest corner of said Lot 7;

Thence South 00°48'26" East along the West line of said Lot 7, a distance of 22.02 feet to a point on a tangent curve concave to the Northeast;

Thence Southeasterly along the arc of said curve, having a radius of 8.00 feet, a central angle of 90°02'39" and an arc distance of 12.57 feet;

Thence North 89°08'55" East along the South line of said Lot 7, a distance of 22.02 feet to a point on a tangent curve concave to the Northeast;

Thence Northwesterly along the arc of said curve, having a radius of 30.00 feet, a central angle of 90°02'39" and an arc distance of 47.15 feet to the Point of Beginning.

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

## EXHIBIT "B"

## LEGAL DESCRIPTION OF PROJECT SITE

**[attached]**

MIAMIBEACH

# CITY OF MIAMI BEACH
# NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY** given that a second reading and second 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, June 3, 2009 at 11:50 A.M.**, to consider A Resolution Approving, Following Second Reading And Second Public Hearing, A First Amendment To That Certain Development Agreement Between The City Of Miami Beach, Florida, And UIA Management, LLC (Developer), Dated April 11, 2007, As Required Pursuant To Sections 163.3220-163.3243, Florida Statutes (The "Florida Local Government Development Agreement Act"); Said Amendment Pertaining To The Developer's Art In Public Places (AIPP) Contribution And Prescribing Further Terms And Conditions For The Design, Fabrication, Installation And Maintenance Of The Artwork; Approving A Covenant Running With The Land Which Requires MBEACH1 LLLP (An Affiliate Of Developer) To Undertake Certain Maintenance Obligations With Respect To Ongoing Cleaning And Maintenance Of The Artwork.

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 #539**

# RESOLUTION TO BE SUBMITTED

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**Condensed Title:**

Request for Approval for a Lease Agreement between the City and Uni.K Wax Center for use of 1290.59 SF of City-owned property located at 1701 Meridian Avenue, Unit 3, 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 July 15, 2009 for second reading and public hearing.

**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.

**Issue:**

Should the City approve the lease agreement?

**Item Summary/Recommendation:**

**FIRST READING**

In 2001, the City Commission authorized 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. When the City purchased the building, Uni.K Wax Center had been an existing tenant of the retail space since 1999. The lease governed approximately 1290 square feet of City-owned property. The square footage was corrected to 1290.59 per a 2008 City survey. Uni.K Wax Center 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. The proposed new lease will incorporate the following terms:

- Square Footage: 1290.59 per updated 2008 City survey.
- Rent: Tenant has agreed to a rent increase from the currently paid $39.75 per SF to $41.07 per SF, including Common Area Maintenance (which includes maintenance, real estate taxes, and insurance);
- Use and Possession: The leased Premises would be used for the purpose of providing/operating a hair removal facility, including waxing, facials and retail sales of related items.
- Security Deposit: Upon execution of the Agreement, the Tenant will furnish the City a Security Deposit in the sum of $5,000.

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 meeting of the Finance and Citywide Projects Committee, the Committee determined that it was in the public's best interest to forgo competitive bidding for the leasing of City-owned surplus space usable for commercial retail/office space, 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).

**Advisory Board Recommendation:**

N/A

**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_____ | HF_____ | JMG_____ |

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AGENDA ITEM R7F
DATE 6-3-09

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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: June 3, 2009 **FIRST READING**

SUBJECT: **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 ROMA WAXING, INC. (D/B/A UNI.K WAX CENTER), FOR USE OF 1,290.59 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1701 MERIDIAN AVENUE, UNIT 3 (A/K/A 771 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 JULY 15, 2009, FOR THE SECOND READING (AND FINAL APPROVAL) OF THE LEASE AGREEMENT**

### ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

### BACKGROUND

On October 17, 2001, the City Commission passed Resolution No. 2001-24661 authorizing the purchase of the building at 1701 Meridian Avenue 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 that retention of the retail space was 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, Roma Waxing (d/b/a Uni.K Wax Center) had been an existing retail tenant since 1999. The lease governed approximately 1290 square feet of City-owned property and the rent had been adjusted over the term with CPI increases to the current rental rate of $39.75 per SF, including CAM costs.

### ANALYSIS

Roma Waxing has remained in the space on a month-to-month tenancy since December 1, 2008, pending Commission review of the City's Space Planning needs. This review was concluded on March 10, 2009, and continued commercial leasing of retail space at 1701 Meridian Avenue was recommended. Roma Waxing has requested a new lease for an initial term of three years commencing August 1, 2009, and ending July 31, 2012, with one additional three year renewal term.

The Tenant will continue to provide a hair removal facility, including waxing and facials and retail sales of related items in its current space, and has agreed to the terms outlined below.

**Summary of Terms:**

Square Footage: 1290.59 per updated 2008 City survey.

Rent: Tenant has agreed to increase the rent from the current rate of $39.75 per SF, including CAM, to $41.07 per SF, including CAM.

Common Area Maintenance (CAM) costs: Amended to $13.60 per SF (increased from current $13.07 per SF) to reflect current costs, and which includes payment of maintenance, real estate taxes, and insurance.

Security Deposit: Tenant shall furnish the City a Security Deposit in the sum of $5,000.

Use and Possession: The Leased Premises will be used by the Tenant solely as a hair removal facility, including waxing and retail sale of items, facials and retail sales of related items.

**Review of Comparable Market Analysis:**

A review of nearby available space revealed that the asking price for ground floor retail space at 1680 Meridian Avenue is $30 per SF NNN (Triple Net). Retail space at 1560 Lenox Avenue is being marketed at $38-$40 per SF Gross.

Additionally, City staff consulted area real estate brokers who focus on this market (including the Lincoln and Alton Road corridors) regarding realistic area comparables in the current market and were informed that the realistic range for rents in the retail portion of the 1701 Meridian Avenue building could run from $35-$45 per SF NNN, with the lower end of the spectrum being more realistic in today's environment. It was suggested that due to the absence of tourist traffic in the area, the focus on leasing any new space should remain local service oriented, such as the City's current retail tenants. Therefore, the proposed rent of $41.07 per SF Gross for Uni.K Wax Center is within the range of market rates, and the use of the retail space is feasible for market and area conditions.

**CONCLUSION**

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 (see attached);
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 meeting 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).

Based on the aforementioned, the favorable experience and payment history with the current Tenant, and the current market conditions, the Administration recommends that the Mayor and City Commission approve, on first reading, the Lease Agreement by and between the City and Roma Waxing, Inc. (D/B/A Uni.K Wax Center), for the lease of 1,290.59 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 July 15, 2009 for the second reading (and final approval) of the Lease Agreement.

JMG\HMF\AP\ACV

Attachments (1)

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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 Roma Waxing, Inc. (D/B/A Uni-K Wax) – 1701 Meridian Avenue

---

Pursuant to your request, this memorandum will serve as a planning analysis of the proposed lease agreement between The City and Roma Waxing, Inc. (D/B/A Uni-K Wax), for use approximately 1,290.5 s.f. of City-owned retail space located at 1701 Meridian Avenue (a/k/a 771 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 Roma Waxing, 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 retail 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 ROMA WAXING, INC. (D/B/A UNI.K WAX), FOR USE OF 1,290.59 SQUARE FEET OF CITY-OWNED PROPERTY, LOCATED AT 1701 MERIDIAN AVENUE, UNIT 3 (A/K/A 771 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 JULY 15, 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**, on June 19, 2002, the City Commission adopted Resolution No. 2002-24900, authorizing the Mayor and City Clerk to execute a lease agreement between the City and Roma Waxing, Inc. having an initial term of three (3) years, commencing on December 1, 2002, and ending on November 30, 2005, with an additional three (3) year renewal term, commencing on December 1, 2005, and expiring on November 30, 2008; and

**WHEREAS**, Roma Waxing has requested a new lease, said proposed lease having an initial term of three years, commencing August 1, 2009 and ending July 31, 2012, with one additional three year renewal term, to continue providing hair removal 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 competitive bidding process, a Planning Department analysis, and an independent appraisal to determine the value of the leasehold interest, as well as two (2) readings of the proposed lease, with the second (and final) reading followed by an advertised public hearing to obtain citizen input; and

**WHEREAS**, the Administration would hereby recommend that the Mayor and City Commission approve the attached Lease Agreement on first reading, and hereby set the public hearing on July 15, 2009, for second reading and final approval of the Agreement; and

**WHEREAS**, Section 82-39 of the City Code further provides for the waiver of the competitive bidding and appraisal requirements, by 5/7$^{ths}$ 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; the Administration would also hereby recommend that the Mayor and City Commission approve said waiver.

**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 Roma Waxing, Inc. (d/b/a Uni.K Wax) for use of 1290.59 square feet of City-owned property, located at 1701 Meridian Avenue, Unit 3 (a/k/a 771 17$^{th}$ 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 5/7$^{ths}$ 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 July 15, 2009, for the second reading (and final approval) of the Lease Agreement.

**PASSED and ADOPTED** this 3$^{rd}$ day of June, 2009.

**ATTEST:**

| | |
|---|---|
| **Robert Parcher, CITY CLERK** | **Matti Herrera Bower, MAYOR** |

JMG\HMF\AP\ACV\rlr

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APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 5/14/09 Date

# LEASE AGREEMENT

THIS LEASE AGREEMENT, made this 15th day of July, 2009, by and between the **CITY OF MIAMI BEACH**, a Florida municipal corporation, (hereinafter referred to as "City" or "Landlord"), and **ROMA WAXING, INC.** (d/b/a Uni.K Wax Center), 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" and more fully described as follows:

> 1,290.59 square feet of City-owned property (the "Building"), located at 1701 Meridian Avenue, Unit 3 (a.k.a. 771 17th Street), Miami Beach, Florida, 33139, and as more specifically delineated in "Exhibit 1", attached hereto and incorporated herein.

2. Term.

2.1 Tenant shall be entitled to have and to hold the Demised Premises for an initial term of three (3) years, commencing on the 1st day of August, 2009 (the "Commencement Date"), and ending on the 31st day of July, 2012. For purposes of this Lease Agreement, and including, without limitation, Subsection 2.2 herein, a "contract year" shall be defined as that certain period commencing on the 1st day of August, and ending on the 31st day of July.

2.2 Provided Tenant is in good standing and free from default(s) under Section 18 hereof, and upon written notice from Tenant, which notice shall be submitted to the City Manager no earlier than one hundred twenty (120) days, but in any case no later than sixty (60) days prior to the expiration of the initial term, this Lease may be extended for one (1) additional three (3) year renewal term. Any extension, if approved, shall be memorialized in writing and signed by the parties hereto (with the City hereby designating the City Manager as the individual authorized to execute such extensions on its behalf).

In the event that the City Manager determines, in his sole discretion, not to extend or renew this Lease Agreement (upon expiration of the initial term or any renewal term), the City Manager shall notify Tenant of same in writing, which notice shall be provided to Tenant within fifteen (15) business days of the City Manager's receipt of Tenant's written notice.

3. Rent.

3.1 Base Rent:
Base Rent for the Demised Premises shall begin to accrue on the Commencement Date.

3.1.1 Throughout the Term herein, the Base Rent for the Demised Premises shall be Thirty Five Thousand Four Hundred Sixty Five Dollars and 41/100 ($35,465.41) per year, payable in monthly installments of Two Thousand Nine Hundred Fifty Five Dollars and 45/100 ($2,955.45), commencing on the Commencement Date and, thereafter, on each first day of subsequent months.

3.1.2 Concurrent with the payment of the Base Rent, Tenant shall also include any and all additional sums for all applicable sales and use tax, now or hereafter prescribed by Federal, State or local law.

3.1.3 The Base Rent amount pursuant to this Section 3.1 shall be increased annually, on the anniversary of the Commencement Date of the Lease, in increments of three (3%) percent per year.

3.2 Additional Rent:
In addition to the Base Rent, as set forth in Section 3.1, Tenant shall also pay the following Additional Rent as provided below:

3.2.1 Operating Expenses:
Tenant shall pay Four Hundred Thirty Dollars and 20/100 ($430.20) per month, for its proportionate share of "Operating Expenses" which are defined as follows:

"Operating Expenses" shall mean the following costs and expenses incurred in operating, repairing, and maintaining the Common Facilities (as hereinafter defined) and shall include, without limitation, water service to the Building, sewer service to the Building, trash removal from the Building, costs incurred for gardening and landscaping, repairing and maintaining elevator(s), painting, janitorial services (except for areas within the Demised Premises), lighting, cleaning, striping, policing, removing garbage and other refuse and trash, removing ice and snow, repairing and maintaining sprinkler systems, water pipes, air-conditioning systems, temperature control systems, and security systems, fire alarm repair and maintenance and other equipment in the common areas and the exterior and structural portions of the Building, paving and repairing, patching and maintaining the parking areas and walkways, and cleaning adjacent areas, management fees and the City's employment expenses to employees furnishing and rendering any services to the common areas, together with an additional administration charge equal to fifteen percent (15%) of all other expenses included in the annual common area expenses, provided by the City for the common or joint

use and/or benefit of the occupants of the Building, their employees, agents, servants, customers and other invitees.

"Common Facilities" shall mean all Building areas, spaces, equipment, as well as certain services, available for use by or for the benefit of Tenant and/or its employees, agents, servants, volunteers, customers, guests and/or invitees.

Tenant agrees and understands that the costs incurred for Operating Expenses may increase or decrease and, as such, Tenant's pro-rata share of Operating Expenses shall increase or decrease accordingly.

3.2.2 Property Taxes:
The Property Tax Payment shall be payable by Tenant, in accordance with Section 11 herein. The 2008 Property Tax Payment is Eleven Thousand Two Hundred Twenty Three Dollars and 72/100 ($11,223.72), payable in monthly installments of Nine Hundred Thirty Five Dollars and 31 /100 ($935.31).

3.2.3 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 Ninety Six Dollars and 79/100 ($96.79). This insurance coverage is in addition to the insurance required pursuant to Section 10, which shall be obtained at Tenant's sole expense and responsibility.

3.3 Sales Taxes:
Concurrent with the payment of the Base Rent and Additional Rent as provide herein, Tenant shall also pay any and all sums for all applicable tax(es), including without limitation, sales and use taxes and Property Taxes, imposed, levied or assessed against the Demised Premises, or any other charge or payment required by any governmental authority having jurisdiction there over, even though the taxing statute or ordinance may purport to impose such tax against the City.

3.4 Enforcement.
Tenant agrees to pay the Base Rent, Additional Rent, and any other amounts as may be due and payable by Tenant under this Agreement, at the time and in the manner provided herein, and should said rents and/or other additional amounts due herein provided, at any time remain due and unpaid for a period of fifteen (15) days after the same shall become due, the City may exercise any or all options available to it hereunder, which options may be exercised concurrently or separately, or the City may pursue any other remedies enforced by law.

4. Location for Payments.
All rents or other payments due hereunder shall be paid to the City at the following address:

City of Miami Beach
Revenue Manager
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

or at such other address as the City may, from time to time, designate in writing.

5. Parking.
Tenant may request, from the City's Parking Department, the use of no more than three (3) parking spaces, if available, at Municipal Parking Garage 2-G located on 17th Street and Meridian Court. Rates for said spaces are subject to change, and are currently Seventy ($70.00) Dollars per month, plus applicable sales and use tax per space.

6. Security Deposit.
Upon execution of this Agreement Tenant shall furnish the City with a Security Deposit, in the amount of Five Thousand ($5,000.00) Dollars. Said Security Deposit shall serve to secure Tenant's performance in accordance with the provisions of this Agreement. In the event Tenant fails to perform in accordance with said provisions, the City may retain said Security Deposit, as well as pursue any and all other legal remedies provided herein, or as may be provided by applicable law.

The parties agree and acknowledge that the foregoing condition is intended to be a condition subsequent to the City's approval of this Agreement. Accordingly, in the event that Tenant does not satisfy the aforestated, then the City Manager or his designee may immediately, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to him for breach of contract.

7. Use and Possession of Demised Premises.

7.1 The Demised Premises shall be used by the Tenant solely for the purpose(s) of operating a hair removal facility, including waxing and retail sale of related items, facials and retail sales of related items. Said Premises shall be open for operation a minimum of five (5) days a week, with normal hours of operation being as follows:

| | |
|---|---|
| Monday - Wednesday: | 9:00 AM to 7:00 PM |
| Thursday and Friday: | 9:00 AM to 9:00 PM |
| Saturday | 10:00 AM to 6:00 PM |
| Sunday | 12:00 PM to 6:00 PM |

Tenant shall not otherwise modify the days or hours of operation without the prior written approval of the City Manager. Nothing herein contained shall be construed to authorize hours contrary to the laws governing such operations.

7.2 It is understood and agreed that the Demised Premises shall be used by the Tenant during the Term of this Agreement only for the above purpose(s)/use(s), and for no other purpose(s) and/or use(s) whatsoever.

Tenant will not make or permit any use of the Demised Premises that, directly or indirectly, is forbidden by law, ordinance or government regulation, or that may be dangerous to life, limb or property. Tenant may not commit (nor permit) waste on the Demised Premises; nor permit the use of the Demised Premises for any illegal purposes; nor commit a nuisance on the Demised Premises. In the event that the Tenant uses the Demised Premises (or otherwise allows the Demised Premises to be used) for any purpose(s) not expressly permitted herein, or permits and/or allows any prohibited use(s) as provided 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. Improvements.

8.1 Tenant accepts the Demised Premises in their present **"AS IS"** condition and may construct or cause to be constructed, such interior and exterior improvements and maintenance to the Demised Premises, as reasonably necessary for it to carry on its permitted use(s), as set forth in Section 7; provided, however, that any plans for such improvements shall be first submitted to the City Manager for his prior written consent, which consent, 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 expense and responsibility. 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. Any and all permits and or licenses required for the installation of improvements shall be the sole cost and responsibility of Tenant.

8.2 Notwithstanding Subsection 8.1, upon termination and/or expiration of this Agreement, and at City's sole option and discretion, any or all alterations or additions made by Tenant to or in the Demised Premises shall, upon written demand by the City Manager, be promptly removed by Tenant, at its expense and responsibility, and Tenant further hereby agrees, in such event, to restore the Demised Premises to their original condition prior to the Commencement Date of this Agreement.

8.3 The above requirements for submission of plans and the use of specific contractors shall not apply to improvements (which term, for purposes of this Subsection 8.3 only, shall also include improvements as necessary for Tenant's maintenance and repair of the Demised Premises) which do not exceed Five Hundred ($500.00) Dollars, provided that the work is not structural, and provided that it is permitted by applicable law.

9. City's Right of Entry.

9.1 The City Manager, and/or his authorized representatives, 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. The City agrees that, whenever reasonably possible, it shall use reasonable efforts to provide notice (whether written or verbal), unless the need to enter the Demised Premises is an emergency, as deemed by the City Manager, in his 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.

9.2 If the Tenant shall not be personally present to open and permit entry into the Demised Premises at any time, for any reason, and any entry thereon shall be necessary or permissible, the City Manager, and/or his authorized representatives, may enter the Demised Premises by master key, or may forcibly enter the Demised Premises without rendering the City or such agents liable therefore.

9.3 Tenant shall furnish the City with duplicate keys to all locks including exterior and interior doors prior to (but no later than by) the Commencement Date of this Agreement. Tenant shall not change the locks to the Demised Premises without the prior written consent of the City Manager, and in the event such consent is given, Tenant shall furnish the City with duplicate keys to said locks in advance of their installation.

10. Tenant's Insurance.

10.1 Tenant shall, at its sole expense and responsibility, comply with all insurance requirements of the City. It is agreed by the parties that Tenant shall not occupy the Demised Premises until proof of the following insurance coverages have been reviewed and approved by the City's Risk Manager:

10.1.1 Comprehensive General Liability, in the minimum amount of One Million ($1,000,000) Dollars (subject to adjustment for inflation) per occurrence for bodily injury and property damage. The City of Miami Beach must be named as an additional insured on this policy.

10.1.2 Workers Compensation and Employers Liability coverage in accordance with Florida statutory requirements.

10.1.3 All-Risk property and casualty insurance, written at a minimum of eighty (80%) percent of replacement cost value and with replacement cost endorsement, covering all leasehold improvements installed in the Demised Premises by or on behalf of Tenant and including

without limitation 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 this Agreement).

10.2 Proof of these coverages must be provided by submitting original certificates of insurance to the City's Risk Manager and Asset Manager respectively. All policies must provide thirty (30) days written notice of cancellation to both the City's Risk Manager and Asset Manager (to be submitted to the addresses set forth in Section 27 hereof). 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.

11. Property Taxes and Assessments.
For the purposes of this Section and other provisions of this Agreement:

11.1 The term "Property Taxes" shall mean (i) real estate taxes, assessments, and special assessments of any kind which may be imposed upon the Demised Premises, and (ii) any expenses incurred by the City in obtaining a reduction of any such taxes or assessments.

11.2 The term "Property Tax Year" shall mean the period of twelve (12) calendar months, beginning on January 1st of each year.

11.3 Tenant shall pay, as Additional Rent pursuant to Section 3.2, for such Property Tax Year an amount ("Property Tax Payment") equal to Tenant's pro-rata share of Property Taxes (if any) for such Property Tax Year; said pro-rata share to be determined by the City based upon the ratio of the Demised Premises to the tax lot. If a Property Tax Year ends after the expiration or termination of the term of this Agreement, the Property Tax Payment therefore shall be prorated to correspond to that portion of such Property Tax Year occurring within the term of this Agreement. The Property Tax Payment shall be payable by Tenant immediately upon receipt of notice from the City. A copy of the tax bill(s) or other evidence of such taxes issued by the taxing authorities, together with the City's computation of the Property Tax Payment, will be made available to Tenant once received from the taxing authorities, if requested by Tenant. Tenant shall pay any difference in the amount between the estimated property taxes and the actual property taxes to the City immediately, upon receipt of request for said payment from the City.

12. Assignment and Subletting.
Tenant shall not have the right to assign or sublet the Demised Premises, in whole or in part, without the prior written consent of the City Manager, which consent, if granted at all shall be at the City Manager's sole and absolute discretion. Such written consent is not a matter of right and the 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.

13. Operation, Maintenance and Repair.

13.1 Tenant shall be solely responsible for the operation, maintenance and repair of the Demised Premises. Tenant shall, at its sole expense and responsibility, maintain the Demised Premises, and all fixtures and appurtenances therein, and shall make all repairs thereto, as and when needed, to preserve them in good working order and condition. Tenant shall be responsible for all interior walls and the interior and exterior of all windows and doors, as well as immediate replacement of any and all plate glass or other glass in the Demised Premises which may become broken, using glass of the same or better quality.

The City shall be responsible for the maintenance of the roof, the exterior of the Building, the structural electrical and plumbing (other than plumbing surrounding any sink(s) and/or toilet(s), including such sink(s) and toilet(s) fixture(s), within the Demised Premises), the common areas and the chilled water supply system. The City shall maintain and/or repair those items that it is responsible for, so as to keep same in proper working condition.

Tenant agrees and understands, that if the City provides a separate air-conditioning unit for the Demised Premises, the City, at its sole discretion, may require that Tenant obtain, at any time during the Term of this Agreement, and continuously maintain in good standing, at Tenant's expense, throughout the Term of this Agreement, a maintenance and repair contract, approved by the City, with a service company previously approved in writing by the City, providing for the preventative maintenance and repair of all heating/ventilation/air-conditioning (HVAC) equipment servicing the Demised Premises. In the event that the City notifies Tenant that it will require Tenant to contract for said maintenance and repair services, Tenant shall provide to the City, in writing, within ten (10) business days, the name(s) and telephone number(s) of service company(ies) for the City's review and approval. Tenant shall provide a copy of a current, enforceable and fully executed maintenance and repair contract, no later than ten (10) business days after receipt of the City's approval of the service company, as proof of Tenant's compliance with this provision.

If the City provides a separate air-conditioning unit for the Demised Premises, as provided herein, Tenant may request that the City inspect same to ensure that it is in proper working order. If the unit is not in proper working order, the City shall, at its sole discretion, repair or replace the unit.

13.2 All damage or injury of any kind to the Demised Premises, and including without limitation its fixtures, glass, appurtenances, and equipment (if any), or to the building fixtures, glass, appurtenances, and equipment, if any, except damage caused by the gross negligence and/or willful misconduct of the City, shall be the sole obligation of Tenant, and shall be repaired, restored or replaced promptly by Tenant, at its sole expense and to the

satisfaction of the City.

13.3 All of the aforesaid repairs, restorations and replacements shall be in quality and class equal to or better than 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 Tenant, and all sums spent and expenses incurred by the City shall be collectable by the City and shall be paid by Tenant within three (3) days after submittal of a bill or statement therefore.

13.5 It shall be Tenant's sole obligation and responsibility 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 Tenant Responsibilities for Utilities (not included within Operating Expenses). Tenant is solely responsible for, and shall promptly pay when due, all charges and impact fees for any and all utilities for the Demised Premises **NOT** included as an Operating Expense (pursuant to Subsection 3.2.1).

In addition to other rights and remedies hereinafter reserved to the City, upon the failure of Tenant to pay for such utility services (as contemplated in this Subsection 13.6) when due, the City may elect, at its sole discretion, to pay same, whereby Tenant agrees to promptly reimburse the City upon demand.

In no event, however, shall the City be liable, whether to Tenant or to third parties, for an interruption or failure in the supply of any utilities or services to the Demised Premises.

13.7 **TENANT HEREBY ACKNOWLEDGES AND AGREES THAT THE DEMISED PREMISES ARE BEING LEASED IN THEIR PRESENT "AS IS" CONDITION.**

14. Governmental Regulations.
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 expense and responsibility. Tenant shall pay all cost, expenses, claims, fines, penalties, and damages that may be imposed because of the failure of Tenant to comply with this Section, and shall indemnify and hold harmless the City from all liability arising from each non-compliance.

15. Liens.

Tenant will not permit any mechanics, laborers, or materialman's liens to stand against the Demised Premises or improvements for any labor or materials to Tenant or claimed to have been furnished to Tenant's agents, contractors, or sub-tenants, in connection with work of any character performed or claimed to have performed on said Premises, or improvements by or at the direction or sufferance of the Tenant; provided however, Tenant shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of such contest, Tenant shall give the City reasonable security as may be demanded by the City to insure payment thereof and prevent sale, foreclosure, or forfeiture of the Premises or improvements by reasons of such non-payment. Such security need not exceed one and one half (1½) times the amount of such lien or such claim of lien. Such security shall be posted by Tenant within ten (10) days of written notice from the City, or Tenant may "bond off" the lien according to statutory procedures. Tenant will immediately pay any judgment rendered with all proper costs and charges and shall have such lien released or judgment satisfied at Tenant's own expense.

16. Intentionally Omitted.

17. Condemnation.

17.1 If at any time during the Term of this Agreement (including any renewal term hereunder) all or any part or portion of the Demised Premises is taken, appropriated, or condemned by reason of Eminent Domain proceedings, 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 Tenant shall pay any and all rents, additional rents, utility charges, and/or other costs for which it is liable under the terms of this Agreement, up to the date of such taking.

17.2 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, 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.

18. Default.

18.1 Default by Tenant:

At the City's option, any of the following shall constitute an Event of Default under this Agreement:

18.1.1 The Base Rent, Additional Rent, or any other amounts as may be due

and payable by Tenant under this Agreement, or any installment thereof, is not paid promptly when and where due within fifteen (15) days of due date, and Tenant shall not have cured such failure within five (5) days after receipt of written notice from the City specifying such default;

18.1.2 The Demised Premises shall be deserted, abandoned, or vacated;

18.1.3 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 the City specifying any such default; or such longer period of time acceptable to the City, at its sole discretion;

18.1.4 Receipt of notice of violation from any governmental authority having jurisdiction dealing with a law, code, regulation, ordinance or the like, which remains uncured for a period of thirty (30) days from its issuance, or such longer period of time as may be acceptable and approved in writing by the City Manager, at his sole discretion;

18.1.5 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;

18.1.6 Tenant shall become insolvent;

18.1.7 Tenant shall make an assignment for benefit of creditors;

18.1.8 A receiver is appointed for Tenant by any court and shall not be dissolved within thirty (30) days thereafter; or

18.1.9 The leasehold interest is levied on under execution.

19. Rights on Default.

19.1 Rights on Default:
In the event of any default by Tenant as provided herein, 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;

19.1.1 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 the Demised Premises and expel or remove Tenant and its 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 Agreement termination, whether through inability to re-let the Demised Premises, or otherwise.

19.1.2 Declare the entire amount of the Base Rent and Additional 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.

19.1.3 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, the 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.

19.1.4 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 Tenant liable for the deficiency, if any.

19.1.5 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 from the due date. In addition, there will be a late charge of Fifty ($50.00) Dollars for any payments submitted after the grace period.

19.1.6 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 the City on the first day of the month following the payment of the expense by the City.

19.1.7 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.

19.2 Default by City:

The failure of the City to perform any of the covenants, conditions and agreements of this 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 Tenant, then such failure to perform (regardless of circumstances beyond its control) as indicated above, shall constitute a default by the City.

19.3 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; provided however, that Tenant expressly acknowledges and agrees that any recovery by Tenant shall be limited to the amount set forth in Section 32 of this Agreement.

20. Indemnity Against Costs and Charges.

20.1 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 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.

20.2 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.

21. Indemnification Against Claims.

21.1 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 other land or other facility or appurtenance used in connection with the Demised Premises, occasioned in whole or in part by any of the following:

21.1.1 An act or omission on the part of Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.2 Any misuse, neglect, or unlawful use of the Demised Premises by Tenant, or any employee, agent, contractor, invitee, guest, assignee, sub-tenant or subcontractor of Tenant;

21.1.3 Any breach, violation, or non-performance of any undertaking of Tenant under this Agreement;

21.1.4 Anything growing out of the use or occupancy of the Demised Premises by Tenant or anyone holding or claiming to hold through or under this Agreement.

21.2 Tenant agrees to pay all damages to the Demised Premises and/or other facilities used in connection therewith, caused by Tenant or any employee, agent, contractor, guest, or invitee of Tenant.

22. Signs and Advertising.
Without the prior written consent of the City Manager, which consent, if given at all, shall be at the City Manager's sole and absolute discretion, 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.

23. Effect of Conveyance.

The term "City" and/or "Landlord" as used in the Agreement means only the owner for the time being of the land and building containing the Demised Premises, so that in the event of any sale of said land and building, or in the event of a lease of said building, the City shall be and hereby is entirely freed and relieved of all covenants and obligations of the City hereunder, and it shall be deemed and construed without further agreement between the parties, or between the parties and the purchaser at such sale, or the lease of this building, that the purchaser or Tenant has assumed and agreed to carry out all covenants and obligations of the City hereunder.

24. Damage to the Demised Premises.

24.1 If the Demised Premises 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 Manager, in his sole discretion, in whole or in part, and such damage is covered by the City's insurance, if any, (hereinafter referred to as "such occurrence"), the City, shall, as soon as possible after such occurrence, utilize the insurance proceeds to cause such damage to be repaired and the Rent (Base Rent and Additional Rent) shall not be abated. If by reason of such occurrence, the Demised Premises shall be rendered untenantable, as determined by the City Manager, in his sole discretion, only in part, the City shall as soon as possible utilize the insurance proceeds to cause the damage to be repaired, and the Rent meanwhile shall be abated proportionately as to the portion of the Demised Premises rendered untenantable; provided however, that the City shall promptly obtain a good faith estimate of the time required to render the Demised Premises tenantable and if such time exceeds sixty (60) days, either party shall have the option of canceling this Agreement.

24.2 If the Demised Premises shall be rendered wholly untenantable by reason of such occurrence, the City shall have the option, but not the obligation, in its sole discretion, to utilize the insurance proceeds to cause such damage to be repaired and the Rent meanwhile shall be abated. However, the City shall have the right, to be exercised by notice in writing delivered to Tenant within sixty (60) days from and after said occurrence, to elect not to reconstruct the destroyed Demised Premises, 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, Tenant shall have the right, to be exercised by notice in writing, delivered to the City within thirty (30) days from and after said occurrence, to elect to terminate this Agreement, the Rent to be adjusted accordingly.

24.3 Notwithstanding any clause contained in this Section 24, if the damage is not covered by the City's insurance, then the City shall have no obligation to repair the damage, but the City shall advise Tenant in writing within thirty (30) days of the occurrence giving rise to the damage and of its decision not to repair, and the Tenant may, at any time thereafter, elect to terminate this Agreement, and the Rent shall be adjusted accordingly.

25. 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.

26. Waiver.

26.1 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.

26.2 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.

26.3 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.

27. 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:

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

With copy to:
Asset Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

TENANT:
Noemi Grupenmager, President
Roma Waxing, Inc.
18911 Collins Avenue, Suite #1707
Sunny Isles, Florida 33160

With copy to: Branch Manager
Uni.K. Wax Center
771 17th Street
Miami Beach, Florida 33139

All notices shall be hand delivered and a receipt requested, or by certified mail with Return receipt requested, and shall be effective upon receipt.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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. Tenant hereby expresses its willingness to enter into this Agreement with Tenant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of $10,000.00. 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 $10,000.00 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 the City's liability as set forth in Florida Statutes, Section 768.28.

33. 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 Section. 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 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, 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 Tenant to surrender the Demised Premises as and when herein required.

34. Time is of the Essence.
Time is of the essence in every particular and particularly where the obligation to pay money is involved.

35. Venue:
This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Florida. 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.**

36. Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your County Public Health Unit.

37. No Dangerous Materials.

Tenant agrees not to use or permit in the Demised Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found within the Demised Premises shall be immediately removed.

Tenant shall indemnify and hold the City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Tenant of any "hazardous substance" or "petroleum products" on, in or upon the Demised Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder. The provisions of this Section 37 shall survive the termination or earlier expiration of this Agreement.

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

**Attest:** **CITY OF MIAMI BEACH, FLORIDA**

Robert Parcher, CITY CLERK

Matti Herrera Bower, MAYOR

**Attest:** **ROMA WAXING, INC.**

Signature/Secretary

Noemi Grupenmager, President

Print Name

CORPORATE SEAL
(affix seal here)

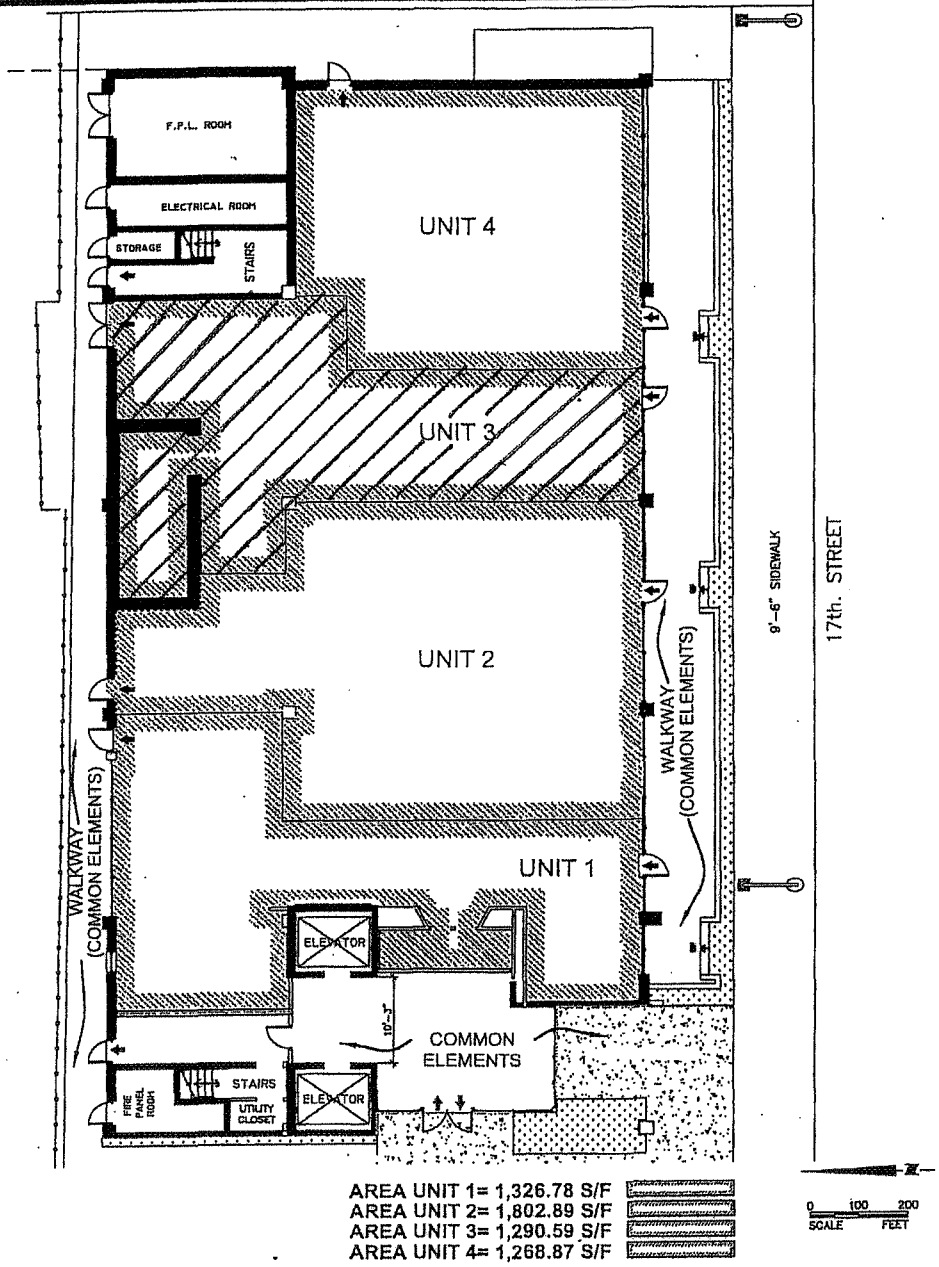
F:\RHCD\$ALL\ECON\$ALL\ASSET\777-17th Street\Roma\ROMA Lease Agreement.FINAL.doc

**APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION**

City Attorney 5/1/09 Date

# EXHIBIT 1

Demised Premises




AREA UNIT 1= 1,326.78 S/F
AREA UNIT 2= 1,802.89 S/F
AREA UNIT 3= 1,290.59 S/F
AREA UNIT 4= 1,268.87 S/F

SURVEYOR'S NOTE:
DETAILS OF INTERIORS WALLS WERE BASED IN ORIGINAL DRAWINGS AND BEST INFORMATION OBTAIN FROM FIELD SURVEY

## First Floor Plan

Prepared by:

*City of Miami Beach*
*Public Works Department*
*Engineering Division*
*1700 Convention Center Drive*
*Miami Beach, Florida 33139*
*Phone (305) 673-7080*

1701 MERIDIAN BUILDING CONDOMINIUM

Page 4 of 9

Exhibit "B"

*Date: 4/17/2007*

**Condensed Title:**

A resolution approving a Substantial Amendment to the 2008 Action Plan filed with the U.S. Department of Housing and Urban Development (HUD) for use of funding from Title XII Of Division of the American Recovery And Reinvestment Act of 2009 for Community Development Block Grant Program funds (CDGB-R) and authorizing execution of all the necessary documentation in order to receive and allocate the grant funds; and further authorizing the appropriation of federal funds in the amount of $467,896.

**Key Intended Outcome Supported:**

Ensure well-designed, quality capital projects.

**Supporting Data (Surveys, Environmental Scan, etc.):**
83% of residents surveyed felt that recent capital improvement projects were either excellent or good.

**Issue:**

Shall the Mayor and City Commission approve a Substantial Amendment to the 2008 Action Plan for the use of HUD funds for the CDBG-R and authorize the City Manager to execute an agreement and any and all necessary documents between the City and HUD?

**Item Summary/Recommendation:**

The City, through the American Recovery and Reinvestment Act of 2009, has been allocated $467,896 of CDBG-R funds. HUD established clear purposes for the use of these funds, i.e., to stimulate the economy through measures that modernize the nation's infrastructure, improve energy efficiency, and expand educational opportunities and access to health care. HUD strongly urges grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings. HUD requires that in selecting CDBG-R projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are available. Furthermore, grantees must ensure that 70 percent of the CDBG-R funds are for low and moderate income residents in target areas, and that funds be allocated for shovel-ready projects.

In order to receive funds, the City is required to submit a Substantial Amendment to its 2008 Action Plan to US HUD by June 5, 2009. The City's proposed use of CDBG-R funds, must be outlined in the Amendment and must be consistent with the Recovery Act requirements and intensions: In considering eligible uses of CDBG-R funds, the Administration considered current infrastructure and public service needs in our community that may qualify for this funding source and capital projects with funding gaps which fall within the target areas. The North Beach Senior Center Capital Improvement Project was identified as an eligible project for all of the CDBG-R funding.

On May 18, 2009, the Neighborhood/Community Affairs Committee considered eligible uses of the CDBG-R funding and recommended presenting the Administration's recommendation to the Community Development Advisory Committee (CDAC). On May 19, 2009, CDAC recommended that in addition to funding the North Beach Senior Center Project, which meets all of the HUD requirements for use of CDBG-R funding, that a portion of the CDBG-R funds be allocated to the Teen Job Corps Program. The Teen Job Corps Program had applied for regular CDBG public service funding through the regular CDBG funding cycle but was not recommended by staff due to limitations of funding.

Based upon CDAC's recommendation, the Administration recommends that the City Commission approve a Substantial Amendment to the City's 2008 Action Plan for use of CDBG-R funding as shown below in the Financial Information section, subject to HUD's approval, and, in the event that HUD disapproves of the proposed uses of the CDBG-R funding, that the City Manager be authorized to identify, with the assistance of the local HUD field office, HUD-eligible project(s) which will be reported back to the City Commission via a Letter to the Commission.

**Advisory Board Recommendation:**

May 18, 2009 – Neighborhoods/Community Affairs Committee
May 19, 2009 – Community Development Advisory Committee

**Financial Information:**

| Source of Funds: | | Amount | Account |
|---|---|---|---|
| CDBG-R | 1 | $391,107 - NB Senior Center Capital Improvements | |
| | 2 | $ 30,000 - Teen Job Corp In. | |
| | 3 | $ 46,789 - Program Administration | |
| | Total | $467,896 | |

**Financial Impact Summary:** N/A

**City Clerk's Office Legislative Tracking:**

Anna Parekh

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| AP | HMF | JMG |

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AGENDA ITEM R7G
DATE 6-3-09

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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: June 3, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING AN AMENDMENT TO THE FY 2008 ONE YEAR ACTION PLAN TO INCLUDE THE USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM TITLE XII OF DIVISION A OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ("CDBG-R") TO BE USED FOR THE FOLLOWING TWO ACTIVITIES: 1) THE NORTH BEACH SENIOR CENTER PROJECT CAPITAL IMPROVEMENTS; AND 2) THE TEEN JOB CORPS PROGRAM, AS APPROVED BY HUD; AUTHORIZING THAT IN THE EVENT THAT HUD DISAPPROVES OF THE AFORESTATED USES OF THE CDBG-R FUNDING, THEN THE CITY MANAGER IS AUTHORIZED TO IDENTIFY, WITH THE ASSISTANCE OF THE LOCAL HUD FIELD OFFICE, HUD-ELIGIBLE PROJECT(S) WHICH WILL BE REPORTED BACK TO THE CITY COMMISSION BY LETTER TO THE COMMISSION; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT AND ANY AND ALL NECESSARY DOCUMENTS BETWEEN THE CITY AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN ORDER TO RECEIVE THE GRANT FUNDS; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AGREEMENTS WITH PROVIDERS OF ACTIVITIES; AND FURTHER AUTHORIZING THE APPROPRIATION OF CDBG-R FEDERAL FUNDS IN THE AMOUNT OF $467,896.**

**ADMINISTRATION RECOMMENDATION**

Adopt the Resolution.

**ANALYSIS**

The American Recovery and Reinvestment Act of 2009 ("Recovery Act") was signed into law by President Obama on February 17, 2009. The Recovery Act awards $1 billion in CDBG Recover (CDBG-R) funds to be distributed to cities, counties, insular areas and states of which $10 million has been reserved by the U.S. Department of Housing and Urban Development (HUD) for its administrative costs, and $10 million of which will be awarded to Indian tribes. Recipients of the remaining $980 million of CDBG-R funds will be approximately 1,200 entitlement jurisdictions that received CDBG funding in Fiscal Year 2008. The City of Miami Beach has been allocated $467,896 CDBG-R funds.

As outlined and presented to the Neighborhoods/Community Affairs Committee on May 18, 2009 (Committee Memorandum, Summary of CDBG-R Funding to Miami Beach, and HUD Notice of Program Requirements are attached), in order to obtain the funds, grantees such as the City of Miami Beach will be required to submit an amendment to their approved FY 2008 Action Plan. HUD has determined that amendments to the action plans are due no later than Friday, June 5, 2009, in the local HUD field offices. Therefore, the City's Substantial Amendment to the 2009 Action Plan must be approved by the City Commission at its June 3, 2009 meeting. If the City fails to submit a substantial amendment by the specified deadline, HUD may cancel our allocation.

**ALLOWABLE USES**

Pursuant to HUD's Notice of Program Requirements, the funding has clear purposes: to stimulate the economy through measures that modernize the nation's infrastructure; improve energy efficiency; and expand educational opportunities and access to health care. HUD strongly urges grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings. The HUD Notice requires that in selecting CDBG-R projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 calendar days from the date the funds are made available.

Furthermore, grantees must ensure that 70 percent of the CDBG-R funds are used for activities that benefit low and moderate-income persons, and the HUD instructions encourage that funds be allocated for infrastructure or other "bricks and mortar" projects within target areas (as identified in the US Census as containing a certain percentage of eligible recipients). North Beach and South Beach contain the highest concentration of low and moderate income persons in the City. These target areas contain Census tract/block groups that display evidence of greater than 51% of households with incomes at or below 80% of the median income and are a priority for allocation of resources.

In considering eligible uses of CDBG-R funds, the Administration considered current infrastructure and public service needs in our community that may qualify for this funding source. A review of pending "shovel-ready" capital projects with funding gaps that fall within the HUD target areas was undertaken. The North Beach Senior Center Capital Improvement Project was identified as an eligible project for all of the CDBG-R funding.

On May 18, 2009, the City presented to the Neighborhood /Community Affairs Committee a proposed amendment to the City FY 2008 Action Plan for uses of CDBG-R funds. The Committee recommended presenting the amendment to the Community Development Advisory Committee (CDAC) for its comments and recommendation.

On May 19, 2009, CDAC recommended that in addition to funding the North Beach Senior Center Project which meets all of the HUD requirements for use of CDBG-R funding, that a portion of the CDBG-R funds be allocated to the Teen Job Corps Program, which had applied for regular CDBG public service funding through the annual competitive process, but was not recommended for funding by staff as a recipient of regular CDBG funding due to limitations of funding. It should be noted that a maximum of 15% of all CDBG and CDBG-R funds may be used for public service programs. Administrative funding in the amount of ten (10%) percent of the total allocation is retained by the City to pay for program monitoring and required reporting.

Therefore, it is recommended that the following activities be approved to be included in the Amendment to the FY 2009 One Year Action Plan, and that in the event that HUD disapproves of these uses, that the City Manager be authorized to identify, with the assistance of the local HUD field office, an eligible project or projects within the necessary time frames. Any such change to the City Commission's recommendation will be reported back to the Commission by the City Manager in the form of a Letter to the Commission.

**Activity #1 - North Beach Senior Center Project Capital Improvement - $391,107**

This project will provide a comprehensive Senior Center located in the Bandshell Park at 7251 Collins Avenue. The North Beach Senior Center will provide comprehensive services designed to serve the large number of low to moderate-income and elderly residents in the North Beach area. The center will have over 8,000 sq. ft. of program space and approximately 10,000 sq. ft. of terraces and walkways. The environmental review process, which is required by HUD prior to drawdown of CDBG or CDBG-R funding, has been successfully completed for this project, and the project is in its final permit process. The bid process is scheduled to take place between June and September 2009, and construction is expected to commence by October, 2009. The new center will provide over 100 temporary jobs during the one year construction period, which is scheduled be completed by November 2010.

Once completed, the Center will provide a variety of services to the senior community including job training and placement. Approximately 130 seniors per year will receive paid training and employment placement and over 500 job referrals will be made for unsubsidized employment during the same time period.

**Activity #2 - Teen Job Corps - $30,000**

The Teen Job Corps Program will provide at-risk, low income youths with employment activities and vocational skills. The program operates six (6) days a week, 52 weeks a year. Eligible program participants are enrolled full-time students, ages 14 to 18 years old, living in the City target areas (target areas are made are made up of 51% or more low-income residents) of North Beach and South Beach. Participants will learn job skills and perform public service job duties after school and on Saturdays. Program eligibility involves a comprehensive intake assessment that will determine family income according to HUD guidelines and the need for additional family referral services. The CDBG-R funds, in combination with other sources of funding received by the Teen Job Corps, will create approximately 20 part-time jobs for qualified participants.

The City will be responsible for the administration of CDBG-R funds to ensure all required HUD regulations are followed. Teen Job Corps, Inc. will provide the part-time employment and vocational services to the qualified students recruited from referrals from Miami Beach Police Department, school counselors and various community based organizations.

**Activity #3 – Program Administration - $46,789.00**

Funding will be used to provide program administration of CDBG-R fund ensuring that all activities and expenditures are in compliance with all HUD requirements. The total allocation for this activity is $46,789.00 which represents 10% of the total allocation.

**CONCLUSION**

The Administration recommends that the Mayor and City Commission approve a Substantial Amendment to the City's 2008 Action Plan for use of $467,896 of CDBG-R funding as shown below in the Funding Summary, as approved by HUD, and, in the event that HUD disapproves of the proposed uses of the CDBG-R funding, that the City Manager be authorized to identify, with the assistance of the local HUD field office, HUD-eligible project(s) which will be reported back to the City Commission via Letter to the Commission.

**Funding Summary**

| CDBG-R ACTIVITY | ALLOCATION |
|---|---|
| North Beach Senior Center Project Capital Improvements | $ 391,107.00 |
| Teen Job Corps | $ 30,000.00 |
| Program Administration | $ 46,789.00 |
| **TOTAL ALLOCATION** | **$ 467,896.00** |

JMG/HMF/AP
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**RESOLUTION NO._____**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING AN AMENDMENT TO THE FY 2008 ONE YEAR ACTION PLAN TO INCLUDE THE USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM TITLE XII OF DIVISION A OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 ("CDBG-R") TO BE USED FOR THE FOLLOWING TWO ACTIVITIES: 1) THE NORTH BEACH SENIOR CENTER PROJECT CAPITAL IMPROVEMENTS; AND 2) THE TEEN JOB CORPS PROGRAM, AS APPROVED BY HUD; AUTHORIZING THAT IN THE EVENT THAT HUD DISAPPROVES OF THE AFORESTATED USES OF THE CDBG-R FUNDING, THEN THE CITY MANAGER IS AUTHORIZED TO IDENTIFY, WITH THE ASSISTANCE OF THE LOCAL HUD FIELD OFFICE, HUD-ELIGIBLE PROJECT(S) WHICH WILL BE REPORTED BACK TO THE CITY COMMISSION BY LETTER TO THE COMMISSION; AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT AND ANY AND ALL NECESSARY DOCUMENTS BETWEEN THE CITY AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN ORDER TO RECEIVE THE GRANT FUNDS; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AGREEMENTS WITH PROVIDERS OF ACTIVITIES; AND FURTHER AUTHORIZING THE APPROPRIATION OF CDBG-R FEDERAL FUNDS IN THE AMOUNT OF $467,896**

**WHEREAS**, the American Recovery and Reinvestment Act of 2009 allocates to the City of Miami Beach $467,896 under Title XII of the Act of Community Development Block Grant funds (CDBG-R) in addition or the City's regular annual allocation; and

**WHEREAS**, in order to receive these funds, the City, as an eligible grantee, must complete a Substantial Amendment to the 2008 Action Plan, follow its Citizens' Participation Plan, and submit the Substantial Amendment to HUD no later than June 5, 2009; and

**WHEREAS**, the proposed projects were presented on May 18, 2009, to the Neighborhood/Community Affairs Committee and on May 19, 2009, to the Community Development Advisory Committee to obtain their input and recommendations; and

**WHEREAS**, the Substantial Amendment to FY 2008 Action Plans proposes funding to the following organizations and/or projects: UNIDAD North Beach Senior Center Capital Improvements and Teen Job Corps, Inc.; and

**WHEREAS,** the City complied with the public comment period required by HUD; and

**WHEREAS**, HUD may disapprove a proposed amendment to the FY 2008 Action Plan if is inconsistent with the requirements of the Recovery Act or the requirements of HUD Notice FR-5309-N-01; and

**WHEREAS,** in the event that HUD disapproves any or all of the proposed projects, the City Commission authorizes the City Manager to identify, with local HUD field office, an eligible project in order to receive HUD approval within the required 15 calendar days period; and

**WHEREAS**, upon HUD's approval of the City's Substantial Amendment to the FY 2008 Action Plan for the CDBG-R funds, a grant agreement will be entered into by HUD and the City which will require that funds be spent by September 30, 2012; and

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA,** that the Mayor and City Commission of the City of Miami Beach, Florida, approve a Substantial Amendment to the City's 2008 Action Plan to include the use of Federal Community Development Block Grant funds from Title XII of Division a of the American Recovery And Reinvestment Act of 2009 ("CDBG-R") to be used for the following two activities: 1) The North Beach Senior Center Project Capital Improvements; and 2) The Teen Job Corps Program, as approved by HUD; authorizing that in the event that HUD disapproves of the aforestated uses of the CDBG-R funding, then the City Manager is authorized to identify, with the assistance of the local HUD field office, HUD-eligible project(s) which will be reported back to the City Commission by letter to the Commission; authorizing the City Manager to execute an agreement and any and all necessary documents between the city and the department of housing and urban development in order to receive the grant funds; authorizing the Mayor and City Clerk to execute agreements with providers of activities; and further authorizing the appropriation of CDBG-R federal funds in the amount of $467,896

**PASSED AND ADOPTED THIS _____ DAY OF _____, 2009.**

**ATTEST:**

_____ _____

CITY CLERK MAYOR

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 5/28/09 Date

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MIAMIBEACH

**NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE MEETING**
SUPPLEMENTAL MATERIAL
CITY COMMISSION CHAMBERS, 3RD FLOOR, CITY HALL
MAY 18, 2009 2:30PM

**Neighborhoods/Community Affairs Committee**
Commissioner Jerry Libbin, Chairperson
Vice-Mayor Edward L. Tobin, Vice-Chairperson
Commissioner Jonah Wolfson, Member
Commissioner Victor M. Diaz, Jr., Alternate

**SUPPLEMENTAL MATERIAL(S)**

1. **DISCUSSION REGARDING THE ISSUE OF DOGS OFF LEASH IN CITY PARKS AND OTHER PUBLIC PROPERTIES IN GENERAL.**

   Kevin Smith, Parks and Recreation Department Director

6. **DISCUSSION REGARDING THE CITY OF MIAMI BEACH'S PROPOSED SUBSTANTIAL AMENDMENT TO THE 2008 ACTION PLAN AS REQUIRED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN ORDER TO RECEIVE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS INCLUDED IN THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

   Anna Parekh, Real Estate, Housing, and Community Development Director
   Hilda M. Fernandez, Assistant City Manager

C: Mayor and Members of the City Commission
Hilda M. Fernandez, Assistant City Manager
Tim Hemstreet, Assistant City Manager
Robert C. Middaugh, Assistant City Manager
Jose Smith, City Attorney
Robert Parcher, City Clerk
Dolores Mejia, Special Projects Administrator

# Neighborhoods/Community Affairs Committee Meeting
May 18, 2009

**DISCUSSION REGARDING THE CITY OF MIAMI BEACH'S PROPOSED SUBSTANTIAL AMENDMENT TO THE 2008 ACTION PLAN AS REQUIRED BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT IN ORDER TO RECEIVE COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS INCLUDED IN THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

Anna Parekh, Real Estate, Housing, and Community Development Director
Hilda M. Fernandez, Assistant City Manager

**ITEM #6**

MIAMIBEACH

OFFICE OF THE CITY MANAGER

# COMMITTEE MEMORANDUM

TO: Members of the Neighborhoods/Community Affairs Committee

FROM: Jorge M. Gonzalez, City Manager

DATE: May 18, 2009

SUBJECT: COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM – Funding Under the American Recovery and Reinvestment Act of 2009

The United States Department of Housing and Urban Development's(USHUD) just released its Notice of Program Requirements for the American Recovery and Reinvestment Act of 2009 (Recovery Act) Community Development Block Grant (CDBG) funds. The Notice, which was provided to the City last Wednesday, May 6, 2009, is attached for your reference (Attachment B). The City of Miami Beach has been allocated $467,896 in additional Recovery Act-related CDBG funding (CDBG-R). This CDBG-R allocation is over and above the City's regular FY 2009/2010 CDBG entitlement allocation ($1,737,602).

**TIMELINES/DEADLINES**

As we learned last week, in order to obtain the funds, grantees such as us will be required to submit what is called a "substantial action plan amendment" to their approved FY 2008 action plan. Actions Plans identify how entitlement (formula) funds will be allocated; they are filed on an annual basis and identify the funding allocated to each particular activity. For entitlement communities such as we are, the Policy document sets forth that amendments to our action plan are due *no later than Friday, June 5, 2009* in the local USHUD Field Office. Therefore, the City's Substantial Amendment to the 2008 Action Plan will need to be approved by the City Commission no later than the June 3, 2009 meeting. As referenced on page six of the attached Policy document, if the City fails to submit a substantial amendment by the specified deadline, USHUD may cancel our allocation.

HUD is waiving the requirement that the grantee follow its Citizen Participation Plan for the Substantial Amendment to the Action Plan by shortening the minimum time for citizen comments to seven (7) calendar days instead of the customary thirty (30) calendar days, and requiring that the Substantial Amendment materials be posted on the grantees' official website as the materials are developed, published, and submitted to HUD (see Section II.A.3.a). As such, a conclusion on the City's use of the CDBG-R funds for purposes of preparing the Substantial Amendment in order to provide for the required public comment is necessary as soon as possible, as the Administration must publish the Substantial Amendment by May 21, 2009, to allow for the seven (7) day public comment period and completion of the Substantial Amendment for Commission consideration and subsequent submission to USHUD. Below, please find reference to expenditure deadlines.

**ALLOWABLE USES**

The attached Notice establishes operating procedures and guidance for the overall $1 billion in CDBG funds appropriated by the Recovery Act, which directed HUD to distribute the funds to CDBG grantees that received funds in FY 2008. The CDBG-R allocation to each grantee is approximately 27% of the FY 2008 CDBG allocation (the City of Miami Beach was allocated $1,722,590 in 2008).

HUD will be issuing further guidance in the next few weeks on a range of issues relating to implementation of the CDBG-R program. However, the Policy document states that the funding

available under the Recovery Act (as set forth on page three of the attached), has clear purposes: to stimulate the economy through measures that modernize the nation's infrastructure; improve energy efficiency; and expand educational opportunities and access to health care. HUD strongly urges grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings.

Additionally, for each activity proposed, the City must describe how the use of the CDBG-R funds will "maximize job creation and economic benefit" by either preserving and creating jobs; assisting those most impacted by the recession; providing investment to increase economic efficiency; investing in transportation, environmental protection or other infrastructure that will provide long-term economic benefits; minimizing or avoiding reductions in essential services; or fostering energy independence. The City must include the number of full-time or part-time jobs estimated to be created and retained by the activity to be funded. As expressed in Section II.A.5, while typical CDBG-eligible activities can be funded with this allocation, Congress' intent is that these funds be primarily used for economic development, increased energy efficiency and job creation/retention. In speaking with our local USHUD representatives, they are strongly encouraging local entitlement jurisdictions to use these one-time funds for new activities currently not funded with the regular allocation. The Policy specifically references their preference for "discrete, stand-alone" activities, if possible.

HUD emphasized that certain activities and/or projects may not be funded with CDBG-R funding. Specifically, ineligible uses include swimming pools, golf courses, zoos, aquariums, and casinos or other gambling establishments. Other activities generally prohibited under CDBG-R are construction of buildings for the general conduct of government, political activities, purchase of equipment, and operating and maintenance expenses. There is also a ban on assistance to professional sports teams, recreational facilities that serve a predominantly higher income clientele, and general promotional activities for the grantee.

The Policy further requires that projects selected to be funded should be those that can award contracts based on bids within 120 days from the date the funds are made available, with a goal of using at least 50 percent of the funds for activities that can be initiated no later than 120 days after enactment of the CDBG-R Act. As noted in Section II.F., USHUD has imposed a grant period and expenditure deadline of September 30, 2012; funds not expended by this date are subject to recapture. As such, Section II.A.5. encourages entitlement jurisdictions to use alternative procurement processes to expedite the allocation of funds.

Lastly, as described in Section II.E., 70 percent of funds must be used for activities that benefit low- and moderate-income persons. The limitation of the use of no more than 15 percent of the available funds on public service also applies to this allocation.

**ALLOCATION STRATEGY FOR CONSIDERATION**

In light of economic conditions which are specific to Miami Beach and its CDBG-eligible target population, the Administration has considered current infrastructure and public service needs in our community that may qualify for this funding source. As the guidance documents appear to encourage that funds be allocated for infrastructure or other "bricks and mortar" projects, the City is concluding a review of any pending "shovel-ready" capital projects with funding gaps that fall within eligible areas (areas identified in the US Census as containing a certain percentage of eligible recipients). The City is also reviewing current CDBG capital funding requests. It is anticipated that we will provide options for the consideration of the Committee at the meeting on Monday.

JMG/HF/AP

# SUMMARY - CDBG-R FUNDING TO MIAMI BEACH

**TOTAL FUNDING AVAILABLE/CDBG-R:** $467,896

**TOTAL FUNDING – REGULAR CDBG:** $1,737,602

| | **Available – regular CDBG** | **Requested** |
|---|---|---|
| **Public Service** | **$260,640** | **$1,289,831** |
| **Housing & Capital Improvements** | **$844,970** | **$2,945,149** |

**ALLOWABLE USES:**

- to stimulate the economy through measures that modernize the nation's infrastructure;
- improve energy efficiency; and
- expand educational opportunities and access to health care.
- *HUD strongly urges grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings.*
- Additionally, for each activity proposed, the City must describe how the use of the CDBG-R funds will "maximize job creation and economic benefit" by either
  - preserving and creating jobs;
  - assisting those most impacted by the recession;
  - providing investment to increase economic efficiency;
  - investing in transportation, environmental protection or other infrastructure that will provide long-term economic benefits
  - minimizing or avoiding reductions in essential services; or fostering energy independence.
- The City must include the number of full-time or part-time jobs estimated to be created and retained by the activity to be funded.
- As expressed in Section II.A.5, while typical CDBG-eligible activities can be funded with this allocation, *Congress' intent is that these funds be primarily used for economic development, increased energy efficiency and job creation/retention.*

- In speaking with our local USHUD representatives, they are strongly encouraging local entitlement jurisdictions to use these one-time funds for new activities currently not funded with the regular allocation.
- The Policy specifically references their preference for "discrete, stand-alone" activities, if possible.
- 70 percent of funds must be used for activities that benefit low- and moderate-income persons.
- Limitation of the use of no more than 15 percent of the available funds on public service also applies to this allocation.

**NOT ALLOWABLE:**

HUD emphasized that certain activities and/or projects may not be funded w/ CDBG-R funding.

- swimming pools, golf courses, zoos, aquariums, and casinos or other gambling establishments.
- construction of buildings for the general conduct of government, political activities, purchase of equipment, and operating and maintenance expenses.
- ban on assistance to professional sports teams, recreational facilities that serve a predominantly higher income clientele, and general promotional activities for the grantee.

**EXPENDITURE TIMELINES:**

- projects selected to be funded should be those that can award contracts based on bids within 120 days from the date the funds are made available,
- a goal of using at least 50 percent of the funds for activities that can be initiated no later than 120 days after enactment of the CDBG-R Act.
- USHUD has imposed a grant period and expenditure deadline of September 30, 2012; funds not expended by this date are subject to recapture.
- USHUD encourages entitlement jurisdictions to use alternative procurement processes to expedite the allocation of funds.

ATTACHMENT B

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5309-N-01]

**Notice of Program Requirements for Community Development Block Grant Program Funding Under the American Recovery and Reinvestment Act of 2009**

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public of the statutory and regulatory waivers granted to grantees under the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Recovery Act appropriated $1 billion in Community Development Block Grant (CDBG) funds to states and local governments to carry out, on an expedited basis, eligible activities under the CDBG program. HUD is authorized by statute to specify alternative requirements and make regulatory waivers for this purpose. This notice also explains statutory issues affecting program design and implementation. The Department is also using this notice to provide grantees information about other ways in which the requirements for this grant vary from regular CDBG program rules. Except as described in this Notice, the statutory and regulatory provisions governing the CDBG program apply to this program.

**DATES:** Entitlement grantees, Insular Areas, and non-entitlement counties in Hawaii are to submit the substantial amendments to their program year (PY) 2008 action plans to their HUD field office by June 5, 2009. States are to submit the substantial amendments to their PY2008 action plans to their HUD field office by June 29, 2009. The deadline for the Homelessness Prevention and Rapid Re-housing Program (HPRP) funding pursuant to

HUD's March 19, 2009, Federal Register notice is May 18. Grantees that wish to submit a single substantial amendment for both programs must do so by May 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW, Room 7286, Washington, DC 20410; telephone 202-708-3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800-877-8339. Interested parties may also visit the CDBG-R web page on HUD's Recovery Act website, http://www.hud.gov/recovery/, for updated information and resources. Questions regarding the CDBG-R program may be submitted to HudRecoveryAct@hud.gov.

**SUPPLEMENTARY INFORMATION:**

Authority to Provide Alternative Requirements and Grant Regulatory Waivers

Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-005, approved February 17, 2009) appropriates $1 billion to carry out the CDBG program under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.) (the HCDA) on an expedited basis. These funds will be distributed to grantees that received CDBG funding in Fiscal Year (FY) 2008 in accordance with the provisions of 42 U.S.C. 5306. The grant program under Title XII is commonly referred to as the CDBG Recovery (CDBG-R) program. When referring to a provision of the appropriations statute itself, this notice will refer to the Recovery Act; when referring to the grants, grantees, assisted activities, and implementation rules, this notice will use the term CDBG-R.

In administering CDBG-R funds, the Secretary may waive or specify alternative requirements for any provision of any statute or regulation in connection with the obligation by the Secretary or the use by the recipient of these funds except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a finding that such waiver is necessary to expedite or facilitate the timely use of such funds and would not be inconsistent with the overall purpose of the statute. Such regulatory relief as HUD deemed necessary and is authorized to provide under 24 CFR 5.110 and 24 CFR 91.600 to permit implementation of CDBG-R is provided in this notice.

The Secretary finds that the alternative requirements outlined in Section II. of this notice are necessary to expedite the use of these funds for their required purposes.

Except as described in this notice, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570 subpart I for states and those at 24 CFR part 570 subparts A, C, D, E, F, J, K, and O for CDBG entitlement communities, as appropriate, shall apply to the use of these funds. Subpart M, concerning the Section 108 Loan Guarantee program, is not applicable to CDBG-R. Other sections of the notice will provide further details of the changes, the majority of which deal with adjustments necessitated by Recovery Act provisions to expedite the use of CDBG-R funds.

Ensuring Responsible Spending of Recovery Act Funds

Funding available under the Recovery Act has clear purposes – to stimulate the economy through measures that modernize the Nation's infrastructure, improve energy efficiency, and expand educational opportunities and access to health care. In implementing the Recovery Act, Federal agencies are undertaking unprecedented measures to ensure transparency and accountability in the use of the funds. Concurrently, Federal agencies must

ensure that the funds are employed in a prudent manner consistent with applicable program requirements.

The Department desires that CDBG-R grantees carefully evaluate proposed projects for consistency with the overarching goals of the Recovery Act, especially the above-cited purposes. To this extent, HUD strongly urges grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings. While the full range of CDBG activities is available to grantees, the Department strongly suggests that grantees incorporate consideration of the public perception of the intent of the Recovery Act in identifying and selecting projects for CDBG-R funding.

On March 20, 2009, President Obama issued a memorandum to the heads of executive branch agencies, entitled "Ensuring Responsible Spending of Recovery Act Funds". (This memorandum was published in the Federal Register on March 25 at 74 FR 12531.) This memorandum lays out principles and steps that federal agencies are to take to ensure responsible distribution and use of Recovery Act funds. Grantees should ensure that the activities that they select for CDBG-R funding adhere to the expectations of this notice, particularly those of Section 2(c).

The Department must emphasize the following points to recipients of CDBG-R funds. Certain specified activities and/or projects may not be funded with CDBG-R funds pursuant to the Recovery Act and this includes swimming pools, golf courses, zoos, aquariums, and casinos or other gambling establishments. Other activities generally prohibited under regulations governing the regular CDBG program are also prohibited under CDBG-R. This

includes prohibitions on the construction of buildings for the general conduct of government, political activities, purchase of equipment, and operating and maintenance expenses. Other CDBG restrictions may also apply including bans on assistance to professional sports teams, recreational facilities that serve a predominantly higher income clientele, and general promotional activities for the grantee.

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## I. ALLOCATIONS

**A. Formula: Allocation.** The Recovery Act appropriates $1 billion of CDBG funding and is distributing $980 million to grantees that received CDBG funding in FY2008. Pursuant to provisions of the Recovery Act, HUD has reserved $10 million to address its administrative costs and has allocated $10 million to the Indian CDBG program, as required by 42 U.S.C.

5306(a). Any unit of local government that did not apply for its FY2008 funds is not eligible to receive CDBG-R funding. The formulas for the allocation of CDBG-R funds are the same as the formulas used for the annual allocation of CDBG funds to the states, entitlement grantees, and Insular Areas. On February 25, 2009, HUD announced the list of the CDBG-R allocations, and these may be found at http://www.hud.gov/recovery/cdblock.cfm.

**B. Formula: Reallocation.** To expedite the use of CDBG-R funds, the Department is specifying alternative requirements to 42 U.S.C. 5306(c) and 42 U.S.C. 5306(d)(3)(C). The Department has determined that it is necessary to employ an alternative reallocation process in order to expedite grantees' timely use of any reallocated funds. Under the existing provisions of 42 U.S.C. 5306, funds that become available for reallocation would be reallocated as part of the process for allocating the next fiscal year's appropriation of regular CDBG funding; this means any unawarded CDBG-R funds would not get reallocated until sometime in federal fiscal year 2010. To expedite the reallocation process, HUD is adopting the following procedure instead.

If a unit of general local government, State, or Insular Area receiving an allocation of CDBG-R funds under this notice fails to submit a substantial amendment to its program year 2008 action plan for its grant allocation by the deadlines specified in Section II.A.4. of this notice, or submits an application for less than the total allocation amount, or if HUD is unable to approve any entity's submission, HUD may notify the jurisdiction of the cancellation of all or part of its allocation amount. Once HUD determines the amount of funds (if any) that are not awarded to any jurisdictions, the Secretary will establish performance criteria by which to award these funds to other entities. These criteria will be

published in the Federal Register. However, these criteria will be established only if funds become available for reallocation.

## II. ALTERNATIVE REQUIREMENTS AND REGULATORY WAIVERS

This section of the notice provides a justification for alternative requirements and describes the necessary basis for each regulatory waiver. The section also highlights some of the statutory provisions applicable to the grants. This background narrative is followed by the CDBG-R requirement(s).

Each grantee eligible for a CDBG-R grant has already received an annual allocation of FY2008 CDBG funds, has carried out needs hearings, has a consolidated plan, an annual action plan, a citizen participation plan, a monitoring plan, an analysis of impediments to fair housing choice, and has made CDBG certifications. The consolidated plan already discusses housing needs related to up to four major grant programs: CDBG; Home Investment Partnerships Program (HOME); Emergency Shelter Grants (ESG); and Housing Opportunities for Persons With AIDS (HOPWA). A grantee's annual action plan describes the activities budgeted under each of those annual programs.

The CDBG-R grant is a supplemental appropriation. As such, HUD is treating a grantee's use of its CDBG-R grant to be a substantial amendment to its current approved consolidated plan and PY2008 annual action plan. (For grantees that received an allocation under the Neighborhood Stabilization Program (NSP), this will constitute a second substantial amendment to the PY2008 annual action plan.) Treating the CDBG-R as a substantial amendment and requiring grantees to amend the PY2008 annual action plan will expedite the distribution of CDBG-R funds, while ensuring citizen participation on the specific use of the funds. HUD is also waiving the consolidated plan regulations to the

extent necessary to adjust the reporting requirements for the use of CDBG-R funds to comply with the Recovery Act.

These waivers and alternative requirements apply only to the grant funds appropriated under the Recovery Act and not to the use of regular formula allocations of CDBG funds, even if they are used in conjunction with CDBG-R funds for a project. The waivers and alternative requirements provide expedited program implementation and implement statutory requirements unique to this supplemental appropriation.

**A. Pre-Grant Process**

Pursuant to Recovery Act provisions, HUD is treating CDBG-R funds as a special allocation of CDBG funding. HUD is requiring grantees to provide a substantial amendment to their PY2008 annual action plans. To receive CDBG-R funding, each CDBG grantee must submit to HUD a substantial amendment to its action plan in accordance with this notice, by the deadlines specified in Section II.A.4. of this notice. This submission will include a signed standard federal form SF-424, signed certifications, and a substantial action plan amendment meeting the requirements of paragraph 2. below. Grantees may immediately begin to prepare and submit substantial amendments to their action plans for CDBG-R funds, in accordance with this notice.

HUD will consider any existing cooperation agreements between a local government and an urban county governing FY2008 CDBG funding (for purposes of either an urban county or a joint program) to automatically cover CDBG-R funding as well. These cooperation agreements will continue to apply to the use of CDBG-R funds for the duration of the CDBG-R grant. For example, a local government presently has a cooperation agreement covering participation in an urban county for federal FYs 2007, 2008, and 2009.

The local government may choose to discontinue its participation with the county at the end of the applicable qualification period for purposes of regular CDBG entitlement funding. However, the county will still be responsible for any CDBG-R projects funded in that community, and for any CDBG-R funding the local government receives from the county, until those funds are expended and the funded activities are completed.

Each grantee will have until the deadlines specified in paragraph 4. below to complete and submit a substantial amendment to its annual action plan. HUD encourages grantees, during development of their action plan amendments, to contact HUD field offices for guidance in complying with these requirements.

In the regular CDBG program, a grantee is required to provide 30 calendar days for soliciting comments from its citizens before it submits an annual action plan to HUD. Then, HUD has 45 calendar days to accept or reject the plan. To expedite the process and to ensure that the CDBG-R grants are awarded in a timely manner, while preserving a reasonable citizen participation process, HUD is waiving the requirement that the grantee follow its citizen participation plan for this substantial amendment. HUD is shortening the minimum time for citizen comments to 7 calendar days and requiring the substantial amendment materials to be posted on the grantee's official website as the materials are developed, published, and submitted to HUD. Grantees are cautioned that, despite the expedited application and plan process, they are still responsible for ensuring that all citizens have equal access to information about activities assisted with CDBG-R funds. In addition, grantees must ensure that non-English speaking persons and persons with disabilities have access to copies of substantial amendments. Since not all citizens have internet access, HUD

encourages grantees to make copies of substantial amendments available in public places such as libraries and government buildings.

HUD will not require states to follow their existing citizen participation plan requirements, either for the state's development of this substantial amendment or for the development of funding proposals by units of general local government. The citizen participation pursuant to CDBG-R will be conducted at the state level and must assure that citizens and units of general local government have an opportunity to comment on all proposed activities to be undertaken with these funds. HUD is therefore waiving the provisions of 24 CFR 91.115(e) and 24 CFR 570.486(a). However, states are encouraged to establish alternative procedures for units of general local government that will provide reasonable citizen access to information and participation in the local decision-making process. To facilitate the timely development of states' substantial amendments, HUD is waiving 42 U.S.C. 5306(d)(2)(C)(1)(iv) and 24 CFR 91.110 to the extent necessary to eliminate the requirement that a state must consult with units of local government in determining the expected use of CDBG-R funds.

Pursuant to the overall objectives of the Recovery Act to assure that funds are in communities assisting in economic recovery, HUD is waiving 24 CFR 91.320 (d) and 24 CFR 91.320(k)(1)(i) to the extent necessary to require states to submit a list of activities in lieu of developing a method of distribution.

Substantial amendments to grantees' action plans are not normally approved by HUD, but may be submitted to HUD as they occur or at the end of the program year. 24 CFR 91.505(c) is waived to the extent necessary to require submission of the substantial

amendment to the action plan to HUD for approval in accordance with this notice no later than the deadlines specified in paragraph 4. below.

HUD is waiving provisions of 24 CFR 91.500(b) and (d) to provide for the following modified action plan approval procedures. HUD will review each grantee's submission for completeness and consistency with the purposes of the Cranston-Gonzalez National Affordable Housing Act, the Recovery Act and the requirements of this notice, and will disapprove incomplete or inconsistent action plan amendments. 24 CFR 91.500(d) permits jurisdictions to revise or resubmit a plan within 45 days after written notification of disapproval; it also states that HUD must respond to approve or disapprove the plan within 30 days of receiving the resubmission. HUD will allow revision and resubmission of a disapproved action plan in accordance with 24 CFR 91.500 so long as the resubmission is received by HUD 15 calendar days or less following the date of first disapproval, and any further resubmissions in response to subsequent disapprovals are received no later than close of business on July 20, 2009 for entitlement communities, Insular Areas or non-entitlement counties in Hawaii. The deadline for states is August 13, 2009.

The substantial amendment to the action plan and citizen participation alternative requirement will permit an expedited grant-making process, but one that still provides for public notice, appraisal, examination, and comment on the activities proposed for the use of CDBG-R grant funds.

Requirement

1. **General.**

a. Except as described in this notice, statutory and regulatory provisions governing the CDBG program for states, entitlement communities, Insular Areas, and non-entitlement

counties in Hawaii, as applicable, shall apply to the use of these funds. Non-entitlement counties in the state of Hawaii and Insular Areas should follow the requirements for entitlement communities.

b. To receive its grant allocation, a grantee must submit to HUD, by the deadlines in paragraph 4. below, a substantial amendment to its PY2008 action plan, in accordance with the consolidated plan procedures for a substantial amendment under the annual CDBG program as modified by this notice, or HUD may cancel the entire amount allocated for that grantee and reallocate the funds. 24 CFR 91.505(c) is waived to the extent necessary to require submission of the substantial amendment to HUD for approval.

c. 24 CFR 91.500(b) and (d) are waived to the extent necessary to implement alternative procedures for HUD review and approval of grantees' action plan amendments. In addition to the criteria in 24 CFR 91.500(b), HUD may disapprove a plan if it is inconsistent with the requirements of the Recovery Act or the requirements of this notice. HUD may disapprove a plan if it determines that the description of activities, as required in paragraphs 2.a. and 2.b. below, does not adequately describe how an activity will address the Recovery Act. This alternative requirement will allow revision and resubmission of a disapproved action plan in accordance with 24 CFR 91.500(d) so long as the first resubmission is received by HUD 15 calendar days or less following the date of first disapproval, and any further resubmissions in response to subsequent disapprovals are received no later than close of business on July 20, 2009 for entitlement communities, Insular Areas or non-entitlement counties in Hawaii. The deadline for states is August 13, 2009.

d. After HUD processes and approves the plan amendment and both HUD and the grantee have signed the grant agreement, HUD will establish the grantee's line of credit in the amount of the grantee's CDBG-R funds included in the action plan amendment.

**2. Contents of a CDBG-R Action Plan Substantial Amendment.**

a. The required elements in the CDBG-R substantial amendment to the annual action plan for entitlement communities, Insular Areas, and non-entitlement counties in Hawaii are:

i. Pursuant to 24 CFR 91.220(d), (e) and (l), a description of the activities the jurisdiction will undertake with these funds to address priority needs and objectives. 24 CFR 91.220(l)(ii) is waived. The grantee shall instead identify any other Recovery Act funding to be used in conjunction with each activity and total activity budget from all funding sources. In addition, grantees must provide information concerning CDBG-R assisted activities in an electronic spreadsheet provided by HUD. The information that must be reported in the spreadsheet includes activity name, activity description, CDBG-R dollar amount budgeted, eligibility category, national objective citation, additional Recovery Act funds for the activity received from other programs, and total activity budget. An electronic copy of the spreadsheet and the format will be available on HUD's recovery website at http://www.hud.gov/recovery. Grantees must include a paper copy of the spreadsheet in their substantial amendment and must submit an electronic version of the completed spreadsheet to CDBG-R@hud.gov.

ii. A description of how the distribution and uses of the grantee's CDBG-R funds will meet the requirements of Title XII of Division A and Section 1602 of the Recovery Act: that, in selecting projects to be funded, recipients shall give

priority to projects that can award contracts based on bids within 120 calendar days from the date the funds are made available to the recipients; and that for CDBG-R funds being used for infrastructure investments, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 calendar days after February 17, 2009.

iii. For each activity, a written description of how the use of CDBG-R funds for the activity will maximize job creation and economic benefit in relation to the CDBG-R funds obligated, and will address the Recovery Act, by:

(A) Preserving and creating jobs and promoting economic recovery;

(B) Assisting those most impacted by the recession;

(C) Providing investment needed to increase economic efficiency;

(D) Investing in transportation, environmental protection, or other infrastructure that will provide long-term economic benefits;

(E) Minimizing or avoiding reductions in essential services; or

(F) Fostering energy independence.

iv. For each activity, the number of full- and part-time jobs estimated to be created and retained by the activity (including permanent, construction and temporary jobs).

v. A description of the activities that will be carried out with CDBG-R funds that promote energy conservation, smart growth, green building technologies, or reduced pollution emissions.

vi. Information on how to contact grantee program administrators, so that citizens and other interested parties know who to contact for additional information.

vii. A signed standard federal form SF-424, and signed certifications as specified in section II.H. of this notice.

b. The required elements in the CDBG-R substantial amendment to the annual action plan required for States are:

i. A description of the activities that will be undertaken with these funds to address priority needs and objectives, and outcome measures pursuant to 24 CFR 91.320(c). The grantee shall identify any other Recovery Act funding to be used in conjunction with each activity and total activity budget from all funding sources. In addition, grantees must provide information concerning CDBG-R assisted activities in an electronic spreadsheet provided by HUD. The information that must be reported in the spreadsheet includes activity name, activity description, CDBG-R dollar amount budgeted, eligibility category, national objective citation, additional Recovery Act funds for the activity received from other programs, and total activity budget. An electronic copy of the spreadsheet and the format will be available on HUD's recovery website at http://www.hud.gov/recovery. Grantees must include a paper copy of the spreadsheet in their substantial amendment and must submit an electronic version of the completed spreadsheet to CDBG-R@hud.gov. HUD waives 24 CFR 91.320(d) and 24 CFR 91.320(k)(1)(i) to the extent necessary to require states to provide a list of activities it intends to fund with the CDBG-R allocation.

ii. A description of how the distribution and uses of the grantee's CDBG-R funds will meet the requirements of Title XII of Division A and Section 1602 of the Recovery Act: that, in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are

made available to the recipients; and that for CDBG-R funds being used for infrastructure investments, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 calendar days after February 17, 2009.

iii. For each activity, a written description of how the use of CDBG-R funds for the activity will maximize job creation and economic benefit in relation to the CDBG-R funds obligated, and will address the Recovery Act, by:

(A) Preserving and creating jobs and promoting economic recovery;

(B) Assisting those most impacted by the recession;

(C) Providing investment needed to increase economic efficiency;

(D) Investing in transportation, environmental protection, or other infrastructure that will provide long-term economic benefits;

(E) Minimizing or avoiding reductions in essential services; or

(F) Fostering energy independence.

iv. For each activity, the number of full- and part-time jobs estimated to be created and retained by the activity, which will include permanent, construction and temporary jobs.

v. A description of activities that will be carried out with CDBG-R funds to promote energy conservation, smart growth, green building techniques or reduced pollution emissions.

vi. Information on how to contact grantee or unit of general local government program administrators so that citizens and other interested parties will know who

to contact for additional information.

vii. A signed standard federal form SF-424, and signed certifications as specified in section II.H. of this notice.

**3. Citizen Participation Alternative Requirement.** HUD is providing an alternative requirement to 42 U.S.C. 5304(a)(2) and (3), to expedite distribution of grant funds and to provide for expedited citizen participation for the CDBG-R substantial amendment. Provisions of 24 CFR 570.302, 24 CFR 570.486(a), 24 CFR 91.105(k) and 91.115(i), with respect to following the citizen participation plan, are waived to the extent necessary to allow implementation of the requirements below. In addition, for States, 24 CFR 91.110 is waived to the extent necessary to eliminate the requirement that a state must consult with units of local government in determining the state's method of distribution in its substantial amendment.

a. 24 CFR 91.105(k) and 24 CFR 91.115(i) are being waived to specify that the grantee will provide no fewer than 7 calendar days for citizen comment (rather than 30 days) for its CDBG-R substantial amendment. At the time of submission to HUD, each grantee will post its action plan amendment and any subsequent CDBG-R amendments on its official website along with a summary of citizen comments received within the 7-day comment period. HUD encourages the grantee to make copies of the substantial amendment available in public places such as libraries and government buildings. In addition, the grantee must ensure that non-English speaking persons and persons with disabilities have access to copies of substantial amendments.

b. The regulation at 24 CFR 91.505(c)(1) states that a grantee may submit a copy of an amendment to its action plan to HUD as it occurs or at the end of the program year. 24 CFR

91.505 is waived to require each grantee to submit the substantial amendment to its action plan for CDBG-R funds no later than the deadlines specified in paragraph 4. below.

**4. Submission Deadlines.** Except as otherwise provided in this paragraph, entitlement grantees, Insular areas and non-entitlement counties in Hawaii are to submit their substantial amendments to their 2008 action plans to their HUD field office by June 5, 2009. States are to submit the substantial amendments to their PY2008 action plans to their HUD field office by June 29, 2009. The deadline for the substantial amendment for HPRP is May 18, 2009; therefore, grantees that wish to submit a single substantial amendment for both programs must do so by May 18, 2009.

Any grantee that will be submitting its program year 2009 action plan between the date of this notice and June 5, 2009, may wish to consider ways in which it can combine the citizen participation and submission steps for its CDBG-R substantial amendment with those for its 2009 action plan. Any entitlement grantee or non-entitlement county in Hawaii with a program year start date of July 1 or earlier, and which has not yet submitted its program year 2009 action plan to its field office as of the date of this notice, may submit its CDBG-R substantial amendment to its 2008 action plan simultaneously with the submission of its program year 2009 action plan. However, in no case can such an entitlement grantee or non-entitlement county in Hawaii submit its CDBG-R action plan amendment later than June 5, 2009. States that submit their substantial amendment to 2008 action plans by June 29, 2009, will need to submit the 2009 action plan by its original deadline. However, the abbreviated citizen participation process provided in this notice applies only to CDBG-R substantial amendments, not to the submission of program year 2009 action plans. Existing regulatory citizen participation requirements continue to apply to action plans submitted for regular

CDBG funding, even if a grantee wishes to submit its CDBG-R substantial amendment simultaneously with its program year 2009 action plan.

A grantee's failure to meet the submission deadlines for CDBG-R, as applicable, may constitute grounds for the Department to cancel the grantee's CDBG-R funding allocation pursuant to the provisions of section I.B. of this notice.

**5. Program Design Considerations**

Although the Recovery Act applies additional or alternative requirements upon CDBG-R funding that do not exist in the regular CDBG program, this additional appropriation is otherwise subject to all regular CDBG program requirements. HUD has minimized the number of additional changes between CDBG-R and regular CDBG program requirements, to maximize grantees' flexibility in administering these funds. The Recovery Act also contains language which, while not stating explicit mandates, makes clear that Congress intends the use of Recovery Act appropriations to be targeted to address current economic conditions. For example, Section 1602 of the Recovery Act states that, "Recipients shall also use grant funds in a manner that maximizes job creation and economic benefit." While grantees have the full range of CDBG eligible activities at their disposal for CDBG-R, Congress clearly intends that CDBG-R funds should primarily be invested in economic development, housing, infrastructure and other public facilities activities that will quickly spur further economic investment, increased energy efficiency, and job creation or retention. In selecting activities for CDBG-R funding, grantees should keep in mind that some eligible activities under the Housing and Community Development Act are unlikely to substantively address the intent of the Recovery Act.

At the same time, the broad purpose language of the Recovery Act does not expand the list of eligible activities beyond those specified by the Housing and Community Development Act. Some uses of funds suggested by the Recovery Act's broad purpose language do not necessarily fit into any CDBG eligible activity category, and may not be eligible for CDBG-R funding. However, HUD has determined that the purpose language and overall intent of the Act, particularly regarding local fiscal stabilization, supersedes the requirement at 42 U.S.C. 5301(c) that CDBG funding not be used to substantially replace the amount of local financial support previously provided to community development activities.

The Recovery Act also makes clear that grantees are to identify projects that can achieve the Recovery Act purposes AND can be quickly implemented. Language at Title XII of Division A of the Recovery Act, which appropriates the CDBG-R funds, states that, "...in selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients." Section 1602 of the Recovery Act further states, "In using funds made available in this Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of this Act."

Grantees should not assume that their normal CDBG funding distribution procedures can meet the goals for obligation of funds described above. For example, if a grantee's existing activity selection process mandates a lengthy Request For Proposals, lengthy procurement actions, or other process that would take months to produce funding recommendations, grantees should explore what local waiver authority or emergency

procedures they can implement to expedite the process. This may particularly be necessary with some states, for which deviations from existing procedures could require state rule-making. Some Urban County funding procedures that distribute funds on a proportional basis among all participating jurisdictions could result in funding awards that are too small to be used expeditiously and productively by the participating jurisdictions.

Grantees may have already identified activities that were approved to receive funding out of the grantee's FY2009 funding allocation. Grantees should consider whether any of these activities meet the additional CDBG-R requirements, and if so, whether their implementation schedules could be accelerated so that they could instead be funded with CDBG-R funds. However, moving an activity from a grantee's 2008 or 2009 program year regular CDBG program to the CDBG-R program, and replacing that moved activity with a new activity, would trigger a substantial amendment to a grantee's already-approved 2008 or 2009 action plan. This would trigger additional citizen participation requirements beyond those required for the CDBG-R substantial amendment.

States should consider whether their existing method of distribution processes can be employed to fund worthwhile activities that fell below the funding cut-off line from their program year 2008 distribution process, or to fund applications already submitted for their program year 2009 distribution process.

HUD encourages grantees to use CDBG-R funds for discrete, stand-alone activities whenever possible. As noted elsewhere in this notice, final guidance on reporting requirements and applicability of the Davis-Bacon Wage Rate Act has not yet been issued. Amending a construction contract to add CDBG-R funding to an existing project (particularly one that is not otherwise federally funded) may subject the entire project to

Recovery Act reporting and other compliance requirements. Grantees should also avoid using CDBG-R funds to initiate a new project that cannot be completed within the expenditure deadline for the CDBG-R program or that will require the commitment of future years' allocations of regular CDBG funds.

However, HUD recognizes that the additional increment of CDBG-R funding may not be enough for some grantees to fully fund a new activity. (The amount of additional funding allocated to grantees equals about 27 percent of their FY2008 regular CDBG allocation.) Grantees should consider whether it is possible to issue a new contract to use CDBG-R funds to fund an additional increment of work or services beyond that which is already under contract or otherwise underway. For example:

- A grantee may have performed engineering and environmental review work on a project to replace sanitary sewers, but scaled back the project before awarding a construction contract due to funding constraints. Because engineering work has already been done, it may be time- or cost-effective for the grantee to issue a separate construction contract for the blocks of sewers that were excluded from the existing contract.
- A grantee may use CDBG-R funds to finance the rehabilitation of several apartment buildings that are on the waiting list for assistance under the grantee's CDBG rental housing rehabilitation loan program.
- A grantee might consider physical improvements to a water treatment plant that will reduce the energy costs of the plant's operations or will conserve water resources.
- A grantee that had to pare back funding for an activity (compared to the subrecipient's original funding request or prior levels of service) might execute a subrecipient agreement to provide CDBG-R funds that will restore the activity to "full funding" levels.

CDBG-R funding will be tracked separately from a grantee's regular CDBG funding in the Integrated Disbursement and Information System (IDIS), will have separate funding contract language, and will have a different grant number from a grantee's regular CDBG funding. Grantees are cautioned against commingling regular CDBG and CDBG-R funds. However, this does not prevent a grantee from using CDBG-R funding in conjunction with an existing activity funded with regular CDBG funds, where the additional funding will be covered under a new contract or subrecipient agreement. Grantees will need to set up this additional increment of funding as a separate activity in IDIS.

Grantees who wish to use CDBG-R funds to expand an ongoing or already-under-construction project should keep the following additional considerations in mind.

*Environmental review procedures*: HUD legislation and regulations (24 CFR 58.22) prohibit CDBG grantees and any party to the development process from committing HUD or non-HUD assistance to a project until the environmental compliance review process has been successfully completed. In adding CDBG-R funds to an existing project, grantees must carefully consider the implications of the Part 58 definition of a commitment of federal funds. No new environmental review is required when a CDBG-R project has been reviewed previously by the same responsible entity, no change to the project activities or location or size results from additional funding, and no new environmental conditions have been discovered. HUD regulations and law prohibit the commitment of HUD and non HUD assistance to a project until the environmental compliance review is successfully completed. Therefore, because Recovery Act projects must expend their CDBG-R funds in such a short timeframe, it is very important to begin and complete your environmental compliance review as soon as possible. Grantees are urged to contact their Field Environmental Officer, and to

visit the HUD environmental website for more detailed information on environmental clearance: http://www.hud.gov/offices/cpd/energyenviron/environment/compliance/qa/clearance.cfm

*Labor Standards applicability*: HUD will issue guidance concerning the applicability of prevailing wage requirements at a later date. For more information about the federal labor standards requirements in HUD programs, please visit the Office of Labor Relations website at www.hud.gov/offices/olr.

**B. Reimbursement for Pre-Award Costs**

Background

CDBG-R grantees will need to move forward rapidly to prepare the CDBG-R substantial amendment and to undertake other administrative actions, including environmental reviews. Therefore, HUD is granting permission to states and entitlement jurisdictions receiving a direct allocation of CDBG-R funds to incur pre-award costs associated with the development of the substantial amendment to the action plan as if each was a new grantee preparing to receive its first allocation of CDBG funds.

Grantees may also take advantage of the provisions of 24 CFR 570.200(h) regarding activity-specific pre-award costs. Grantees may incur costs prior to grant award for specific activities, as of the date the grantee submits its CDBG-R action plan substantial amendment to HUD. Where a grantee amends an existing construction contract or issues a new contract in order to use CDBG-R funding to expand an existing activity, the date on which the CDBG-R costs are considered incurred for purposes of 24 CFR 570.200(h) will generally be the date of the new or amended contract, not the date that funds were initially obligated for the original project.

A number of entitlement grantees have used the provisions of 24 CFR 570.200(h)(1)(v) to incur pre-award costs against their regular CDBG program, where payments will be made from future years' CDBG allocations. HUD has determined that it is not consistent with the requirements of the Recovery Act to allow CDBG-R funds to be used as payment for pre-award activity costs that grantees incurred under their regular CDBG funds. HUD therefore finds good cause to waive 24 CFR 570.200(h) to the extent necessary to implement this prohibition.

Requirement

24 CFR 570.200(h) is waived to the extent necessary to allow entitlement jurisdictions receiving a direct CDBG-R allocation under this notice to incur pre-award costs as if each was a new grantee preparing to receive its first allocation of CDBG funds. In accordance with OMB Circular A-87, Attachment B, paragraph 31, 24 CFR 570.200(h) is similarly applied to States. A CDBG-R grantee will be allowed to incur costs necessary to develop the CDBG-R substantial amendment to its action plan and undertake other administrative actions necessary to receive its grant, prior to the costs being included in the final plan, and to incur activity-specific costs as of the date the substantial is submitted to HUD, provided that the other conditions of 24 CFR 570.200(h) are met. For units of general local governments funded by a state, 24 CFR 570.489(b) applies unmodified. 24 CFR 570.200(h) is waived to the extent necessary to prohibit a grantee from using CDBG-R funds for reimbursement of pre-award costs incurred against the grantee's regular CDBG funding.

**C. Recovery Act Requirements for CDBG-R Expenditures**

Title XII of Division A of the Recovery Act requires that in selecting CDBG-R projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 calendar days from the date the funds are made available to the recipients.

Section 1602 of the Recovery Act requires that grantees shall use grant funds in a manner that maximizes job creation and economic benefit. Section 1602 also states that, when CDBG-R funds are being used for infrastructure investments, grantees must give preference to activities that can be started and completed expeditiously, including a goal to obligate at least 50 percent of the funds for activities that can be initiated within 120 days of enactment of the Recovery Act.

HUD has defined the term "use" for purposes of these requirements to mean obligation of funds. HUD is adopting the definition of "obligation" as it appears in 24 CFR 85.3 for all grantees, including states, to mean the amount of orders placed, contracts and sub-grants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

Section 1605 of the Recovery Act requires that all iron, steel and manufactured goods used in construction, alteration, repair, or maintenance of a public building or public work project assisted with funds under the Recovery Act must be produced in the United States, unless the Secretary finds that: the requirement is inconsistent with public interest; those goods are not reasonably available or produced in sufficient quantity in the U.S.; or the use of the goods will increase the project cost by more than 25 percent. Grantees must request a waiver of this provision if, in the process of carrying out an eligible activity, one of these conditions arises. If the Secretary determines that it is necessary to waive this requirement, he must publish in the Federal Register a detailed written justification why the requirement

was waived; therefore, all grantees are expected to adhere to these provisions. These requirements must be applied consistent with U.S. obligations under international agreements. To streamline compliance with the provision of Section 1605 in determining the project cost using American-made materials, grantees may want to consider acquiring two cost estimates with bids: one with only American-made materials and the other with any materials.

Section 1604 of the Recovery Act prohibits CDBG-R funds from being used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. In applying this prohibition, HUD will interpret the definitions of these terms broadly. This requirement is further discussed in section II.E. of this notice.

Section 1512 of the Recovery Act requires that for each activity carried out with CDBG-R funds, grantees must report on the number of jobs estimated to be created or retained. This reporting requirement applies to all activities, and is unrelated to the reporting of jobs for purposes of meeting the low- and moderate-income benefit national objective requirements. This requirement is further discussed under section II.G of this notice.

As part of the CDBG-R substantial amendment, grantees will be required to submit certifications regarding these requirements.

**D. Program Income Requirements**

Any program income generated from the use of CDBG-R funds will be treated as program income to the regular CDBG program, not as program income to the CDBG-R program. HUD is waiving a number of statutory and regulatory provisions to implement this requirement, many of which are described in Section F. below. 24 CFR 85.21 and 24 CFR 570.504 (for entitlements) and 24 CFR 570.489(e)(3) and 31 CFR part 205 (for states),

require grantees and subrecipients to disburse program income before requesting additional cash withdrawals of regular CDBG funds from the U.S. Treasury. Those requirements will not apply to the drawdown of CDBG-R funds.

In the regular CDBG program, 24 CFR 570.301(b) provides for float-funded activities and guarantees, a short-term financing mechanism which allows a grantee to use undisbursed funds in its line of credit and CDBG program account that are budgeted in action plans for one or more other activities that do not need the funds immediately. Each activity carried out using the float must meet all CDBG requirements and must be expected to produce program income in an amount at least equal to the amount of float so used. Because program income generated from CDBG-R activities will not be treated as program income to the CDBG-R program, grantees may not use CDBG-R funds to assist any float-funded activity or guarantee. 24 CFR 570.301(b) is therefore waived.

**E. Eligibility, Allowable Costs, and National Objective Waivers**

Background

*Overall low- and moderate-income benefit alternative requirements:* The requirement that 70 percent of funds are for activities that benefit low- and moderate-income persons [found at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) and 24 CFR 570.484] will apply to the use of CDBG-R funds. A grantee must ensure that 70 percent of its CDBG-R grant be expended for activities that benefit low- and moderate-income persons. Compliance with the overall benefit requirement must be demonstrated separately for the CDBG-R grant and not in combination with regular CDBG funding or commitments under the Section 108 Loan Guarantee program; thus, there is no option for selecting the timeframe for compliance.

*Urgent need national objective criteria:* In the regular CDBG program, to meet the urgent need national objective pursuant to 24 CFR 570.208(c) and 24 CFR 570.483(d), the recipient must certify: that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health and welfare of the community which are of recent origin or recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funds are not available. In the regular State CDBG program, the local government provides this certification and the State makes the determination of the same. For CDBG-R, HUD is eliminating the recordkeeping requirement that grantees document the nature, degree and timing of seriousness of the condition to be addressed by the activity if the urgent need is based on current economic conditions. HUD will accept a grantee's certification that current economic conditions are of recent origin and constitute a serious and immediate threat to the welfare of the community. However, the grantee must still demonstrate that it is unable to finance the activity on its own, and that other sources of funding are not available. For the State CDBG program, states may make this certification on behalf of units of general local government.

*Limitations on public services activities:* In the regular CDBG program, entitlement grantees are permitted to obligate no more than 15 percent of their annual CDBG allocation plus 15 percent of the prior program year's program income for public service activities. States are permitted to expend no more than 15 percent of each annual CDBG allocation plus program income for public service activities. HUD is providing an alternative requirement because there will be no program income attributed to CDBG-R, and because CDBG-R is to be treated as a separate appropriation of funds. Compliance with the public service cap must be demonstrated separately based on each grantee's total CDBG- R grant allocation and not

in combination with its regular CDBG funding or program income. For both states and entitlements, compliance will be demonstrated based on expenditures of CDBG-R funds, not on obligations as in the regular CDBG entitlement program. HUD is waiving 42 U.S.C. 5305(a)(8) to exclude program income from the amount of funds on which the cap is based. Other provisions of that section remain in place.

*Limitations on planning and general administration activities:* Pursuant to 24 CFR 570.200(g), in the regular CDBG program, a CDBG entitlement grantee is permitted to obligate no more than 20 percent of its annual CDBG allocation plus program income for planning and administrative costs as defined in 24 CFR 570.205 and 24 CFR 570.206. Pursuant to 24 CFR 570.489(a)(3), a state and its funded units of general local government are, in aggregate, permitted to expend no more than 20 percent of the state's annual grant plus program income for planning and administrative costs as defined at 42 U.S.C. 5305(a)(12), 5305(a)(13) and 5306(d)(3). HUD is providing an alternative requirement because there will be no program income attributed to CDBG-R, and because CDBG-R is to be treated as a separate appropriation of funds. Compliance with the planning and administration costs cap must be demonstrated separately based on each grantee's total CDBG- R grant allocation and not in combination with its regular CDBG funding or program income. For CDBG-R, up to 10 percent of a CDBG-R grant directly provided to a jurisdiction (State, entitlement community, Insular Area or non-entitled county in Hawaii) may be used for general administration and planning activities. For all grantees, including states, the 10 percent limitation applies to the grant as a whole. States should note that the 10 percent limitation includes any funds the State expends for technical assistance to units of general local government and non-profit organizations pursuant to 42 U.S.C. 5306(d)(5) and

(6). Consistent with Recovery Act provisions to expedite the use of CDBG-R funds, HUD is waiving the requirement for matching State administrative funds. Requiring states to match administrative funds may considerably slow down the expenditure of CDBG-R funds in states struggling to stabilize their budgets.

*Public benefit standards:* In the regular CDBG program, the public benefit standards at 24 CFR 570.209(b), (c) and (d) (for entitlement grantees) and 24 CFR 570.482(f) and (g) (for states) apply to economic development projects under the authority of 24 CFR 570.203, 24 CFR 570.204, 24 CFR 570.208(a)(4)(vi)(F)(2), 24 CFR 570.483(b)(4)(vi)(F)(2), and 42 U.S.C. 5305(a)(2), (14), (15), or (17), respectively. HUD is waiving portions of these regulations to expedite the timely use of funds by grantees. HUD will presume that activities that meet the requirements and Congressional intent of the Recovery Act provide sufficient public benefit. Grantees are still encouraged to provide economic assistance at the lowest possible cost per job, or cost per low- and moderate-income beneficiary.

Activities identified in these regulations as providing insufficient public benefit remain ineligible for CDBG-R funding: general promotion of the community as a whole; assistance to professional sports teams; assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons; acquisition of land for which the specific proposed use has not yet been identified; and assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient. (Those ineligible activities are in

addition to those which the Recovery Act specifically prohibits: casinos, other gambling establishments, aquariums, zoos, golf courses, or swimming pools.) Furthermore, HUD is not waiving the provisions of 24 CFR 570.209(a) (for entitlement grantees) and 24 CFR 570.482(e) (for states) regarding underwriting guidelines.

*Relationship of CDBG-R to the Section 108 Loan Guarantee program:* In the Section 108 program, 24 CFR 570.705(a)(2)(i) permits a CDBG grantee to borrow an amount of up to five times of its most recent CDBG grant for a Section 108 loan. 24 CFR 570.705(b) permits CDBG funds to be used as a pledge of security for the repayment of Section 108 loans. 24 CFR 570.705(c) permits the use of CDBG funds to repay funds borrowed under the Section 108 program. The Section 108 program is intended to provide longer-term project financing and requires a pledge of CDBG future funds over the life of the loan guarantee, whereas CDBG-R is a one-time appropriation of funds of limited duration. CDBG-R funds may not be used as a pledge of security for the repayment of Section 108 loans, may not be used to securitize borrowing under the Section 108 program, may not be used as repayment for funds borrowed under the Section 108 program, and may not be counted toward a grantee's maximum Section 108 borrowing authority.

Requirements

1. 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.200(a)(3) and 24 CFR 570.484 are waived to the extent necessary to require that CDBG-R funds shall principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons, exclusive of any other funds received by the

grantee under 42 U.S.C. 5306 or as a result of a guarantee or a grant under 42 U.S.C. 5308. A grantee must meet this requirement over the life of its CDBG-R grant.

2. 24 CFR 570.506(b)(12)(i) and (iii) are waived, and 24 CFR 570.208(c), 24 CFR 570.483(d), and 24 CFR 570.490(a) and (b) are waived to the extent necessary to allow grantees to certify that an activity is designed to address current economic conditions which pose a serious and immediate threat to the welfare of the community. HUD has determined that current economic conditions are of recent origin and pose a serious and immediate threat to the economic welfare of communities. States may provide this certification on behalf of units of general local government. Grantees must maintain other documentation specified in these regulations.

3. 42 U.S.C. 5306(a)(8), 24 CFR 570.201(e)(1) and 24 CFR 570.201(e)(2) are waived to the extent necessary to require that no more than 15 percent of CDBG-R funds shall be expended for eligible public service activities, exclusive of any other funds received by the grantee under 42 U.S.C. 5306. A grantee must meet this requirement over the life of this grant.

4. 42 U.S.C. 5306(d)(3), (5) and (6), 24 CFR 570.200(g) and 24 CFR 570.489(a) are waived to the extent necessary to establish the following requirement: No more than 10 percent of CDBG-R funds shall be expended for eligible planning and general administration activities as defined in 42 U.S.C. 5305(a)(12), 5305(a)(13) and 5306(d)(3), and in 24 CFR 570.205 and 24 CFR 570.206, exclusive of any other funds received by the grantee under 42 U.S.C. 5306. For states, this 10 percent limitation includes technical assistance eligible under 42 U.S.C. 5306(d)(5) and (6). A grantee must meet this requirement over the life of this grant. For states, this requirement applies in total to the state and all entities it funds.

5. The requirements at 42 U.S.C. 5306(d)(3)(A) and 24 CFR 570.489(a) are waived to the extent necessary to eliminate the state match requirement for general administrative costs.

6. 42 U.S.C. 5305(e)(3), 24 CFR 570.209, 24 CFR 570.482(f), 24 CFR 570.490(a) and 24 CFR 570.506(c) are waived to the extent necessary to permit grantees to carry out economic development projects without meeting the public benefit standards, except that 24 CFR 570.209(b)(3)(ii)(A) through (E) and 24 CFR 570.482(f)(4)(ii)(A) through (E) are not waived.

7. 42 U.S.C. 5308 and Subpart M of 24 CFR Part 570 are waived to the extent that they are not applicable to the use of CDBG-R funds.

8. Uses of grant funds must constitute an eligible use under the Recovery Act. In addition to being an eligible CDBG-R use of funds, each activity funded under this notice must also be eligible under 42 U.S.C. 5305(a) and Subparts C and I of Part 570, and meet a CDBG national objective under Subparts C and I of Part 570, as modified by this notice. Activities not listed as eligible under 42 U.S.C. 5305(a), and activities that are specifically listed as ineligible under 24 CFR 570.207 and 24 CFR 570.482, are ineligible for CDBG-R funding. The last sentence of 42 U.S.C. 5301(c) is waived.

9. Pursuant to Section 1604 of the Recovery Act, CDBG-R funds may not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

**F. Timeliness of Use and expenditure of CDBG-R funds**

Background

In accordance with the Recovery Act, HUD has imposed a grant period and expenditure deadline of September 30, 2012, to ensure that the use of CDBG-R funds is expedited. To that end, HUD has waived a number of regulatory and statutory provisions.

The timely expenditure regulatory requirements for the entitlement CDBG program will not apply to CDBG-R funds. These funds will not be included in determining compliance with the requirements of 24 CFR 570.902. However, income generated from CDBG-R activities will be treated as program income to grantees' regular CDBG program, and thus will be included in timely expenditure compliance determinations. In selecting and designing activities for CDBG-R funding, grantees should consider the indirect effects on their compliance with the timely expenditure requirements for their regular CDBG funding. The timely distribution regulatory requirements for states will not apply to CDBG-R funds.

Requirement

The timely distribution or expenditure requirements of 42 U.S.C. 5304(e) and 24 CFR 570.494 and 570.902 are waived to the extent necessary to allow the following alternative requirement: All CDBG-R grantees must expend their entire allocation of CDBG-R funds by September 30, 2012. Any funds not expended by September 30, 2012, will be recaptured by HUD and returned to the U.S. Treasury.

**G. Reporting**

Background

HUD requires timely and accurate reporting on each CDBG-R grant in IDIS. HUD will use the information from IDIS to exercise oversight for compliance with the requirements of this notice and for prevention of fraud, waste, and abuse of funds. The Recovery Act imposes greater (and more frequent) reporting requirements than those that apply to grantees' regular CDBG funding.

Section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a federal agency shall

submit a report to that agency that contains: (1) the total amount of recovery funds received from that agency; (2) the amount of recovery funds received that were expended or obligated to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including the name of the project or activity; a description of the project or activity; an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment. Not later than 30 calendar days after the end of each calendar quarter, each agency that made Recovery Act funds available to any recipient shall make the information in reports submitted publicly available by posting the information on a website.

Grantees' agreements with subrecipients or units of general local government must contain a special contract condition requiring them to comply with the reporting requirements established for CDBG-R funding. All grantees, subrecipients and contractors desiring to participate in the CDBG-R program must obtain a Data Universal Numbering System (DUNS) number. A DUNS number may be requested via the web at: http://www.grants.gov/applicants/request_duns_number.jsp. HUD will post guidance on its website regarding how to obtain a DUNS number.

Title XV, Section 1512 of the Recovery Act states that funding recipients that are required to report information per subsection (c)(4) of the Recovery Act (detailed information on any subcontracts or subgrants awarded by the recipient to include the data

elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 allowing aggregate reporting on awards below $25,000 or to individuals) must register with the Central Contractor Registration (CCR) database. CCR is the primary registrant database for the U.S. Federal government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions. Registration information on the CCR website can be found at http://www.ccr.gov/startregistration.aspx. A CCR User Account Guide can be found at http://www.ccr.gov/doc/UserAccount.pdf. CCR frequently asked questions can be found at http://www.ccr.gov/FAQ.aspx#accounts.

Additional information regarding subrecipients, other organizations, and contractors receiving CDBG-R funding will also be required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282) and to ensure accountability and transparency as cited in Title XV of the Recovery Act. This may include, but is not limited to, address and contact information as well as more detailed information about the entity and its award under this activity.

The regular CDBG reporting requirements as well as the additional CDBG-R reporting requirements will be strictly enforced. HUD reserves the right to restrict access to grantees' CDBG-R funds for delinquent, incomplete, or inaccurate reporting. Each CDBG-R activity, regardless of eligibility category and national objective, will not only report on the regular CDBG accomplishments and performance measures for that activity but also on the number of jobs created and retained, if applicable. (Grantees should note that this jobs reporting requirement applies to all activities and has nothing to do with low- and moderate-income benefit national objective compliance based on job creation or retention.)

The Recovery imposes additional reporting requirements including, but not limited to, information on the environmental review process, the expected completion of the activity, the type of activity, and the location of the activity. The Department has not yet determined how these reporting requirements will be implemented. HUD will establish and disseminate reporting requirements for CDBG-R assisted activities at a later date.

To collect these data elements and to meet its reporting requirements, HUD is requiring each grantee to report on its CDBG-R funds to HUD using IDIS.

Requirements

1. Performance report alternative requirement. The Secretary may specify the form and timing of reports provided by the grantee under both 42 U.S.C. 5304(e) (the HCD Act) and 42 U.S.C. 12708 (NAHA). Therefore, the consolidated plan regulation at 24 CFR 91.520 is waived and the alternative reporting form and timing for the CDBG-R funds is that:

a. For infrastructure investments made by State and local governments, report the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act and name of the person to contact at the agency if there are concerns with the infrastructure investment.

b. Provide detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below $25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

c. Information must be submitted using HUD's IDIS system. Pursuant to Section 1512 of the Recovery Act, grantees must enter the data into IDIS on a quarterly basis for generation of

reports by HUD or other entities. 24 CFR 570.495 and 24 CFR 570.910 are waived to the extent necessary to allow HUD to restrict access to funds in IDIS for any grantee that fails to fully comply with CDBG-R reporting requirements.

d. Throughout 24 CFR parts 91 and 570, all references to "annual" requirements such as submission of plans and reports are waived to the extent necessary to allow the provisions of this notice to apply to CDBG-R funds, with no recurring annual requirements other than those related to civil rights and fair housing certifications and requirements.

**H. Certifications**

Background

Because this is a separate appropriation of funds, the certifications that are required for the CDBG program must also be submitted for the CDBG-R program; they are listed at 24 CFR 91.225 for entitlement communities and 24 CFR 91.325 for States. HUD is waiving the requirements that grantees follow their existing citizen participation plan, and that a state consult with units of general local government in preparation of its substantial amendment. Therefore, HUD is also waiving the certifications associated with these requirements.

HUD is requiring additional certifications in addition to the certifications that are normally required. The additional certifications are tailored to CDBG-R grants. Although the CDBG-R is being implemented as a substantial amendment to the 2008 annual action plan, HUD is requiring submission of this additional set of certifications.

Requirements

Certifications for states and for entitlement communities.

1. Each jurisdiction will sign and submit the certifications at 24 CFR 91.225(a) and (b), or 24 CFR 91.325(a) and (b) as applicable, except that 24 CFR 91.225(b)(1), 24 CFR

91.225(b)(4)(ii), 24 CFR 91.325(b)(1), 91.325(b)(2)(i) and (v), and 24 CFR 91.325(b)(4)(ii) are waived. 24 CFR 91.225(b)(4)(iii) and 24 CFR 91.325(b)(4)(iii) are waived to the extent necessary to eliminate the phrase "including Section 108 loan guarantee funds" from the certifications.

2. Each jurisdiction will also sign and submit the following certifications:

a. a certification that the jurisdiction will comply with Title XII of Division A of the American Recovery and Reinvestment Act of 2009.

b. a certification that in selecting projects to be funded, the grantee will give priority to projects that can award contracts based on bids within 120 days from the date the funds are made available to the recipients, and will ensure maximum job creation and economic benefit.

c. a certification that when CDBG-R funds are being used for infrastructure investments, the grantee will give preference to quick-start and finish activities, including a goal to use at least 50 percent of the funds for activities within 120 days of enactment of the Recovery Act.

d. a certification that all iron, steel and manufactured goods used in construction, alteration, repair, or maintenance of a public building or public work project assisted with CDBG-R funds under the Recovery Act must be produced in the United States unless the Secretary finds that: (1) the requirement is inconsistent with public interest; (2) those goods are not reasonably available or produced in sufficient quantity in the U.S.; (3) or the use of the goods will increase the project cost by more than 25 percent.

e. a certification from the Governor, mayor, or other chief executive, as appropriate, that any infrastructure investments have received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate

use of taxpayer dollars. Alternatively, a grantee's chief elected official may certify that infrastructure investments will receive the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars.

f. a certification that, for activities carried out with CDBG-R funds using the urgent need national objective where the urgent need is the current economic conditions, the activity is alleviating current economic conditions which pose a threat to the economic welfare of the community in which the activity is being carried out, the recipient is unable to finance the activity on its own, and other sources of funding are not available.

g. a certification stating that the aggregate use of CDBG-R funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 70 percent of the grant is expended for activities that benefit such persons over the life of the CDBG-R grant.

**I. Paperwork Reduction Act**

The information collection requirements in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2506-0184. In accordance with the Paperwork Reduction Act, HUD may not

conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

**J. Environmental Impact**

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this issuance in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8:00 a.m. and 5:00 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

Dated: 5/4/09

Shaun Donovan
Secretary

[FR-5309-N-01]

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**Condensed Title:**

A Resolution authorizing and approving (following the expiration of the initial term on July 12, 2009) a month-to-month extension of the contract with Standard Parking, Inc. for parking meter collection services for the City's Parking System; said extension is not to exceed six (6) months, expiring no later than January 12, 2010.

**Key Intended Outcome Supported:**

Maintain or improve traffic flow and improve parking availability.

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

There had been an overall increase of 9.57% in total vehicle entries in City facilities between 2004 and 2007, thus maintaining the need for services such as the collection of parking meters.

**Issue:**

Should the City Commission approve a month-to-month extension of the contract with Standard Parking for parking meter collection services until such time that either the renewal term that is available is successfully negotiated or a Request for Proposals is issued?

**Item Summary/Recommendation:**

The City's Parking Department has outsourced parking meter collections services for over 18 years. Standard Parking, Inc. is the current parking meter collection service provider and has been in place since 2001. On July 12, 2006, via Resolution No. 2006-26256, the Mayor and Commission awarded an initial three (3) year term to Standard Parking to provide the City's Parking System with parking meter collection services. The award included two (2) one-year options for renewal, at the sole and absolute discretion of the City.

The Administration is currently negotiating more favorable terms with Standard Parking; however, negotiations may not be completed by the expiration date of the current three year term, which shall expire on July 12, 2009.

Upon completion of the negotiations with Standard Parking, the City's options are as follows:

- Option One: A one-year renewal option providing more favorable terms to the City.
- Option Two: Issue a Request for Proposals (RFP) and continue the current contract on a month-to-month basis with Standard Parking until such time that the Mayor and Commission approve an award.

It is the Administration's goal to provide a recommendation to the Mayor and Commission regarding the aforementioned options with an agenda item at the July 15, 2009 City Commission Meeting.

**Adopt the Resolution.**

**Advisory Board Recommendation:**

N/A

**Financial Information:**

| Source of Funds: | | Amount | Account | Approved |
|---|---|---|---|---|
| | 1 | | | |
| OBPI | Total | | | |

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Saul Frances, Parking Department

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| SF | TH | JMG |

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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: June 3, 2009

SUBJECT: **A RESOLUTION AUTHORIZING AND APPROVING (FOLLOWING THE EXPIRATION OF THE INITIAL TERM ON JULY 12, 2009), A MONTH TO MONTH EXTENSION OF THE CONTRACT WITH STANDARD PARKING, INC. FOR PARKING METER COLLECTION SERVICES FOR THE CITY'S PARKING SYSTEM; SAID EXTENSION IS NOT TO EXCEED SIX (6) MONTHS, EXPIRING NO LATER THAN JANUARY 12, 2010**

## ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

## ANALYSIS

The City's Parking Department has outsourced parking meter collections services for over 18 years. Standard Parking, Inc. is the current parking meter collection service provider and has been in place since 2001. On July 12, 2006, via Resolution No. 2006-26256, the Mayor and Commission awarded an initial three (3) year term to Standard Parking to provide the City's Parking System with parking meter collection services. The award included two (2) one-year options for renewal, at the sole and absolute discretion of the City.

The Administration is currently negotiating more favorable terms with Standard Parking; however, negotiations may not be completed by the expiration date of the current three year term, which shall expire on July 12, 2009.

Upon completion of the negotiations with Standard Parking, the City's options are as follows:

- Option One: A one-year renewal option providing more favorable terms to the City.
- Option Two: Issue a Request for Proposals (RFP) and continue the current contract on a month-to-month basis with Standard Parking until such time that the Mayor and Commission approve an award.

It is the Administration's goal to provide a recommendation to the Mayor and Commission regarding the aforementioned options with an agenda item at the July 15, 2009 Commission Meeting.

## CONCLUSION

The Administration recommends that the Mayor and Commission approve a month-to-month extension with Standard Parking, Inc. for parking meter collection services, until such time that either a one-year term is exercised and approved by the Mayor and Commission or alternatively, a competitive bidding process is approved by the Mayor and Commission to procure parking meter collection services. The month-to-month extension should not exceed a six month period and shall expire on January 12, 2010.

JMG/TH/SF
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**RESOLUTION NO. _____**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING (FOLLOWING THE EXPIRATION OF THE INITIAL TERM ON JULY 12, 2009), A MONTH TO MONTH EXTENSION OF THE CONTRACT WITH STANDARD PARKING, INC. FOR PARKING METER COLLECTION SERVICES FOR THE CITY'S PARKING SYSTEM; SAID EXTENSION NOT TO EXCEED SIX (6) MONTHS, COMMENCING ON JULY 13, 2009, AND TERMINATING NO LATER THAN JANUARY 12, 2010.**

**WHEREAS,** the City's Parking Department has outsourced parking meter collections services for over eighteen (18) years; Standard Parking, Inc. is the current parking meter collection service provider and has been in place since 2001; and

**WHEREAS,** on July 12, 2006, via Resolution No. 2006-26256, the Mayor and Commission awarded a contract to Standard Parking to provide the City's Parking System with parking meter collection services; the contract included a three (3) year initial term, with two (2) one-year renewal options, at the sole and absolute discretion of the City; and

**WHEREAS**, the Administration is currently negotiating more favorable terms with Standard Parking; however, negotiations may not be completed by the expiration date of the three year initial term, which expires on July 12, 2009; and

**WHEREAS,** upon completion of the successful negotiations with Standard Parking, the City's options are: (1) exercise the first one year option term under the contract; or (2) issue a Request for Proposals (RFP) and continue the current contract on a month-to-month basis until such time that the Mayor and Commission approve an award pursuant to the new RFP; and

**WHEREAS,** it is the Administration's goal to provide a recommendation to the Mayor and Commission regarding the aforementioned options with at the July 15, 2009 City Commission Meeting.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby approve (following the expiration of the initial term on July 12, 2009), a month-to-month extension of the contract with Standard Parking, Inc. for parking meter collections services for the City's Parking System; said extension not to exceed six (6) months, commencing on July 13, 2009, and terminating no later than January 12, 2010.

**PASSED AND ADOPTED THIS _____ DAY OF _____2009.**

**ATTEST:**

**CITY CLERK** **MAYOR**

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**APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION**

City Attorney 5/26/09 Date

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**Condensed Title:**

A Resolution Approving A Letter Agreement Between The City And One Washington Avenue Corp., For The Use Of Property In South Pointe Park Adjacent To The Smith & Wollensky Restaurant For The Management And Operation Of An Outdoor Dining Area.

**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.

**Issue:**

Should the City approve the Letter Agreement for ancillary dining with One Washington Avenue?

**Item Summary/Recommendation:**

**BACKGROUND**

On July 27, 2005, the City Commission adopted Resolution No. 2005-25978 approving the design and construction of the South Pointe Park improvements. The improvements included a change to the cutwalk, and included a paved area identified for use as an outdoor dining area south of the cutwalk behind Smith and Wollensky (S&W). S&W had previously operated an outdoor dining area (on the then-existing 10-foot wide cutwalk) pursuant to the issuance of annual sidewalk cafe permits by the City.

The Administration has been negotiating with S&W a concession agreement for the outdoor dining area. On April 14, 2009, the Finance & Citywide Projects Committee (F&CPC) discussed the proposed concession agreement and directed staff to further negotiate financial terms. On May 5, 2009, the City advised S&W that they had to remove all tables and chairs from the paved outdoor area pending approval of a concession agreement. At the May 13, 2009 meeting of the City Commission the Commission discussed the outdoor dining area, resulting with the Commission giving the Administration direction to reestablish negotiations with S&W to facilitate a mechanism for the outdoor dining.

S&W has requested interim authorization to use the outdoor seating area via a Letter Agreement which would be short term in nature, to allow the operations to continue until such time as the concession agreement that is under negotiation is approved by the City Commission.

**LETTER AGREEMENT PROVISIONS:**

TERM: Commencing on June 4, 2009, and terminating on the earlier of: 1) final action by the City Commission as to a proposed concession agreement for the use of said area; or, 2) September 30, 2009.

FEE: 10% of gross receipts collected during the term of this Letter Agreement.

USE(S): Placement of tables and chairs as approved following ADA compliance review; only on the paved area south of the cutwalk located on the south side of S & W's restaurant building for use as an outdoor dining area ancillary to the restaurant.

CONDITIONS: The outdoor seating would be subject to the following conditions:

- S & W must submit a site plan. Site plan must be reviewed and approved by relevant City departments prior to use;
- S & W must clean and maintain the cutwalk area (between the demised premises of the lease and the paved area that is the location of the outdoor dining area), to include daily cleaning, litter control, pressure cleaning (as per the specifications provided by the Park contractor);
- S & W to identify a queuing area for guests and provide, at its own cost and expense, staff to maintain the cutwalk clear of patrons waiting for seating; provide signage on the demised premises and on the paved area, advising patrons that they should remain clear of the cutwalk; provide stanchions or other appropriate barrier on the demised premises to demarcate the area where patrons can wait in the demised premises;

INDEMNIFICATION & INSURANCE: To be provided prior to use and approved by the City Attorney's Office and the Risk Management Division.

The Administration recommends the approval of the Letter Agreement

**Advisory Board Recommendation:**

On April 14, 2009 the Finance & Citywide Projects Committee recommended changes to the operational conditions and negotiation of a more favorable base minimum rent. On May 13, 2009 the City Commission directed the Administration to move forward to the City Commission the issue of the Concession Agreement with One Washington Ave Corp.

**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_____ | KGR | JMG |

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DATE 6-3-09

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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: June 3, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A LETTER AGREEMENT BETWEEN THE CITY AND ONE WASHINGTON AVENUE CORP. (SMITH AND WOLLENSKY RESTAURANT) FOR A TEMPORARY REVOCABLE USE LETTER AGREEMENT ("LETTER AGREEMENT") OF AN APPROXIMATELY 581 SQUARE FOOT PAVED AREA IN SOUTH POINTE PARK, ADJACENT TO THE RESTAURANT BUILDING, FOR THE OPERATION OF A FOOD AND BEVERAGE CONCESSION AND OUTDOOR DINING AREA; WITH THE TERM OF SAID AGREEMENT COMMENCING ON JUNE 4, 2009, AND TERMINATING ON THE EARLIER OF 1) FINAL ACTION BY THE CITY COMMISSION AS TO A PROPOSED CONCESSION AGREEMENT BETWEEN THE CITY AND ONE WASHINGTON AVENUE CORP. FOR THE USE OF SAID AREA, OR 2) SEPTEMBER 30, 2009.**

## BACKGROUND

On July 27, 2005, the City Commission adopted Resolution No. 2005-25978 approving the design and construction of the South Pointe Park improvements. The improvements included a change to the cutwalk, and included the construction of a paved area south of the cutwalk behind Smith & Wollensky (S&W) identified for use as an outdoor dining area. S&W had previously operated an outdoor dining area (on the then-existing 10-foot wide cutwalk) pursuant to the issuance of annual sidewalk cafe permits by the City.

As a result of the new construction, the Administration and City Attorney's Office determined that the correct instrument to memorialize S&W's use of this specific public property for its outdoor dining area – going forward – would be through a concession agreement. Accordingly, the Administration has been negotiating with S&W on a concession agreement for the outdoor dining area, originally with the expectation that those deliberations and subsequent approvals would occur concurrent with the reopening of the Park on March 22nd. On April 14, 2009, the Finance & Citywide Projects Committee (F&CPC) discussed the proposed concession agreement. The F&CPC recommended changes to the proposed operational conditions, and requested that the Administration negotiate a more favorable base minimum rent. On May 6, 2009, the City advised S&W that it had to remove all tables and chairs from the paved area pending approval of a concession agreement. At the May 13, 2009 meeting of the City Commission, the Commission discussed the outdoor dining area, resulting with the Commission giving the Administration direction to reestablish negotiations with S&W to facilitate a mechanism for the outdoor dining.

Pursuant to the City's directive, S&W is currently not operating the outdoor dining area. While these negotiations continue, S&W has requested interim authorization to use the outdoor seating area. Such approval would require the execution of a Letter Agreement that would require S&W to pay a percentage of gross, and meet certain operational conditions. This Letter Agreement, if approved by the Commission, would be short term in nature, to allow the operations to continue until such time as the concession agreement that is under negotiation is approved by the City Commission.

## LETTER AGREEMENT PROVISIONS

Should the City Commission consider granting a Letter Agreement to S&W for use of the outdoor dining area until such time as the terms of the proposed concession agreement can be negotiated and approved by the City Commission, the following key terms would be incorporated:

TERM: Commencing on June 4, 2009, and terminating on the earlier of: 1) final action by the City Commission as to a proposed concession agreement for the use of said area; or, 2) September 30, 2009.

FEE: 10% of gross receipts.

USE(S): Placement of the maximum number of tables and chairs approved following ADA compliance review; tables and chairs only on the gray paved area south of the cutwalk located on the south side of S & W's restaurant building; for use only as an outdoor dining area ancillary to the restaurant.

CONDITIONS: The outdoor seating would be subject to the following conditions:

- S & W must submit a site plan. Site plan must be reviewed and approved by relevant City departments prior to use;
- S & W must clean and maintain the cutwalk area (between the demised premises of the lease and the paved area that is the location of the outdoor dining area), to include daily cleaning, litter control, pressure cleaning (as per the specifications provided by the Park contractor);
- S & W to identify a queuing area for guests and provide, at its own cost and expense, staff to maintain the cutwalk clear of patrons waiting for seating; provide signage on the demised premises and on the paved area advising patrons that they should remain clear of the cutwalk; provide stanchions or other appropriate barrier on the demised premises to demarcate the area where patrons can wait in the demised premises;
- S&W must adhere to all City Code requirements (e.g. noise, etc.);
- S&W hours of operation must be consistent with restaurant hours of operation; no table service when/if kitchen is closed.

INDEMNIFICATION & INSURANCE: To be provided prior to use and approved by the City Attorney's Office and the Risk Management Division.

## CONCLUSION

The construction of South Pointe Park incorporated a paved area south of the cutwalk to accommodate an outdoor dining area as an ancillary use of the Smith and Wollensky Restaurant operations. Pending final approval of a concession agreement for S&W's use of the paved area, it is recommended that the City Commission approve a Letter Agreement to provide for outdoor dining in the paved area on a short term basis.

JMG\HMF\AP\ACV\
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MIAMIBEACH
**City of Miami Beach,** 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

OFFICE OF REAL ESTATE, HOUSING & COMMUNITY DEVELOPMENT
Tel: 305.673.7193, Fax: 305.673.7033

June 4, 2009

Mr. Nick Valenti, President
Patina Restaurant Group, LLC
120 West 45th Street, 16th Floor
New York, NY 10036

**Re: Agreement between the City of Miami Beach, Florida (City) and One Washington Avenue Corp. d/b/a Smith & Wollensky Restaurant (S&W) for Temporary Use of an Outdoor Concession Area in South Pointe Park**

Dear Mr. Valenti:

The foregoing Letter Agreement shall confirm the understanding between the City and S&W with regard to S&W's temporary, revocable use of approximately 581 square feet of public property in South Pointe Park (the Park), directly south of the cutwalk behind the S&W restaurant building, for use by S&W as an outdoor dining area (said premises, as also identified in the sketch attached as Exhibit "A" hereto, are hereinafter referred to as the Concession Area).

The City hereby agrees to grant S&W the use of the Concession Area (and S&W hereby agrees to use said Area) solely for the purpose of providing food and beverage service to patrons seated at the tables and seats located in the Concession Area. S&W shall have the right to place such number of tables and chairs as shall be approved by the City and subject to the Area (including the table and chairs within it) complying with applicable ADA requirements. The approved number of tables and chairs, and where they are to be situated within the concession area shall be attached in a site plan which shall be incorporated as Exhibit "A" hereto. No change in the approved site plan (in Exhibit "A") shall be permitted without the prior written consent of the City Manager or his designee, which consent (if given at all) shall be at the Manager's (or his designee's) sole and reasonable judgment and discretion.

In no event shall S&W's use of the Concession Area, and its operations thereon, conflict with the operation and use of the Park. S&W acknowledges and agrees that the operation and use of the Park as a public park and recreational amenity is primary and, as such, S&W shall not unreasonably interfere with the public's right to use the Park including, without limitation, any and all recreational

amenities located thereon. The Concession Area shall be open and accessible to members of the general public who choose to use and enjoy the outdoor dining area (for drinks and/or food) as patrons of S&W restaurant.

The term of this Agreement shall commence on June 4, 2009, and shall automatically terminate (without any further notice required by the City) on the earlier of 1) the City and S&W's conclusion of negotiations for, and the City Commission's approval of, a "final" concession agreement for S&W's use of the Concession Area (which, if approved, is intended to authorize S&W's use of the Concession Area for a longer term); or 2) September 30, 2009 (the Term).

Notwithstanding the preceding Term, this Letter Agreement may also be terminated by the City Manager or his designee either 1) for cause, in the event of a breach by S&W of any term(s) and/or condition(s) set forth herein and S&W's failure to satisfactorily cure same within five (5) days of written notice of such breach by the City Manager or his designee; or 2) for convenience (without cause), upon seven (7) days written notice to S&W. Upon termination by the City (whether for cause or for convenience), and/or expiration of this Agreement, S&W shall immediately cease operations thereon; remove any and all tables, chairs, and other equipment from the Concession Area; and restore the Area to its original condition prior to the commencement of the Term, ordinary wear and tear excepted.

Other than approval of this Letter Agreement by the Mayor and City Commission, S&W does not anticipate that any additional approvals from the City will be necessary to allow it to operate the Concession Area for the stated purposes herein. To the extent any additional approvals do become necessary, S&W shall have the option to terminate this Agreement, effective immediately, rather than seek any such additional approvals.

As further consideration for S&W's right to use the Concession Area for the stated purposes herein, S&W agrees to pay the City an amount equal to ten (10%) percent of its monthly gross receipts for the Concession Area (Percentage of Gross or PG). The term "gross receipts" shall have the same meaning as provided in that certain Lease Agreement, dated February 8, 1985 (and subsequently amended) between the City and One Washington Avenue Corp. for the S&W restaurant building/facility (hereinafter, said Lease and all amendments thereto is referred to as the S&W Lease).

Within thirty (30) days after each month of the Term, S&W shall deliver to the City a written monthly statement of the gross receipts for such month, certified by S&W to be true, accurate, and complete. The PG shall be due and payable at the time of submittal of the statement of monthly gross receipts. The first statement of monthly gross receipts and first PG payment shall be due no later than July 31, 2009 (representing the PG for the month of June 2009).

S&W assumes liability for any loss, injury or damage to the extent caused by the negligence, omissions, or other wrongful conduct by S&W, its employees or

agents, provided, however, that with respect to real property damage the liability shall be limited to the limits of the insurance policies required hereunder. Similarly, subject to the limitations in F.S. Sec. 768.28, the City assumes liability for any loss, injury or damage to the extent caused by the negligence, omissions or other wrongful conduct by the City, its employees or agents.

S&W further acknowledges and agrees that it shall be solely responsible for providing reasonable measures to secure and safeguard any and all items, such as equipment, and other property to be stored in the Concession Area. Except for the City's liability otherwise herein, S&W further acknowledges and agrees that under no circumstances shall the City be in anyway responsible or liable whether to S&W, its employees, agents, sub-consultants, or any other person or entity acting under S&W's control, in connection with this Letter Agreement, for any stolen, damaged, or destroyed equipment, furniture, records, or other property stored within the Concession Area. It is understood that there is no City property in the Concession Area.

S&W shall, at its sole cost and expense, comply with all insurance requirements of the City. It is agreed by the parties that the S&W shall not occupy the Concession Area 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 additional insured parties 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 S&W's personal property in the Concession Area (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by S&W under the provisions of this Agreement) and all improvements installed in the Concession Area by or on behalf of S&W.

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.

No utility services shall be provided to the Concession Area.

S&W accepts the Concession Area in its "AS IS WHERE IS" condition, and hereby assumes sole responsibility and expense for maintenance of the Concession Area including, without limitation 1) daily removal of litter, garbage, and debris; 2) pressure cleaning (as per specifications provided by the City and attached as Exhibit "B" hereto); and 3) any and all such additional maintenance, litter control, and cleaning, as reasonably required at all times to maintain the Concession Area in a clean, neat, and orderly manner.

Additionally, in furtherance of the parties' acknowledgment and agreement that South Pointe Park is an important public recreational amenity in the City of Miami Beach, and that the public's use and enjoyment of the Park and its recreational facilities must be a primary consideration, S&W shall comply with the following requirements:

1) S&W shall clean and maintain that certain area between the Demised Premises, (as said term and said area is defined in the S&W Lease) and the Concession Area (such certain area hereinafter referred to as the Cutwalk Area), which shall include, without limitation, daily cleaning, litter control, and pressure cleaning (as per the specifications provided by the City in Exhibit "B" hereto);

2) S&W shall, to the reasonable satisfaction of the City Manager or his designee, maintain the Cutwalk Area free from obstructions at all times during its operations on the Concession Area by implementing all of the following measures:

    a) Identify a queuing area for patrons and provide (at its sole cost and expense) staff to use reasonable efforts to maintain the Cutwalk Area clear of patrons waiting for seating. Benches will be placed on the southeast and southwest corners of the Demised Premises;

    b) Provide signage advising patrons that they should remain clear of the Cutwalk Area;

    c) Provide stanchions and/or other appropriate barrier(s) to demarcate an area where patrons can wait for a table; and

3) S&W shall, at all times, adhere to the City of Miami Beach Noise Ordinance, as same may be amended from time to time.

This Letter Agreement embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change, or modification of the terms of this Agreement shall be valid unless amended in writing, signed by both parties hereto, and approved by the City of Miami Beach.

If the aforestated terms and conditions meet your approval, please acknowledge, execute and have same duly witnessed in the space provided below. Upon execution

by the City, we will forward a fully executed copy to your office for your records. This Letter Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by any party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in State court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND S&W EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

Sincerely,

Ana Cecilia Velasco
Asset Manager

ACV:acv

I have read this Letter Agreement and, fully understanding same, agree to be bound by the terms and conditions contained herein. I further warrant and represent to the City that I am authorized to execute this Letter Agreement on behalf of City / S&W (respectively) and, accordingly bind City / S&W to the terms and conditions set forth herein.

| **ONE WASHINGTON AVENUE CORP.** | **CITY OF MIAMI BEACH, FLORIDA** |
|---|---|
| Nick Valenti, President | Jorge M. Gonzalez, City Manager |
| Date | Date |

**APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION**

City Attorney 5/29/09 Date

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# EXHIBIT "A"
(the Concession Area)

[TO BE INSERTED]

EXHIBIT "B"

CONNERY CONCRETE

946 Beachland Blvd., Suite 12, Vero Beach, FL 32963 (772) 231-1224
Decker Avenue, Stuart, FL (772) 288-1072
Melbourne, FL (321) 723-4004
Fax (772) 231-5582

May 27, 2009

## *Care & Maintenance*

Thank you for choosing CONNERY CONCRETE to install and seal your new ***"Tabby"*** driveway areas. We appreciate your business and with proper care and maintenance it will look great for many years to come.

Generally, minimal maintenance is required. A light, periodic pressure cleaning might be necessary for heavy dirt or staining from tires, pine needles and vehicle fluids. Most often, **hosing down your driveway and cleaning with a biodegradable detergent,** using a **nylon bristle brush** will remove basic dirt and stains. For more stubborn stains, please contact us.

Also, please be aware that certain chemicals can adversely affect your ***"Tabby"*** **Concrete.** Among the chemicals that can damage are:

Muratic acid / Battery acid / Radiator overflows
Xylene / Tylene / Paint thinners
Paint strippers
Automobile wheel cover cleaners

**Please advise your maintenance and pool cleaning contractor NOT to place any kind of cleaning chemicals on any of the driveway areas.**

Following the above guidelines will help ensure the beauty and durability for many years to come. Once again, we hope you will enjoy years of comfort knowing your investment is protected and maintained by the professionals of CONNERY CONCRETE.

Sincerely,

*Jim Connery*

Jim Connery
President

Bomanite

TABBY
SEA SHELL CONCRETE

RESOLUTION TO BE SUBMITTED

**Condensed Title:**

A resolution authorizing the installation of a "Dog Park" in South Pointe Park and appropriating $60,836 from the South Beach Quality of Life Fund - 161, to be repaid in the future from the South Pointe Capital Fund 389, for the design and construction of the dog park and amenities.

**Key Intended Outcome Supported:**

Increase Satisfaction with Recreational Programs.

**Supporting Data (Surveys, Environmental Scan, etc**

Parks and Recreation appeared as one of the most important areas affecting resident's quality of life. Of the 79% of residents and 82% of businesses rated the overall quality of the recreational programs and facilities as excellent or good and 58% of residents stated that they go to recreational facilities a couple of times a month or more. More recreational opportunities appeared as one of the changes residents would make to make Miami Beach a better place to live, work, and play.

**Issue:**

Shall the Mayor and Members of the City Commission adopt this resolution?

**Item Summary/Recommendation:**

The Neighborhoods/ Community Affairs Committee held a discussion concerning dogs in South Pointe Park at their May 18, 2009 meeting. At the conclusion of the discussion the Committee directed the Administration to proceed with the development of the enclosed dog park in South Pointe Park. The Administration proceeded to prepare the concept plan and budget for the preferred location.

The option of constructing a dog park at the open space area of Washington Avenue Park, located on the south side of the old Miami-Dade County library building, at 3rd and Washington was also discussed. Subsequent to the May 18, 2009 Neighborhoods/ Community Affairs Committee meeting, the City and the contractor were unable to reach terms that would make the loss of use of Washington Park beneficial to the City and Neighborhood. As such, while the committee did not consider this location at their meeting for the development of a dog park now, it is provided at this time as a viable alternative to the dog park in South Pointe Park. The Administration recommends the discussion of this issue and approval of the resolution, or alternative direction be given.

.

**Advisory Board Recommendation:**

Neighborhoods/Community Affairs Committee on April 15, 2009 and May 18, 2009.

**Financial Information:**

| Source of Funds: | | Amount | Account |
|---|---|---|---|
| | 1 | $60,836 | South Beach Quality of Life Fund - 161 ( to be repaid in the future from the South Pointe Capital Fund 389) |
| | 2 | | |
| | 3 | | |
| OBPI | Total | $60,836 | |

**Financial Impact Summary:**

In addition to initial construction costs, there are annual maintenance costs associated with, among other things, pest control and sod replacement. The latter will be more costly at the South Pointe park location due to the paspalum grass. Estimated annual maintenance costs for a dog park this size with paspalum grass is between $18,500 and $24,500 depending on the need for sod replacement.

**City Clerk's Office Legislative Tracking:**

Kevin Smith, Parks & Recreation Director

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| KS | HMF | JMG |

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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: June 3, 2009

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE INSTALLATION OF A "DOG PARK" IN SOUTH POINTE PARK AS RECOMMENDED BY THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE, TO BE LOCATED IN THE AREA OF THE PARK WEST OF THE WASHINGTON AVENUE FOUNTAIN/PLAZA AND SOUTH OF APOGEE, AS DELINEATED IN THE ATTACHED CONCEPT PLAN (SEE ATTACHMENT); AND FURTHER APPROPRIATING $60,836 FROM THE SOUTH BEACH QUALITY OF LIFE FUND - 161 (TO BE REPAID IN THE FUTURE FROM THE SOUTH POINTE CAPITAL FUND 389) FOR THE DESIGN AND CONSTRUCTION OF THE DOG PARK AND AMENITIES.**

### ADMINISTRATION RECOMMENDATION

Adopt the resolution.

### KEY INTENDED OUTCOME SUPPORTED

Increase Satisfaction with Recreational Programs

### BACKGROUND

At the January 28, 2009, Commission meeting, the Administration requested the matter of dogs off leash in City parks and other public properties in general, be referred to the Neighborhoods/Community Affairs Committee for discussion. Subsequently, there have been on-going discussions at the Neighborhoods/ Community Affairs Committee meetings concerning this issue. Prior to the closing of South Pointe Park, dogs had been using the park as an unsanctioned off-leash area. During construction, the City built the smaller Washington Park as an enclosed dog park. Following reopening of the Park, residents have requested a larger area for dogs to be allowed off-leash.

Staff looked at options to accommodate dogs in the South Pointe area, including the expansion of the Washington Park dog park to include the park area adjacent to the old library, as well as locations at Marjory Stoneman Douglas Park. The Washington Park location was not initially pursued, as the location was identified as a possible staging area for the upcoming South Pointe Streetscape Improvement project. While large enough to accommodate a dog park at two sites, the Marjory Stoneman Douglas Park was not considered a preferred location. The most recent discussion was held at the Committee's May 18, 2009 meeting. At this meeting there was a discussion held and comments received by the public concerning dogs off-leash in South Pointe Park and the possibility of the creation of a dog park in South Pointe Park.

**South Pointe Park Dog Park**

Committee discussions to accommodate dogs off leash at South Pointe Park have included the possibility of a fenced-in dog park, or an off-leash area, or limited off-leash hours. The latter option was further researched, including programs in other cities and legislative limitations.

At the May 18, 2009, Neighborhoods/Community Affairs Committee meeting, our City Attorney advised the Committee, Administration and public that permitting an off-leash area that is not enclosed by a fence would be in violation of Miami-Dade County Code Sec. 5-20 (d) which states "It shall be unlawful for a responsible party to allow, whether willfully or through failure to exercise due care or control, a dog to be unrestrained or to be at large in any manner in or upon public property"; Section 5-20(b) of the County Code, entitled "Regulations on dogs in public areas" further states "It shall be unlawful for a responsible party to allow, whether willfully or through failure to exercise due care or control, a dog into or upon any public park or beach in the county; provided, however, this provision shall not apply to *park*ways, wayside *parks*, or other *park* areas in which dogs are specifically authorized". Further, as stated in Section 5-25 (entitled "Municipalities authorized to adopt additional regulations"), "Any municipality may adopt and enforce additional regulations governing the control of dogs within the boundaries of such municipality; provided that any such municipal regulation shall not conflict with the provisions of this chapter."

In addition to a non-enclosed off-leash area requiring amendment of both City and County Code, there were concerns about a general off-leash program. As such, the Committee requested that staff pursue options for the former concept (fenced-in dog park) should a dog park be considered at South Pointe Park.

A location was identified on the southwest corner of the park south of the Apogee building and west of the Washington Avenue fountains. This area could accommodate both small and large dogs. The concept was presented to Committee on April 15, 2009 and approved, with a request that aesthetic improvements be considered for the proposed design. Specifically, there were concerns expressed that the fence enclosure affected the proposed design of the area. As you may recall, Hargreaves Associates, the architect for South Pointe Park, recommended *against* a fence enclosure in South Pointe Park. In response to the Committee's directive at their April 15, 2009 meeting, the Administration revisited the proposed location and conducted an analysis of the area for possible design improvements.

Concerns expressed at the April, 2009, Committee meeting focused on the aesthetic impact of having the dog park fence line adjacent to the Washington Avenue entrance walkway. The attached rendering reflects a modified dog park area as presented at the May 18, 2009, meeting that is set back from the Washington Avenue walkway and is contoured to compliment the planting line of the palms in that green space. The proposed area encompasses 15,100 SF and would have an aluminum picket fence set back from the sidewalks and would be divided by a fence into two sections, one for larger dogs and the other for smaller ones. The site line of the fence is further softened by a hedge. The initial estimated cost for this program is $60,836. This cost includes the Design Review Board process, which is required for the development of a dog park at this location. Subsequent to the Committee's recommendation, a request was made to the Administration to develop a modified concept that did not cross the walkway. Please note that this modification reduces the originally proposed site by approximately 4,050SF, which equates to a 27% reduction in space. Please also note that the recurring maintenance costs for a dog park at South Pointe Park have not been developed but are expected to be higher than other dog parks due to the higher replacement costs of the paspalum sod.

## Other Possible Alternative

At the April 17, 2009 Committee meeting, an option was proffered to establish a dog park at South Pointe Park until such time as Washington Park became available, and at that time make Washington Park the dog park for this area. This recommendation was premised on the anticipated unavailability of Washington Park for at least 18 months. As proposed, this site would compliment the current dog park at the Washington Avenue Park (RDA) area located diagonally across the street on Collins and 2nd Avenue, and would permit the separation of the larger dogs (in the new, bigger area on Washington and 3rd) and the smaller dogs who would continue to utilize the existing Washington Avenue (RDA) dog park.

Subsequent to the May 18, 2009 Neighborhoods/Community Affairs Committee meeting, the City and the contractor were unable to reach terms that would make the loss of use of Washington Park beneficial to the City and Neighborhood. As such, while the committee did not consider this location at their meeting, it is provided at this time as a viable alternative to the dog park in South Pointe Park. To assist in considering this alternative, please note the following information:

- The South Pointe Park site as proposed is approximately 15,100 SF (0.35 acre).
- The Washington Avenue Park (additional site) as proposed is approximately 21,800 SF (0.50 acres depending on final approvals of the Planning Department).
- This site, in addition to the existing RDA dog park (which is approximately 6,500 SF) brings the potential total SF of the Washington Avenue dog park (inclusive of both sites) to 28,300/0.65 acres.
- By comparison, the Flamingo dog park is 0.53 acres, Pine Tree is 0.51 acres and Belle Isle is 0.24 acres.

If approved, the Washington Park option would create the largest dog park in our inventory.

It is anticipated that the construction cost of the Washington Avenue dog park would be equal to or less than the South Pointe dog park ($60,836) and may not require the Design Review Board process. The Planning Department is reviewing the potential site plan to determine if Historic Preservation Board review is required.

## FUNDING

Funding for the South Pointe Park Dog Park project will be appropriated from the South Beach Quality of Life Fund -161, to be repaid in the future from the South Pointe Capital Fund 389. If it is the Commission's directive to relocate and construct the Dog Park in Washington Avenue Park, the same funding source would be used. It is estimated the cost of the Washington Avenue Dog Park will be equal to or less than the South Pointe Park dog park (projected to be $60,836). As previously noted, annual maintenance costs have not been developed, but are anticipated to be higher at South Pointe Park than other dog parks (or a dog park at Washington Park) due to the paspalum sod.

## CONCLUSION

Options have been presented to provide an enclosed off-leash area for dogs in South Pointe. Based on the anticipated unavailability of Washington Park, a proposed enclosed dog park had been designed for South Pointe Park and presented to Committee; the Committee considered and approved the modified site plan for South Pointe Park. This area has been designed to address aesthetic concerns to the extent possible.

Subsequently, the Washington Park location has become immediately available for conversion into a dog park. This location would compliment the neighboring dog park and, combined, provide the largest dog park in the City.

In light of the ongoing maintenance costs associated with a dog park (including the higher than usual costs at South Pointe Park due to the paspalum grass), developing and maintaining both a large Washington Park dog park and South Pointe Park would not be recommended. In response to aesthetic concerns, size limitation, and cost to build and maintain, it would appear that a dog park at Washington Park might provide for better amenities for the community. However, as the information regarding the availability of this site was not available until after the committee meeting, neither the committee nor community has had an opportunity to discuss this alternative.

JMG/HMF/KS

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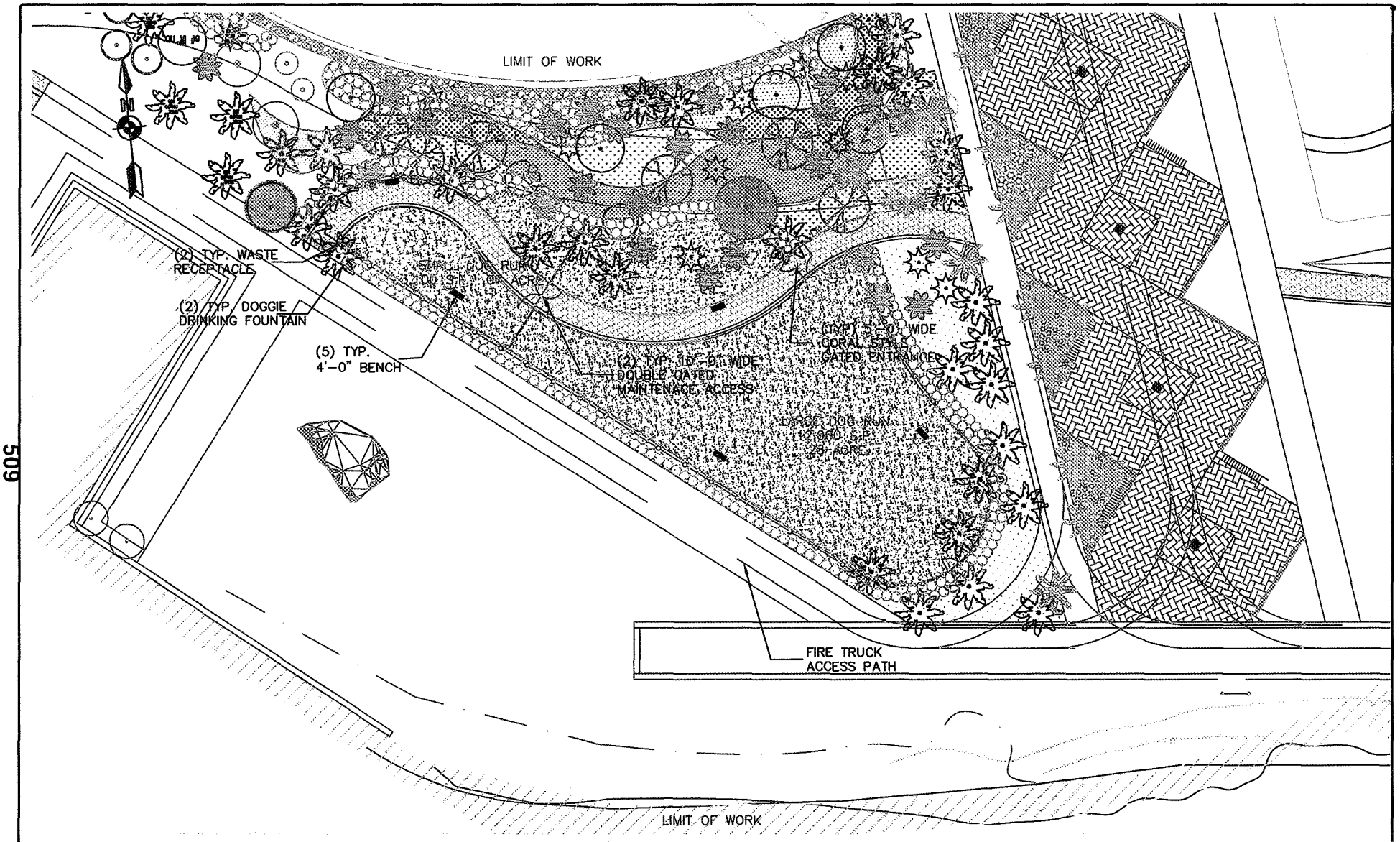


MIAMIBEACH
PARKS AND RECREACTION

TITLE: NEIGHBORHOOD 9 - CITY CENTER
SOUTH BEACH NEIGHBORHOOD
PROPOSED FENCED DOG PARK- OPTION 1

CITY MANAGER: JORGE GONZALEZ
DIRECTOR: KEVIN SMITH

ENGINEER OF RECORDS:
DESIGNER:
DRAWN BY: R.G.
CHECKER: R.G.
SCALE: AS SHOWN

ENGINEER OF RECORD:
FERNANDO VAZQUEZ, PE NO. 68517

| NO. | DATE | REVISION | APP'D. BY |
|---|---|---|---|
| 5 | | | |
| 4 | | | |
| 3 | | | |
| 2 | | | |
| 1 | | | |

File location:

Field Book: 0 Page: 0 Job Order:
Date: 02/24/09
Sheet: 19 of 19 Drawing: IR-04

MIAMIBEACH

# PARKS RECREATION DEPARTMENT
# SOUTH POINTE PARK DOG PARK

| South Pointe Park<br>Fenced Dog Park Option '1' - with pathway | QTY | UNIT | UNIT PRICE | ITEM TOTAL | SUBTOTAL |
|---|---|---|---|---|---|
| | | | | | |
| **DEMOLITION** | | | | | |
| SOD REMOVAL FOR SHRUBS | 500 | SF | $1.00 | $500.00 | |
| | | | | | **$500.00** |
| **FENCE** | | | | | |
| 5-FT HIGH ALUMINUM PICKET FENCE | 690 | LF | $45.00 | $31,050.00 | |
| (2) SINGLE GATES, CORRAL ENTRANCE | 2 | EA | $450.00 | $900.00 | |
| (2) 10' WIDE DOUBLE GATES FOR MOWING | 2 | LS | $450.00 | $900.00 | |
| | | | | | **$32,850.00** |
| **HARDSCAPE** | | | | | |
| INSTALL ADA COMPLIANT SURFACE FOR BENCH PADS | 60 | SF | $6.00 | $360.00 | |
| | | | | | **$360.00** |
| **PLANTING** | | | | | |
| EST. REPLACEMENT TURF - DAMAGED DURING CONST. | 200 | SF | $0.35 | $70.00 | |
| PLANTING BUFFER AROUND FENCE PERIMETER WHERE | 332 | 3 GAL | $15.00 | $4,980.00 | |
| THERE IS NO ADDITIONAL PLANTINGS- 3 GAL SHRUBS | | | | | |
| 4' OA - 7 GAL AT $90.00 EACH INSTALLED | | | | | |
| | | | | | **$5,050.00** |
| **IRRIGATION** | | | | | |
| IRRIGATION SYSTEM FOR TURF | 1 | LS | $1,500.00 | $1,500.00 | |
| | | | | | **$1,500.00** |
| **FURNISHINGS** | | | | | |
| | | | | | |
| DOG WASTE STATIONS | 2 | EA | $150.00 | $300.00 | |
| BENCHES | 5 | EA | $600.00 | $3,000.00 | |
| DOG DRINKING FOUNTAIN WITH SERVICE CONNECTION | 2 | EA | $2,600.00 | $5,200.00 | |
| UTILITY/WATER SERVICE | 1 | ALLOW | $2,000.00 | $2,000.00 | |
| | | | | | **$10,500.00** |
| | | | | | |
| **SUBTOTAL** | | | | | **$50,760.00** |
| **CONTINGENCY 10%** | | | | | **$5,076.00** |
| **DESIGN REVIEW BOARD PROCESS (ESTIMATED)** | | | | | **$5,000.00** |
| | | | | | |
| **TOTAL BASE DESIGN** | | | | | **$60,836.00** |
| | | | | | |

## RESOLUTION NO. _____

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AUTHORIZING THE INSTALLATION OF A "DOG PARK" IN SOUTH POINTE PARK AS RECOMMENDED BY THE NEIGHBORHOODS/COMMUNITY AFFAIRS COMMITTEE, TO BE LOCATED IN THE AREA OF THE PARK WEST OF THE WASHINGTON AVENUE FOUNTAIN/PLAZA AND SOUTH OF APOGEE, AS DELINEATED IN THE ATTACHED CONCEPT PLAN (SEE ATTACHMENT); AND FURTHER APPROPRIATING $60,836 FROM THE SOUTH BEACH QUALITY OF LIFE FUND – 161 (TO BE REPAID IN THE FUTURE FROM THE SOUTH POINTE CAPITAL FUND 389) FOR THE DESIGN AND CONSTRUCTION OF THE DOG PARK AND AMENITIES.**

**WHEREAS**, at the January 28, 2009, City Commission meeting, the Administration requested the issue of dogs off-leash in City parks, and in other public properties in general, be referred to the Neighborhoods/Community Affairs Committee for discussion; and

**WHEREAS,** subsequently, there have been on-going discussions at the Neighborhoods/ Community Affairs Committee meetings efforts to accommodate dogs off leash at South Pointe Park that have included the possibility of a fenced-in dog park, or an off-leash area, or limited off-leash hours concerning this issue; and

**WHEREAS,** staff looked at options to accommodate dogs in the South Pointe area, including the expansion of the Washington Park dog park to include the park area adjacent to the old library, as well as locations at Marjory Stoneman Douglas Park; and

**WHEREAS,** while large enough to accommodate a dog park at two sites, the Marjory Stoneman Douglas Park was not considered a preferred location; and

**WHEREAS,** the Washington Park location was not initially pursued as the location was identified as a possible staging area for the upcoming South Pointe Streetscape Improvement project; and

**WHEREAS,** at the most recent Neighborhoods/Community Affairs Committee meeting held on May 18, 2009, there was a discussion held and comments received by the public concerning dogs off-leash in South Pointe Park and the possibility of the creation of a dog park in South Pointe Park; and

**WHEREAS,** at the May 18, 2009 Neighborhoods/Community Affairs Committee meeting, the City Attorney advised that off-leash areas not enclosed by a fence are not permitted pursuant to Sec. 5-20(d) of the Miami-Dade County Code; and

**WHEREAS,** in addition to a non-enclosed off-leash area requiring amendment of both City and County Code, there were concerns about a general off-leash program; and

**WHEREAS,** at the conclusion of the discussion at the May 18th meeting, the members of the Neighborhoods/Community Affairs Committee requested that staff pursue options for the former concept (fenced-in dog park) in South Pointe Park, in the area south of Apogee, and west of the Washington Avenue fountain/plaza; and

**WHEREAS,** the initial estimated cost for this dog park in South Pointe Park, including the Design Review Board process, is estimated at $60,836; and

**WHEREAS**, the funding source as recommended by the Administration is the South Beach Quality of Life Fund -161, to be repaid by the South Pointe Capital Fund 389; and

**WHEREAS**, the funds must be appropriated for the program from the South Beach Quality of Life Fund -161; and

**WHEREAS,** in previous meetings of the Neighborhoods/Community Affairs Committee the option of constructing a dog park at the open space area of Washington Avenue Park, located on the south side of the old Miami-Dade County library building, at 3rd and Washington was discussed; and

**WHEREAS,** subsequent to the May 18, 2009 Committee meeting, the City and the contractor were unable to reach terms that would make the loss of use of Washington Park beneficial to the City and Neighborhood; and

**WHEREAS,** as such, while the Committee did not consider this location at their meeting, it is provided at this time as a viable alternative to the dog park in South Pointe Park; and

**WHEREAS,** it is anticipated that the construction costs for a dog park in Washington Avenue Park would be equal to or less than the South Pointe dog park, which is estimated at $60,836, and the same funding source (South Beach Quality of Life Fund -161, to be repaid by the South Pointe Capital Fund 389) could be used should this alternative location be utilized.

**NOW, THEREFORE, BE IT DULY RESOLVED THAT THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA** that the Mayor and City Commission hereby authorize the installation of a "Dog Park" in South Pointe Park as recommended by the Neighborhoods/Community Affairs Committee, to be located in the area of the park west of the Washington Avenue fountain/plaza and south of Apogee, as delineated in the concept plan (See Attachment); and further appropriating $60,836 form the South Beach Quality of Life Fund -161 (to be repaid in the future from the South Pointe Capital Fund 389) for the design and construction of a dog park and amenities.

**PASSED** and **ADOPTED** this 3rd day of June, 2009.

**ATTEST:**

Matti Herrera Bower
Mayor

Robert Parcher, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney 5-29-09
Date

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**Condensed Title:**

A resolution of the Mayor and City Commission of the City of Miami Beach, Florida, authorizing the Mayor and City Clerk to execute a Management Agreement with Altos Del Mar Sculpture Park, Incorporated, a Florida Not-For-Profit Corporation pursuant to the completion of successful negotiations following Request for Proposals No. 02-07/08; said agreement having an initial term of ten (10) years with two (2) additional five (5) year renewal options at the City's sole and absolute discretion.

**Key Intended Outcome Supported:**

Increase community rating of cultural activities.

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

The 2009 Community Satisfaction Survey shows that 73.3 % of residents and 58.7 % of businesses feel the City has the "right amount" of cultural events available. Residents also attend cultural activities (such as art shows, film festivals and live performances) 10.61 times per year on average. The same survey shows that residents attend museums on average 6.85 times per year. However, 29.3% of residents also feel the City has "too few" museums.

**Issue:**

Shall the City Commission approve the Resolution?

**Item Summary/Recommendation:**

On October 17, 2007, the Mayor and City Commission approved the issuance of Request for Proposals No. 02-07/08 to Establish a Cultural Arts Themed and/or Other Passive Recreational Activities Program in Altos Del Mar park, located on Collins Avenue, between 76th and 77th Streets (the RFP). On July 16, 2008, the Mayor and City Commission accepted the recommendation of the City Manager and authorized the Administration to enter into negotiations with the successful proposer, Altos Del Mar Sculpture Park, Inc, a not for profit Florida corporation (ADMSP). The Administration has been negotiating with ADMSP since November 2008 and have finalized a Management Agreement, whereby ADMSP would design, develop, operate and maintain a sculpture park within a portion of Altos Del Mar Park (to be known as the Altos Del Mar Sculpture Park), in accordance with its response to the RFP.

As stated above, ADMSP's proposal contemplates the design, development, construction and, thereafter, operation and maintenance, of a public sculpture park (hereinafter referred to as the Sculpture Park). The Sculpture Park would display, in changing exhibitions, major works of sculpture from internationally established sculptors of the 19th, 20th, and 21st centuries. The artwork would be displayed in three (3) distinct landscaped areas--referred to, respectively, in ADMSP's proposal as the 1) "Dunefields," 2) Maritime Garden; and, 3) "Tree Allees."-- which are intended to serve as natural "outdoor galleries," and which would enable visitors to navigate freely through exhibits, enjoying the natural beauty created by the landscaped areas, as well as the beauty of the works of art themselves.

In addition to the Proposed Improvements above, the City may elect to relocate the North Shore Branch Library (which is located on the southwest corner of the Park) to the North Beach Town Center area. Should the City elect to do so, and ADMSP be interested in re-purposing the library as a museum building, the City may elect to incorporate the library into the ADMSP site, in which case ADMSP would assist the City in financing the library relocation and would also, at its sole cost and expense, pay for all expenses to convert the existing library building into a museum building for the Sculpture Park.

**Advisory Board Recommendation:**

Finance and Citywide Projects Committee discussed the Agreement on May 5, 2009 and gave the Administration direction on a number of items.

**Financial Information:**

| Source of Funds: | | Amount | Account |
|---|---|---|---|
| | 1 | | |
| OBPI | Total | | |

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Max Sklar, Tourism & Cultural Development Director

**Sign-Offs:**

| Department Director | Assistant City Manager | City Manager |
|---|---|---|
| | Hilda M. Fernandez | |

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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: June 3, 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 A MANAGEMENT AGREEMENT WITH ALTOS DEL MAR SCULPTURE PARK, INCORPORATED, A FLORIDA NOT-FOR-PROFIT CORPORATION, AS THE SUCCESSFUL PROPOSER IN RESPONSE TO REQUEST FOR PROPOSALS NO. 02-07/08 FOR ESTABLISHING A CULTURAL ARTS THEMED AND/OR PASSIVE RECREATIONAL ACTIVITES PROGRAM IN ALTOS DEL MAR; SAID AGREEMENT HAVING AN INITIAL TERM OF TEN (10) YEARS WITH TWO (2) ADDITIONAL FIVE (5) YEAR RENEWAL OPTIONS, AT THE CITY'S SOLE AND ABSOLUTE DISCRETION.**

## ADMINISTRATION RECOMMENDATION

Adopt the resolution.

## BACKGROUND

On October 17, 2007, the Mayor and City Commission approved the issuance of Request for Proposals No. 02-07/08 to establish a Cultural Arts Themed and/or Other Passive Recreational Activities Program in Altos Del Mar Park, located on Collins Avenue, between 76th and 77th Streets (the RFP). On July 16, 2008, the Mayor and City Commission accepted the recommendation of the City Manager and authorized the Administration to enter into negotiations with the successful proposer, Altos Del Mar Sculpture Park, Inc, a not-for-profit Florida corporation (ADMSP). The Administration has been negotiating with ADMSP since November 2008 and have finalized a Management Agreement, whereby ADMSP would design, develop, operate and maintain a sculpture park within a portion of Altos Del Mar Park (to be known as the Altos Del Mar Sculpture Park), in accordance with its response to the RFP.

As stated above, ADMSP's proposal contemplates the design, development, construction and, thereafter, operation and maintenance, of a public sculpture park (hereinafter referred to as the Sculpture Park). The Sculpture Park would display, in changing exhibitions, major works of sculpture from internationally established sculptors of the 19th, 20th, and 21st centuries. The artwork would be displayed in three (3) distinct landscaped areas--referred to, respectively, in ADMSP's proposal as the 1) "Dunefields;" 2) Maritime Garden; and, 3) "Tree Allees." These are intended to serve as natural "outdoor galleries," and would enable visitors to navigate freely through exhibits, enjoying the natural beauty created by the landscaped areas, as well as the beauty of the works of art themselves.

ADMSP would be responsible for all costs associated with design, development, construction, operation, and maintenance of the Sculpture Park--including, without limitation, construction of all Proposed Improvements (as hereinafter defined). ADMSP has retained the services of ArquitectonicaGEO to create the proposed Sculpture Park Design.

As currently defined in the Agreement, the Proposed Improvements contemplate the following:

1. At least eleven (11) concrete and steel foundations for the large sculptures (with each foundation measuring 5 meters by 5 meters by 1/2 to 1 meter);

2. At least twenty- five (25) foundations for the medium to small size sculptures (1 meter by 1 meter by .30 meter);

3. A 1200 square foot one-level entrance pavilion;

4. Restrooms and facilities such as water fountains and benches (which will be integrated throughout the Sculpture Park per the design); and

5. The actual landscaping for the three (3) "outdoor galleries."

In addition to the Proposed Improvements above, the City may elect to relocate the North Shore Branch Library (which is located on the southwest corner of the Park) to the North Beach Town Center area. Should the City elect to do so, and ADMSP be interested in re-purposing the library as a museum building, the City may elect to incorporate the building into the ADMSP site. If the City elects to incorporate the building into the ADMSP site, ADMSP would assist the City in financing the library relocation and would also, at its sole cost and expense, pay for all costs associated with converting the library building into a museum building for the Sculpture Park.

As is the case in most City management agreements, the City would own the Proposed Improvements upon completion of construction and acceptance by the City.

Under the terms of the Agreement, ADMSP would be responsible for all ongoing maintenance of the Sculpture Park, including the Proposed Improvements. It would also be responsible for operation and management of the Park for its intended purposes.

The primary use of the Sculpture Park is as a public cultural facility. As such, it will be free and open to the public 365 days a year, during daily hours of operation currently proposed from 10AM to sunset. In addition to the primary use as a sculpture park, ADMSP also plans to offer other public programs such as: art classes; guided tours by art historians; chamber music events; book readings; kite flying; outdoor cinema; tai chi and/or meditation classes; and yoga. Additionally, the Sculpture Park also wishes to be permitted to operate a gift shop/bookstore on the premises. As contemplated in the Agreement, the aforestated uses would be expressly set forth as "Approved Uses;" any additional and/or new uses (whether of a public and/or commercial/revenue generating nature) would require the prior written consent of the City (and, if approved, would be incorporated as an amendment to the Agreement). The Agreement also provides for the majority of these private events occurring after regular hours to ensure maximum access to the park for the public.

In its proposal, ADMSP also requested that it be permitted to rent all or portions of the Sculpture Park for private events such as weddings. During the course of negotiations, ADMSP requested

that, in addition to weddings, it also have the flexibility to rent the Sculpture Park for other similar social events such as baptisms, bar/bat mitzvahs, birthdays, graduations, fashion shows, etc. Rental of the premises would be subject to rates and policies and procedures which would be subject to prior City approval. Renters would be required to provide insurance naming the City as an additional insured, as well as fully indemnifying and holding the City harmless. A Special Event Permit would be required for certain events.

Finally, as the primary use of the premises is as a sculpture park, the proposed Agreement provides for specific sections regarding the art work itself, and addresses considerations such as the procedure for selection and booking of art and exhibitions, as well as limitations on sale of art works, and insurance, maintenance and security requirements particular to works of art.

ADMSP's proposal contemplates that the artwork and exhibitions will be selected, planned, and executed by certain committees of the not-for-profit entity (i.e. specifically, a design review committee, collection review committee, and an exhibition planning committee) comprised of ADMSP board members and recognized experts. Additionally, the Agreement requires that the City have equal representation on the ADMSP board (not less than 30%), which may include a member of the City Commission, the City Manager or his designee, or other persons selected by majority vote of the City Commission. ADMSP also proposes employing a full-time curator for the Sculpture Park.

Selected works of art and artwork related to exhibitions shall be insured and secured by ADMSP at its sole cost and expense, and ADMSP shall indemnify and hold the city harmless against the loss or theft of any art work. The Agreement also prohibits the sale of artwork on the premises, to ensure that the primary use of the Sculpture Park is as a public cultural facility and not as a de-facto or quasi-private, commercial art gallery. As to selection of art works and booking of exhibitions, and in addition to the city representation on the aforestated selection committees, the Agreement also provides the City Manager with the right to prohibit certain events (or uses), or the display of certain works, in the event that he reasonably deems that the event, use, and/or particular work(s) might either present safety concerns or be a threat to the health, safety and morals of the public.

The following pending items were discussed at the May 5, 2009 Finance and Citywide Projects Committee:

1. Term: While the RFP provides for an initial five (5) year term with one five (5) year renewal term, at the City's discretion, Addendum No. 2 of the RFP also gave the City the option to negotiate a longer term "...if the proposal awarded offers capital investment." As ADMSP's proposal does offer capital investment, they have requested an initial term of ten (10) years, with two (2) five year renewal options. ADMSP confirmed that a capital investment of $2.5 million is needed upfront and $1.7 million is needed for operating costs yearly. The Committee recommended in favor of an initial term of ten (10) years, with two (2) five year renewal options.

2. Rental of the Premises: As stated, ADMSP's proposal initially requested that it be permitted to rent the Premise for wedding receptions, on limited days and outside the normal hours of operation of the Sculpture Park (i.e. when it would not be open to the public). During negotiations, ADMSP requested that, in addition to weddings, it also be allowed to rent the premises for other social functions (under rates and policies and procedures approved by the City). The Committee recommended in favor of allowing ADMSP to hold additional

events and asked that rules and regulations/guidelines be added about noise violations to the Agreement. Additionally, staff was directed to determine a certain number of times per year where ADMSP would be permitted to hold events during normal operating hours. The Agreement contemplates that certain events would be subject to application for Special Events permits.

3. Sale of Art Works: The Committee discussed this subject at length and recommended that the Agreement prohibit the sale of art works while exhibited in the Park, but the City could not limit sales following exhibition in the park. Furthermore, the Committee recommended allowing ADMSP to accept donated works of art and be allowed to sell donated work as long as sales proceeds are reinvested into the Park for ongoing maintenance and support of the Park. The Committee also recommended that ADMSP consider lending art, post exhibit, to the City for use in the Art in Public Places Program.

4. Naming Rights: ADMSP would like the ability to sell naming rights for the exhibition areas in order to support its programming. As the proposed exhibition areas are all outdoor areas within Altos Del Mar Park, the naming of these areas would, in essence, be akin to the naming of a portion of the Park itself and would currently trigger the provisions of the City's Naming Ordinance (unless the City Commission amended the Ordinance to specifically exempt Altos Del Mar Park or the Sculpture Park). The Committee recommended in favor of allowing ADMSP the ability to sell naming rights for the exhibition areas in order to support its programming. Furthermore, it was requested to add specification to the Agreement with regard to the signs' size, location and proportion. It was also requested that "and the City of Miami Beach" be added to the attribution signs. The Committee directed staff to amend the City's Naming Ordinance to allow for this inside the park, subject to review of signs.

5. ADMSP raised two additional points which were rejected by the City Attorney's Office during the course of negotiations. First, the City's title to Altos del Mar Park contains a deed restriction, which was disclosed to all proposers, including ADMSP, during the RFP process, which gives the State of Florida the right of first refusal if the City were ever to sell the property. ADMSP wants the City to represent that it will not sell the property during the term of the proposed Agreement. To our knowledge, the City has never agreed to a similar restriction on its property (in any other agreement), nor would we recommend that the City encumber the Altos Del Mar Park property now for this transaction. The Committee agreed that they City should not agree to this request. In subsequent negotiations ADMSP has indicated that they understand this limitation.

The Committee also discussed whether or not ADMSP should be required to donate works of art to the City (for its Art in Public Places Program) periodically throughout the term of the Agreement. The Committee recommended against this as a requirement.

Finally, the Committee recommended that the concept plan for the sculpture park go to the Planning Board for review and that any concerns raised by the Planning Board should be directed to the Commission. It should be noted that Section 9.7.5 of the Agreement requires Planning Board approval of the Concept Plan. ADMSP is required to submit the Concept Plan Design to the City Manager and subsequently to the Planning Board, for its review and recommendation. Following review of the Concept Plan Design by the City Manager and the Planning Board, the Concept Plan Design shall be submitted for review and approval by the City Commission at a regularly scheduled meeting. Final approval of the Concept Plan Design will

rest with the City Commission. The Administration believes this addresses the Finance Committee's request.

The Administration also added an option in the Agreement which allows ADMSP to repair the public art piece "Red Sea Road", which was damaged by Hurricane Wilma. ADMSP has been working with artist Barbara Neijna and they are close to an agreement for its repair. If ADMSP funds the repair of the sculpture, the City will loan the piece to ADMSP for exhibition through at least the end of the initial term of the agreement.

## CONCLUSION

The Administration recommends adopting this resolution, which authorizes the Mayor and City Clerk to execute the Management Agreement between the City and ADMSP for the use of Altos del Mar Park.

## Attachments

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**MANAGEMENT AGREEMENT BETWEEN**
**THE CITY OF MIAMI BEACH, FLORIDA**
**AND**
**ALTOS DEL MAR SCULPTURE PARK, INC.**
**FOR THE OPERATION**
**OF A SCULPTURE PARK IN ALTOS DEL MAR PARK**
**PURSUANT TO REQUEST FOR PROPOSALS NO. 02-07108**

THIS AGREEMENT, is made and executed as of this ____ day of _____, 2009, by and between the CITY OF MIAMI BEACH, a municipal corporation organized and existing under the laws of the State of Florida (the "City"), and ALTOS DEL MAR SCULPTURE PARK, INC., a Florida not-for-profit corporation, whose principal office is located at 7701 Collins Avenue, Miami Beach, Florida 33141 (the "ADMSP").

RECITALS:

**WHEREAS**, the City is the owner of Altos del Mar Park and the street ends (as more fully described and delineated in the Boundary and Topography Surveys 1 and 2 and the Altos del Mar Park Location Map sketch attached and incorporated as **Exhibit "A"** hereto) (the "Park"); and

**WHEREAS,** on October 17, 2007, the Mayor and City Commission approved the issuance of Request for Proposals No. 02-07108 for Establishing a Cultural Arts Themed and/or Other Passive Recreational Activities Program in Altos Del Mar Park located on Collins Avenue, between 76th and 77th Streets in the area of Miami Beach known as North Beach (the RFP); and

**WHEREAS,** on July 16th, 2008, the Mayor and the Commission accepted the recommendation of the City Manager and authorized the City Administration to enter into negotiations with the successful proposer, ADMSP; and

**WHEREAS**, ADMSP wishes to establish a cultural arts themed program, as proposed by ADMSP and to be known as "Altos del Mar Sculpture Park" (the "Sculpture Park"); said Sculpture Park to be established in that area of the Park generally delineated in the sketch incorporated as **Exhibit "B"** hereto (hereinafter, the Sculpture Park may also be referred to as the "Premises"); and

**WHEREAS**, ADMSP has obtained the services of ArquitectonicaGeo (the "ARQGEO") to create the Sculpture Park concept plan and design; and

**WHEREAS**, both ADMSP and ARQGEO seek to create a unique amenity that meets the needs of the present without compromising the needs of the future, by utilizing subtle interventions and ecologically harmonious materials, trees and plants, thereby conserving the land while using it as a park with sculptures; and

**WHEREAS**, the design and construction and, thereafter, operation and maintenance of the Sculpture Park would be funded and undertaken by ADMSP, at its sole cost and responsibility; and

**WHEREAS**, the City is supportive of ADMSP's offer to use its own funding (which will consist of monies raised from private donations, grant resources, and other funding sources ) toward the design, development, construction, maintenance, and operation of the Sculpture Park; and

**WHEREAS**, the City and ADMSP have negotiated the following Management Agreement for the aforestated purposes.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions herein contained, it is agreed by the parties hereto as follows:

**SECTION 1.**

The City hereby grants to ADMSP, and ADMSP hereby accepts from the City, this Agreement for the design and construction and, thereafter, operation, management, coordination, operation, and maintenance of the Premises (as more fully described and delineated in Exhibit "B" hereto), in conformance with the purposes and for the period stated herein, and subject to all the terms and conditions herein contained and fairly implied by the terms hereinafter set forth.

**SECTION 2. TERM.**

This Agreement shall be for an initial term of ten (10) years, commencing on the ___ day of _____, 2009, and ending on the ___ day _____, 20__. At the expiration of the initial term herein, and provided that (i) ADMSP is in good standing and free from default hereunder, and (ii) ADMSP continues to operate, manage and maintain the Premises in accordance with the terms of this Agreement including, without limitation, in accordance with the approved uses (as hereinafter defined) the City, may at its sole judgment and discretion, renew this Agreement for two (2) additional five (5) year renewal terms. In the event that the City determines not to renew the Agreement, it shall notify the ADMSP of same, in writing, no less than one (1) year prior to the end of the initial term, or a renewal term, as the case may be.

**SECTION 3. PREMISES.**

In addition to the description of the land and area set forth in Exhibit "B" hereto, the Premises shall also be deemed to include all facilities, structures, additional landscaping, fixtures and other improvements within the Sculpture Park, whether existing as of the commencement date of this Agreement or as may be constructed throughout the Term hereof. The parties acknowledge and agree that, following completion, the Proposed Improvements (as defined in Section 9.7 hereof), shall become the sole and exclusive property of the City. Accordingly, upon completion and acceptance by the City of all or any portion of the Proposed Improvements (as hereinafter defined), or any other improvements made to the Premises by ADMSP during the Term of this Agreement, excluding personalty (which shall be defined as any

of ADMSP's personal property on the Premises which is not permanently affixed or is otherwise removable without substantial damage to the Premises including, without limitation, furniture, trade fixtures, and Art Work(s) owned by ADMSP), and upon request by the City Manager or his designee, ADMSP shall execute a bill of sale (or such other document as may be required by the City Manager) effectuating and memoralizing such proof of ownership by the City.

**ADMSP WARRANTS AND REPRESENTS THAT IT ACCEPTS THE PARK (INCLUDING, WITHOUT LIMITATION, THE LAND THEREON CONSTITUTING THE PREMISES) IN ITS "AS IS" CONDITION, WITHOUT ANY REPRESENTATION(S) OR WARRANTY(IES) OF ANY KIND OR NATURE WHATSOEVER BY CITY, WHETHER AS TO ITS CONDITION, OR AS TO THE USE OR OCCUPANCY WHICH MAY BE MADE THEREOF.**

**SECTION 4. OBJECTIVES/APPROVED USES.**

**4.1 Objectives.**

**4.1.1** Altos Del Mar Sculpture Park, with its clearly defined cultural arts theme, shall be geared toward all age groups, from children to senior citizens (as more fully described and delineated in **Exhibit "C"** attached hereto **[NOTE: ADMSP TO PREPARE EXHIBIT]**, entitled "Sculpture Park Programming").

**4.1.2** ADMSP shall provide the facilities, infrastructure, maintenance and security necessary to support the approved uses (as hereinafter defined) including, without limitation, the programming in Exhibit "C," at no cost to the City.

**4.1.3** The approved uses (as hereinafter defined) shall complement activities and programs in nearby City parks and open spaces including, without limitation, North Shore Open Space Park, Ocean Terrace and Bandshell Park, as described in the City's North Beach Oceanfront Parks Master Plan (the "Master Plan").

**4.1.4** ADMSP hereby warrants and represents that ADMSP has studied the Master Plan and that the Sculpture Park shall be compatible with the above-mentioned parks and Master Plan. The Sculpture Park will result in creating a pedestrian link to the public spaces to the north and south, and provide current and future residents and visitors with a cultural programs destination in conjunction.

**4.1.5** ADMSP shall keep the Sculpture Park open and free to the general public during the hours of operation prescribed in this Agreement.

**4.1.6** The Sculpture Park shall provide safe and convenient access to the public beach and to the North Beach Recreational Corridor (the "Beachwalk") by creating a pedestrian link to these areas. The Sculpture Park is naturally divided into three natural sculpture "rooms" where the sculptures will be exhibited. The visitor can stroll down paths that will change as the sculptures change from contemporary to figurative to abstract and which lead to the beach and

Beachwalk from all directions.

**4.1.7** ADMSP hereby agrees that the Sculpture Park will showcase the natural environment and beauty of the Park. The Sculpture Park will provide a quiet and relaxing oasis in a sculpture setting. An allee, dunes, and a maritime planting pallette shall provide a landscape design appropriate to the site making the Sculpture Park as unique as is the site of the Park. .

**4.1.8** ADMSP agrees that the Sculpture Park will , and shall be appropriate in design and programming for the historic district where the Park is located (Harding Townsite / South Altos Del Mar), and compatible with the adjoining historic districts (Altos Del Mar and the pending North Shore National Register District).

**4.1.9** ADMSP agrees that the Sculpture Park will be compatible with the residential neighborhoods located to the north and west of the Park. The Park will continue to serve the community as a park but, in addition, it will also provide current and future residents and visitors with a cultural programs destination.

**4.1.10** The North Shore Branch Library building, located on the southwest corner of the Park, is owned by the City and leased to the Miami-Dade County Library System. The City is considering options for moving the library to another location, which may make the library building available for integration into programming for the Sculpture Park. If the City elects to re-locate the library to another location, the City may also elect, at its discretion, to permit ADMSP to utilize the existing library building as a museum for the Sculpture Park, as further set forth below. In the event that the City elects ADMSP to utilize the existing library building, and ADMSP accepts, ADMSP shall assist the City with financing a move of the North Shore Branch Library to the Town Center area. Subject further to the provisions of Section 9.7 (including, without limitation, Sections 9.7.5 through 9.7.11 thereof), ADMSP shall, also, at its sole cost, develop plans and be responsible for any design, permitting, and construction, at ADMSP's sole cost and expense, to re-purpose the current library building for use of the building as a Sculpture Park museum.

**4.1.11 <u>"Red Sea Road" Sculpture.</u>**

ADMSP will contract for all services, including, without limitation, fabrication, installation and such other ancillary work, as required to accomplish the restoration of the "Red Sea Road" sculpture (which is owned by the City) up to an amount not to exceed $250,000 (collectively, the fabrication, installation, and other ancillary work required to restore the "Red Sea Road" shall be referred to as the Restoration Project).

The Restoration Project shall commence on or before October 1, 2010, with the installation phase of the (restored) "Red Sea Road" to be completed no later than September 15, 2011.

The "Red Sea Road" artist, Barbara Neijna, shall work with ADMSP to the Restoration Project. Prior to commencement of any work on the Restoration Project, ADMSP and the City shall use reasonable efforts to negotiate an agreement with Ms. Neijna to supervise

the Restoration Project, using the artist's original documents for the work, and according to her aesthetic direction. The agreement with Ms. Neijna shall also provide that the artist shall provide her consulting services for the Restoration Project free of charge. In the event that ADMSP and the City are unable to successfully negotiate an agreement with Ms. Neijna for her consulting services on the Restoration Project, then ADMSP shall have no further obligation with regard to said Project pursuant to this subsection 4.1.11.

The total cost for the Restoration Project (including the aforestated out-of-pocket expenses) shall not exceed $200,000. Prior to commencing the work, ADMSP shall deposit the sum of $200,000 in its lawyer's trust account (located in a bank in Miami-Dade County, Florida). This account shall be used to pay for all costs/work associated with the Restoration Project.

Upon completion of the Restoration Project, the "Red Sea Road" will be installed and exhibited at the Sculpture Park throughout the initial Term of this Agreement.

Barbara Neijna will also develop a maintenance program for the "Red Sea Road," at no cost to either ADMSP or the City. Following installation of "Red Sea Road" in the Sculpture Park, ADMSP shall be responsible for maintenance of the sculpture throughout the Term of the Agreement (notwithstanding that the sculpture is, and shall at all times continue to be, owned by the City).

Neither Barbara Neijna nor the City will incur any liability, risk, and/or financial obligation with respect to the Restoration Project, and the ongoing maintenance of the "Red Sea Road."

**4.2 <u>Approved Uses.</u>**

**4.2.1** The Sculpture Park shall be designed, developed, constructed and, thereafter, managed, operated, and maintained as a public recreational amenity.

**4.2.2** The Sculpture Park is intended to include the following programs, services, activities, and uses:

a. Changing exhibitions of at least ten (10) large and heavy sculptures every three (3) years;

b. Changing exhibitions of at least small to midsize sculptures at least every eighteen (18) months.

c. Guided park tours by an art historian;

d. Art classes;

e. Classical, jazz or other music events that are cultural in nature (excludes loud genres of music such as heavy metal);

f. Book author readings;

g. Kite flying;

h. Outdoor Cinema;

i. Exercise classes such as yoga, aerobics, pilates, ballet, qi gong, Tai Chi and/or meditation classes; and

j. Yoga classes.

k. The Sculpture Park will also be available for rental for limited private events such as wedding ceremonies and receptions, baptisms, bar/bat mitzvahs, birthdays, graduations, and other similar social events. ADMSP shall follow and adhere to the rental rates and policies and procedures which shall be mutually developed by ADMSP and the City and subject to final approval by the Mayor and City Commission; which approval must be obtained no later than six (6) months prior to final completion of the Proposed Improvements (as contemplated in Section 9.7.10). The approved rental rates and policies and procedures approved by the City shall be attached hereto as **Exhibit "D"** hereto. The City reserves the right to amend said rental rates and other policies and procedures in its sole discretion. Renters of the Sculpture Park (excepting the City) shall be required to provide certificates of insurance evidencing appropriate insurance, as determined by the City's Risk Manager (and referenced within the attached **Exhibit "E"**). Copies of these certificates shall be furnished to the City Manager or his designee; coverage shall be kept in full force at all times throughout the period of intended use. All such liability policies shall name the City of Miami Beach, Florida as additional insured.

Notwithstanding the approved policies and procedures (to be attached as Exhibit "D" hereto), or any other term or condition of this Agreement, any use of the Premises and/or Sculpture Park (or any portion thereof) for an event(s) identified in subsection 4.2.2(k) shall also be subject to the following scheduling requirements:

(i) In booking such events, ADMSP shall use best efforts to schedule the event outside of the regular hours of operation of the Sculpture Park (as defined in Section 5.3) hereof, so as not to interfere with the use of the Sculpture Park as a public cultural facility.

(ii) For proposed events which are scheduled to be held during (or during any portion of) the Sculpture Park's regular hours of operation (as defined in Section 5.3 hereof), ADMSP shall be limited to scheduling a maximum of twelve (12) such events per contract year during the Term hereof. Approval of any events which exceed the annual permitted maximum number shall be subject to the prior written approval of the City Manager, which approval, if given at all, shall be at the Manager's sole judgment and discretion. A written request must be submitted by ADMSP no later than forty-five (45) days prior to the requested date of the event but, in all

cases, prior to the execution of any third party agreement between ADMSP and the proposed renter. The notice shall also contain the name of the event; the type of event and a brief description; the scheduled date and time; and the area of the Sculpture Park to be utilized (and whether the event shall require the use of all or only a portion of the Sculpture Park). The notice shall certify that ADMSP has utilized any and all best efforts to schedule the event outside of the Sculpture Park's regular operating hours, and shall further set forth the reason(s) and necessity for having the event during the Sculpture Park's hours of operation.

Hereinafter, the City approved programs, activities, services, and uses by ADMSP of the Premises, as set forth in subsections (a) – (k) above, shall be collectively referred to as the "uses" and/or the "approved uses".

l. Subject to ADMSP's obtaining a special events permit from the City and compliance with the City's Special Events Requirements and Guidelines (as same may be amended from time to time), ADMSP may also be allowed to utilize the Sculpture Park for its black tie fundraising events, to take place up to a maximum of five (5) times per year (as designated by ADMSP).

m. In the event that ADMSP is permitted to use the existing North Shore Branch Library building, as provided in Section 4.1.10 hereof, ADMSP shall operate the existing building as the Sculpture Park's museum building which would include, without limitation, indoor exhibition room, a museum café, gift shop/bookstore, classrooms, administrative offices, bathrooms, storage room, janitor room, and other such uses customary in public museum buildings of comparable type and size.

**4.2.3 <u>Sculpture Park Art Work and Exhibitions.</u>**

**4.2.3.1** The Sculpture Park will display, in changing exhibitions, major works of sculpture from internationally established sculptors of the 19th, 20th and 21st centuries (the Art Work). A series of programmed exhibitions, ranging from historical to contemporary art, will be show cased and changed periodically, and at a minimum, as follows:

a. Changing exhibitions of the large and heavy sculptures at least every three (3) years throughout the Term; and
b. Changing exhibitions of the small to mid-size sculptures at least every eighteen (18) months throughout the Term.

Themes of planned exhibits, as included in ADMSP's response to the RFP, are attached and incorporated as **Exhibit "F"** hereto. **[NOTE: EXHIBIT SHOULD BE SAME ONE AS IN ADMSP'S RESPONSE TO RFP, IN WHICH ADMSP OUTLINED SOME PROPOSED EXHIBITS IN DETAIL].**

**4.2.3.2** The Art Work shall be exhibited in three (3) distinct landscaped areas (referred to in ADMSP's response to the RFP as, respectively, 1) the "Dunefields;" 2) the "Maritime

Garden;" and 3) the "Tree Allees"). As referenced in ADMSP's response to the RFP, those areas are intended to be used as "three natural sculpture 'rooms' and "three distinct 'outdoor galleries' in which the user can navigate through the exhibit along a path that will change as the sculptures change from contemporary to figurative to abstract."

A detailed description of the proposed landscaping areas (as set forth in ADMSP's response (to the RFP) is attached and incorporated as **Exhibit "G"** hereto. **[NOTE: EXHIBIT SHOULD BE SAME ONE AS SUBMITTED IN ADMSP'S RESPONSE TO RFP, WHICH DESCRIBED LANDSCAPED AREAS AND FEATURED CONCEPTUAL SKETCHES AND RENDERINGS]**

**4.2.3.3** The Art Work shall be displayed and exhibited for public cultural purposes only and shall not, under any event or circumstances, be displayed, exhibited, or otherwise utilized or associated in connection with any commercial purpose whatsoever.

**THERE SHALL BE NO SALE OF THE ART WORK ON THE PREMISES, NOR SHALL ANY RELATED MATERIALS AND/OR DOCUMENTS ISSUED BY ADMSP AND/OR ANY THIRD PARTIES WITH REGARD OR IN RELATION TO THE SCULPTURE PARK OR THE PREMISES REFERENCE THAT ANY ART WORK EXHIBITED OR OTHERWISE DISPLAYED ON THE PREMISES IS INTENDED OR OFFERED FOR SALE OR RE-SALE, OR FOR ANY COMMERCIAL USE, ACTIVITY, OR PURPOSE. ADMSP HEREBY WARRANTS, REPRESENTS AND COVENANTS THAT THE SOLE AND PRIMARY USE OF THE SCULPTURE PARK SHALL BE AS A PUBLIC CULTURAL FACILITY OF THE CITY OF MIAMI BEACH (AND NOT AS A PRIVATE OR QUASI-PRIVATE COMMERCIAL ART GALLERY WHERE EXHIBITED ART WORKS ARE INTENDED TO BE EXHIBITED FOR SALE OR RE-SALE). ANY VIOLATION OF THIS SECTION BY ADMSP SHALL RESULT IN IMMEDIATE TERMINATION OF THIS AGREEMENT.**

**4.2.3.4 Procedure for Selection of Art Work/Exhibitions.**

The Artwork and exhibitions will be selected, planned and executed by committees (or sub-boards), which shall be comprised of members of the ADMSP Board of Directors (the ADMSP Board or the Board); nationally and internationally recognized experts who provide guidance in decision-making to the ADMSP Board; and representatives from the City of Miami Beach, who shall be designated by the City Commission and who may be comprised of: i) a member of the City Commission, ii) the City Manager or his designee, iii) and/or other individuals (as selected by majority vote of the City Commission) having experience and expertise in the visual arts. The City's representation on the aforestated committees/sub-boards shall be a number proportionate to the total number of members of each committee, but in no event less than thirty percent (30%). The City's members shall all be voting members of the ADMSP Board and each respective committee/sub-board.

The approved committees/sub-boards are as follows:

a. Design Review Committee

Makes all Sculpture Park and exhibition decisions;

b. Collection Review Committee

Researches and reviews collections of private collectors and museums, which are entrusted in making sculptures available to ADMSP and makes the decision which sculpture(s) to accept; and

c. Exhibition Planning Committee

Decides which exhibitions will be planned and executed.

**4.2.3.5** In addition to the above, ADMSP shall at all times during the Term employ and/or otherwise retain a curator for the Sculpture Park, who shall be responsible for the overall artistic direction of the Sculpture Park (the Curator), in relation to collecting, exhibiting, education, programming, registration and installation within the framework of the Sculpture Park objectives and approved uses. The Curator's responsibilities shall include, without limitation:

a) Preparing the exhibition schedules and presenting them to the ADMSP Board, with copies to the City Manager;
b) Organizing and supervising all of the Sculpture Park exhibitions, including donation contracts, and general administration;
c) Recommending to the Board acquisitions to the collections within the acquisition policies of the Sculpture Park;
d) Managing and developing the collections by;
    i) Recommending and implementing ADMSP Board approved policies and procedures for documentation, conservation, acquisition, management or publication of the park collection;
    ii) Negotiating acquisitions with potential donors and advising on suitable gifts in conjunction and/or under the guidance of ADMSP's president/CEO and general counsel;
    iii) Recommending conservation priorities within established conservation guidelines;
    iv) Assessing artistic, art historical and community cultural needs or demands with reference to establishing programming policy; and
    v) Keeping current with local, regional, provincial, national and international artistic communities.

Prior to ADMSP's appointment of the Curator, ADMSP shall consult with the City Manager with respect to the qualifications of the proposed individual. .

**4.2.3.6** ADMSP shall be solely responsible (including, without limitation, any and all costs associated therewith) for insuring and securing the Art Work, in accordance with the

respective requirements for same, as set forth in Sections 20 (Insurance requirements) and 9.3.2 (Security) of the Agreement.

**4.2.3.7** ADMSP shall be solely responsible for procuring, negotiating, executing, administering, and assuring compliance with any and all contracts including, without limitation, any contracts or agreements related to i) the use of the Sculpture Park for exhibitions; ii) the display and exhibition of Art Work in the Sculpture Park, whether for a specific exhibition or otherwise; and/or iii) third party rental and/or use of all or any portion of the Premises (excluding any City use(s) thereof). Prior to commencement of operations at the Sculpture Park, ADMSP shall submit its proposed standard form contracts for, respectively, i) exhibitions; ii) display and exhibition of Art Work; and iii) third party rental/use of the Premises, to the City Manager, for his review, comment, and approval of the boiler plate provisions. Once approved, ADMSP shall use such forms in furtherance of its objectives and approved uses hereunder, and shall not materially deviate from the terms contained in such forms (as they relate to the boiler plate provisions) without obtaining the prior written approval of the City Manager, which approval shall not be unreasonably withheld.

ADMSP shall also require all users of the Premises to execute (among the terms of the aforestated form contract) an agreement to indemnify, defend and hold harmless the City.

ADMSP shall not license or allow the use of any portion of the Premises to other than short-term users. ADMSP shall require that all users of the Premises provide certificates of insurance evidencing appropriate insurance and any other insurance required by the applicable form agreement. Copies of these certificates shall be furnished to the City Manager or his designee prior to any exhibition or other use. Such insurance shall be kept in force at all times by all licensees, users, lessees, concessionaires or other such third parties. All liability policies shall name the City of Miami Beach, Florida and ADMSP as additional insureds.

**4.2.3.8** The City Manager shall have the right to prohibit certain events or uses, including exhibitions, from occurring on the Premises, upon City Manager's reasonable determination that such event, use, or exhibition might present unreasonable safety concerns, or be a threat to the health, safety and morals of the public. Notice of any such determination shall be sent by written notice to ADMSP within fourteen (14) days after City Manager has received the booking report from ADMSP (as required under Section 4.2.4) that specifies the potential event, use, or exhibition and, if such determination is not delivered within such fourteen (14) day period, then the event, use, or exhibition may be held. Similarly, the City Manager shall have the right to remove or relocate the exhibition of a particular Art Work (whether in conjunction with an exhibition or otherwise) from public display if, upon the City Manager's reasonable determination that such Art Work might present unreasonable safety concerns or be a threat to the health, safety and morals of the public.

**4.2.4** With regard to any use of the Premises, whether currently contemplated in this Section 4 (or as may subsequently proposed), in the event that ADMSP seeks to use the Premises for additional programs, services, activities, and uses which are materially different than the approved uses (as enumerated in Section 4.2.2), then each such proposed new program, service, activity and use must be (i) consistent with the approved uses (as defined herein), and

(ii) subject to the prior written approval of the City Manager. ADMSP shall request such approvals in writing thirty (30) days prior to the proposed first date of such program, service, activity and use. The City Manager shall have fourteen (14) days from the date of receipt of the written request to reply in writing to ADMSP. Any and all approvals shall not be unreasonably withheld or delayed. In the event of approval by the City Manager, all such new programs, services, activities, and uses shall be memorialized by the writing approving such programs, services, activities, and uses; sent to ADMSP; and incorporated with the other approved uses in this Agreement (as evidenced by the City writing approving same).

**4.2.5** ADMSP shall provide the City Manager or his designee with a monthly written report of all events, scheduled in the Sculpture Park for the up-coming month and, with each such report, shall also report on the events which actually occurred during the previous months, and the number of persons participating in those events.

**4.2.6** The Premises shall be used by ADMSP solely and exclusively for the uses set forth in this Section 4.2 (or such other uses as may be approved by the City). It is understood and agreed that the Premises shall be used by ADMSP during the Term of this Agreement only for the purposes and/or uses described in (and/or otherwise approved pursuant to) this Section 4.2, and for no other purposes or uses whatsoever. In the event that ADMSP uses the Premises for any purpose(s) and/or use(s) not expressly permitted in this Section 4.2, such use(s) shall be considered a default under this Agreement, and the City shall be entitled to all remedies, including termination of this Agreement, as set forth in Section 27 hereof. In addition, notwithstanding any other term of this Agreement, the City shall be entitled to seek immediate relief, whether at law or equity, to restrain such improper use(s).

**4.2.7** Following the conclusion of an exhibition, ADMSP shall be allowed to retain on the Premises, Artwork or Artwork(s) displayed at the Sculpture Park in conjunction with that exhibition, for a period not to exceed ninety (90) days from the conclusion of the exhibition; provided that 1) ADMSP obtains the written consent of the owner(s) of the Artwork(s); and 2) the retention of the Artwork or Artworks on the Premises does not materially interfere with ADMSP's presentation and/or the mounting of the immediately following exhibition, or subsequent exhibitions. ADMSP shall continue to be solely responsible for any and all Artwork(s) retained on the Premises pursuant to this subsection.

**4.2.8Donation of Art Works to ADMSP.**

The parties acknowledge that from time to time during the Term of this Agreement, donations of Art Work(s) may be made by third parties to ADMSP. The City hereby approves ADMSP accepting any such donations subject to ADMSP's compliance with the following conditions:

a) ADMSP shall promptly notify the City Manager in writing of any proposed donation(s) it intends to accept, which notice shall be submitted prior to any formal acceptance of the Art Work(s) by ADMSP and which, at a minimum, shall include a detailed description of the Art Work(s) to be donated (including photographs); the materials and size and dimensions of

the Art Work(s); conditions (if any) imposed by the donor in connection with the proposed donation; the estimated value of the Art Work(s) (including a recent appraisal); the date on which ADMSP intends to take formal action on the acceptance of the donation; and whether the donation (if accepted) is intended for display and/or exhibition in the Sculpture Park;

b) ADMSP shall be solely responsible for and shall assume any and all liability, costs, and expenses in connection with any donated Art Work(s) and shall comply with the same insurance and security requirements as pertain to Art Works generally; and

c) ADMSP shall not be precluded from selling any donated Art Works; provided that any proceeds derived from the sale shall be dedicated exclusively to help fund ADMSP's management, operation and maintenance of the Sculpture Park (including the allocation of such proceeds into an investment portfolio related to an endowment for management, operation, and maintenance of the Sculpture Park.)The sale and the sale price shall be reported to the City during its annual budget review process pursuant to Section 7 hereof).

**SECTION 5. OPERATION AND MANAGEMENT OF THE PREMISES.**

**5.1** Subject to the approved uses in Section 4.2 (as same may be approved/amended from time to time), and any and all other terms, limitations and required approvals contained in this Agreement, ADMSP is authorized and required, and shall have the right to:

a. Manage and operate the Premises, and ADMSP's activities, services, and programs thereon, for the purpose of coordinating, implementing, and supervising all approved uses;

b. Maintain and provide for the day-to-day maintenance and housekeeping of the Premises;

c. Supervise and direct all ADMSP and/or Sculpture Park employees, officers, agents, contractors, volunteers, invitees, visitors, and guests on the Premises;

d. Maintain detailed, accurate and complete financial and other records of all of its activities under this Agreement in accordance with generally accepted accounting principles. All financial records maintained pursuant to this Agreement shall be retained by ADMSP as long as such records are required to be retained pursuant to Florida Public Records Law, and shall be made available upon reasonable notice by the City;

e. Develop and implement programs and activities which support and promote the goals and priorities and approved uses (as set forth in Section 4, and as same may be approved/amended from time to time); and

f. Coordinate and cooperate with the City for use of the Premises by the City, as set forth in Section 10.1 hereof, which coordination and cooperation shall not be unreasonably withheld or delayed.

**5.2.** The parties agree and acknowledge that, in furtherance of, and consistent with, the objectives and approved uses, ADMSP and the City may agree to mutually coordinate, sponsor and provide certain additional recreation and leisure activities and/or programs on the Premises. The City and ADMSP shall mutually agree upon and approve any such activities and/or programs in advance of their implementation; the programs and/or activities must be consistent with the operation of the Park and the Sculpture Park; and may not materially interfere with the operations of the Park and the Sculpture Park. Subject to the preceding criteria, ADMSP and the City further agree that each party will be responsible for its respective costs associated with the provision of said activities and/or programs.

**5.3** **Hours of Operation.** The City and ADMSP agree that normal hours of operation for the Sculpture Park for the general public shall be from 10:00 AM to Sunset, 365 days a year. The parties recognize and acknowledge that, under certain circumstances (i.e. certain events under subsection 4.2.2(k), ADMSP's black-tie fundraiser, a City use, or approved special event), ADMSP may be permitted to extend its hours of operation, but any prolonged extension shall be subject to the prior written consent of the City Manager (which consent shall not be unreasonably withheld or delayed). In no event shall the Sculpture Park's normal hours of operation be shortened without the prior written consent of the City Manager.

## SECTION 6. REVENUE FROM SCULPTURE PARK RELATED ACTIVITIES/FINANCIAL RECORDS AND REPORTS.

**6.1** **Revenue from Sculpture Park Related Businesses/Activities.** The City acknowledges that ADMSP may derive revenues from activities it conducts on the Premises, including, without limitation, rental of the Premises as contemplated in Section 4.2.2(k), gift shop/bookstore sales, classes, tours, and sale of food and beverages. ADMSP acknowledges that any and all such revenue generating activities conducted on the Premises shall be directly related to and consistent with the customary operation and management of a public Sculpture Park; consistent with the objectives and approved uses in Section 4; and consistent with the overall public recreational purposes and character of the Park. Any revenue generating activities conducted (or contemplated to be conducted) on the Premises shall first be approved, in writing, by the City Manager or his designee, prior to commencement of same; which approval, if given at all, shall be at the City Manager's sole discretion. Said approval shall initially be obtained concurrent with the execution of this Agreement by the parties, by submittal of proposed uses/business(es) to be conducted by ADMSP on the Premises, which submission shall be attached and incorporated hereto as **Exhibit "H"** to the Agreement. **[NOTE: EXHIBIT NEEDS TO BE PROVIDED BY ADMSP]** Thereafter (and subject to approval by the City Manager), said exhibit shall be updated by ADMSP, to include any new proposed use(s)/business(es) on the Premises. Additionally, the City Manager's approval of any revenue generating activities shall not excuse ADMSP from compliance with the City's Special Events Requirements and Guidelines (as same may be amended from time to time), and/or any and all other applicable requirements pertaining to event programming and other event scheduling requirements.

**6.1.2** **Cessation/Suspension of Approved Use(s) and/or Business Activity(ies).** Notwithstanding anything contained or this Agreement, in the event that a particular use and/or

revenue generating activity has been approved by the City Manager, and the City Manager thereafter, upon reasonable inquiry, determines that the continuation of such use and/or activity is, or may be, inconsistent, contrary to and/or detrimental to the objectives and approved uses set forth in Section 4; and/or to the health, safety and/or welfare of the City's residents and visitors; and/or to the overall recreational purposes and character of the Park, then the City Manager and/or his designee, upon thirty (30) days prior written notice to ADMSP, may revoke, suspend, and/or otherwise disallow the objectionable uses and/or revenue generating activity, and ADMSP shall immediately cease and desist in providing, and/or continuing with, said use and/or activity within the time period and in the manner prescribed in the City's notice. In the alternative, the City Manager may allow ADMSP to continue with the subject use, or business activity(ies), subject to such additional guidelines, as may be determined and established by the City Manager, in his sole and reasonable discretion and judgment.

**6.2** **Financial Records and Reports.** ADMSP shall maintain on the Premises, or at the location set forth in the Notices section of this Agreement, or at such other location within Miami-Dade County, Florida, true, accurate, and complete records and accounts of all receipts and expenses for any and all uses, services, programs, events, and activities (including, without limitation, all revenue generating activities) conducted on the Premises, and shall give the City Manager or his authorized representative access during reasonable business hours to examine and audit such records and accounts.
Throughout the Term of this Agreement, and no later than one hundred and twenty (120) days following the closing of the City's fiscal year (October 1st – September 30th), ADMSP shall provide the City Manager with an annual report of all uses, services, programs, events and activities (including, without limitation, all revenue generating activities) conducted on the Premises for the prior year, along with audited financial statements. Said statements shall be certified as true, accurate and complete by ADMSP and by its certified public accountant.

**6.3** All revenues received by ADMSP in connection with any approved uses and/or revenue generating activities shall be dedicated exclusively to help fund ADMSP's management, operation, and maintenance of the Premises. In the event that revenue(s) pertaining to the Sculpture Park exceed expenses during a particular budget year, the City and ADMSP agree that such excess, if any, shall first be applied to offset any of the landscaping maintenance/replacement, capital improvements, and/or infrastructure maintenance costs (as set forth in Section 9.1), and may, thereafter, be applied by ADMSP to support other programming in the Sculpture Park. For purposes hereon, "revenues" shall be deemed to include public/private grant funding, and unrestricted donations and contributions received by ADMSP specifically earmarked toward the operation, management and programming of the Sculpture Park. No portion of the net earnings resulting from the activities of ADMSP on the Premises shall inure to the benefit of any private individual.

## SECTION 7. BUDGET AND FUNDING FOR THE SCULPTURE PARK.

**7.1** Throughout the Term of this Agreement, ADMSP shall prepare and present, by May 15th of each year, a proposed, detailed line item annual operating budget for the Sculpture Park for each City fiscal year (October 1st – September 30th) during the Term hereof, for review and approval by the City Manager. Said budget shall include a projected income and expense

statement; projected year end balance sheet; statement of projected income sources; and application of funds. Additionally, the budget shall also include, without limitation, the following detailed projections:

a. Gross revenues by categories from all revenue sources and revenue generating activities derived on the Premises;
b. Operating expenses for the Sculpture Park;
c. Administrative, labor and general expenses;
d. Marketing, advertising and promotion expenses;
e. Utility costs;
f. Regular repairs and maintenance costs, and costs related to landscaping maintenance and replacement, capital improvements, and infrastructure; and
g. In addition to subsection (f) hereof, ADMSP shall identify for the City, such long term capital maintenance, repair, and replacement of the landscaping and the Proposed Improvements (as defined herein). In conjunction with this subsection (g), ADMSP agrees to allow the City and/or its authorized representative(s) access to the Premises (as provided in Section 18 hereof) for the purpose of the City conducting its own facility assessment.

7.2 **Programmatic Plan**. Accompanying ADMSP's proposed annual budget shall be the Sculpture Park's programmatic plan for the upcoming City fiscal year, detailing the then-known (planned) uses, services, activities, events, programs, and operations, and the estimated number of users anticipated.

**SECTION 8. [INTENTIONALLY DELETED]**

**SECTION 9. MAINTENANCE, REPAIRS, AND ALTERATIONS.**

9.1 **Generally.** Throughout the Term of the Agreement, ADMSP shall be solely responsible (including any costs associated therewith) for maintaining the Premises, and every part thereof, in good condition, and will not suffer or permit any strip or waste of the Premises.

ADMSP shall assume sole responsibility and expense for day to day housekeeping, janitorial services, and routine maintenance of the Premises (and all improvements, fixtures, and equipment thereon). This shall include, without limitation, daily removal of litter, garbage and debris generated by ADMSP's use of the Premises, including all garbage disposal generated by its operations and activities.

9.2 **Landscaping Maintenance.** ADMSP shall, at its sole cost and responsibility maintain the grounds and horticulture of the Sculpture Park. ADMSP agrees to be bound by the minimum maintenance standards as set forth in **Exhibit "I"** to this Agreement, entitled "City of Miami Beach Minimum Specifications for Maintenance of the Altos del Mar Sculpture Park". **[NOTE: CITY AND ADMSP TO MUTUALLY DEVELOP LANDSCAPE MAINTENANCE SPECIFICATIONS FOR THIS EXHIBIT]**Along with its proposed annual

budget and programmatic plan (as required in Section 7 hereof), ADMSP shall also provide the City Manager with an annual monthly maintenance report (in such form as shall be approved by the City Manager and/or his designee). Notwithstanding ADMSP's responsibility with regard to maintenance of the Premises (including, without limitation, the grounds and horticulture of the Sculpture Park), the City Manager retains the right to review and approve plans for all major horticultural material installations, removals, etc. ADMSP shall comply with any and all Federal, State, Miami-Dade County, and City laws, codes, rules and regulations, etc. with regard to maintenance and replacement of landscaping and/or horticultural including, without limitation, tree removal permits, use and storage of pesticides, chemicals, etc.

**9.3 Art Work Maintenance and Security.**

**9.3.1 Art Work Maintenance.**Notwithstanding ADMSP's general maintenance obligations as to the Premises and the Landscaping, as set forth above, ADMSP will also maintain all Art Work(s) in accordance with established maintenance procedures, as outlined by the conservation guidelines of established museums and adapted to suit the conservation needs and requirements of each Art Work. ADMSP shall be responsible for using reasonable efforts to remove any graffiti from the Artwork, and keeping the Artwork free of vandalism.

**9.3.2 [INTENTIONALLY DELETED]**

**9.4 Labor/Personnel/Materials/Equipment/Furnishings.**

ADMSP shall supply, at its sole cost and responsibility, all labor, personnel, materials, equipment, and furnishings, as reasonably required, to operate and maintain the Premises in accordance with the objectives and approved uses set forth herein. In the event any materials, equipment, and/or furnishings are lost, stolen, or damaged, they shall be promptly replaced or repaired at the sole cost and expense of the ADMSP.

**9.5 [INTENTIONALLY OMITTED]**

**9.6 Security.**

**9.6.1 Generally.** ADMSP shall be responsible for and provide reasonable security measures as may be required to protect and secure the Premises and any facilities, materials, fixtures, furnishings, and equipment (FFE), thereon. Under no circumstances shall the City be responsible for any stolen or damaged materials or FFE, nor shall the City be responsible for any stolen or damaged personal property of ADMSP and/or the Sculpture Park's officials, employees, contractors, volunteers, patrons, guests, invitees, and/or any other third parties.

**9.6.2 Security for Art Works.**

ADMSP will maintain a 24/365 guarded security on the Premises and Art Works provided by a local South Florida security company, which observes the newest security management methods derived from the work of the International Security Management Association ('ISMA').

## 9.7 ADMSP's Proposed Improvements, Funding, and Responsibilities.

This Agreement is made with the understanding and agreement that ADMSP will, at its sole cost and responsibility, design, develop, and construct the Proposed Improvements (as hereinafter defined). The intended scope of the Proposed Improvements to be designed and constructed by ADMSP for the Sculpture Park will include the following primary components:

a. At least eleven (11) foundations for the large sculptures. The size of each foundation will be 5 meters by 5 meters by 1/2 to maximum 1 meter. The foundations will be constructed in concrete and steel;
b. At least twenty-five (25) foundations for the medium to small size sculptures. The size of each foundation will be 1 meter by 1 meter by 0.30 meter;
c. A one level entrance pavilion with 1,200 square feet;
d. Facilities such as toilets, water fountains and benches all of which are to be incorporated in the Sculpture Park design;
e. The Sculpture Park landscape design, as proposed by ADMSP in its response to the RFP, which portion is attached and incorporated as **Exhibit "G"** hereto; and

The aforestated improvements are hereinafter referred to as the "Proposed Improvements".

ADMSP hereby covenants and agrees that ADMSP shall invest or cause to be invested not less than $1.36 million dollars in hard construction costs for the Proposed Improvements. Upon substantial completion of the Proposed Improvements, ADMSP shall certify to City that it has, in fact, expended not less than said amount for hard construction costs.

Notwithstanding the Proposed Improvements described in (a) through (e) above, in the event that ADMSP secures the existing North Shore Branch Library building, pursuant to Section 4.1.10 hereunder, ADMSP would utilize the existing facility to design, develop and construct the Sculpture Park's Museum building which would include, but not be limited to, indoor exhibition room, a museum café, gift shop/bookstore, classrooms, administrative offices, bathrooms, storage room, janitor room and other such uses customary of museum buildings (the Museum building). The design and construction of the Museum building shall be undertaken at ADMSP's sole cost and obligation and is further subject to the same process set forth for the Proposed Improvements in Sections 9.7.5 through 9.7.11; provided that the specific milestones and timelines for the Museum building shall be established and mutually agreed to by the parties; and further provided, that ADMSP shall not have the right to terminate the Agreement under Section 9.7.9 hereof for failure to obtain a final Full Building Permit for the Museum building.

**9.7.1** The Sculpture Park will commence operations upon the completion of the Proposed Improvements, as hereinafter set forth.

**9.7.2 INTENTIONALLY OMITTED.**

**9.7.3** The Proposed Improvements will be approved by the City Commission as hereinafter set forth in Section 9.7.5.

**9.7.4** ADMSP shall be solely responsible for obtaining all final, non-appealable approvals from the City (including approvals by the City acting in both its proprietary and regulatory capacity, and any and all other applicable regulatory agencies. Construction of the Proposed Improvements shall be carried out pursuant to the Plans and Specifications (as hereinafter defined), which shall be prepared by licensed architects and engineers.

**9.7.5** **Concept Plan Design.** The Concept Plan Design review process shall commence with ADMSP's submission to the City's Planning Board, for its review and recommendation of a Concept Plan Design detailing the Sculpture Park, and including, without limitation, the Proposed Improvements, in sufficient detail, layout, and siting.
The current Preliminary Sculpture Park Site Plan and Design, attached as Exhibit "___" hereto **[NOTE: ADMSP TO PROVIDE EXHIBIT]**, shall serve as the basis of the Concept Plan Design.

Following review of the Concept Plan Design by the Planning Board, the Concept Plan Design shall be submitted for review and approval by the City Commission at a regularly scheduled meeting. Final approval of the Concept Plan Design will rest with the City Commission.

In the event that the City Commission fails to approve the Concept Plan Design by **October 1, 2009,** then this Agreement shall automatically terminate and be of no further force or effect, unless the City Commission deems to grant an extension, at its sole discretion. In the event of automatic termination of this Agreement pursuant to this subsection, each party shall bear its own costs and expenses incurred in connection with this Agreement, and neither party shall have any further liability to the other.

**9.7.6** **Preliminary Plans and Specifications.**
Upon the City Commission's approval of the Concept Plan Design, ADMSP shall submit to the City Manager (acting on behalf of the City, in its proprietary capacity) preliminary plans and specifications for the Proposed Improvements, which shall be in accordance with the approved Concept Plan Design (the "Preliminary Plans and Specifications").

ADMSP shall submit the Preliminary Plans and Specifications to the City Manager within **180 days** of the approval of the Concept Plan Design by the City Commission. The City Manager shall have **forty five (45) Business days** to review the Preliminary Plans and Specifications. If the City Manager does not approve the Preliminary Plans and Specifications, then ADMSP and the City shall confer in good faith to develop and submit revised Preliminary Plans and Specifications, which shall be submitted and reviewed as provided above. Failure of ADMSP to obtain the City Manager's final approval of the Preliminary Plans and Specifications within **120 days** from the date of the City Manager's disapproval shall constitute a termination of this Agreement without any further liability of either party to the other. Hereinafter, the date of final approval of the Preliminary Plans and Specifications by the City Manager shall be referred to as the "Commencement Date".

ADMSP shall, within **sixty (60) days** of the City Manager's final approval of the Preliminary Plans and Specifications, submit an application for approval of the design of the Proposed Improvements to the applicable City boards, including, without limitation, the applicable City land use boards (collectively, any and all such City boards shall be hereinafter referred to as the "applicable City boards"). ADMSP shall pursue approval of its applications to the applicable City boards diligently and in good faith. Failure of ADMSP to submit its application(s) to the applicable City boards by the date, which is **sixty (60) days** from the receipt of the City Manager's final approval of the Preliminary Plans and Specifications, as provided above, shall constitute a default under this Agreement.

**9.7.7 <u>Plans and Specifications.</u>**

Upon receipt of the applicable City boards' approval of the Preliminary Plans and Specifications, ADMSP shall prepare construction plans and specifications for construction of the Proposed Improvements (the Plans and Specifications). The Plans and Specifications shall be consistent with the Preliminary Plans and Specifications (approved by the City Manager and the applicable City boards

**9.7.8 <u>Construction Commencement/ADMSP's Right to Terminate.</u>**

**9.7.8.1** As conditions precedent to ADMSP's commencement of construction of the Proposed Improvements, ADMSP shall obtain a final Full Building Permit for the Proposed Improvements by not more than **one (1) year** from the Commencement Date, and failure to do so shall constitute a default under this Agreement.

No later than thirty (30) days after ADMSP receives its final Full Building Permit for construction of the Proposed Improvements, ADMSP shall provide evidence, reasonably satisfactory to the City Manager or his designee (who may be the City's Chief Financial Officer), regarding ADMSP's sources of funding for construction of the completion of the Proposed Improvements (as approved and permitted by City, and in such amount(s) equal to the anticipated final cost of completion, estimated as of the date of issuance of the Building Permit).

ADMSP shall not commence construction of the Proposed Improvements unless and until (a) ADMSP shall have obtained and delivered to City copies of all final permits and approvals required to commence construction; (b) ADMSP shall have delivered to City original certificates of the policies of insurance required to be carried by ADMSP's contractor(s) (in accordance with the requirements set forth in **Exhibit "J"** , attached hereto); and (c) ADMSP shall have obtained and furnished to City a payment and performance bond from ADMSP's general contractor (the Payment and Performance Bond), in a form reasonably acceptable to City, issued by a surety listed in the most recent U.S. Dept. of Treasury listing of approved sureties, guaranteeing the performance by the general contractor for construction of the Proposed Improvements. The City of Miami Beach, Florida, shall be named as a dual obligee under the Payment and Performance Bond.

The City (acting solely in its proprietary and not in its regulatory capacity) shall reasonably cooperate with ADMSP in obtaining the permits and approvals required to construct the Proposed Improvements; shall sign any application reasonably made by ADMSP that is required in order to obtain such permits and approvals; and shall provide ADMSP with any information and/or documentation not otherwise reasonably available to ADMSP (if available to City) that is necessary to procure such permits and approvals. Any such accommodation by City shall be without prejudice to, and shall not constitute a waiver of City's rights to exercise its discretion in connection with its regulatory functions.

**9.7.8.2** ADMSP shall (a) commence construction of the Proposed Improvements on or before **ninety (90) days** after all permits and approvals necessary for the commencement of construction are issued, but no later than **nineteen (19) months** from the Commencement Date (the "Construction Commencement Date"), and (b) thereafter continue to prosecute construction of the Proposed Improvements with diligence and continuity to completion. "commence construction" or "commencement of construction" means the commencement of major work (such as pilings or foundations) for construction of the Proposed Improvements. Promptly after commencement of construction, ADMSP shall notify the City Manager, in writing, of the actual date of such commencement. Any and all preliminary site work (including, without limitation, any environmental remediation and ancillary demolition) shall not be deemed to be commencement of construction. If, after ADMSP has commenced construction, ADMSP fails to diligently prosecute construction of the Proposed Improvements (subject to unavoidable delays), and such failure continues (subject to unavoidable delays) for sixty (60) consecutive days after ADMSP's receipt of notice of such failure, the City shall, in addition to all of its other remedies under this Agreement, have the right to seek such equitable relief (either mandatory or injunctive in nature) as may be necessary to cause diligent and continuous prosecution of construction of the Proposed Improvements by ADMSP, it being understood that construction of the Proposed Improvements is a material inducement for the City to enter into this Agreement and monetary damages shall be inadequate to compensate the City for harm resulting from such failure. Notwithstanding anything to the contrary contained herein, if ADMSP fails to substantially complete construction of the Proposed Improvements by the date provided for in this Agreement, then the same shall constitute a default under this Agreement.

**9.7.8.3** "Unavoidable delays" shall mean delays due to strikes, slowdowns, lock-outs, Acts of God, inability to obtain labor or materials, war, enemy action, civil commotion, fire, casualty, eminent domain, catastrophic weather conditions, a court order that actually causes a delay in the application of any requirement (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 of affiliates of such alleging party). The party alleging unavoidable delay shall notify the other within twenty (20) days of such occurrence; however, failure to do so shall not waive any rights caused by such delay. The times for performance related to the Proposed Improvements shall be extended to the extent performance is delayed by unavoidable delays.

**9.7.8.4** ADMSP shall provide the City with written notice, which notice shall be no earlier than thirty (30) days prior to the Construction Commencement Date, requesting that the City remove the volley ball game area(s) currently situated within the Premises. The City shall

comply with removal of the volley ball game area(s) within seven (7) days from receipt of written notice from ADMSP.

**9.7.9 <u>ADMSP's Right to Terminate.</u>**

Notwithstanding anything to the contrary contained herein, ADMSP shall have the right to be released from its liability and to terminate this Agreement at any time prior to obtaining a final Full Building Permit for construction of the Proposed Improvements because: (a) changes to the Preliminary Plans and Specifications required by any or all of the applicable City boards, or any other governmental authority, render the project economically unfeasible, in the reasonable business judgment of ADMSP; (b) ADMSP, after good faith efforts, has been unable to obtain a final Full Building Permit for the Proposed Improvements pursuant to the Plans and Specifications; or (c) ADMSP, after diligent, good faith efforts, has been unable to raise the funding required for the Proposed Improvements. In the event of termination of this Agreement pursuant to subsections (a) and (b) above, each party shall bear its own costs and expenses incurred in connection with this Agreement, and neither party shall have any further liability to the other; provided further, however, that in the event of termination pursuant to subsection (c) above, ADMSP shall reimburse the City for any reasonable out-of-pocket costs incurred by the City up to the date of termination.

**9.7.10 <u>Substantial Completion/Completion of Construction.</u>**

Substantial completion of the Proposed Improvements shall be accomplished in a diligent manner and, in any event, no later than **eighteen (18) months** from the issuance of a final Full Building Permit. "Substantial completion", as used herein, shall require the issuance of a temporary or final certificate of occupancy by the City of Miami Beach Building Department. Final completion of the Proposed Improvements shall be accomplished in a diligent, good and workmanlike manner, and in accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein).

Upon Substantial completion of the Proposed Improvements, ADMSP shall furnish the City Manager with the following:

(a) a certification from ADMSP's architect (certified to City on the standard AIA certification form) that it has examined the Plans and Specifications and that, in its professional judgment, after diligent inquiry, construction of the Proposed Improvements has been substantially completed in accordance with the Plans and Specifications applicable thereto and, as constructed, the Proposed Improvements comply with all applicable codes and laws;

(b) a copy or copies of the final certificates of occupancy for the Proposed Improvements issued by the City of Miami Beach Building Department;

(c) lien waivers (in form and substance reasonably satisfactory to the City Manager) from each contractor, subcontractor, supplier or material man retained by or on behalf of ADMSP in connection with the construction of the Proposed Improvements, evidencing that such persons have been paid in full for all work performed or materials supplied in connection with the construction of the Proposed Improvements;

(d) a complete set of "as built" plans and a survey showing the improvement(s) for which the construction of the Proposed Improvements has been completed. The City

shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Premises without paying any additional cost or compensation therefore, The foregoing requirement with respect to "as built" plans shall be satisfied by ADMSP furnishing to the City Manager a complete set of Plans and Specifications, with all addenda thereto and change orders in respect thereof, marked to show all changes, additions, deletions and selections made during the course of the construction of the Proposed Improvements; and

(e) Contractor's Final Affidavit (in form and substance reasonably satisfactory to the City Manager) executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers, and material men retained by or on behalf of ADMSP in connection with the construction of the Proposed Improvements have been paid in full for all work performed or materials supplied in connection with the construction of the Proposed Improvements, and (ii) otherwise complying with all of the requirements under the Florida Construction Lien Law, Chapter 713, Florida Statutes, as amended.

**9.7.11 <u>Extensions for Performance.</u>**

The times for performance related to the design and construction of the Proposed Improvements, as set forth in this Section 9.7, may be extended for good cause shown, upon request in writing to the City Manager; approval of any such extensions shall be at the City Manager's sole judgment and discretion, but shall not be unreasonably withheld or delayed.

Notwithstanding the preceding paragraph, any and all construction, once commenced, must be carried through continuously to completion; provided, however, that any interruption or delay in the prosecution and completion of the work which shall have been caused by Act of God, public enemy, or strike, or natural casualty, or other circumstances not occasioned by or attributable to the fault, default or neglect of ADMSP, shall not be deemed to cause ADMSP to be in default under this Agreement, so long as ADMSP exercises due diligence to cause the work of construction to be carried through to completion as promptly and expeditiously after the commencement thereof as possible.

**9.7.12 <u>Additional Improvements/Alterations</u>.**

In the event that ADMSP desires or deems it appropriate to make alterations, additions, or improvements to the Premises (other than the Proposed Improvements), it will submit plans for same to the City, for the prior written approval of the City Manager. No such alterations, improvements, or additions shall be made without the express written approval of the City Manager and, if approved, shall be ADMSP's sole cost and responsibility, and shall become the property of the City upon completion of same. ADMSP shall not have the right to create or permit the creation of any lien attaching to the City's interest in the Premises as a result of any such alterations, improvements, or additions.

## SECTION 10. CITY USE OF PREMISES.

**10.1 Use by the City.** Upon no less than fifteen (15) days prior written notice to ADMSP, the City shall have the right to use the Sculpture Park, or any part thereof, subject to availability, for the purpose of providing City-approved or sponsored public recreational, cultural, and/or other programs and/or events, as may be deemed appropriate by the City Manager, in his sole and reasonable discretion, and without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City. City uses of the Sculpture Park shall not be in conflict with, ADMSP's approved uses and shall be booked in advance, upon reasonable notice.

**10.2 Use of Art Work(s) by City for Art in Public Places (AiPP).**

ADMSP acknowledges that from time to time the City may request the temporary loan of Artwork(s) owned by and/or donated to ADMSP, for exhibition and display by the City in front of or within a City-owned facility or building, and/or in a City-owned park, on a public right of way, or other public area and/or facility. ADMSP hereby consents to making donated Art Work(s) or other Art Work(s) owned by ADMSP available to the City for such limited use subject to the following conditions:

a) The request for loan of Artwork(s) shall be made to ADMSP by the City Manager or his designee, in writing, at least thirty (30) days prior to the actual date of commencement of the City's intended use;

b) The written request shall also state the term (duration) of the proposed loan and the location of the intended public area and/or facility where the Art Work will be displayed and/or exhibited (and, more specifically, where the Artwork(s) will be situated within the proposed public property where it is intended to be displayed and/or exhibited);

c) The City shall be responsible for all costs related to shipment and delivery of the Art Work(s), both to the intended location, and in returning to ADMSP (upon conclusion of the term of the proposed loan);

d) Upon placement of the Art Work(s) at the intended location, the City shall be responsible for insuring (and/or self-insuring) the Artwork(s) for the appraised value of the Work(s). The City Manager shall either have an appraisal of the Artwork(s) done, prior to commencement of the loan, or, at his discretion, may accept a recent appraisal by ADMSP. In either case, the City and ADMSP shall mutually agree in writing on the appraised value of the Art Work prior to commencement of the City's use, and the agreed-upon value shall serve as the value of the Work for the City's insurance (or self-insurance) requirement;

e) ADMSP shall have the right to request that the City return the Artwork(s) prior to the conclusion of the term of the loan, by providing written notice to the City Manager; provided, however, that ADMSP shall be responsible for all costs associated with return shipment and delivery of the Work(s), as well as any pro-rated insurance costs incurred by the City (for the full term of the intended City use); and

f) The City shall contract with ADMSP for maintenance and cleaning of the Artwork.

**SECTION 11. ADMSP'S FINANCIAL CONTRIBUTION.**

The City and ADMSP agree and acknowledge that a vital component of ADMSP's mission statement with respect to this Agreement is to use its best efforts to obtain public/private funding contributions for the design and construction of the Proposed Improvements and, thereafter, for the continuous operation, management, and maintenance of the Sculpture Park in accordance with the highest levels of service. Accordingly, ADMSP hereby represents that it shall use its best efforts with respect to undertaking a coherent and consistent fund-raising effort to fund the design and construction of the Proposed Improvements, and the management, operation, and maintenance of the Sculpture Park.

ADMSP further acknowledges and understands that the City shall in no way be obligated to supplement and/or otherwise contribute any funds for the Proposed Improvements, or for ADMSP's management, operation, and maintenance of the Premises.

**SECTION 12. ASSIGNMENT.**

ADMSP may not assign this Agreement, or any part thereof, without the prior written approval of the City, which approval, if given at all, shall be at the sole discretion of the Mayor and City Commission. This Agreement is made with the understanding that ADMSP shall at all times, throughout the Term hereof, remain a not-for-profit corporation. In the event that ADMSP ceases to be a not-for-profit corporation, or the City, through the City Manager, in his reasonable discretion and judgment, determines that the Premises are not being used for the stated purposes in Section 4, then this Agreement shall be subject to termination upon thirty (30) days written notice by the City Manager to ADMSP.

**SECTION 13. USE OF THE PARK IS PRIMARY/SECURITY.**

**13.1** The Park is for the use of the public. Accordingly, the Sculpture Park shall only be used for those purposes in Section 4, and the public's right to use the Park shall not be infringed upon by any act of ADMSP. ADMSP shall use best efforts to assure that the uses and activities conducted by ADMSP on the Premises shall not unduly interfere with the public's right to use the Park, and ADMSP hereby covenants to use the Premises only for such public recreational purposes as contemplated in this Agreement.

**SECTION 14. PERMITS, LICENSES, COMPLIANCE WITH LAWS.**

**14.1** ADMSP agrees to obtain and pay for all permits and licenses necessary for the conduct of its uses and activities on the Premises. ADMSP shall comply with all rules, regulations and laws of the City, Miami-Dade County, the State of Florida, and the U.S. Government, whether now in force or hereinafter adopted, and as same may be amended from time to time.

## SECTION 15. UTILITIES, RESPONSIBILITY FOR TAXES AND ASSESSMENTS.

### 15.1 Utilities.

ADMSP shall be solely responsible for and shall pay (whether to the City or directly to the utility) before delinquency, any and all charges for utilities on the Premises (including, without limitation, water, electricity, gas, heating, cooling, cable, internet, telephone, sewer, trash collection, etc.).

### 15.2 Procedure If Taxes Assessed.

ADMSP agrees to, and shall pay before delinquency, all taxes and assessments of any kind assessed or levied, whether upon ADMSP or the Premises, by reason of this Agreement or by reason of any use(s) and/or activity(ies) of ADMSP upon or in connection with the Premises. The parties agree that ADMSP's operation and use of the Premises is for public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser. If, however, if taxes are assessed by the Property Tax Appraiser, ADMSP shall be solely responsible for payment of same.

## SECTION 16. SIGNAGE.

**16.1 Generally.** ADMSP shall provide, at its sole cost and responsibility, any required signage on the Premises, subject to the prior written consent of the City Manager (which shall not be unreasonably withheld or delayed), and subject further to all applicable planning and zoning requirements of the City.

### 16.2 Naming Rights.

The City reserves the name-in-title rights (i.e. the right to name) in Altos del Mar Park and all revenue(s) that may be derived therefrom.

ADMSP shall be permitted to name the Premises "The Altos del Mar Sculpture Park," and shall also be permitted to name the interior portions of the Sculpture Park (which may include, without limitation, the "outdoor galleries" described in subsection 4.2.3.1; the museum building contemplated in subsection 4.1.10; and/or any of the sculpture foundations, the entrance pavilion and other Proposed Improvements described in Section 9.7 hereof) if and only if the City Commission approves and adopts an ordinance amending Chapter 82, Article VI, Section 82-501 through 82-505, as same may be amended from time to time (hereinafter, the "City's Naming Ordinance"), exempting the Sculpture Park from the requirements of the City's Naming Ordinance. In the event the City Commission does not pass and adopt the aforesaid ordinance (amending the City's Naming Ordinance) by December 31, 2009, then ADMSP shall have right to terminate this Agreement, which right must be exercised, in writing, by ADMSP no later than March 1, 2009. If ADMSP does not exercise its right to terminate pursuant to this Section 16.2 by the aforestated date, then ADMSP shall be deemed to have waived such right.

ADMSP shall include the name of the City of Miami Beach in its publications, advertising, promotions, websites, announcements, and other similar and related materials referring to the Sculpture Park.

All signage (whether exterior or interior) shall be subject to the City Manager's prior written approval as to size, location, materials, and aesthetics. ADMSP agrees that it shall bear all costs to obtain and install any new signage (including, without limitation, any costs related to obtaining all required approvals and/or permits).

Naming rights in connection with sponsorships (i.e. sponsorship names) shall be subject to the City Manager's prior written approval, which shall not be unreasonably withheld. In no event shall any sponsorship names be permitted which includes the names of any company selling the following type of products: guns, tobacco, or sexual products (the "Prohibited Names").

In no event shall any portion of the Sculpture Parkbe named or re-named after an individual who has committed an illegal act (regardless of whether it becomes known to ADMSP and/or the City before or after the approval of the proposed naming).

In such event, ADMSP shall immediately remove (or cause to be removed) such name(s) from the Sculpture Park and/or any portion(s) thereof, and the City shall have no liability, whether to ADMSP and/or third parties, in connection with such removal.

ADMSP shall be entitled to all naming right revenues derived herefrom; provided however that any revenues in connection with any naming rights pursuant to this Section 16.2 must be utilized by ADMSP and shall be dedicated exclusively for management, operation and maintenance of the Sculpture Park, and shall be reported to the City during the City's annual review of ADMSP's proposed operating budget for the Sculpture Park (pursuant to Section 7 hereof).

Notwithstanding anything in this Section 16.2, no name (and/or signage related thereto) approved in the Sculpture Park, or any portion thereof, shall be allowed to remain beyond the Term of this Agreement, and the City shall have no liability, whether to ADMSP and/or to third parties, in connection with the removal of any signage following the termination and/or expiration of this Agreement.

## SECTION 17. FORCE MAJEURE.

**17.1** The performance of any act by ADMSP or the City hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by Acts of God (including without limitation hurricanes), the elements of war, rebellion, strikes, lock-outs, fire, explosion, or any other casualty or occurrence not due to either ADMSP's and/or the City's negligence and beyond the reasonable control of the parties; provided, however, that if the condition of Force Majeure exceeds a period of 180 days, then

either the City or ADMSP may, at their respective option and discretion, terminate this Agreement upon written notice to the other party.

**17.2 Premises Unusable.**

In the event a Force Majeure renders the Premises unusable, in whole or in part, as determined in the reasonable judgment and discretion of the City Manager, the City may, at its sole option and discretion: (i) elect, as soon as practicable, to compel ADMSP to utilize insurance proceeds to repair the damaged property, and the Term of the Agreement shall be abated until such time as ADMSP may re-open the Sculpture Park after restoration or repair of the damaged property; or (ii) elect not to have ADMSP repair or restore the damaged property and, in such event, this Agreement shall be terminated as of the date of said occurrence of damage or casualty. In the event the City elects option (i) above: (1) ADMSP must give written notice to the City Manager, within sixty (60) days receipt of the City's notice of election of option (i), that ADMSP is willing to undertake the repair of the damage with its own or other available funds; (2) within twelve (12) months following such notice, ADMSP shall prove, to the City Manager's reasonable satisfaction and discretion, that it has adequate funds immediately available to undertake the repair; and (3) the City and ADMSP, each acting in its reasonable discretion, shall agree within a reasonable time (but not to exceed six (6) months unless otherwise extended in writing by City Manager) after the City Manager deems that ADMSP has demonstrated that it has adequate funds to undertake the repair, to the conditions, timing, plans, procedures, contractors, subcontractors, disbursement mechanisms, and other matters with respect to the repair; and (4) ADMSP must complete any and all repairs and/or restoration no later than eighteen (18) months from the date of the City Manager's approval of ADMSP's funding capability.

**SECTION 18. INSPECTION.**

ADMSP agrees that the Premises may be inspected at any time upon reasonable notice (whether written or verbal) by the City Manager and/or or his authorized representatives, or by any other State, County, Federal, and/or municipal officer or agency having responsibilities for inspections of the Premises and/or any operations thereon. ADMSP agrees to immediately undertake the correction of any deficiency cited by such inspectors.

The City Manager and/or his authorized representatives, shall also have the right to enter upon the Premises at all reasonable times to examine the condition and use thereof (including, without limitation, for the purpose of assessing the condition of the facility as referenced in Section 7.1(g)), provided that such right shall be exercised in such manner so as not to materially interfere with ADMSP's activities on the Premises.
Notwithstanding the preceding paragraph or anything contained in this Agreement, if the Premises are damaged by fire, windstorm or by other casualty that causes the Premises to be exposed to the elements, then the City Manager or his authorized representatives may enter upon the Premises, without notice to ADMSP, to make emergency repairs; but if the City exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse ADMSP from its obligation to keep the Premises in repair. If City makes any emergency repairs pursuant to

the terms hereof, ADMSP shall reimburse the City for all such repairs upon receipt by ADMSP of City's notice of repairs made and statement and proof of costs incurred.

**SECTION 19. WAIVER OF INTERFERENCE.**

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

**SECTION 20. INSURANCE REQUIREMENTS.**

**20.1** ADMSP shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the Term hereof:

a. General liability insurance with not less than the following limits, subject to adjustment for inflation:

| | |
|---|---|
| General aggregate | $2,000,000 |
| Personal and advertising (injury) | $1,000,000 |
| (Per occurrence) | $1,000,000 |
| Fire damage | $ 100,000 |
| Medical Expense | $ 5,000 |

b. Workers Compensation Insurance, as required under the Laws of the State of Florida.

c. Automobile Insurance covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits, subject to adjustment for inflation:

| | |
|---|---|
| Bodily Injury | $1,000,000 per person |
| Bodily Injury | $1,000,000 per accident |
| Property Damage | $ 500,000 per accident |

d. Artworks (Fine Arts Policy) $ 50,000,000
(dependent on actual market value of Artwork in exhibition)

e. Fire Insurance shall be the responsibility of ADMSP.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage, except upon at least thirty (30) days written notice to the City, and then subject to the prior written approval of City Manager. ADMSP shall provide the City with a certificate of insurance for each such policy, which shall name the City of Miami Beach, Florida, as an additional named insured. All such policies shall be obtained from companies authorized to do business in the State of Florida with an A.M. Best's Insurance Guide (latest edition) rating acceptable to the City, through its Risk Manager, and any replacement or substitute company shall also be subject to the approval of the City, through its Risk Manager. Should ADMSP fail to obtain, maintain or renew any of the

policies of insurance referred to above, in the required amounts, the City may deem such failure an event of default hereunder, and at its sole option and discretion (but not obligation), may obtain such insurance., Any sums expended by the City in obtaining said insurance, shall be repaid by ADMSP to the City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If ADMSP does not repay the City's expenditures within fifteen (15) days of demand, the total sum owed shall accrue interest at the rate of twelve percent (12%) until paid.

**20.2 Adjustment of Limits.**

All of the limits of insurance required pursuant to this Section 20 shall be subject to review by the City and, in connection therewith, ADMSP shall carry or cause to be carried such additional amounts as City may reasonably require from time to time, but City may not impose such new limits any more frequently than once in every five (5) year period from the Commencement Date. Any request by City that ADMSP carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of similar projects in South Florida of a size, nature and character similar to the size, nature and character of the Premises.

## SECTION 21. INDEMNIFICATION.

**21.1** ADMSP shall indemnify, hold harmless and defend the City, its officers, agents, servants and employees, from and against any claim, demand or cause of action of whatsoever kind or nature, including, but not limited to, reasonable attorneys fees and cost(s) arising out of error, omission, or negligent act of ADMSP, and/or its officers, agents, servants, employees, contractors, or volunteers under this Agreement.

**21.2** In addition, ADMSP shall indemnify, hold harmless and defend the City, its officers, agents, servants and employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any willful misconduct of ADMSP not included in Section 21.1 and for which the City, its officers, agents, servants or employees are alleged to be liable. This subsection shall not apply, however, to any such liability as may be the result of the gross negligence or willful misconduct of the City, its officers, agents, servants or employees.

**21.3** In addition to the indemnification requirements in Sections 21.1 and 21.2 above, ADMSP shall also require any and all users of the Premises (including, without limitation, exhibitors, owners of Art Work, third party renters (except the City), etc. to indemnify, defend and hold the City harmless. This indemnity provision shall be included in ADMSP's form agreements, as required under Section 4.2.3.7.

**21.4 Subrogation.** The terms of insurance policies referred to in Section 20 shall preclude subrogation claims against ADMSP, the City and their respective officers, agents, servants, and employees.

**21.5** The provisions of this Section 21 shall survive the termination and/or expiration of this Agreement.

## SECTION 22. NO LIENS.

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

## SECTION 23. ADMSP EMPLOYEES AND MANAGERS.

**23.1** The City and ADMSP recognize that in the performance of this Agreement, it shall be necessary for ADMSP to retain qualified individuals to effectuate and optimize ADMSP's management and operation of the Premises. Any such individuals, whether employees, agents, independent contractors, volunteers, and/or other, employed, retained, or otherwise engaged by ADMSP for such purpose(s) shall not be deemed to be agents, employees, partners, joint venturers, or associates of the City, and shall not obtain any rights or benefits under the civil service or pension ordinances of the City or any rights generally afforded classified or unclassified employees of the City; further they shall not be deemed entitled to the Florida Worker's Compensation benefits as employees of the City. Additionally, ADMSP, and/or any employees, agents, independent contractors, volunteers, and/or others, acting under the authority and/or with the permission of ADMSP for the purposes set forth herein, shall never have been convicted of any offense involving moral turpitude or felony. Failure to comply with this Section shall constitute cause for termination of this Agreement. ADMSP shall have an experienced manager or managers overseeing the Premises at all times. Any criminal activity on the Premises caused by or knowingly permitted by ADMSP shall result in automatic termination of this Agreement.

**23.2** **Contract Administration.**

a. The City's contract administrator shall be the City Manager and/or his authorized designee. ADMSP shall name a specific individual to serve as its contract administrator.

b. The City's contract administrator shall have the authority to give all approvals for the City while administering this Agreement, with the exception of items which would require City Commission approval. The City's contract administrator:

   (i) Shall be the liaison between the City and ADMSP on all matters relating to this Agreement.

   (ii) Shall be responsible for ensuring that any information supplied by ADMSP is property distributed to the appropriate City departments.

(iii) Shall be responsible for contract compliance by ADMSP (including, without limitation, ADMSP's activities, programming, operations, management, and maintenance of the Premises).

c. ADMSP shall name an individual who shall serve as the general manager of the Club and who:

(i) Shall be the liaison between the City and ADMSP on all matters relating to this Agreement.

(ii) Shall be responsible for the day-to-day management and supervision of the Premises.

(iii) Shall be responsible for providing supervision and direction to ADMSP and/or the Sculpture Park's employees, agents, contractors, volunteers, and/or others.

**SECTION 24. NO IMPROPER USE.**

ADMSP will not use, and shall use its reasonable efforts to not suffer or permit any person to use, in any manner whatsoever, the Premises for any unlawful, improper, immoral or offensive purpose, or for any purpose otherwise in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation, whether now in effect or hereinafter enacted or adopted. Should ADMSP become aware of any such use by any person, it shall take corrective action in a reasonable amount of time to stop such use. ADMSP agrees not to use (or to permit use of) the Premises for any offensive or dangerous activity, nuisance, or anything against public policy.

**SECTION 25. NO DANGEROUS MATERIALS.**

ADMSP agrees not to use or permit in, on, or within the Premises the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida. Any such substances or materials found in, on, or within the Premises shall be immediately removed.
ADMSP shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by ADMSP of any "hazardous substance" or "petroleum products" in, on, or within the Premises as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, ADMSP shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Section 25 shall survive the termination or earlier expiration of this Agreement.

**SECTION 26. NO CLAIM AGAINST CITY OFFICERS, EMPLOYEES, INDIVIDUALS.**

It is expressly understood and agreed by and between the parties hereto that all individuals, employees, officers, and agents of the City are acting in a representative capacity

and not for their own benefit; and that neither ADMSP, nor any of its employees, agents, contractors, volunteers, guests, invitees, and/or others, shall have any claim against them or any of them as individuals in any event whatsoever in conjunction with any acts or duties which are reasonably related to the performance of their duties.

## SECTION 27. DEFAULT AND TERMINATION.

If either party fails to perform in accordance with any of the terms and conditions of this Agreement, and such default is not cured within thirty (30) days after written notice is given( or if not curable within thirty (30) days, the party has begun to take curative action within thirty (30) days and is continuing to pursue such cure), the aggrieved party shall have the right to terminate this Agreement and, as the case may be, either vacate or re-enter the Premises, without further notice or demand. At its option, either party may also pursue any and all legal remedies available to seek redress for such default. The default and termination rights afforded the parties in this Section 27, shall in no way limit or otherwise preclude the City from exercising such other rights to terminate this Agreement, as may be expressly provided in other sections hereto.

## SECTION 28. PROCEDURE UPON EXPIRATION AND/OR TERMINATION BY CITY

**28.1** ADMSP shall, on or before the last day of the Term herein, or the sooner termination thereof, peaceably and quietly leave, surrender and yield unto the City, the Premises, together with any and all improvements and fixtures located at or on the Premises (including, without limitation, the landscaping and Proposed Improvements) and used by ADMSP in the management, operation and maintenance of the Premises (excluding any furnishings, fixtures, and equipment, or other personal property which can be removed without material injury to the Premises), free of all liens, claims and encumbrances and rights of others, and broom-clean, and in good order, condition and repair, reasonable wear and tear excepted. Any property which pursuant to the provisions of this subsection is removable by ADMSP on or at the Premises upon the termination of this Agreement and is not so removed may, at the option of the City, be deemed abandoned by ADMSP, and either may be retained by the City as its property, or may be removed and disposed of by City, at the sole cost of ADMSP, in such manner as the City may see fit.

If the Premises are not surrendered at the end of the Term as provided in this subsection, ADMSP shall make good to the City all damages which the City shall suffer by reason thereof, and shall indemnify the City against all claims made by a succeeding occupant (if any), so far as such delay is occasioned by the failure of ADMSP to surrender the Premises as and when herein required.

**28.2** ADMSP covenants and agrees that it will not enter into agreements (whether express or implied) relating to the Premises for a period of time beyond the stated expiration date of this Agreement.

**SECTION 29.** **TERMINATION FOR LACK OF FUNDS.**

In the event that ADMSP loses its funding (including, without limitation, loss of its funding due to a cancellation or major change by the U.S. government of the 501(c)(3) public charity rules or the IRS taxable deductions rules which would delay or make it impossible to collect donations), such that it can no longer manage, operate, and maintain the Sculpture Park and the Premises in accordance with the objectives and uses herein, then the City may, at its sole option and discretion: (i) supplement any lack or loss of funds in order to allow ADMSP to continue to manage and operate the Sculpture Park; or (ii) terminate this Agreement pursuant to Section 27 hereof.

**SECTION 30.** **NOTICES.**

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

Altos del Mar Sculpture Park, Inc.
Attention: Dr. jur. Marlene Saile
7701 Collins Avenue
Miami Beach, FL 33141

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

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

with copies to: City of Miami Beach
Attention: Max Sklar, Director of Tourism and Culture
1700 Convention Center Drive
Miami Beach, Florida 33139

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

**SECTION 31.** **NO DISCRIMINATION.**

ADMSP agrees that there shall be no discrimination as to race, sex, color, creed, national origin, physical handicap, or sexual orientation in the operations referred to by this Agreement; and further, there shall be no discrimination regarding any use, service, maintenance or operation of the Premises. All facilities located on the Premises shall be made available to the public, subject to the right of ADMSP to establish and enforce reasonable rules and regulations to provide for the safety, orderly operation, and security of the facilities.

**SECTION 32. VENUE/WAIVER OF JURY TRIAL/DISPUTE MEDIATION.**

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

**32.2** If a dispute arises out of, or related to, this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association, or other similar alternative dispute resolution organization, person or source agreeable to the parties, before resorting to litigation or other dispute resolution procedure.

**SECTION 33. INTENTIONALLY OMITTED**

**SECTION 34. MISCELLANEOUS PROVISIONS.**

**34.1 City's Governmental Capacity.**

Nothing in this Agreement or in the parties' acts or omissions in connection herewith shall be deemed in any manner to waive, impair, limit or otherwise affect the authority of the City in the discharge of its police or governmental power.

**34.2 Entire Agreement.**

(a) Entire Agreement. This Agreement, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings between City and ADMSP concerning the operation, management, and maintenance of the Premises, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and in such attachments thereto or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

(b) Waiver, Modification, etc. No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, or waived except by a written instrument of change, modification, alteration, or waiver executed by City and ADMSP. No waiver of any default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

### 34.3 Remedies Cumulative.

Each right and remedy of either party provided for in this Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), and the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement), shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise (except as otherwise expressly limited by the terms of this Agreement).

### 34.4 Performance at Each Party's Sole Cost and Expense.

Unless otherwise expressly provided in this Agreement, when either party exercises any of its rights, or renders or performs any of its obligations hereunder, such party shall do so at its sole cost and expense.

### 34.5 Time is of the Essence.

Time is of the essence with respect to all matters in, and requirements of, this Agreement as to both City and ADMSP including, but not limited to, the times within which ADMSP must commence and complete construction of the Proposed Improvements.

### 34.6 No Representations by City.

City herein makes no representations as to the condition of the Premises.

### 34.7 Partnership Disclaimer.

ADMSP acknowledges, represents and confirms that it is an independent contractor in the performance of all activities, functions, duties and obligations pursuant to this Agreement.

The parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, tenancy in common, joint tenancy, co-ownership or agency relationship for the purpose of this Agreement, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein, nothing in this Agreement, shall be construed or deemed to create, or to express an intent to create a partnership, joint venture, tenancy-in-common, joint tenancy, co-ownership, or agency relationship of any kind or nature whatsoever between the parties hereto. The provisions of this Section 34.7 shall survive termination and/or expiration of this Agreement.

### 34.8 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, structure, equipment or space is leased to ADMSP; that this Agreement is a management agreement and not a lease, and that ADMSP's right to operate, manage, and maintain the Premises shall continue only so long as ADMSP complies with the undertakings, provisions, agreements, stipulations and conditions of this Agreement.
Accordingly, ADMSP hereby agrees and acknowledges that in the event of termination of this Agreement, whether due to a default by ADMSP or otherwise, ADMSP shall surrender and yield unto the City the Premises, in accordance with Section 28 hereof, and the City shall in no way be required to evict and/or otherwise remove ADMSP from the Premises as if this were a tenancy under Chapter 83, Florida Statutes, nor shall ADMSP be afforded any other rights afforded to nonresidential tenants pursuant to said Chapter (the parties having herein expressly acknowledged that this Agreement is intended to be a management agreement and is in no way intended to be a lease).

**34.9 <u>No Third Party Rights.</u>**

Nothing in this Agreement, express or implied, shall confer upon any person, other than the parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

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

Attest:

**CITY OF MIAMI BEACH**

_____
City Clerk

_____
Matti Herrera Bower, Mayor

Attest:

**ALTOS DEL MAR SCULPTURE PARK, INC.**

_____
Dr. Anthony M. Weaver, Secretary

_____
Dr. jur. Marlene Saile, President

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by Mayor _____ and _____, City Clerk, or their designees respectively, on behalf of the CITY OF MIAMI BEACH, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 2009.

_____

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

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

5/28/09
City Attorney Date

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

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____, on behalf of the Altos del Mar Sculpture Park, Inc., known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal, this _____ day of _____, 2009.

_____

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

**EXHIBIT "A"**

**[SKETCH OF ALTOS DEL MAR PARK]**

**EXHIBIT "B"**

**[SKETCH OF PREMISES]**

**EXHIBIT "C"**

**["SCULPTURE PARK PROGRAMMING"]**

**EXHIBIT "D"**

**[RENTAL RATES, POLICIES, AND PROCEDURES]**

**EXHIBIT "E"**

**[INSURANCE REQUIREMENTS FOR EXHIBITIONS, THIRD PARTY RENTERS, AND OTHER USERS OF THE PREMISES]**

**EXHIBIT "F"**

**[ADMSP'S THEMES OF PLANNED EXHIBITS]**

**EXHIBIT "G"**

**[DETAILED DESCRIPTION/CONCEPTUAL SKETCH OF LANDSCAPE AREA]**

**EXHIBIT "H"**

**[REVENUE GENERATING USES TO BE CONDUCTED BY ADMSP UPON PREMISES]**

**EXHIBIT "I"**

**["CMB MINIMUM SPECIFICATIONS FOR MAINTENANCE OF ALTOS DEL MAR SCULPTURE PARK"]**

**EXHIBIT "J"**
**INSURANCE REQUIREMENTS FOR CONSTRUCTION**

1. Worker's compensation insurance covering all employees of the Contractors (as required by the laws of the State of Florida) and employer's liability insurance of not less than One Million Dollars ($ 1,000,000) per occurrence.

2. Comprehensive general liability insurance in an amount of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate covering personal injury and property damage. Such coverage shall include, but not be limited to, the following:

i. Blanket contractual liability insurance covering all indemnity or hold harmless agreements.
ii. Protective liability insurance for the operation of the Independent Contractors.
iii. XCU coverage (explosion, collapse or damage to underground property).
iv. Products and completed operations (for two (2) year extension beyond completion of project).

3. Excess umbrella liability insurance with a limit of not less than Dollars ($ ) per occurrence and in the aggregate in excess of the above mentioned insurance, which shall be required only in any "wrap up" policy.

a) ADMSP may cause the insurance listed in this subsection to be provided through an overall "wrap up" policy, in lieu of individual policies provided by Contractors.
b) Comprehensive automobile insurance in an amount of not less than Two Million Dollars ($2,000,000) combined single limit for bodily injury and property damage covering all owned, non-owned or hired vehicles, trailers or semi-trailers, including any machinery or apparatus attached thereto.

4. Builder's Risk Insurance (standard "All Risk" or equivalent coverage) in an amount not less than the cost of construction, written on a completed value basis or a reporting basis, for property damage protecting ADMSP, City, and ADMSP's General Contractor, with a deductible of not more than Fifty Thousand Dollars ($50,000), subject to adjustment for inflation (except as to flood and windstorm, with regard to which the deductible shall be a commercially reasonable amount).

5. Comprehensive automobile insurance in an amount of not less than Two Million Dollars ($2,000,000) combined single limit for bodily injury and property damage covering all owned, non[owned or hired vehicles, trailers or semi-trailers, including any machinery or apparatus attached thereto.

# RESOLUTION TO BE SUBMITTED

R9

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

Date: June 3, 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 | 1 | 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 6-3-09



*We are committed to providing excellent public service and safety to all who live, work and play in*

## VACANCIES

| BOARD OR COMMITTEE: | TOTAL MBRS. | APPOINTED BY: | TOTAL VAC | PAGE |
|---|---|---|---|---|
| Committee on the Homeless | 9 | Mayor Matti Herrera Bower | 1 | |
| Community Development Advisory Committee | 14 | Mayor Matti Herrera Bower | 1 | Page 12 |
| | | Steinberg Diaz | 1 | |
| Community Relations Board | 17 | Jorge M. Gonzalez, City Manager | 1 | |
| Convention Center Advisory Board | 7 | Commissioner Victor M. Diaz, Jr. | 1 | |
| Debarment Committee | 7 | Commissioner Ed Tobin | 1 | |
| | | Mayor Matti Herrera Bower | 1 | |
| Design Review Board | 7 | City Commission | 1 | |
| Disability Access Committee | 7 | Commissioner Victor M. Diaz, Jr. | 1 | |
| Fine Arts Board | 14 | Mayor Matti Herrera Bower | 1 | |
| Gay Business Development Ad Hoc Committee | 17 | Mayor Matti Herrera Bower | 1 | |
| Gay, Lesbian, Bisexual and Transgender (GLBT) | 15 | City Commission | 2 | |
| | | Commissioner Deede Weithorn | 2 | |
| | | Commissioner Ed Tobin | 3 | |
| | | Commissioner Jerry Libbin | 2 | |
| | | Commissioner Jonah M. Wolfson | 2 | |
| | | Commissioner Saul Gross | 2 | |
| | | Commissioner Victor M. Diaz, Jr. | 2 | |
| | | Mayor Matti Herrera Bower | 3 | |

## VACANCIES

| BOARD OR COMMITTEE: | TOTAL MBRS. | APPOINTED BY: | TOTAL VAC | PAGE |
|---|---|---|---|---|
| Health Advisory Committee | 11 | City Commission | 4 | Page 23 |
| Health Facilities Authority Board | 6 | City Commission | 1 | Page 25 |
| Miami Beach Commission For Women | 21 | Mayor Matti Herrera Bower | 2 | Page 31 |
| Miami Beach Sister Cities Program | 24 | Mayor Matti Herrera Bower | 8 | Page 33 |
| Personnel Board | 10 | City Commission | 2 | Page 37 |
| Police Citizens Relations Committee | 17 | Mayor Matti Herrera Bower | 1 | Page 39 |
| Production Industry Council | 7 | Commissioner Victor M. Diaz, Jr. | 1 | Page 41 |
| Public Safety Advisory Committee | 7 | Commissioner Deede Weithorn | 1 | Page 42 |
| | | Commissioner Victor M. Diaz, Jr. | 1 | |
| | | Mayor Matti Herrera Bower | 1 | |
| Safety Committee | 14 | Steinberg Diaz | 2 | Page 43 |
| Single-Family Residential Review Panel | 3 | Jorge M. Gonzalez, City Manager | 3 | Page 44 |
| Youth Center Advisory Board | 10 | Commissioner Jerry Libbin | 1 | Page 49 |
| | | Mayor Matti Herrera Bower | 1 | |

## VACANCIES

| BOARD OR COMMITTEE: | TOTAL MBRS. | APPOINTED BY: | TOTAL VAC. | PAGE |
|---|---|---|---|---|

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

# 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: June 3, 2009

SUBJECT: **BOARD AND COMMITTEE APPOINTMENTS – CITY COMMISSION APPOINTMENTS**

**ADMINISTRATION RECOMMENDATION**

Make appointments as indicated.

**BOARDS AND COMMITTEES**

1. Affordable Housing Advisory Committee
2. Art in Public Places
3. Budget Advisory Committee
4. Design Review Board
5. Gay, Lesbian, Bisexual and Transgender (GLBT) Enhancement Committee
6. Health Advisory Committee
7. Health Facilities Authority Board
8 Personnel Board

JMG/REP

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Agenda Item R9A1
Date 6-3-09

## 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
Richard Lubliner

## COMMISSION COMMITTEE APPOINTMENTS

2. Art in Public Places (one 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:**

| | | |
|---|---|---|
| To replace Claire Breukel | 12/31/2009 | City Commission |

**Members:**

| Name | Last Name | Position/Title | Term Ends: | Appointed by: | *Term Limit:* |
|---|---|---|---|---|---|
| Elizabeth | Resnick | | 12/31/2010 | City Commission | 12/31/12 |
| James | Weingarten | | 12/31/2010 | City Commission | 12/31/10 |
| Jeremy | Chestler | | 12/31/2010 | City Commission | 12/31/10 |
| Lisette | Olemberg Goldstein | | 12/31/2009 | City Commission | 12/31/14 |
| Mariangela | Capuzzo | | 12/31/2010 | City Commission | 12/31/10 |
| 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 | |
| Matthew Maffai | | Merri Mann | |
| Michael McManus | | Nelida Barrios | |
| Zoila Datorre | | | |

## COMMISSION COMMITTEE APPOINTMENTS

3. Budget Advisory Committee (two appointments)

# 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 Olemberg Goldstein | |

# *Board and Committees Current Members*

Michael Mogensen
Scott Diffenderfer
Oliver Weirich
Todd Glaser

## COMMISSION COMMITTEE APPOINTMENTS

5 Gay, Lesbian, Bisexual and Transgender (GLBT) (two appointments)

# Board and Committees Current Members

## Gay, Lesbian, Bisexual and Transgender (GLBT)

**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.
City Liaison: Rebecca Wakefield

**Vacancy:**

| | | | |
|---|---|---|---|
| New Member | TL 12/31/16 | 12/31/2010 | Commissioner Saul Gross |
| New Member | TL 12/31/16 | 12/31/2010 | Mayor Matti Herrera Bower |
| New Member | TL12/31/16 | 12/31/2010 | Mayor Matti Herrera Bower |
| New Member | TL 12/31/16 | 12/31/2009 | Commissioner Victor M. Diaz, Jr. |
| New Member | TL 12/31/16 | 12/31/2009 | Commissioner Saul Gross |
| New Member | TL 12/31/16 | 12/31/2010 | Commissioner Jerry Libbin |
| New Member | TL 12/31/16 | 12/31/2009 | Commissioner Ed Tobin |
| New Member | TL 12/31/16 | 12/31/2009 | Commissioner Deede Weithorn |
| New Member | TL 12/31/16 | 12/31/2009 | Mayor Matti Herrera Bower |
| New Member | TL 12/31/16 | 12/31/2010 | Commissioner Victor M. Diaz, Jr. |
| New Member | TL 12/31/16 | 12/31/2009 | City Commission |
| New Member | TL 12/31/16 | 12/31/2009 | Commissioner Jerry Libbin |
| New Member | TL 12/31/16 | 12/31/2010 | Commissioner Ed Tobin |
| New Member | TL 12/31/16 | 12/31/2010 | Commissioner Deede Weithorn |
| New Member | TL 12/31/16 | 12/31/2009 | Commissioner Jonah M. Wolfson |
| New Member | TL12/31/16 | 12/31/2009 | Commissioner Ed Tobin |
| New Member | TL 12/31/16 | 12/31/2009 | Commissioner Ed Tobin |
| New Member | TL 12/31/2016 | 12/31/2009 | City Commission |
| New Member | TL 12/31/16 | 12/31/2010 | Commissioner Jonah M. Wolfson |

**Members:**

| Name | Last Name | Position/Title | Term Ends: | Appointed by: | *Term Limit:* |
|---|---|---|---|---|---|
| New | Member | | 12/31/2009 | City Commission | 12/31/16 |

| Applicants | Position/Title | Applicants | Position/Title |
|---|---|---|---|
| Anabel Evora | | Arlene De la Torre | |
| Mitch Becker | | | |

## COMMISSION COMMITTEE APPOINTMENTS

6 Health Advisory Committee (four appointments)

# Board and Committees Current Members

## Health Advisory Committee

Sec. 2-81 2002-33RR

**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) | 12/31/2010 | 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

7. Health Facilities Authority Board (one appointment)

# Board and Committees Current Members

## Health Facilities Authority Board

Sec. 2-111

**Composition:**

Four (4) year terms.
Five (5) members shall consist of;
two (2) health providers,
one (1) individual in the field of general business who possesses good standing in the community;
one (1) accountant and;
one (1) attorney.
The chairperson of the Health Advisory Board shall serve as a non-voting advisor to the Authority.
Members shall be residents of the City.
Florida Statute 154.207 No term Limits.

City Liaison: Patricia Walker

**Vacancy:**

| | | | | |
|---|---|---|---|---|
| Emilio Suster | To replace Sidney Goldin | General Business | 06/19/2007 | City Commission |

**Members:**

| Name | Last Name | Position/Title | Term Ends: | Appointed by: | *Term Limit:* |
|---|---|---|---|---|---|
| Allison | Stone | Attorney | 06/19/2009 | City Commission | FS 154-207 |
| Arthur | Unger | Accountant | 06/12/2012 | City Commission | FS 154-207 |
| Marc | Umlas | Health Provider | 06/19/2010 | City Commission | FS-154-207 |
| Mark | Sinnreich | Health Provider | 06/19/2011 | City Commission | FS 154-207 |

Kathryn Abbate Chairperson, Health Advisory Board

| Applicants | Position/Title | Applicants | Position/Title |
|---|---|---|---|
| Jorge Perez | | Rolando Rodriguez | |
| Shaheen Wirk | | Suzanne Stonbely | |

## COMMISSION COMMITTEE APPOINTMENTS

8. 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 6-3-09

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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: Jose Smith, City Attorney

CC: Jorge M. Gonzalez, City Manager

DATE: June 3, 2009

SUBJECT: **A DISCUSSION REGARDING A PROPOSED SETTLEMENT AGREEMENT BETWEEN CLUB MADONNA, INC., THE CITY OF MIAMI BEACH, AND CERTAIN NAMED INDIVIDUAL DEFENDANTS, INVOLVING LITIGATION BETWEEN THESE PARTIES IN THE U.S. DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, CASE NO. 08-23469-CIV-MOORE/TURNOFF.**

## CITY ATTORNEY RECOMMENDATION

Approve the Settlement Agreement.

## BACKGROUND

Since 2003, Club Madonna, Inc., ("the Club") has tried to amend ordinances in Chapter 6 of the City Code regulating the sale of alcohol in adult entertainment establishments. After numerous hearings, the City Commission decided not to pursue any ordinance amendment. The Club filed a lawsuit in 2005 challenging the adoption of the ordinances in 1989. The suit was partially dismissed by the U.S. District Court, and the remainder voluntarily dismissed by the Club. Settlement discussions thereafter were not successful.

In 2008, the Club filed another lawsuit challenging the actions of certain individual City Commissioners and employees of the City, and the original adoption of the ordinances in 1989, prohibiting the sale of alcohol at establishments displaying total nudity. After the City filed its Motion to Dismiss, the Club proposed a Settlement Agreement (copy attached), providing for dismissal of the claims against the individual defendants and the City, and consideration by the City Commission of a proposed Ordinance Amendment (copy attached). Upon consideration, regardless of whether the vote is in favor or against adopting the proposed Ordinance, the remainder of the lawsuit would be dismissed, and mutual general releases exchanged.

## ANALYSIS

The Club's Complaint, and the City's Motion to Dismiss and supporting Memorandum of Law, have been delivered to the City Commission under separate cover, along with the City Commission Memorandum on the proposed ordinance from 2004. The Motion to Dismiss and Memorandum of Law explain the City's position with respect to this lawsuit.

The Club proposes a settlement of its lawsuit against the City and individual defendants pursuant to an Agreement (copy attached), which contains the following terms:

**Agenda Item** R9C

**Date** 6-3-09

1. The City would place on the City Commission agenda for consideration a proposed ordinance in the form attached for "discussion and an up-or-down vote."

2. First reading would be scheduled for approximately July, 2009, with a final decision by December, 2009. The Commission may refer the ordinance to a City Board or Committee.

3. The Club and its representatives may discuss the matter with City Commissioners, who are not obligated to do so.

4. Commissioner Gross would decide for himself whether to abstain or not from participating.

5. Within 10 days of City Commission approval of the Agreement to consider the Ordinance, the Club would dismiss Count II with prejudice against the individual defendants.

6. The City and Club agree to continue the stay of the lawsuit currently in effect pending the final vote by the City Commission.

7. Within ten days of the "up-or-down vote" the Club would dismiss with prejudice all remaining counts in the Complaint.

8. All parties bear their own costs and attorneys' fees.

9. Within ten days of entering into the Agreement, the parties execute and place into escrow mutual general releases, pending the final vote by the City Commission.

**CONCLUSION**

The proposed settlement which requires the City Commission to hold a hearing and vote up or down on the proposed ordinance, is a reasonable conclusion to this matter and is in the best interests of the city. Accordingly, the City Attorney recommends that the City Commission approve the Settlement Agreement, authorizing the processing of the Proposed Ordinance for consideration by the City Commission and any committee or board deemed appropriate.

Attachments (2)

F:\atto\HELG\LITIGATION\Madonna fed case 2\Club Madonna Settlement Agreement Memo to Comm'n 06032009.MEM.doc

## SETTLEMENT AGREEMENT

This Settlement Agreement and Release ("Agreement") is made and entered into by and between Club Madonna, Inc. ("Club Madonna"), LeRoy Griffith ("Griffith"), the City of Miami Beach ("the City"), Saul Gross, Simon Cruz, Jose Smith, Gary Held, Murray Dubbin, and David Dermer ("the individual defendants") (collectively "the parties" or "each party"). The terms of this Agreement are as follows:

1. The City agrees to place Club Madonna's proposed ordinance ("the Proposal"), a copy of which is attached as Exhibit A, which would allow for the sale of liquor by the drink in full nudity entertainment establishments, on the City Commission's agenda, with the required public notice, for discussion and an up-or-down vote, including any modification thereto the Commission considers appropriate for adoption. The parties acknowledge that adoption will require two readings and a public hearing at the second reading, but that failure to obtain a majority vote at the first reading will mean no second reading and public hearing will be held.

2. The City will endeavor in good-faith to have the Proposal initially heard for first reading before the Commission in or around June or July 2009, but a failure to meet that schedule shall not constitute a breach of the Agreement. The parties agree that they shall in no event have the hearing later than the end of December 2009. Club Madonna may put in the public record any and all testimony and evidence in support of the Proposal that it wishes. The City Commission may, at its sole discretion, refer the Proposal to the Planning Board and City Commission sub-committees for voluntary review and report prior to a vote, but with an up or down vote by the City Commission occurring prior to the end of December 2009. It is expressly understood and agreed that Club Madonna's proposed Ordinance will receive an up or down vote prior to the end of December 2009, and that the vote will not be postponed or delayed by sub-committee review.

3. The City agrees that Club Madonna shall have the right to discuss the Proposal with the individual Commissioners and Mayor if any are willing to do so, provided however that neither any Commissioner nor the Mayor is under any obligation to engage in such discussion if he or she does not wish to do so. That any or all Commissioners or the Mayor decline the invitation to speak with Club Madonna or its representatives or agents is not a ground to invalidate this Agreement.

4. Club Madonna agrees that Commissioner Saul Gross will decide for himself whether or not to abstain from discussion or vote on the Proposal. His participation in the Commission's disposition of the Proposal shall not constitute a breach of this Agreement and shall not be grounds for Club Madonna to make further attack on the City's Ordinances, or a collateral after-the-fact attack on the Commission vote provided for by this Agreement.

5. Club Madonna agrees to immediately, within ten (10) days of entering into this Agreement, file a notice of voluntary dismissal of Count II with prejudice in the action now pending before Judge Moore in the Southern District of Florida, Case No. 08-23469-CIV-MOORE/TURNOFF.

6. Club Madonna and the City agree to continue the stay that is currently in effect with respect to the remaining counts (*i.e.*, Counts I, III, IV, V, and VI) of the action that is before Judge Moore in the Southern District of Florida, Case No. 08-23469-CIV-MOORE/TURNOFF, pending the up-or-down vote on the Proposal before the Commission.

7. Once the Proposal has received an up-or-down vote before the Commission, Club Madonna agrees to, within ten (10) days of the vote, dismiss with prejudice all remaining counts of the action (Case No. 08-23469-CIV-MOORE/TURNOFF). Club Madonna agrees to do so regardless of the outcome of the Commission's vote on the Proposal.

8. Each party shall bear its own attorney's fees and costs upon dismissal of the action (Case No. 08-23469-CIV-MOORE/TURNOFF).

9. The parties shall immediately, within ten (10) days of entering into this Agreement, execute and tender the mutual limited releases attached hereto as Composite Exhibit "B," which will be held in escrow pending the Commission's final vote on the Proposal.

[Signatures Begin On Next Page]

ORDINANCE NO. _____

**AN ORGINANCE OF THE MAYOR AND CITY COMMISION OF THE CITY OF MIAMI BEACH, FLORIDA AMENDING CHAPTER 6, "ALCOHOLIC BEVERAGES," OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, BY AMENDEDING SECTION 6-40 "TOTAL NUDITY AND SEXUAL CONDUCT PROHIBITED," TO ALLOW ESTABLISHMENTS LICENSED TO PROVIDE TOTAL NUDE ENTERTAINMENT TO SERVE ALCOHOLIC BEVERAGES TO THEIR CUSTOMERS; PROVIDING FOR CODIFICATION, REPEALER, NONSEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS,** the Code of the City of Miami Beach, as permitted by state law, contains various restrictions on the sale of alcoholic beverages within the City; and

**WHEREAS**, there are numerous adult venues within Miami-Dade County that offer total nudity with the sale of alcohol, thereby putting nude adult entertainment establishments on Miami Beach in an unfair competitive position; and

**WHEREAS**, tourists, tourism and tourist dollars are leaving Miami Beach because other parts of Miami-Dade County have adult establishments that allow total nudity and alcohol; and

**WHEREAS**, patrons of adult nude establishments not only patronize adult establishments but also patronize surrounding businesses; and

**WHEREAS,** the allowing of total nudity and alcohol will be an economic benefit to those businesses surrounding the nude adult entertainment establishment as well as to the economy of the City of Miami Beach in general; and

**WHEREAS,** there are reports of numerous establishments, which are not licensed, but which are nevertheless engaged in total nudity and the sale of alcohol on their premises in an unregulated fashion, and the passage of a law designed to permit total nudity and the sale of alcohol would permit the City to regulate such establishments; and

**WHEREAS,** there are numerous studies that show that the addition of alcohol at nude entertainment establishments does not cause or add to adverse secondary effects; and

**WHEREAS,** those establishments licensed to permit total nudity on Miami Beach are self policed and have not been responsible for adverse secondary effects; and

**WHEREAS,** Section 6-40 of the Code restricts the sale of alcoholic beverages by persons maintaining owning, managing or operating an establishment permitting total nudity; and

**WHEREAS,** the City Commission recognizes the need to provide sufficient opportunity for patrons of businesses in the City to compete with other venues that afford alcoholic beverages establishments offering total nude adult entertainment; and

**WHEREAS,** in the interest of improving the efficiency of allowing certain licensed, total nude adult entertainment establishments to offer alcohol to their customers, it is recommended that an ordinance amendment be adopted; and

**WHEREAS,** this ordinance accomplishes the purpose set forth above.

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

**SECTION 1:** That Chapter 6, entitled "Alcoholic Beverages," of the Code of the City of Miami Beach, and Section 6-40 entitled "Total nudity and sexual conduct prohibited" are hereby amended to read as follows:

**Sec 6-40 Total nudity and sexual conduct ~~prohibited~~.**

(a) No alcoholic beverage establishment shall permit total nudity or sexual conduct on any parcel of land located in the City of Miami Beach, except as provided herein.

(b) It shall be unlawful for any person maintaining, owning, managing or operating an alcoholic beverage establishment to knowingly, or with reason to know, suffer of permit total nudity or sexual conduct to occur on the premises of that alcoholic beverage establishment, except as provided herein.

(c) It shall be unlawful for any person, while on the premise of an alcoholic beverage establishment, to expose to public view those portions of anatomy defined as total nudity, or engage in any sexual conduct, except as provided herein.

(d) An adult entertainment establishment currently licensed to permit live total nudity under an active occupational license may obtain an alcoholic beverage license and sell alcohol to customers for consumption on the premises between the hours of 6:00 pm and 5:00 am on days when public schools are in session and between 11:00 am and 5:00 am on the weekends and when public schools are not in session.

(e) *Location, mandatory requirements.*

(1) The minimum building size of the alcoholic beverage establishment permitting total nudity shall be 7,000 square feet.

(2) An alcoholic beverage establishment permitting total nudity shall have no less than 250 seats.

(3) An alcoholic beverage establishment permitting total nudity shall offer a complete food menu during the operating hours of the establishment.

(4) Parking required for an alcoholic beverage establishment permitting total nudity shall be a minimum of one space per three seats, all of which shall be located on-site. Adult entertainment establishments currently licensed to permit live total nudity under an active occupational license are grandfathered from this provision.

(5) An alcoholic beverage establishment permitting total nudity shall have no exterior signage describing or depicting the activities regulated by this article taking place within the premises. Exterior signage that has been approved and is in place is exempt from this provision.

(6) Total nudity when alcoholic beverages are sold in alcoholic beverage establishments shall occur only between the hours of 6:00 pm and 5:00 am. on days when public schools are in session and between 11:00 am and 5:00 am on the weekends and when public schools are not in session.

(f) *Prohibited activities.* No person shall own, operate, manage, work or perform at any alcoholic beverage establishment permitting total nudity on the premises unless the following mandatory requirements are observed therein:

(1) Persons engaged in displaying total nudity are prohibited from engaging in sexual activity with any patron, spectators, employee or other person on the premises. Lap dancing shall not be considered a violation of this ordinance.

(2) No person shall engage in the display or exposition of total nudity except while the person is on stage or positioned at least three feet from a patron, except for lap dancing, which is permitted herein. It shall not be a violation of this section for touching of a performer or dancer while totally nude by a patron for the sole purpose of providing a gratuity.

(3) No person maintaining, owning or operating such an establishment shall suffer or permit construction, maintenance or use of areas partitioned or screened from public view that are designed to be occupied or are commonly occupied alone or together by any person or persons on the premises of such establishment for private performances involving the display or exhibition of total nudity. Partitioned areas or rooms with an open doorway shall not be deemed to violate this subsection.

(4) No person on the premises of such establishment shall be permitted to use or to be present in areas partitioned or screened from public view that are designed to be occupied together or alone by any person or persons on the premises of such establishment for the display or exhibition of total nudity. Partitioned areas or rooms with an open doorway shall not be deemed to violate this subsection.

(5) Prostitution or solicitation for prostitution as defined in the F.S. 768.01 shall not occur on the premises.

(6) There shall be no sale or use of controlled substances as defined in F.S. 893.02(04) on the premises.

(g) *Compliance with codes, standards.* The establishment shall be in compliance with all applicable fire, property maintenance and building codes at all times. If a building is an historic structure as defined in section 114-1, it shall conform with the secretary of the interior's standards for historic places.

(h) *Departmental reports.* A certificate of use or occupational license shall not be issued until the city manager or his designee receives reports from the city's police, fire, building services and code compliance departments that the above regulations have been complied with.

(i) *Variances.* Variances to the provisions of subsection (e) of this section may be granted pursuant to the procedure in section 118-351 et seq.

## SECTION 2. 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 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. NONSEVERABILITY.

It is the intention of the City Commission that all provisions of this Ordinance are integral to and dependant upon all other provisions thereof, and thus if any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be severable from the portion declared invalid. In the event any portion of this ordinance

shall be finally determined invalid by a court of competent jurisdiction, the City Code provisions in effect prior to the effective date hereof shall automatically be reinstated.

**SECTION 5. 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 & LANGUAGE
& FOR EXECUTION

_____ _____
City Attorney Date

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

# MEMORANDUM

TO: Jorge Gonzalez, City Manager
Jose Smith, City Attorney

FROM: Deede Weithorn, Commissioner DW/aks

DATE: May 18, 2009

SUBJECT: Agenda item for June 3 Commission meeting

Please add to the June 3rd agenda a status update and discussion item on the 2009/2010 budget.

DW/aks

Agenda Item R9D
Date 6-3-09

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## R9 - New Business and Commission Requests

R9E The Committee Of The Whole Will Meet During Lunch Break In The City Manager's Large Conference Room To Discuss The City Attorney's Performance Evaluation.
(City Attorney's Office)

AGENDA ITEM R9E
DATE 6-3-09

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## R9 - New Business and Commission Requests

R9F The Committee Of The Whole Will Meet During Lunch Break In The City Manager's Large Conference Room To Discuss Fiscal Year (FY) 2009/10 Proposed Operating Budget Request For The Office Of The Mayor And City Commission.
(Budget & Performance Improvement)

AGENDA ITEM R9F
DATE 6-3-09

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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

DATE: June 3, 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 May 13, 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 R9G
Date 6-3-09

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

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

MEMORANDUM

TO: Jorge M. Gonzalez, City Manager

FROM: Mayor Matti Herrera Bower

DATE: May 26, 2008

SUBJECT: **A Resolution Urging the Florida Department of Education to Maintain the Existing Training Requirements for Teachers of English Language Learners.**

Please place on the June 3, 2009 Commission meeting agenda the above named resolution, supporting efforts of a wide coalition of educators and activists to prevent the State of Florida from lowering the training requirements of teachers of ESOL students. Similar resolutions have been passed by the Miami Dade and Broward county commissions, as well as the cities of Aventura, Homestead, North Miami Beach and Doral, among others.

I thank you in advance for your cooperation in this matter. If you have any questions, please do not hesitate to contact Rebecca Wakefield at extension 6157.

Thank you.

MHB/rw

**Agenda Item** R9H

**Date** 6-3-09

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## R10 - City Attorney Reports

R10A Notice Of Closed Executive Session.
Pursuant To Section 447.605, Florida Statutes, A Closed Executive Session Will Be Held At The Lunch Recess On Wednesday, June 3, 2009 In The City Manager's Large Conference Room, Fourth Floor, City Hall, For A Discussion Relative To Collective Bargaining.

AGENDA ITEM R10A
DATE 6-3-09

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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 Gonzalez

FROM: City Attorney Jose Smith

DATE: May 27, 2009

SUBJECT: **Attorney-Client Session**

Pursuant to Section 286.011, Florida Statutes, the City Attorney hereby advises the Mayor and City Commission that he desires advice concerning the following pending litigation matter:

MCZ/Centrum Flamingo II, LLC, et al. v. City of Miami Beach
U.S. District Court, Southern District of Florida,
Case No.: 08-22419-CIV-Altonaga/Brown

Therefore, a private closed Attorney-Client Session will be held during the lunch recess of the City Commission meeting on June 3, 2009 in the City Manager's Large Conference Room, Fourth Floor, City Hall, to discuss settlement negotiations and/or strategy related to litigation expenditures with regard to the above-referenced litigation matter.

The following individuals will be in attendance: Mayor Matti Herrera Bower; Members of the City Commission: Saul Gross, Jerry Libbin, Victor Diaz, Ed Tobin, Deede Weithorn, and Jonah Wolfson; City Attorney Jose Smith, City Manager Jorge Gonzalez, First Assistant City Attorney Gary Held, outside counsel Richard Ovelmen and Jason Kairalla.

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Agenda Item R10B
Date 6-3-09

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## INFO ITEMS

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: June 3, 2009

FROM: Jose Smith, City Attorney

SUBJECT: City Attorney's Status Report

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LAWSUITS FILED BY OR AGAINST THE CITY OF MIAMI BEACH SINCE THE LAST REPORT

1) Deutsche Bank vs. Roberto Arias et. al, Case No. 09-34909 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 6345 Collins Avenue, Unit 1037, Miami Beach, Florida. The Summons and Complaint were served on the City on May 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 was filed on May 8, 2009.

2) JPMorgan Chase vs. Guillermo H. Gonzalez et. al, Case No. 09-36147 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 1881 Washington Avenue, Unit 5G, Miami Beach, Florida. The Summons and Complaint were served on the City on May 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 was filed on May 11, 2009.

3) US Bank National Association vs. Fernando Ortiz et. al, Case No. 09-34850 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 3425 Collins Avenue, Unit 708, Miami Beach, Florida. The Summons and Complaint were served on the City on May 7, 2009.

Agenda Item A
Date 6-3-09



1700 Convention Center Drive -- Fourth Floor -- Miami Beach

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 May 11, 2009.

4) Linda McGlathery v. City of Miami Beach, Case # 09-35359 CA 04 (Circuit Court – 11th Judicial Circuit in and for Miami Dade County)

   The City was served with this complaint on May 08, 2009 alleging that on November 3, 2007, the plaintiff, fell on the sidewalk located at the intersection of Collins Avenue between 21st Street and 22nd Street due to a broken and dangerous protruding sign post on the sidewalk. The plaintiff injured her right knee. The City shall file its usual answer to the complaint, propound discovery and set the plaintiff for a deposition.

5) Coconut Grove Bank vs. Byron Condo Developments, LLC et. al, Case No. 09-37884 CA 01 (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 7510 Byron Avenue, Miami Beach, Florida. The Summons and Complaint were served on the City on May 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 May 13, 2009.

6) Deutsche Bank National Trust vs. Fernando Ortiz et. al, Case No. 09-38489 CA 32 (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 3425 Collins Avenue, Unit 527, Miami Beach, Florida. The Summons and Complaint were served on the City on May 15, 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 May 19, 2009.

7) Great Florida Bank vs. 6949 Bay Partners, Inc. et. al, Case No. 09-38375 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 6949 Bay Drive, Miami Beach, Florida. The Summons and Complaint were served on the City on May 20, 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 May ***, 2009.

8) Aurora Loan Servicing, LLC vs. Andres Perez et. al, Case No. 09-39418 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 1200 West Avenue, Apartment 214, Miami Beach, Florida. The Summons and Complaint were served on the City on May 20, 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 May 21, 2009.

9) BAC Home Loan Servicing LLP vs. Elizabeth Cabrera, et. al, Case No. 09-39418 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 1319 Meridian, Apartment 304, Miami Beach, Florida. The Summons and Complaint were served on the City on May 20, 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 May 21, 2009.

10) The Bank of New York vs. Jose Herrera, et. al, Case No. 09-39859 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 8040 Tatum Waterway Drive, Unit 12, Miami Beach, Florida. The Summons and Complaint were served on the City on May 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 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: June 3, 2009

SUBJECT: **PARKING STATUS REPORT – APRIL 2009**

During the month of April the Parking Department received revenue from different sources outlined in the categories listed below:

| REVENUE SOURCE | APRIL 2008 | APRIL 2009 | %INC/(DEC) |
|---|---|---|---|
| **I. Meters** (Single & Multi Space) | **$1,130,906.34** | **$1,504,766.85** | **33.06%** |
| **II. Garages & Attended Lots** | **$1,036,094.71** | **$998,334.22** | **(3.64%)** |
| a. 17th Street Garage | $364,289.79 | $302,976.32 | (16.83%) |
| b. 7th Street Garage | $195,768.67 | $209,238.11 | 6.88% |
| c. 17th Street Lots (E & W) | $77,862.89 | $61,449.89 | (21.08%) |
| d. 12th Street Garage | $39,902.25 | $39,547.02 | (0.89%) |
| e. 13th Street Garage | $97,601.97 | $103,903.39 | 6.46% |
| f. 42nd Street Garage | $35,267.00 | $37,222.80 | 5.55% |
| g. 16th Street Garage | $225,402.14 | $243,996.69 | 8.25% |
| **III. Enforcement** | **$294,349.67** | **$345,866.94** | **17.50%** |
| a. M-D Cty Pkg Violations | $270,937.17 | $326,341.94 | 20.45% |
| b. Towing | $23,412.50 | $19,525.00 | (16.60%) |
| **IV. Permit Sales** | **$287,498.65** | **$362,575.67** | **26.11%** |
| a. Municipal Monthly Permits | $53,279.13 | $57,713.91 | 8.32% |
| b. Valet & Space Rental | $114,940.07 | $178,997.50 | 55.73% |
| c. Residential Permits | $83,514.45 | $87,774.26 | 5.10% |
| d. Smart Card Sales (0 cards) | $12,965.00 | $0.00 | (100.00%) |
| e. Hotel Hang Tags (3,230 tags) | $22,800.00 | $19,380.00 | (15.00%) |
| f. In Vehicle Parking Meter (243 iParks) | 0.00 | $18,710.00 | 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; 2) the upgrade to wireless communication of all multi-space meters; and 3) increased enforcement productivity.

Agenda Item B

Date 6-3-09

Garages & Attended Lots: the overall revenue in the garages and lots decreased by 3.64%. This is a direct result of decreased transient use at the 17th Street Garage and 17th Street Lot.

Enforcement: the 17.50% increase in revenue is a result of a 10.61% increase in the number of citations issued.

Permit Sales: the increase in revenue is reflective of increased space rentals, including valet parking, and In-Vehicle Parking Meter (IVPM or iPark) sales and reloads which began on November 24, 2008.

Attached are detailed reports for each category listed above that comprises the total monthly revenue.

*Weather: 2 sunny, 13 partially sunny, 12 partially cloudy, and 3 rainy days.*

JMG/[illegible]/SF/RAR
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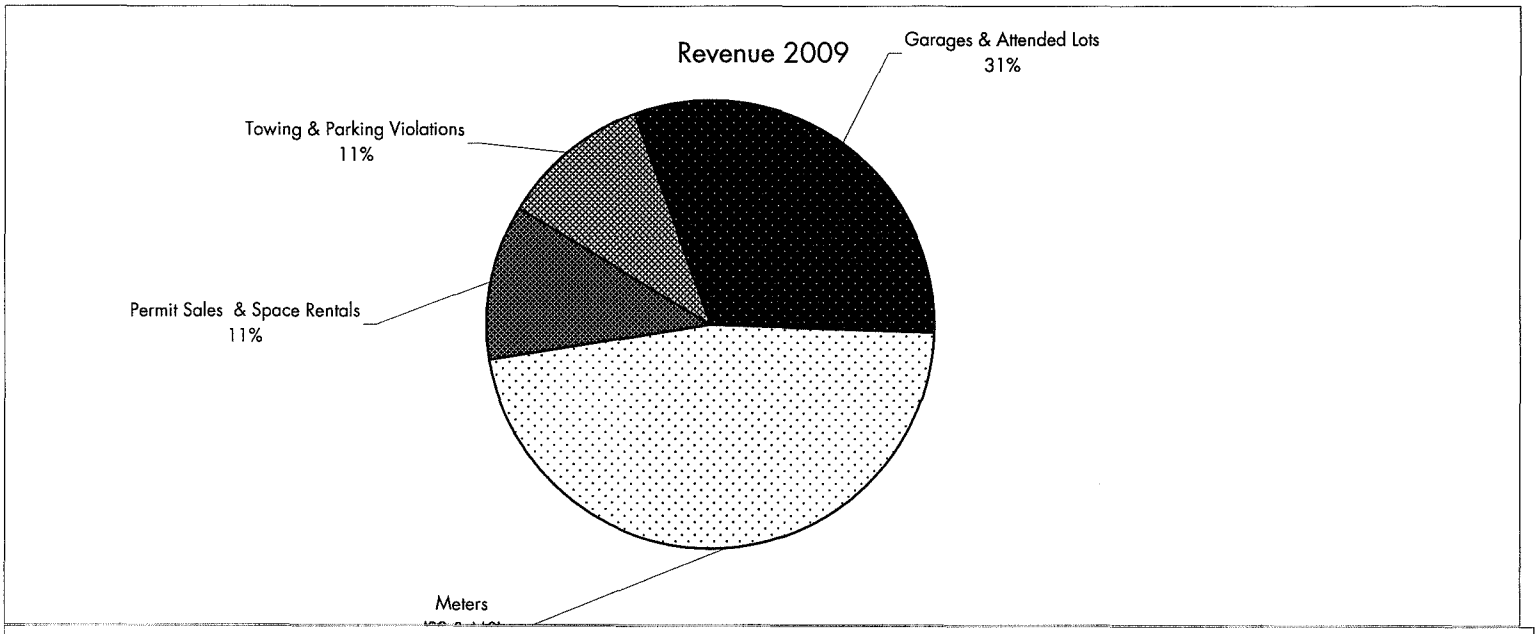
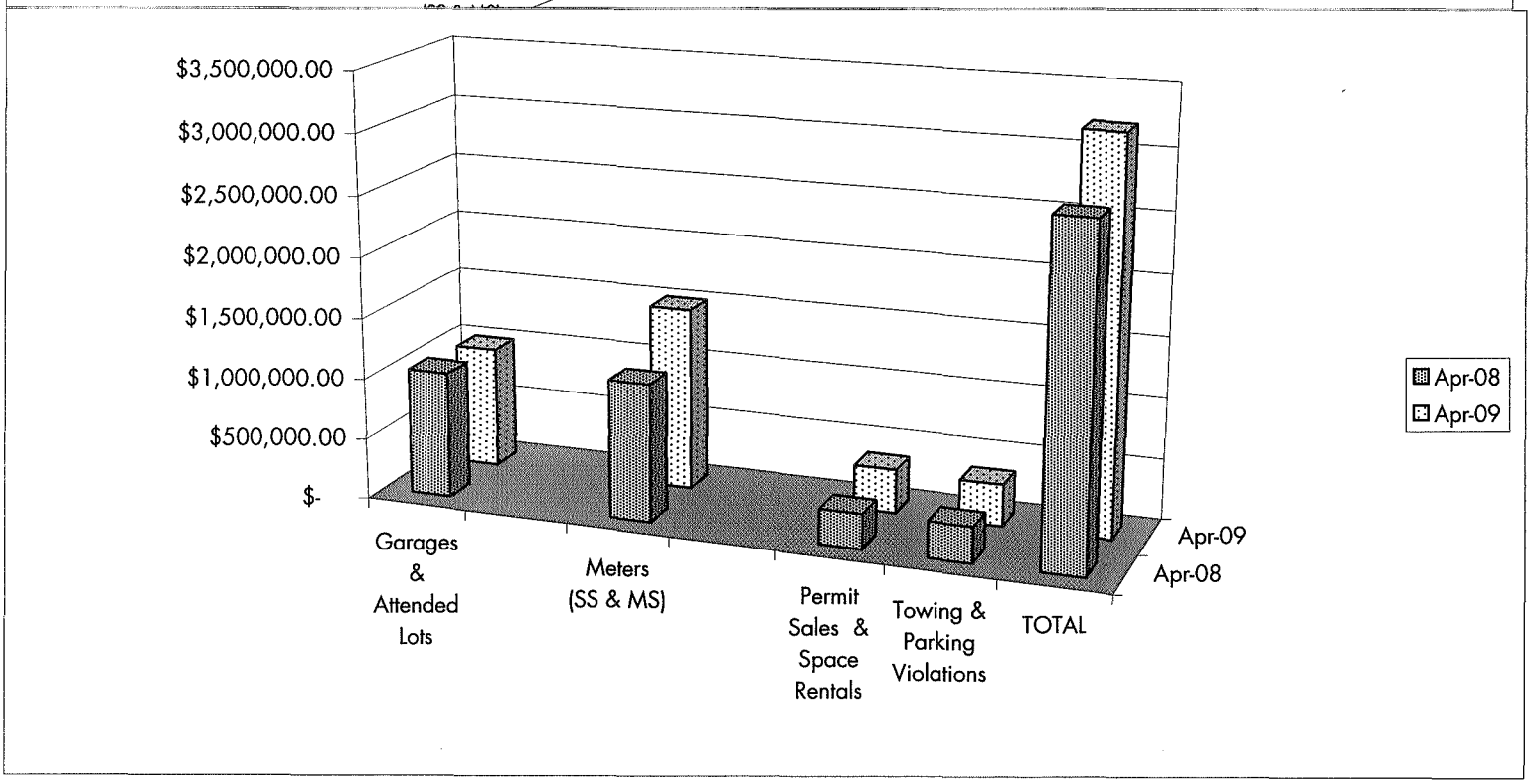
# PARKING DEPARTMENT REVENUE

April-09

| | Garages & Attended Lots | Meters (SS & MS) | Permit Sales & Space Rentals | Towing & Parking Violations | TOTAL |
|---|---|---|---|---|---|
| Apr-08 | $ 1,036,094.71 | $ 1,130,906.34 | $ 287,498.65 | $ 294,349.67 | $ 2,748,849.37 |
| Apr-09 | $ 998,334.22 | $ 1,504,766.85 | $ 362,575.67 | $ 345,866.94 | $ 3,211,543.68 |
| Diff | $ (37,760.49) | $ 373,860.51 | $ 75,077.02 | $ 51,517.27 | $ 462,694.31 |
| % | -3.64% | 33.06% | 26.11% | 17.50% | 16.83% |

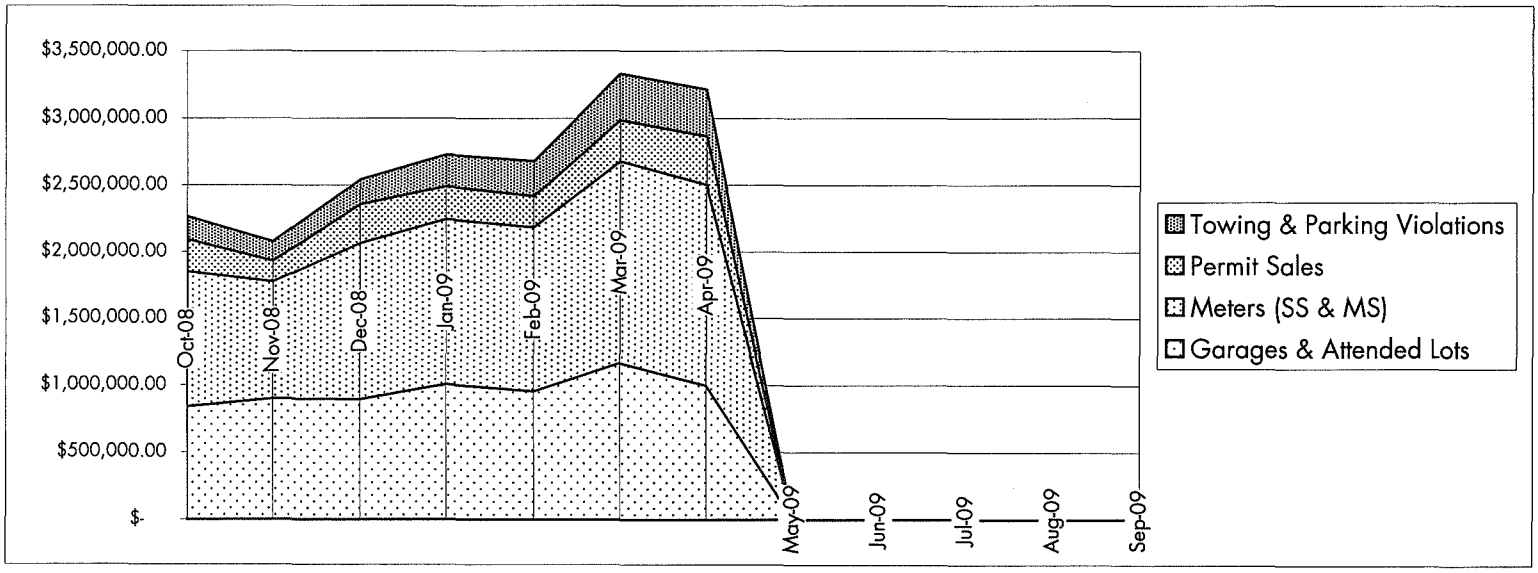


# PARKING DEPARTMENT REVENUE YTD

April-09

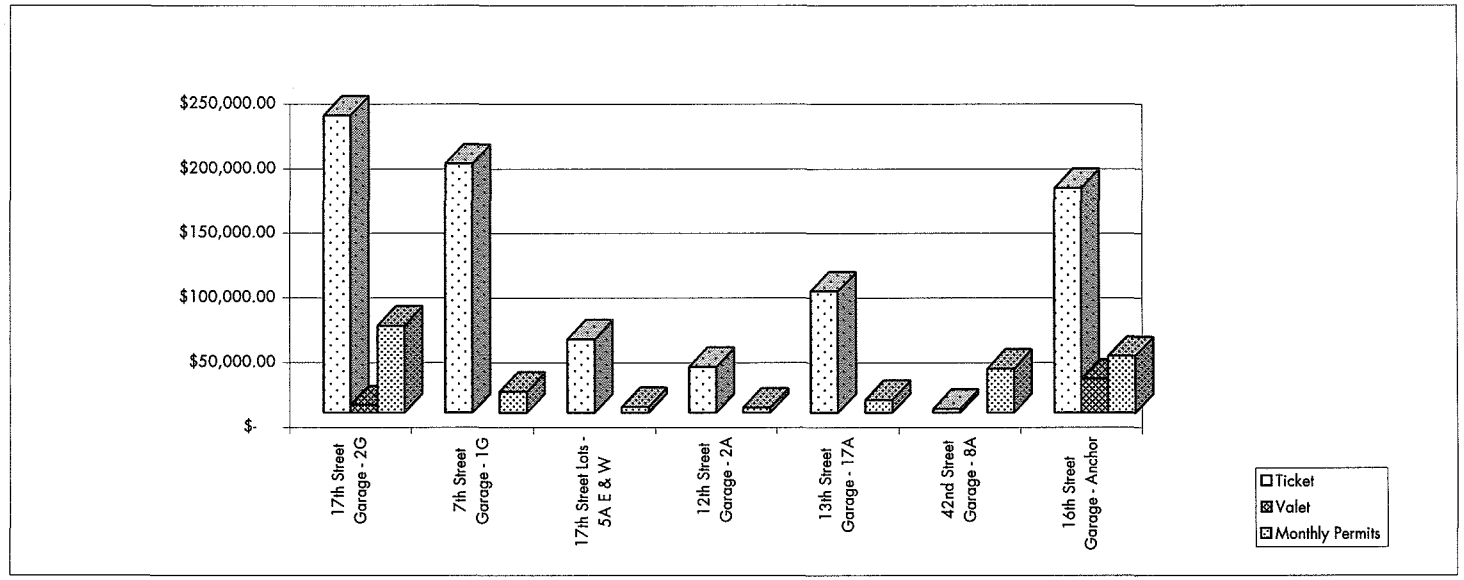
| | Garages & Attended Lots | Meters (SS & MS) | Permit Sales | Towing & Parking Violations | TOTAL |
|---|---|---|---|---|---|
| Oct-08 | $ 839,507.39 | $ 1,011,911.34 | $ 240,276.94 | $ 174,467.02 | $ 2,266,162.69 |
| Nov-08 | $ 898,793.27 | $ 875,193.68 | $ 155,507.61 | $ 146,992.60 | $ 2,076,487.16 |
| 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 | $ 1,164,886.63 | $ 1,515,725.47 | $ 305,407.06 | $ 346,167.87 | $ 3,332,187.03 |
| Apr-09 | $ 998,334.22 | $ 1,504,766.85 | $ 362,575.67 | $ 345,866.94 | $ 3,211,543.68 |
| May-09 | | | | | $ - |
| Jun-09 | | | | | $ - |
| Jul-09 | | | | | $ - |
| Aug-09 | | | | | $ - |
| Sep-09 | | | | | $ - |
| | | | | | |
| YTD | $ 6,757,343.21 | $ 8,543,820.16 | $ 1,837,612.41 | $ 1,699,101.04 | $ 18,837,876.82 |



# PARKING GARAGE REVENUE CATEGORIES

April-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 | $ 229,896.32 | $ 192,813.11 | $ 56,829.89 | $ 35,557.02 | $ 93,823.39 | $ 3,202.80 | $ 173,863.52 | $ 785,986.05 |
| Valet | $ 5,950.00 | | | | | | $ 26,283.17 | $ 32,233.17 |
| Monthly Permits | $ 67,130.00 | $ 16,425.00 | $ 4,620.00 | $ 3,990.00 | $ 10,080.00 | $ 34,020.00 | $ 43,850.00 | $ 180,115.00 |
| | $ 302,976.32 | $ 209,238.11 | $ 61,449.89 | $ 39,547.02 | $ 103,903.39 | $ 37,222.80 | $ 243,996.69 | $ 998,334.22 |



City of Miami Beach

Parking Department

Daily Vehicle Entry Report - April 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 | W | 2709 | 17:00-17:59 | 499 | 792 | 15:00-15:59 | 156 | 820 | 14:00-14:59 | 130 |
| 2 | TH | 2834 | 17:00-17:59 | 433 | 884 | 16:00-16:59 | 156 | 923 | 14:00-14:59 | 128 |
| 3 | F | 3871 | 22:00-22:59 | 535 | 1347 | 23:00-23:59 | 216 | 1090 | 17:00-17:59 | 133 |
| 4 | SA | 4379 | 21:00-21:59 | 727 | 1858 | 12:00-12:59 | 302 | 1556 | 16:00-16:59 | 201 |
| 5 | SU | 4017 | 19:00-19:59 | 681 | 2119 | 17:00-17:59 | 299 | 1338 | 17:00-17:59 | 229 |
| 6 | MO | 2390 | 16:00-16:59 | 348 | 1039 | 16:00-16:59 | 207 | 998 | 17:00-17:59 | 140 |
| 7 | TU | 2867 | 15:00-15:59 | 444 | 942 | 15:00-15:59 | 206 | 972 | 17:00-17:59 | 176 |
| 8 | W | 2918 | 17:00-17:59 | 445 | 863 | 17:00-17:59 | 168 | 791 | 14:00-14:59 | 151 |
| 9 | TH | 3142 | 17:00-17:59 | 448 | 1348 | 16:00-16:59 | 249 | 1334 | 08:00-08:59 | 433 |
| 10 | F | 4272 | 19:00-19:59 | 614 | 1673 | 16:00-16:59 | 288 | 1456 | 16:00-16:59 | 221 |
| 11 | SA | 3445 | 21:00-21:59 | 579 | 1855 | 11:00-11:59 | 262 | 1534 | 23:00-23:59 | 216 |
| 12 | SU | 3369 | 19:00-19:59 | 541 | 1542 | 12:00-12:59 | 289 | 1500 | 00:00-00:59 | 234 |
| 13 | MO | 2411 | 17:00-17:59 | 325 | 695 | 18:00-18:59 | 126 | 960 | 18:00-18:59 | 137 |
| 14 | TU | 2516 | 17:00-17:59 | 365 | 775 | 15:00-15:59 | 140 | 1059 | 18:00-18:59 | 161 |
| 15 | W | 2554 | 17:00-17:59 | 349 | 757 | 15:00-15:59 | 135 | 1056 | 08:00-08:59 | 206 |
| 16 | TH | 2860 | 17:00-17:59 | 398 | 1103 | 17:00-17:59 | 192 | 1249 | 18:00-18:59 | 184 |
| 17 | F | 3879 | 23:00-23:59 | 540 | 1350 | 15:00-15:59 | 219 | 1206 | 17:00-17:59 | 189 |
| 18 | SA | 4587 | 19:00-19:59 | 702 | 2001 | 11:00-11:59 | 324 | 1559 | 12:00-12:59 | 269 |
| 19 | SU | 4320 | 15:00-15:59 | 654 | 1747 | 17:00-17:59 | 310 | 1412 | 00:00-00:59 | 233 |
| 20 | MO | 2358 | 17:00-17:59 | 390 | 717 | 15:00-15:59 | 119 | 762 | 12:00-12:59 | 112 |
| 21 | TU | 2772 | 13:00-13:59 | 393 | 624 | 19:00-19:59 | 129 | 706 | 17:00-17:59 | 125 |
| 22 | W | 3892 | 19:00-19:59 | 569 | 872 | 14:00-14:59 | 169 | 816 | 18:00-18:59 | 126 |
| 23 | TH | 3309 | 14:00-14:59 | 550 | 1113 | 15:00-15:59 | 210 | 896 | 17:00-17:59 | 141 |
| 24 | F | 3665 | 22:00-22:59 | 504 | 1421 | 15:00-15:59 | 244 | 1108 | 17:00-17:59 | 152 |
| 25 | SA | 4282 | 19:00-19:59 | 765 | 1922 | 15:00-15:59 | 278 | 1490 | 23:00-23:59 | 198 |
| 26 | SU | 4155 | 14:00-14:59 | 770 | 1702 | 12:00-12:59 | 334 | 1399 | 14:00-14:59 | 237 |
| 27 | MO | 1898 | 17:00-17:59 | 341 | 683 | 18:00-18:59 | 119 | 771 | 17:00-17:59 | 124 |
| 28 | TU | 1967 | 17:00-17:59 | 339 | 834 | 18:00-18:59 | 154 | 664 | 17:00-17:59 | 105 |
| 29 | W | 2432 | 17:00-17:59 | 365 | 649 | 12:00-12:59 | 136 | 724 | 16:00-16:59 | 102 |
| 30 | TH | 2984 | 19:00-19:59 | 436 | 1056 | 08:00-08:59 | 166 | 874 | 17:00-17:59 | 126 |
| | | 97054 | | | 36283 | | | 33023 | | |

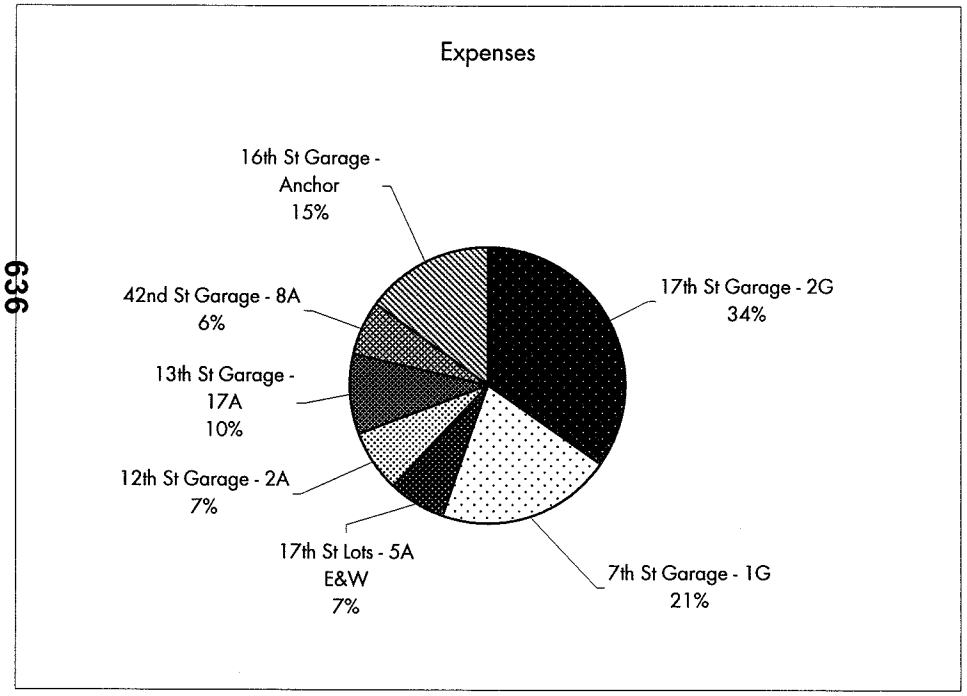
City of Miami Beach
Parking Department
Daily Vehicle Entry Report - April 2009

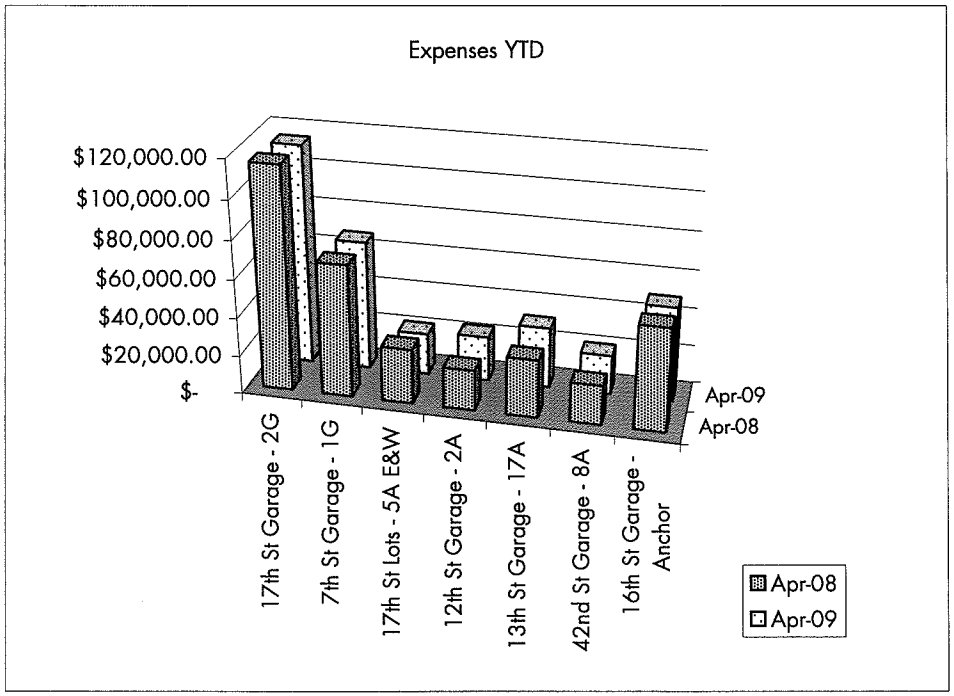
| | | 12th St Garage - 2A | | | 13th St Garage - 17A | | | 42nd St Garage - 8A | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Date | Day | Total Vehicle Entries | Peak Period | Peak Vehicle Count | Total Vehicle Entries | Peak Period | Peak Vehicle Count | Total Vehicle Entries | Peak Period | Peak Vehicle Count |
| 1 | W | 161 | 12:00-12:59 | 26 | 371 | 17:00-17:59 | 62 | 417 | 08:00-08:59 | 84 |
| 2 | TH | 172 | 13:00-13:59 | 31 | 475 | 16:00-16:59 | 83 | 417 | 08:00-08:59 | 74 |
| 3 | F | 223 | 00:00-00:59 | 31 | 538 | 15:00-15:59 | 74 | 407 | 16:00-16:59 | 75 |
| 4 | SA | 344 | 16:00-16:59 | 52 | 657 | 16:00-16:59 | 109 | 173 | 22:00-22:59 | 37 |
| 5 | SU | 271 | 18:00-18:59 | 49 | 642 | 17:00-17:59 | 110 | 125 | 14:00-14:59 | 29 |
| 6 | MO | 193 | 20:00-20:59 | 39 | 459 | 14:00-14:59 | 99 | 408 | 08:00-08:59 | 80 |
| 7 | TU | 151 | 15:00-15:59 | 27 | 507 | 14:00-14:59 | 98 | 400 | 08:00-08:59 | 85 |
| 8 | W | 138 | 17:00-17:59 | 32 | 484 | 15:00-15:59 | 88 | 376 | 16:00-16:59 | 71 |
| 9 | TH | 223 | 17:00-17:59 | 29 | 526 | 16:00-16:59 | 95 | 383 | 16:00-16:59 | 80 |
| 10 | F | 306 | 13:00-13:59 | 57 | 680 | 16:00-16:59 | 116 | 308 | 16:00-16:59 | 56 |
| 11 | SA | 325 | 23:00-23:59 | 48 | 661 | 15:00-15:59 | 128 | 146 | 07:00-07:59 | 33 |
| 12 | SU | 257 | 17:00-17:59 | 58 | 658 | 16:00-16:59 | 122 | 107 | 14:00-14:59 | 25 |
| 13 | MO | 131 | 18:00-18:59 | 29 | 347 | 17:00-17:59 | 66 | 404 | 17:00-17:59 | 72 |
| 14 | TU | 120 | 17:00-17:59 | 26 | 349 | 17:00-17:59 | 58 | 419 | 16:00-16:59 | 88 |
| 15 | W | 153 | 14:00-14:59 | 29 | 371 | 17:00-17:59 | 60 | 424 | 08:00-08:59 | 94 |
| 16 | TH | 202 | 17:00-17:59 | 27 | 519 | 17:00-17:59 | 93 | 401 | 08:00-08:59 | 75 |
| 17 | F | 256 | 00:00-00:59 | 40 | 635 | 17:00-17:59 | 88 | 383 | 16:00-16:59 | 66 |
| 18 | SA | 349 | 23:00-23:59 | 51 | 633 | 23:00-23:59 | 105 | 148 | 06:00-06:59 | 35 |
| 19 | SU | 246 | 13:00-13:59 | 47 | 680 | 17:00-17:59 | 126 | 124 | 06:00-06:59 | 33 |
| 20 | MO | 152 | 18:00-18:59 | 28 | 405 | 14:00-14:59 | 73 | 402 | 14:00-14:59 | 78 |
| 21 | TU | 157 | 01:00-01:59 | 29 | 341 | 18:00-18:59 | 55 | 426 | 16:00-16:59 | 89 |
| 22 | W | 144 | 17:00-17:59 | 31 | 378 | 14:00-14:59 | 69 | 406 | 16:00-16:59 | 86 |
| 23 | TH | 218 | 16:00-16:59 | 38 | 454 | 18:00-18:59 | 72 | 409 | 16:00-16:59 | 83 |
| 24 | F | 239 | 17:00-17:59 | 36 | 620 | 15:00-15:59 | 99 | 398 | 08:00-08:59 | 68 |
| 25 | SA | 327 | 13:00-13:59 | 49 | 708 | 17:00-17:59 | 102 | 155 | 13:00-13:59 | 31 |
| 26 | SU | 265 | 13:00-13:59 | 51 | 609 | 17:00-17:59 | 112 | 127 | 06:00-06:59 | 31 |
| 27 | MO | 119 | 18:00-18:59 | 26 | 315 | 17:00-17:59 | 63 | 375 | 08:00-08:59 | 82 |
| 28 | TU | 105 | 17:00-17:59 | 28 | 328 | 14:00-14:59 | 56 | 391 | 08:00-08:59 | 70 |
| 29 | W | 125 | 17:00-17:59 | 28 | 287 | 15:00-15:59 | 55 | 377 | 16:00-16:59 | 79 |
| 30 | TH | 190 | 23:00-23:59 | 25 | 448 | 18:00-18:59 | 66 | 411 | 16:00-16:59 | 85 |
| | | 6262 | | | 15085 | | | 9847 | | |

# PARKING GARAGE EXPENSES

April-09

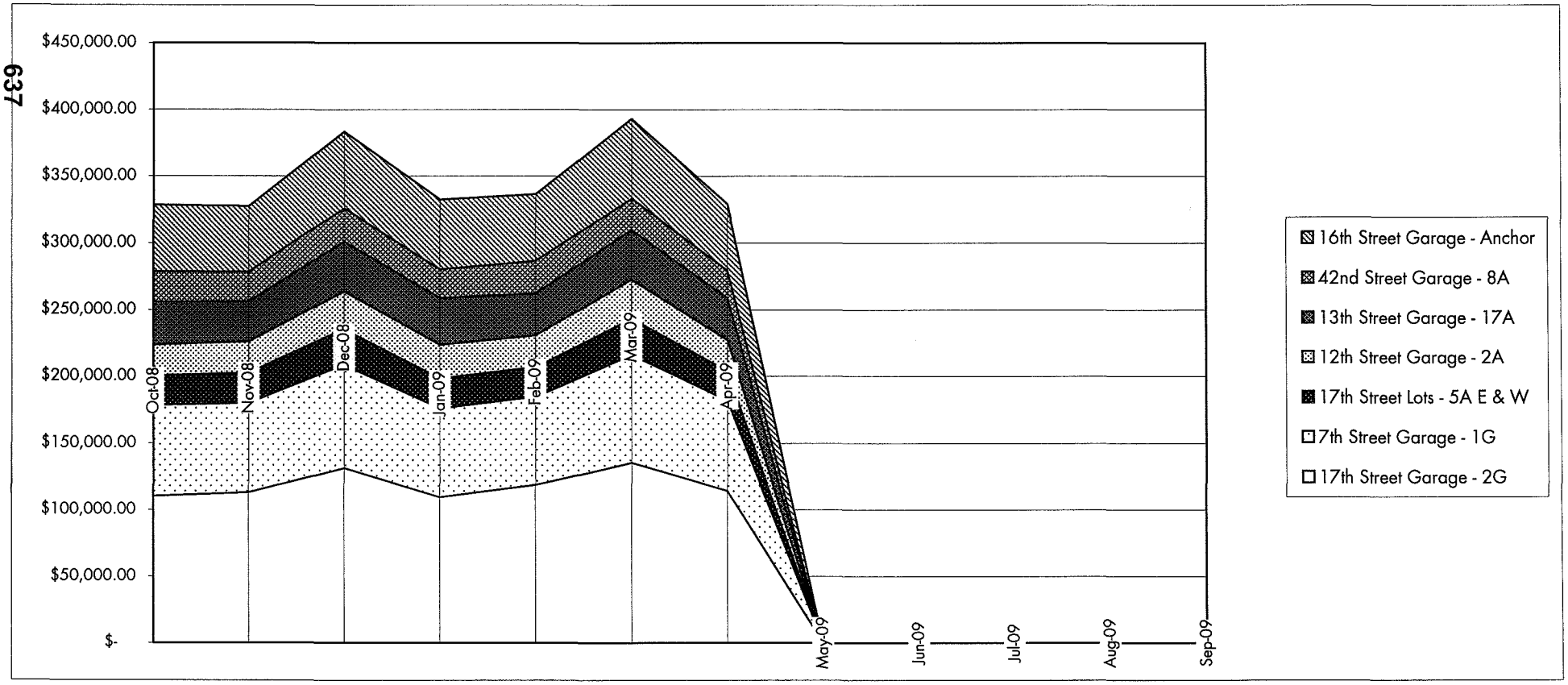
| | 17th St Garage - 2G | 7th St Garage - 1G | 17th St Lots - 5A E&W | 12th St Garage - 2A | 13th St Garage - 17A | 42nd St Garage - 8A | 16th St Garage - Anchor | TOTAL |
|---|---|---|---|---|---|---|---|---|
| Apr-08 | $ 115,902.32 | $ 69,066.87 | $ 28,564.52 | $ 21,218.29 | $ 30,194.78 | $ 20,669.35 | $ 53,925.41 | $ 339,541.54 |
| Apr-09 | $ 114,589.04 | $ 67,468.66 | $ 21,759.44 | $ 23,492.69 | $ 31,726.63 | $ 20,546.05 | $ 49,374.54 | $ 328,957.05 |
| DIFF | $ (1,313.28) | $ (1,598.21) | $ (6,805.08) | $ 2,274.40 | $ 1,531.85 | $ (123.30) | $ (4,550.87) | $ (10,584.49) |
| % | -1.13% | -2.31% | -23.82% | 10.72% | 5.07% | -0.60% | -8.44% | -3.12% |



# 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 | $ 135,597.43 | $ 80,537.49 | $ 27,422.48 | $ 29,319.64 | $ 36,987.67 | $ 23,280.18 | $ 60,123.12 | $ 393,268.01 |
| Apr-09 | $ 114,589.04 | $ 67,468.66 | $ 21,759.44 | $ 23,492.69 | $ 31,726.63 | $ 20,546.05 | $ 49,374.54 | $ 328,957.05 |
| May-09 | | | | | | | | $ - |
| Jun-09 | | | | | | | | $ - |
| Jul-09 | | | | | | | | $ - |
| Aug-09 | | | | | | | | $ - |
| Sep-09 | | | | | | | | $ - |
| | $ 833,887.51 | $ 492,119.62 | $ 165,234.89 | $ 176,820.75 | $ 235,679.36 | $ 159,134.87 | $ 367,258.41 | $ 2,430,135.41 |

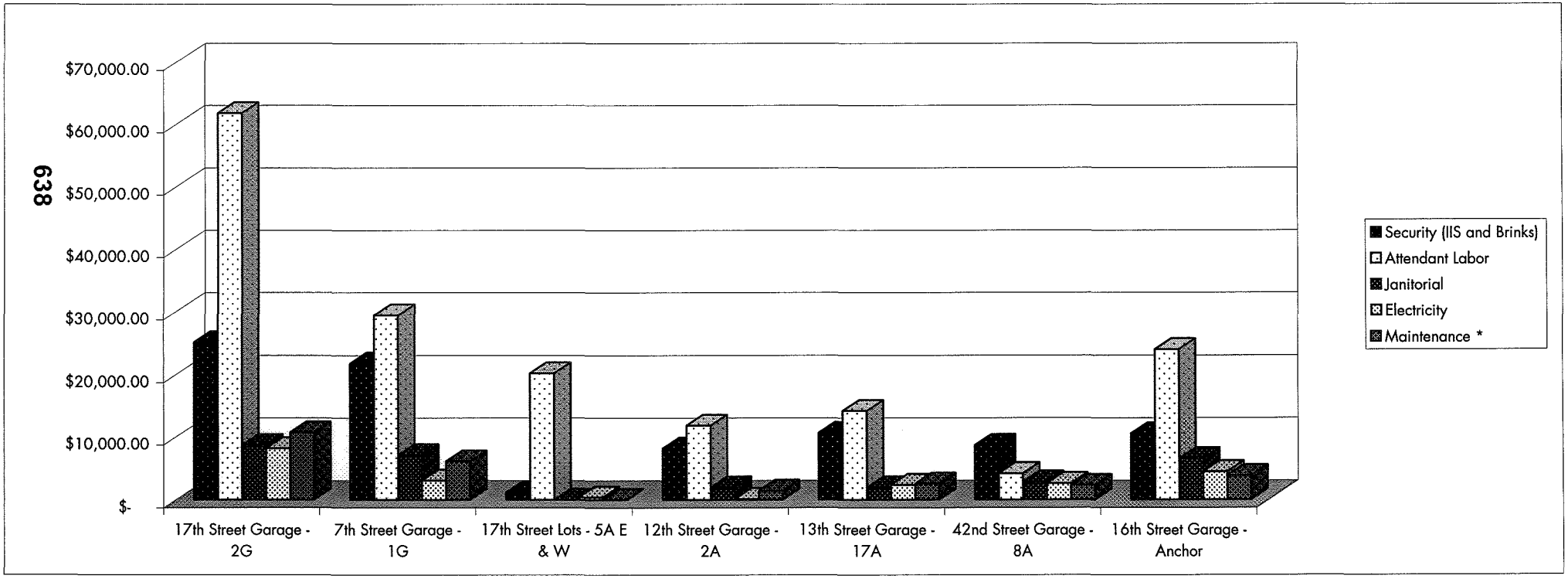


# PARKING GARAGE EXPENSES CATEGORIES

April-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) | $ 25,131.50 | $ 21,768.96 | $ 1,144.80 | $ 8,160.28 | $ 10,667.40 | $ 8,690.03 | $ 10,575.36 | $ 86,138.33 |
| Attendant Labor | $ 61,824.42 | $ 29,441.41 | $ 20,223.16 | $ 11,848.01 | $ 14,198.51 | $ 4,184.82 | $ 24,020.26 | $ 165,740.59 |
| Janitorial | $ 8,706.67 | $ 7,086.13 | $ - | $ 1,951.00 | $ 1,951.00 | $ 2,799.80 | $ 6,528.20 | $ 29,022.80 |
| Electricity | $ 8,180.06 | $ 3,056.40 | $ 391.48 | $ 108.54 | $ 2,350.94 | $ 2,575.86 | $ 4,445.88 | $ 21,109.16 |
| Maintenance * | $ 10,746.39 | $ 6,115.76 | $ - | $ 1,424.86 | $ 2,558.78 | $ 2,295.54 | $ 3,804.84 | $ 26,946.17 |
| | $ 114,589.04 | $ 67,468.66 | $ 21,759.44 | $ 23,492.69 | $ 31,726.63 | $ 20,546.05 | $ 49,374.54 | $ 328,957.05 |

* Includes Landscape, Revenue Control, Elevator & Surveillance



**CITY OF MIAMI BEACH**
**PARKING DEPARTMENT**
**FINANCIAL REPORT SUMMARY**
**APRIL 2009**

| LOCATION | REVENUE 2008 April | REVENUE 2009 April | REVENUE Increase/ (Decrease) | REVENUE Percent of Increase/ (Decrease) | EXPENSES 2008 April | EXPENSES 2009 April | EXPENSES Increase/ (Decrease) | EXPENSES Percent of Increase/ (Decrease) | PROFIT/(LOSS) 2008 April | PROFIT/(LOSS) 2009 April | PROFIT/(LOSS) Increase/ (Decrease) | PROFIT/(LOSS) Percent of Increase/ (Decrease) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **17 St. Garage** | 364,289.79 | 302,976.32 | **(61,313.47)** | **-16.83%** | 115,902.32 | 114,589.04 | **(1,313.28)** | **-1.13%** | 248,387.47 | 188,387.28 | **(60,000.19)** | **-24.16%** |
| **7th St. Garage** | 195,768.67 | 209,238.11 | **13,469.44** | **6.88%** | 69,066.87 | 67,468.66 | **(1,598.21)** | **-2.31%** | 126,701.80 | 141,769.45 | **15,067.65** | **11.89%** |
| **17th St. Lots** | 77,862.89 | 61,449.89 | **(16,413.00)** | **-21.08%** | 28,564.52 | 21,759.44 | **(6,805.08)** | **-23.82%** | 49,298.37 | 39,690.45 | **(9,607.92)** | **-19.49%** |
| **12th St. Garage** | 39,902.25 | 39,547.02 | **(355.23)** | **-0.89%** | 21,218.29 | 23,492.69 | **2,274.40** | **10.72%** | 18,683.96 | 16,054.33 | **(2,629.63)** | **-14.07%** |
| **13th St. Garage** | 97,601.97 | 103,903.39 | **6,301.42** | **6.46%** | 30,194.78 | 31,726.63 | **1,531.85** | **5.07%** | 67,407.19 | 72,176.76 | **4,769.57** | **7.08%** |
| **42nd St. Garage** | 35,267.00 | 37,222.80 | **1,955.80** | **5.55%** | 20,669.35 | 20,546.05 | **(123.30)** | **-0.60%** | 14,597.65 | 16,676.75 | **2,079.10** | **14.24%** |
| **16th St. - Anchor** | 225,402.14 | 243,996.69 | **18,594.55** | **8.25%** | 53,925.41 | 49,374.54 | **(4,550.87)** | **-8.44%** | 171,476.73 | 194,622.15 | **23,145.42** | **13.50%** |
| **Totals** | **1,036,094.71** | **998,334.22** | **(37,760.49)** | **-3.64%** | **339,541.54** | **328,957.05** | **(10,584.49)** | **-3.12%** | **696,553.17** | **669,377.17** | **(27,176.00)** | **-3.90%** |

639

| | Revenue Per Space | Expenses Per Space | Profit/(Loss) Per Space | |
|---|---|---|---|---|
| **17 St. Garage** | 207.52 | 78.49 | 129.03 | The 17th Street Garage has 1,460 spaces. |
| **7th St. Garage** | 323.90 | 104.44 | 219.46 | The 7th Street Garage has 646 spaces. |
| **17th St. Lots** | 121.44 | 43.00 | 78.44 | The 17th Street Lots have 506 spaces. |
| **12th St. Garage** | 295.13 | 175.32 | 119.81 | The 12th Street Garage has 134 spaces. |
| **13th St. Garage** | 363.30 | 110.93 | 252.37 | The 13th Street Garage has 286 spaces. |
| **42nd St. Garage** | 60.04 | 33.14 | 26.90 | The 42nd Street Garage has 620 spaces. |
| **16th St. - Anchor** | 303.86 | 61.49 | 242.37 | The 16th Street - Anchor Garage has 803 spaces. |

CITY OF MIAMI BEACH
PARKING DEPARTMENT
FINANCIAL REPORT SUMMARY-YEAR TO DATE
APRIL 2009

| LOCATION | REVENUE 2008 April YTD | REVENUE 2009 April YTD | REVENUE Increase/ (Decrease) | REVENUE Percent of Increase/ (Decrease) | EXPENSES 2008 April YTD | EXPENSES 2009 April YTD | EXPENSES Increase/ (Decrease) | EXPENSES Percent of Increase/ (Decrease) | PROFIT/(LOSS) 2008 April YTD | PROFIT/(LOSS) 2009 April YTD | PROFIT/(LOSS) Increase/ (Decrease) | PROFIT/(LOSS) Percent of Increase/ (Decrease) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **17 St. Garage** | 2,294,105.51 | 2,246,848.23 | **(47,257.28)** | **-2.06%** | 902,846.99 | 833,887.51 | **(68,959.48)** | **-7.64%** | 1,391,258.52 | 1,412,960.72 | **21,702.20** | **1.56%** |
| **7th St. Garage** | 1,244,329.18 | 1,266,784.35 | **22,455.17** | **1.80%** | 510,619.47 | 492,119.62 | **(18,499.85)** | **-3.62%** | 733,709.71 | 774,664.73 | **40,955.02** | **5.58%** |
| **17th St. Lots** | 1,135,236.05 | 463,633.35 | **(671,602.70)** | **-59.16%** | 263,522.88 | 165,234.89 | **(98,287.99)** | **-37.30%** | 871,713.17 | 298,398.46 | **(573,314.71)** | **-65.77%** |
| **12th St. Garage** | 255,401.84 | 266,833.69 | **11,431.85** | **4.48%** | 161,717.57 | 176,820.75 | **15,103.18** | **9.34%** | 93,684.27 | 90,012.94 | **(3,671.33)** | **-3.92%** |
| **13th St. Garage** | 587,627.97 | 687,211.74 | **99,583.77** | **16.95%** | 231,007.27 | 235,679.36 | **4,672.09** | **2.02%** | 356,620.70 | 451,532.38 | **94,911.68** | **26.61%** |
| **42nd St. Garage** | 258,405.35 | 280,951.06 | **22,545.71** | **8.72%** | 156,471.66 | 159,134.87 | **2,663.21** | **1.70%** | 101,933.69 | 121,816.19 | **19,882.50** | **19.51%** |
| **16th St. - Anchor** | 1,518,671.12 | 1,545,080.79 | **26,409.67** | **1.74%** | 383,269.84 | 367,258.41 | **(16,011.43)** | **-4.18%** | 1,135,401.28 | 1,177,822.38 | **42,421.10** | **3.74%** |
| **Totals** | **7,293,777.02** | **6,757,343.21** | **(536,433.81)** | **-7.35%** | **2,609,455.68** | **2,430,135.41** | **(179,320.27)** | **-6.87%** | **4,684,321.34** | **4,327,207.80** | **(357,113.54)** | **-7.62%** |

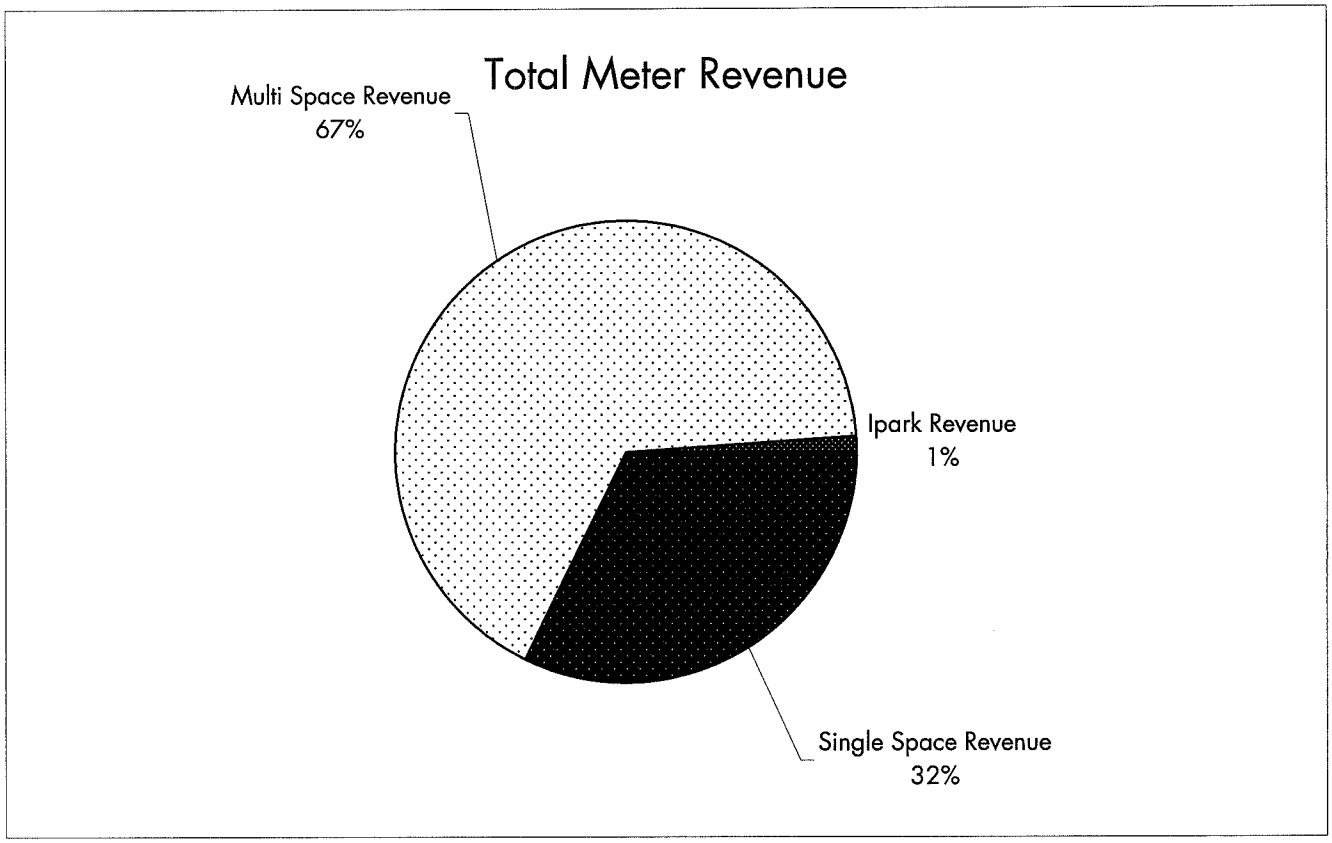
640

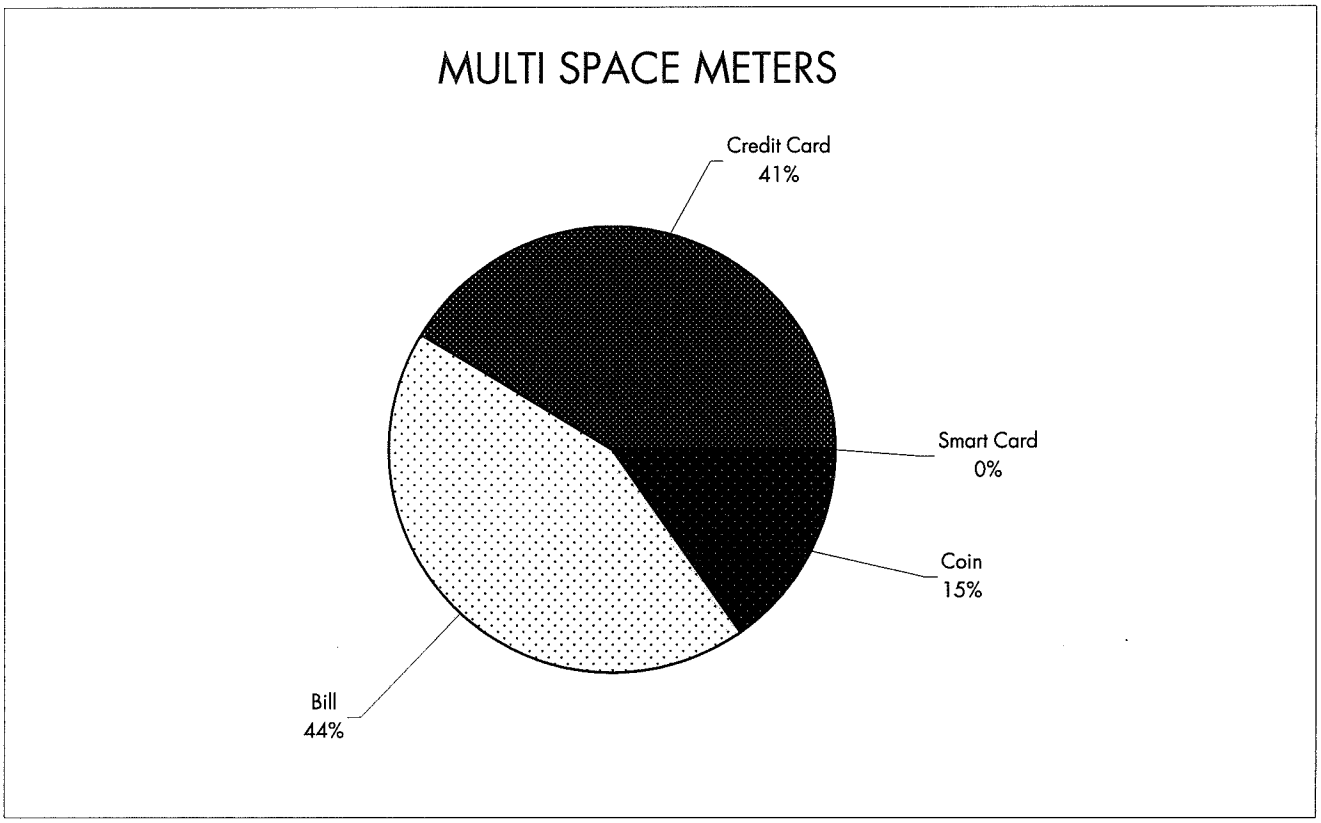
| | Revenue Per Space | Expenses Per Space | Profit/(Loss) Per Space | |
|---|---|---|---|---|
| **17 St. Garage** | 1,538.94 | 571.16 | 967.78 | The 17th Street Garage has 1,460 spaces. |
| **7th St. Garage** | 1,960.97 | 761.80 | 1,199.17 | The 7th Street Garage has 646 spaces. |
| **17th St. Lots** | 916.27 | 326.55 | 589.72 | The 17th Street Lots have 506 spaces. |
| **12th St. Garage** | 1,991.30 | 1,319.56 | 671.74 | The 12th Street Garage has 134 spaces. |
| **13th St. Garage** | 2,402.84 | 824.05 | 1,578.78 | The 13th Street Garage has 286 spaces. |
| **42nd St. Garage** | 453.15 | 256.67 | 196.48 | The 42nd Street Garage has 620 spaces. |
| **16th St. - Anchor** | 1,924.14 | 457.36 | 1,466.78 | The 16th Street - Anchor Garage has 803 spaces. |

# PARKING DEPARTMENT METER REVENUE

% of USAGE

Apr-09



## IPARK SALES

Apr-09

| | IPARK DEVICE SALES | | $25 - RELOAD SALES | | $50 - RELOAD SALES | | TOTAL RELOADS | GRAND TOTAL |
|---|---|---|---|---|---|---|---|---|
| | QTY | AMOUNT | QTY | AMOUNT | QTY | AMOUNT | | |
| RESIDENT | 197 | $ 3,940.00 | 143 | $ 3,575.00 | 153 | $ 7,650.00 | $ 11,225.00 | **$ 15,165.00** |
| NON-RESI | 46 | $ 920.00 | 49 | $ 1,225.00 | 28 | $ 1,400.00 | $ 2,625.00 | **$ 3,545.00** |
| | **243** | **$ 4,860.00** | **192** | **$ 4,800.00** | **181** | **$ 9,050.00** | **$ 13,850.00** | **$ 18,710.00** |

## 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 | 211 | 39 | 250 | 127 | 26 | 133 | 36 | $ 17,275.00 |
| Apr-09 | 197 | 46 | 243 | 143 | 49 | 153 | 28 | $ 18,710.00 |
| May-09 | | | | | | | | |
| Jun-09 | | | | | | | | |
| Jul-09 | | | | | | | | |
| Aug-09 | | | | | | | | |
| Sep-09 | | | | | | | | |
| **YTD** | **1759** | **245** | **2004** | **606** | **173** | **533** | **129** | **$ 92,655.00** |

*NOTE: IPark sales began on November 24, 2008.*

**CITY OF MIAMI BEACH**
**PARKING DEPARTMENT**
**ELECTRONIC METER REVENUE COMPARISON**
**April 2009**

| LOCATION | Accounting Code | # of Spaces | 2008 April | 2009 April | Increase/ (Decrease) | % of Inc/(Dec) |
|---|---|---|---|---|---|---|
| *1X - (Washington - 4th & Lincoln) - On Street* | *480-8000-344501* | *291* | *$46,936.83* | *$75,263.13* | *28,326.30* | *60.35%* |
| P2 (1A - (1st Street & Ocean Dr.) - Off Street) | 480-8000-344502 | 62 | *$3,099.19* | *$6,243.73* | *3,144.54* | |
| P2 (1A - (1st Street & Ocean Dr.) - Attended) | 480-8000-344502 | 0 | *$27,911.21* | *$21,423.36* | | |
| Total | | 62 | 31,010.40 | 27,667.09 | (3,343.31) | -10.78% |
| P3 (1B - (78 Washington Avenue) - Off Street) | 480-8000-344617 | 12 | $889.32 | $1,340.21 | 450.89 | 50.70% |
| *2X - (Washington - 5th & Lincoln) - On Street* | *480-8000-344503* | *370* | $54,351.03 | $76,534.66 | *22,183.63* | *40.82%* |
| P11 (2B - (6/7 & Meridian) - Off Street) | 480-8000-344505 | 25 | $631.59 | $1,375.65 | 744.06 | 117.81% |
| *3X - (Collins & Euclid Ave.) On Street* | *480-8000-344507* | *68* | $10,359.17 | $14,840.76 | *4,481.59* | *43.26%* |
| *4X - (Alton 7th St.- Dade Blvd.) - On Street* | *480-8000-344509* | *491* | $98,710.20 | $174,586.70 | *75,876.50* | *76.87%* |
| 4B - (Alton & 20th St.-Purdy-Dade Blvd.) - On Street | 480-8000-344511 | 213 | $20,441.40 | $13,689.49 | (6,751.91) | -33.03% |
| P24 (4C - (West Ave & 17th St. ) - Off Street) | 480-8000-344512 | 66 | $13,245.80 | $12,119.56 | (1,126.24) | -8.50% |
| P23 (4D - (West Ave & Lincoln Rd. ) - Off Street) | 480-8000-344513 | 30 | $4,015.73 | $3,690.94 | (324.79) | -8.09% |
| P29 (5C - (Convention Ctr. Dr. & 17th Street) - Off Stree | 480-8000-344517 | 85 | $7,252.48 | $8,940.29 | 1,687.81 | |
| P29 (5C - (Convention Ctr. Dr. & 17th Street) - Attended | 480-8000-344517 | 0 | 0.00 | 0.00 | | |
| Total | | 85 | 7,252.48 | 8,940.29 | 1,687.81 | 23.27% |
| 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! |
| P33 (5H - (19th Street & Meridian Ave) - Off Street) | 480-8000-344521 | 27 | $2,471.39 | $2,723.86 | 252.47 | 10.22% |
| *5M - (17th & Meridian Ave) - Off Street (TEMP P-LOT)* | *480-8000-344506* | *27* | $0.00 | $909.12 | | |
| *5M - (17th & Meridian Ave) - Attended* | *480-8000-344506* | *0* | 0.00 | 0.00 | | |
| Total | | | *0.00* | *909.12* | 909.12 | #DIV/0! |
| *6X - (Collins - 20th to 24th St) - On Street* | 480-8000-344522 | 236 | $28,313.64 | $60,574.38 | 32,260.74 | 113.94% |
| P48 (6A - (22nd Street & Park) - Off Street) | 480-8000-344523 | 14 | $1,071.65 | $1,346.36 | 274.71 | 25.63% |
| P48 (6A - (22nd Street & Park) - Attended) | 480-8000-344523 | | $0.00 | $24,955.15 | | |
| Total | | | $1,071.65 | $26,301.51 | | |
| P49 (6B - (Collins Ave & 21st Street) - Off Street) | 480-8000-344524 | 190 | $25,864.37 | $7,245.75 | (18,618.62) | -71.99% |
| P49 (6B - (Collins Ave & 21st Street) - Attended) | 480-8000-344524 | 0 | 0.00 | 42,476.66 | | |
| Total | | 190 | 25,864.37 | 49,722.41 | 23,858.04 | 92.24% |
| *7X - (Ocean - Biscayne - 15th St) - On Street* | *480-8000-344525* | *442* | *$82,209.30* | *$129,165.81* | *46,956.51* | *57.12%* |
| *7A - (Collins Ave, 4th to 15th St) - On Street* | *480-8000-344526* | *591* | *$137,043.40* | *$171,809.61* | *34,766.21* | *25.37%* |
| P14 (7C - (Collins Ave & 6th St) - Off Street) | 480-8000-344528 | 14 | *$686.47* | *$919.42* | | |
| P14 (7C - (Collins Ave & 6th St) - Attended) | 480-8000-344528 | 0 | 0.00 | 0.00 | | |
| Total | | 14 | 686.47 | 919.42 | 232.95 | 33.93% |
| 8X - (Pinetree-Alton - 40th to 42nd St) - On Street | 480-8000-344530 | 386 | $19,832.43 | $15,201.94 | (4,630.49) | -23.35% |
| G6 (8A - (42nd Street Garage) - Off Street Meters) | 480-8000-344531 | 11 | $541.45 | $524.03 | (17.42) | -3.22% |
| P63 (8B - (42nd Street & Royal Palm) - Off Street) | 480-8000-344532 | 173 | $4,101.11 | $4,328.90 | | |
| P63 (8B - (42nd Street & Royal Palm) - Attended) | 480-8000-344532 | 0 | 0.00 | 0.00 | | |
| Total | | 173 | 4,101.11 | 4,328.90 | 227.79 | 5.55% |
| P60 (8C - (40/41 Street & Chase) - Off Street) | 480-8000-344533 | 88 | $2,185.06 | $2,224.05 | 38.99 | 1.78% |
| P64 (8D - (47th Street & Pinetree) - Off Street) | 480-8000-344534 | 16 | $127.72 | $81.82 | (45.90) | -35.94% |
| P61 (8E - (41st Street & Alton) - Off Street) | 480-8000-344535 | 40 | $1,064.69 | $2,274.96 | 1,210.27 | 113.67% |
| P62 (8F - (41st Street & Jefferson) - Off Street) | 480-8000-344536 | 30 | $596.90 | $591.83 | (5.07) | -0.85% |
| 9X - (Collins - 64th to 79th St) - On Street | 480-8000-344537 | 527 | $43,584.52 | $51,417.99 | 7,833.47 | 17.97% |
| P84 (9A - (Harding & 71st St) - Off Street) | 480-8000-344538 | 48 | $2,923.48 | $1,886.05 | (1,037.43) | -35.49% |
| *P92 (9B - (72nd St. & Collins) - Off Street)* | *480-8000-344539* | *0* | $3,807.36 | $11,517.38 | | |
| *P92 (9B - (72nd St. & Collins) - Attended)* | *480-8000-344539* | *0* | *9,338.34* | *0.00* | | |
| Total | | 0 | *13,145.70* | *11,517.38* | (1,628.32) | -12.39% |
| P85 (9C (Carlyle & 71st St) - Off Street) | 480-8000-344540 | 14 | $90.89 | $104.42 | 13.53 | 14.89% |

**CITY OF MIAMI BEACH**
**PARKING DEPARTMENT**
**ELECTRONIC METER REVENUE COMPARISON**
**April 2009**

| LOCATION | Accounting Code | # of Spaces | 2008 April | 2009 April | Increase/ (Decrease) | % of Inc/(Dec) |
|---|---|---|---|---|---|---|
| P86 (9D - (Collins & 76th St) - Off Street) | 480-8000-344541 | 33 | $1,650.29 | $1,662.74 | 12.45 | 0.75% |
| P83 (9E - (71st St. & Harding) - Off Street) | 480-8000-344542 | 31 | $743.20 | $1,356.75 | 613.55 | 82.56% |
| P106 (9F - (75th & Collins ) - Off Street) | 480-8000-344543 | 106 | $5,839.98 | $7,352.96 | 1,512.98 | 25.91% |
| *P25 (10A - (Lincoln Lane & Lenox) - Off Street)* | *480-8000-344544* | *70* | $20,175.33 | $24,023.37 | *3,848.04* | *19.07%* |
| 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% |
| *P27 (10C - (Lincoln Lane & Meridian) - Off Street)* | *480-8000-344546* | *141* | *$43,158.15* | *$48,038.69* | *4,880.54* | *11.31%* |
| *P20 (10D - (Lincoln Lane & Jefferson - W) - Off Street)* | *480-8000-344547* | *62* | *$17,819.97* | *$21,168.54* | *3,348.57* | *18.79%* |
| *P19 (10E - (Lincoln Lane & Jefferson - E) - Off Street)* | *480-8000-344548* | *19* | *$7,245.34* | *$6,790.10* | *(455.24)* | *-6.28%* |
| *P18 (10F - (Lincoln Lane & Euclid) - Off Street)* | *480-8000-344549* | *36* | *$12,021.71* | *$13,524.57* | *1,502.86* | *12.50%* |
| *P21 (10G - (Lincoln Lane & Michigan) - Off Street )* | *480-8000-344550* | *21* | *$4,964.01* | *$5,820.94* | *856.93* | *17.26%* |
| P15 (11X - (Collins & 11th Street) - Off Street) | 480-8000-344551 | 0 | $0.00 | $0.00 | | |
| P15 (11X - (Collins & 11th Street) - Attended) | 480-8000-344551 | 0 | 0.00 | 0.00 | | |
| Total | | 0 | 0.00 | 0.00 | 0.00 | #DIV/0! |
| P12 (12X - (Washington & 9th Street) - Off Street) | 480-8000-344552 | 23 | $3,357.70 | $4,536.18 | 1,178.48 | 35.10% |
| P12 (12X - (Washington & 9th Street) - Attended) | 480-8000-344552 | 0 | 0.00 | 3,112.14 | | |
| Total | | 23 | 3,357.70 | 7,648.32 | 4,290.62 | 127.78% |
| P13 (13X - (Washington & 10th Street) - Off Street) | 480-8000-344553 | 33 | $6,282.46 | $6,191.15 | | |
| P13 (13X - (Washington & 10th Street) - Attended) | 480-8000-344553 | 0 | 0.00 | 5,593.46 | | |
| Total | | 33 | 6,282.46 | 11,784.61 | 5,502.15 | 87.58% |
| *15X - (16th to 18th East of Collins) - On Street* | *480-8000-344556* | *43* | *$19,151.94* | *$31,215.08* | *12,063.14* | *62.99%* |
| *15A - (Washington, 17th to 20th) - On Street* | *480-8000-344557* | *91* | *$16,006.54* | *$16,900.11* | *893.57* | *5.58%* |
| *15B - (Convention Center Drive) - On Street* | 480-8000-344558 | 46 | *$4,006.29* | *$3,419.34* | (586.95) | -14.65% |
| 16X - (25th to 32nd, E of Collins) - On Street | 480-8000-344559 | 78 | *$7,784.11* | *$6,396.61* | (1,387.50) | -17.82% |
| 16A - (35th to 43rd, E of Collins) - On Street | 480-8000-344560 | 117 | *$5,512.38* | *$7,263.01* | 1,750.63 | 31.76% |
| 16B - (Indian Crk Dr, 27th to 32nd) - On Street | 480-8000-344561 | 219 | *$6,572.29* | *$8,266.09* | 1,693.80 | 25.77% |
| 16C - ( Indian Crk - 33rd to 43rd) - On Street | 480-8000-344562 | 230 | *$16,076.84* | *$11,563.66* | (4,513.18) | -28.07% |
| *P56 (16D - (Collins Ave & 34th St) - Off Street)* | *480-8000-344563* | *64* | *$7,501.69* | *$4,327.02* | | |
| *P56 (16D - (Collins Ave & 34th St) - Attended)* | *480-8000-344563* | *0* | *0.00* | *0.00* | | |
| Total | | 64 | 7,501.69 | 4,327.02 | (3,174.67) | -42.32% |
| *P57 (16E - (Collins Ave & 35th St) - Off Street)* | *480-8000-344564* | *72* | *$12,896.94* | *$5,809.22* | | |
| *P57 (16E - (Collins Ave & 35th St) - Attended)* | *480-8000-344564* | *0* | *0.00* | *0.00* | | |
| Total | | 72 | 12,896.94 | 5,809.22 | (7,087.72) | -54.96% |
| P16 (17X - (Collins & 13th Street) - Off Street) | 480-8000-344565 | 54 | *$4,420.78* | *$7,356.55* | | |
| P16 (17X - (Collins & 13th Street) - Attended) | 480-8000-344565 | 0 | 19,654.21 | 15,336.46 | | |
| Total | | 54 | 24,074.99 | 22,693.01 | (1,381.98) | -5.74% |
| *P82 (18X - (Indian Crk & 65th St) - Off Street)* | 480-8000-344567 | 53 | *$793.28* | *$0.00* | (793.28) | -100.00% |
| *P81 (18A - (Collins & 64th St) - Off Street)* | 480-8000-344568 | 67 | *$2,441.11* | *$6,285.40* | | |
| *P81 (18A - (Collins & 64th St) - Attended)* | 480-8000-344568 | 0 | 5,183.18 | 0.00 | | |
| Total | | 67 | 7,624.29 | 6,285.40 | (1,338.89) | -17.56% |
| *P71 (19X - (Collins & 46th Street) - Off Street)* | *480-8000-344569* | *449* | *$4,942.48* | *$26,924.97* | | |
| *P71 (19X - (Collins & 46th Street) - Attended)* | *480-8000-344569* | *0* | *86,521.50* | *79,856.07* | | |
| Total | | 449 | 91,463.98 | 106,781.04 | 15,317.06 | 16.75% |
| 19A - (Collins & 46th Street) - On Street | 480-8000-344570 | 19 | *$1,246.12* | *$1,636.57* | 390.45 | 31.33% |

**CITY OF MIAMI BEACH**
**PARKING DEPARTMENT**
**ELECTRONIC METER REVENUE COMPARISON**
**April 2009**

| LOCATION | Accounting Code | # of Spaces | 2008 April | 2009 April | Increase/ (Decrease) | % of Inc/(Dec) |
|---|---|---|---|---|---|---|
| P72 (19B - (Collins & 53rd Street) - Off Street) | 480-8000-344571 | 158 | $5,732.68 | $10,223.20 | | |
| P72 (19B - (Collins & 53rd Street) - Attended) | 480-8000-344571 | 0 | 0.00 | 0.00 | | |
| Total | | 158 | 5,732.68 | 10,223.20 | 4,490.52 | 78.33% |
| P55 (20X - (Collins Ave & 27th St) - Off Street) | 480-8000-344572 | 121 | $4,705.65 | $5,469.36 | | |
| P55 (20X - (Collins Ave & 27th St) - Attended) | 480-8000-344572 | 0 | 0.00 | 0.00 | | |
| Total | | 121 | 4,705.65 | 5,469.36 | 763.71 | 16.23% |
| P91 (22X - (Carlyle & 72nd St ) - Off Street) | 480-8000-344574 | 45 | $722.56 | $746.37 | 23.81 | 3.30% |
| P110 (23X - (83rd & Abbott) - Off Street) | 480-8000-344575 | 25 | $88.22 | $90.30 | 2.08 | 2.36% |
| 24X - (Normandy Isle & Bay Dr) - On Street | 480-8000-344576 | 102 | $6,275.15 | $6,225.71 | (49.44) | -0.79% |
| P89 (24A - (Normandy Isle & Bay Dr) - Off Street) | 480-8000-344577 | 26 | $945.65 | $994.02 | 48.37 | 5.12% |
| *P88 (24B - (Normandy Isle & Vendome) - Off Street)* | 480-8000-344578 | 22 | $522.26 | $513.86 | (8.40) | -1.61% |
| P87 (24C - (Normandy Isle & Bay Rd S/S) - Off Street) | 480-8000-344579 | 33 | $1,052.73 | $471.98 | (580.75) | -55.17% |
| P90 (25X - (Bonita Drive & 71st St) - Off Street) | 480-8000-344580 | 15 | $467.80 | $373.05 | (94.75) | -20.25% |
| 26X - (Collins, 79th to 87th Terr) - On Street | 480-8000-344581 | 283 | $5,863.88 | $8,983.25 | 3,119.37 | 53.20% |
| 26Z - (Collins & 87th Street) - Off Street | 480-8000-344616 | 15 | $224.19 | $415.67 | 191.48 | 85.41% |
| *P26 (10X - (Lincoln Lane & Lenox) - Off Street)* | *480-8000-344582* | 99 | $32,038.23 | $34,219.82 | | |
| *P26 (10X - (Lincoln Lane & Lenox - Attended)* | *480-8000-344582* | 0 | 0.00 | 0.00 | | |
| Total | | 99 | 32,038.23 | 34,219.82 | 2,181.59 | 6.81% |
| P108 (26A - (Collins & 80th Street) - Off Street) | 480-8000-344584 | 62 | $1,317.66 | $0.00 | | |
| P108 (26A - (Collins & 80th Street) - Attended) | 480-8000-344584 | 0 | 0.00 | 0.00 | | |
| Total | | 62 | 1,317.66 | 0.00 | (1,317.66) | -100.00% |
| P111 (26B - (Collins & 84th Street) - Off Street) | 480-8000-344585 | 62 | $1,226.62 | $1,901.76 | 675.14 | 55.04% |
| P46 (4E (Purdy & 18th Street) - Off Street) | 480-8000-344586 | 39 | $8,350.46 | $5,991.90 | | |
| P46 (4E (Purdy & 18th Street) - Attended) | 480-8000-344586 | 0 | 0.00 | 3,612.15 | | |
| Total | | 39 | 8,350.46 | 9,604.05 | 1,253.59 | 15.01% |
| P58 (8G - (40th Street & Royal Palm) - Off Street) | 480-8000-344592 | 43 | $2,686.99 | $2,669.23 | (17.76) | -0.66% |
| P59 (8H - (40th Street & Prairie) - Off Street) | 480-8000-344594 | 71 | $3,449.14 | $3,092.71 | (356.43) | -10.33% |
| P107 (26C - (Collins & 79th Street) - Off Street) | 480-8000-344600 | 34 | $229.45 | $874.06 | 644.61 | 280.94% |
| P109 (26D - (Collins & 83rd Street) - Off Street) | 480-8000-344601 | 95 | $160.35 | $1,230.74 | 1,070.39 | 667.53% |
| P109 (26D - (Collins & 83rd Street) - Attended) | 480-8000-344601 | 0 | $0.00 | $0.00 | | |
| Total | | 95 | 160.35 | 1,230.74 | 1,070.39 | 667.53% |
| P1 (SLSP00 - (South Point Lot) - Off Street) | 480-8000-344602 | 215 | $0.00 | $14,914.54 | | |
| P1 (SLSP00 - (South Point Lot) - Attended) | 480-8000-344602 | 0 | 0.00 | 13,431.77 | | |
| Total | | 215 | 0.00 | 28,346.31 | 28,346.31 | #DIV/0! |
| P5 (4th & Alton Lot - Off Street) | 480-8000-344604 | 21 | $934.71 | $1,280.56 | 345.85 | 37.00% |
| 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% |
| *P22 (10H - (Lincoln Rd. So. & Lenox) - Off Street)* | 480-8000-344611 | 0 | $4,398.06 | $4,879.35 | 481.29 | 10.94% |
| 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 | $5,329.32 | $5,168.13 | (161.19) | -3.02% |
| 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 | $6,508.71 | $7,058.62 | | |
| *P51 - (23rd Street & Liberty Avenue East) - Attended* | *480-8000-344620* | 0 | 0.00 | 1,495.34 | | |
| *Total* | | | 6,508.71 | 8,553.96 | 2,045.25 | 31.42% |
| *P52 - (23rd Street & Liberty Avenue West) - Off Street* | *480-8000-344621* | 35 | $7,030.07 | $8,711.43 | | |
| *P52 - (23rd Street & Liberty Avenue West) - Attended* | *480-8000-344621* | 0 | 0.00 | 2,943.92 | | |
| Total | | | 7,030.07 | 11,655.35 | 4,625.28 | 65.79% |
| *P80- (71st Street & Byron) - Off Street* | *480-8000-344618* | 0 | $311.20 | $61.67 | | |
| *P80 -(71st Street & Byron) - Attended* | *480-8000-344618* | 0 | 0.00 | 0.00 | | |
| Total | | 0 | 311.20 | 61.67 | (249.53) | -80.18% |
| **TOTAL** | | | **$1,130,906.34** | **$1,504,766.85** | **$373,860.51** | **33.06%** |

NOTE: SLSP00-(SOUTH POINT LOT) IT IS CLOSED.
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

| ATION | 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 - REVENU** (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: June 3, 2009

SUBJECT: **STATUS REPORT ON THE NORMANDY SHORES GOLF COURSE CLUB HOUSE**

On April 9, 2009, the City received thirteen (13) bids for the construction of a club house at the Normandy Shores Golf Course that replicates the previous August Geiger designed club house. Following administrative review of the proposals and interviews with bidders' key personnel, the City Commission approved the award of a construction contract, at its May 13, 2009 meeting, to John Moriarty and Associates of Florida, Inc. at the not to exceed amount of $1,934,427.

Upon execution of the agreement, Notice to Proceed (NTP) #1 will be issued for the submittal of insurance documents and initiation of the permit process. When the construction permit is pulled, and the construction schedule is reviewed and accepted, NTP #2 will be issued and construction mobilization will begin. Construction duration should be twelve (12) months.

Since the Normandy Shores Golf Course Club House replica has been designed and the construction contract awarded, which was the principal reason for this item being placed as a regular status report, this will be the last regular Commission report for this item, unless directed otherwise.

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**Agenda Item** C
**Date** 6-3-09

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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: June 3, 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. | Various Medical Services | Mount Sinai Medical Center | 11/30/2009 | one year option to renew |
| 2. | Validate, Administer, Score, Report and Review Testing Programs | David Santisteban, Ph.D | 12/06/2009 | None |

AGENDA ITEM D
DATE 6-3-09

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# MIAMIBEACH

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

MEMO # COMMISSION MEMORANDUM

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

FROM: Jorge M. Gonzalez, City Manager

DATE: June 3, 2009

SUBJECT: Status Update on Wireless Miami Beach Project

The purpose of this Commission Memo is to communicate the current status of the Wireless Miami Beach Wi-Fi project.

IBM turned over the Wi-Fi network to the City and the City began final acceptance testing on Monday April 6. The data gathering portion of the field testing was completed as of May 6, and our independent engineer, Jim Geier, Wireless Nets, Inc., has analyzed the data collected and submitted his final report to the City. All tests of the Wi-Fi network were conducted in accordance with the approved and agreed upon final acceptance test plan and were observed by IBM.

To achieve the contract specifications the test results must show that the Wi-Fi network has achieved citywide coverage of 95 percent for outdoor coverage and 70 percent for indoor coverage, up to the second floor, with an average net throughput of one megabit per second up and down.

Outdoor Coverage

The test report from Wireless Nets, Inc. indicates that the system provides approximately 86 percent outdoor signal coverage, which fails to meet the 95 percent required coverage.

*Wireless-Nets recommends that CMB require IBM to increase the density of mesh nodes in the North Beach area, specifically 79th through 86th streets between Hawthorne Avenue and Crespi Blvd. This area has very poor signal coverage. IBM should also review all AirMagnet signal coverage data and determine where additional mesh nodes may be necessary to increase signal coverage to provide 95 percent or better outdoor coverage.*

Indoor Coverage

The system provides approximately 78 percent indoor signal coverage, which meets the 70 percent required coverage.

**Agenda Item** E

**Date** 6-3-09

In Motion Testing Results
The test of in motion connectivity failed for the optiClient IP phone application.

During this test, both the Ubiquity card and Tropos 4210 configurations experienced disruptions to the flow of data in addition to the disruption of the optiClient IP phone application. The Ubiquity card configuration, as compared to the Tropos 4210, experienced approximately 35 percent greater Ping timeouts, and the timeouts relative to the Ubiquity card lasted twice as long as the 4210 in some cases. As a result, the Tropos 4210 configuration appears to be performing better than the Ubiquity card configuration. This is likely due to the much higher transmitting power of the Tropos 4210 as compared to the Ubiquity card.

The Tropos 4210 is a mobile mesh node that Tropos specifically designed for satisfying public safety wireless connectivity requirements, such as seamless roaming, in conjunction with the Tropos mesh network system. The 4210 is a mesh node (not a Wi-Fi client card) and has external diversity antennas that mount on the vehicle's roof or trunk lid. It is possible to connect a laptop to the 4210 via Ethernet or Wi-Fi, which enables the laptop to be taken outside of the vehicle and utilize remotely. The Tropos 4210 connects to Tropos mesh nodes via Tropos mesh protocols, which takes full advantage of the Tropos routing and roaming functionality, something that a client card does not do.

*Wireless-Nets recommends that CMB require IBM to implement the Tropos 4210 as part of the system.*

Application Security Connection Test Results
Although the system provides adequate security, the Accela Wireless and City GIS applications fail to connect over the Wi-Fi system.

The test team found that NetMotion is blocking the machine-level authentication, which is blocking the applications from connecting to the network.

*A possible solution is to implement a script that holds off NetMotion from starting until after machine authentication completes.*

Backhaul Functionality
The system failed to provide adequate backhaul functionality.

*Wireless-Nets recommends that CMB require IBM to further investigate and correct all issues resulting in unsuccessful tests completed during the backhaul testing as explained in Section 3.6 of this report.*

Although IBM has not achieved the required contractual specifications and network performance, the results are extremely encouraging and demonstrate that we are very close to successfully completing this project and accomplishing what few, if any, cities have been able to achieve.

Therefore, Trish Walker and I will meet with IBM to discuss what steps they will take to resolve the remaining outstanding issues so that the system can enter the

90 day reliability period. The network must successfully perform during the reliability period before the City will accept the network.

If accepted by the City, the contract with IBM provides for the operation and maintenance of the network for a six year period from the date of acceptance, a 24 hour help desk for users, a content filtered connection for children, a total infrastructure refresh, an upgrade of the backhaul capacity of the network to WiMax and requires IBM to maintain the network at the state of the art through continuous upgrades over the contract term. Additionally, the City has a money back guarantee from IBM should the network not meet the required specifications in the form of incremental letters of credit provided by IBM for each progress payment made by the City. The total contract price is $5,167,800, which includes $1,505,669 for capital and $3,662,131 for maintenance and operation for the 6 year period.

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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: June 3, 2009

SUBJECT: **A REPORT ON THE 2009 FLORIDA LEGISLATIVE SESSION**

Attached, please find a copy of the Final Legislative Report on the 2009 Regular Session of the Florida Legislature, provided by the City's lobbyists. This report provides an overview and information regarding the economic, fiscal and political issues that impacted the session, federal stimulus funding, the City's legislative priorities, and other issues of interest to the City. Specific issues that are addressed include Elevator Safety, Condominium Reform, Bert Harris Act, Sexual Predators, Local Authority, the State of Florida Budget and Federal Stimulus Funding.

JMG/HF/kc

Attachment

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Agenda Item F

Date 6-3-09

*RUTLEDGE, ECENIA & PURNELL*
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JONATHAN M. COSTELLO
MARGARET A. MENDUNI

# MEMORANDUM

TO: Mayor Matti Bower
City Commissioners and City Manager Gonzalez
City of Miami Beach

VIA: E-mail to Kevin Crowder

FROM: Gary Rutledge
Fausto Gomez
Bob Levy
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Manny Reyes
Jose Diaz
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DATE: May 18, 2009

SUBJECT: **Final Legislative Report, 2009 Regular Session**

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The 2009 Legislative Session was like a dysfunctional family which finds itself critically short of finances. According to Session statistics, there were fewer bills passed this Session than in any session since 1998.

The international recession placed many strains on the process. The Session opened with a $6 billion budget deficit, making bills with any fiscal impact nearly impossible to pass. Tension developed over how to approach the deficit. The Republican majority had to face tax and fee increases. This and the Obama factor gave Democrats more than usual political fodder. The development community took advantage of bad economic times to push their long-standing agenda under the guise of economic development.

The federal stimulus money was a blessing and a curse. Future chamber leaders were deeply concerned about filling current gaps and planning for long-term needs. Interpreting strings

attached to, and the actual availability of stimulus funds, delayed decisions. A Special Session in January to address the 2008-2009 budget deficits disrupted pre-session committee meetings.

Communication between the chambers broke down early in the process. Allegations of unethical conduct against House Speaker Ray Sansom led to his resignation as Speaker and subsequent indictment. This left the House in a scramble to reorganize. Representative Larry Cretul, appointed Speaker Pro Tempore by Sansom, was quickly installed as the new Speaker and certain leadership positions were shuffled. Without the usual year of preparation, Cretul was left with Sansom's leadership team and a weak hand. Addressing a leaking dam, Speaker Designate Dean Cannon and other Republican leaders without real authority to do so, attempted to close the gaps. The Senate members found it difficult to determine who was driving the train in the House. The House also had a record 48 freshmen involved in the process. Companion bills moving along the process together were few, leaving a stampede at the end of session to amend bills onto other bills.

Florida's centrist Governor Crist could have served as a moderator, but chose instead to forge his own path. Session began with the Governor's authority successfully challenged regarding the deal on the Seminole Indian Gaming Compact, and was under attack for his proposal to buy out U.S. Sugar to advance Everglades cleanup without any legislative input. Rumors of his intent to run for the U.S. Senate instead of reelection in 2010 set up a lame duck scenario. The effect of his veto power is yet to be seen. It appears remarkable that the Session ended only a week late at 3:00 p.m. on Friday, May 8.

**Legislative Priorities**

Bert Harris Act

Again, this Session, the Private Property Rights Coalition led by Dan Stengel of Hopping, Green & Sams, pushed for the passage of changes to the Bert Harris Act, particularly removing the sovereign immunity provisions. Representative Eric Eisnaugle filed House Bill 1361 and Senator Baker filed Senate Bill 1556. The lobby team led the League of Cities and Florida Association of Counties in a coalition to oppose the bills. The Senate Bill was heard in one committee while the House Bill was not heard. We appeared to be the only local government actively fighting these bills. In addition to removing the sovereign immunity provision, the bills would have changed from 180 days to 120 days the time period in which a claim must be presented in writing to local governments prior to filing Bert Harris actions and also limited to 120 days local governments' response time. The bill provided that whether a local government submits a written decision or fails to submit a written decision within the 120-day notice period that it constitutes a final decision by the local government. There were several concessions made in the bill which were discussed last year in negotiations with the bill sponsors. One section deals with a moratorium on developments. If a moratorium is in effect for longer than a year, it does not necessarily constitute an impact to real property and thus, depending upon the particular circumstances, may constitute an inordinate burden but does not automatically become an inordinate burden. One other concession was in regard to the current language which restricts a

cause of action being commenced if the claim is presented more than one year after a law or regulation is first applied by the government entity to the property at issue. It qualifies that saying "for purposes of this section enacting a law or adopting a regulation does not constitute applying the law or regulation to a property." It further states that in determining whether an inordinate burden has been imposed, "consideration may be given to the length of time that has elapsed since the enactment of a law or the adoption of a rule, regulation or ordinance in its application."

Affordable Housing Surtax

Senate Bill 2430 passed the Session. It repeals the 2011 sunset of the Miami-Dade Affordable Housing Surtax Program. It also addresses the Miami Crescent tax loophole.

Sexual Predators and Offenders

There were attempts to challenge local government authority to establish distance limitation for sexual predators and offenders but none of them passed. Senate Bill 320 by Crist as filed would have preempted to the state the authority to limit the residence of a person convicted of a sexual offense. It was amended to take that language out and then it was further amended to put it back in at the request of Senator Aronberg. Senator Crist agreed to give that issue a hearing in Community Affairs Committee and the bill was not heard after that.

Fire Protection Services

Senate Bill 1000 by Fasano passed. It authorizes counties to levy a discretionary surtax for emergency fire rescue services. The bill contains three exemptions. One is for Miami-Dade County.

Condominium Reform

Despite attempts by legislators, our lobby team and other interested parties to move forward relief for condominiums by increasing the responsibility of primary mortgage holders in regard to assessments and fees on foreclosed units, none of the six bills which contained language on the subject passed. Our team lobbied numerous legislators. Commissioner Libbin came to Tallahassee during Miami-Dade Days and testified before a Senate Committee and submitted numerous petitions he had collected. The banking industry had a lot of support in the Senate to hold up legislation. Both Senate President Atwater and Senate Banking and Insurance Committee Chairman Richter are bankers. In addition, the condominium association's chief advocate in the House, Representative Robaina had difficulty with House Leadership which set aside his bill for several weeks of Session. The following bills contained language which amended Florida Statute 718.116. Senate Bill 880 by Fasano got as far as Special Order but was never heard. This bill would have limited a condominium unit owner's liability to $75 for any delinquent assessments if the management company prepares any letter or estoppel certificate and charges a reasonable fee related to the preparation of such letter or certificate. It would have

also required a tenant who was occupying a unit in foreclosure, when the owner is delinquent in the payment of regular assessments, to be responsible for future assessments. The tenant's landlord would then be required to provide a credit against rent in the amount of assessments paid to the association. The companion, HB 831 by Frishe was never heard.

Senate Bill 998 by Ring passed two of its four committees of reference. This bill would have required the first mortgagee or its successor to pay to the association, the lesser of the unit's common expenses and regular periodic assessments which accrued or came due during the immediately preceding six months, or 1% of the original mortgage debt under certain circumstances. Its companion bill, HB 633 by Porth, was never heard.

House Bill 1397 by Robaina would have added language requiring a mortgagee who files a foreclosure case on a condominium unit to pay the association, within 15 days after filing, unpaid common expenses and regular periodic assessments which accrued or came due up to the date of the filing of the foreclosure action. Its companion, 2302 by Garcia, was not heard.

Casino Gambling

There was no effort made during the session to promote casino gambling in Miami Beach.

Tour Guide Licensing

We were directed to support legislation that would remove the state preemption for regulation of tour guides. We secured sponsors, Representative Bovo filed House Bill 555 and Senator Gelber filed Senate Bill 1622. We met with Mike Solario of the Department of Agriculture and Consumer Services. He was adamant in his opposition to the language. His argument was that because Florida is a tourist state, the Legislature determined that the state should regulate tour guides and sellers of travel and that exemptions were not appropriate. We met with him again with members of the Greater Miami Convention and Visitors Bureau but he held his ground and opposed the language. Neither bill was heard.

Protection of Ocean Lifeguards

We experienced a miscommunication early in Session with Representative Garcia in regard to filing a bill for increasing the penalties for assault or battery on an ocean lifeguard. Consequently, the deadline passed before we could secure a House sponsor. However, we worked with other legislators trying to amend language onto other bills. Initially, the language was given a fiscal impact which prevented a number of legislators from considering the language on their bills. By the time we were able to get the fiscal impact corrected, there was not enough time left in session to pursue the language.

Elevator Retrofit

The elevator issue was a serious struggle all Session between the lobby team, numerous legislators and condominium association advocates and the Department of Business & Professional Regulation. The Department did not publicly oppose the elimination of the requirement to upgrade to new code requirements but behind the scene lobbied legislators, particularly those who had agreed to carry the language. We did manage to get total relief from the upgrade in Senate Bill 2100 by Bennett and House Bill 7149 by Trudi Williams. Those bills, however, did not have clearly defined companions. On the last day of the Session, the language was put on Senate Bill 682 which passed the House and was sent to the Senate. The bill was the next bill in Senate Messages when the Session ended. Senate Bill 714 did pass. It amends Florida Statute 633.0215, Florida Fire Prevention Code, to make an exemption for installing a manual fire alarm system in certain circumstances. The bill also changes the date from 2014 to 2025 for completion of retrofitting of common areas with a sprinkler system. The bill also repealed Section 553.509, Florida Statutes, Critical Accessibility. This language which passed in 2006, required multi-family dwellings, including condominiums of at least 75 feet in height, to contain a public elevator. At least one elevator has to be capable of operating on an alternative power source for emergency purposes. Prior to and during the beginning of the Legislative Session, the Department indicated that waivers would be granted for a brief period of time, such as 6 to 18 months, to accomplish certain elevator retrofits. Beneficially, as a result of the team's lobbying efforts, the Secretary advised legislators that such waivers would be granted routinely for 3-5 years. This should provide some potential relief for affected condominium associations and other affected parties, and also allow the City to revisit this issue in the future. While it was not a total victory regarding elevator retrofits in all buildings, some relief, including for condominium associations, was achieved.

Anchoring and Mooring

We were directed to support Florida Fish & Wildlife Conservation Commission amendments that strengthen local authority to regulate anchoring and mooring. We were in communication with FWC over the summer and forwarded the City multiple drafts of proposed legislation and informed the City regarding public hearings in various parts of the state. The issue drew so much controversy that the Fish & Wildlife Commission decided to conduct pilot projects in several locations in the state. Since it is general practice for a local government with a lot of boating activity to have mooring fields, the pilot project will be conducted in areas with mooring fields. We do feel that a number of issues, especially anchoring and mooring near single family homes, will be an issue which is examined in the pilot project. House Bill 1423 which passed this Session also increases penalties for boating under the influence of alcohol and revises the definition of the term "live-aboard-vessel." The bill gradually increases the age for requiring the operator of a vessel to take a boating safety education course. The bill provides a mechanism for local governments to establish boating restricted areas with approval of the Commission. The bill also revises provisions limiting local regulation of vessels operating in waters of the state. The bill also authorizes municipal police officers to enforce provisions of the boating statutes. The bill authorizes a county to impose an annual registration fee on vessels using waters of the state within its jurisdiction. Finally, the bill contains language protecting sea grass and coral reefs, and establishes a saltwater fishing license.

Local Authority

House Bill 611 by Hukill relating to public construction did pass. However, the final version is greatly modified from the originally filed bill. The lobby team worked with the League of Cities and the Association of Counties to mediate the impact on local governments by the construction industry to get more business at the expense of local governments. In the final version, the limits which would trigger a competitive bid were increased. The definitions of "repair" and "maintenance" were made more local government friendly. The ability to exceed private contractor's bids by 10% for local governments to decline bids was increased to 20%. Throughout Session, a great deal of work was done on this bill.

Bills which attempted to preempt to the state, the regulation of locksmith services and cranes, did not pass.

However, House Bill 339 by Patterson related to second hand dealers and secondary metal recyclers did pass. The bill preempts local government ordinances related to hold notices for secondary metal recyclers. That is contained in Section 538.21, Florida Statutes. The new language provides a uniform statewide process for holding recycled metals.

House Bills 195 and 870 did not pass. These bills would have placed restrictions on public employee's charitable contribution campaigns. However, Senate Bill 216 by Justice, did pass. This bill prohibits local governments from expending public funds for political advertisements for electioneering and communications concerning an issue or referendum or an amendment that is subject to the vote of the electors.

Senate Bill 252 by Constantine passed and this bill establishes a Code of Ethics and Standards of Conduct for officers and employees serving as the Chief Administrative Officer of a political subdivision.

Senate Bill 2282 by Bennett passed. It prohibits local governments from imposing a fee or seeking reimbursement for costs related to certain first responder services. An exception is made for the clean up of the hazard materials and for ambulance services. Members of the lobby team were instrumental in securing an exemption for ambulance service.

One of the biggest victories for local governments against preemption was the defeat of Senate Bill 630 and House Bill 1129 which would have imposed a 3-year moratorium on impact fees.

House Bill 227 by Aubuchon related to impact fees did pass this Session. It requires governments to prove elements of impact fees by a preponderance of evidence when challenged.

Senate Bill 1796 by Alexander, relating to Government Financial Information, passed. Disbursement information related to every appropriation item in the state budget must be on line. The legislative Committee on Intergovernmental Affairs is directed to develop an additional

schedule by March 1, 2010 for adding information from other governmental entities including local governments. The bill is quite explicit in terms of the types of information to be included on the website.

Retirement

As directed, we worked with Jim Linn on Senate Bill 1672 and House Bill 673 related to retirement. These bills were intended to help local governments transition to a state retirement system. The Senate Bill was only heard in one committee and the House Bill was never heard. The commitment by the Firefighters Union to support the bills wavered, causing the bills to die.

Forfeiture

We were directed to amend Senate Bill 1178 and House Bill 427 related to forfeited property. The bills were tied up from the beginning of the session and never got a hearing in either Chamber.

Budget

The Florida Legislature passed a $66.5 billion budget which was $300 million more than the original budget passed last Session. The budget contains a number of fee increases and a tax on cigarette and tobacco products. Federal stimulus money accounted for a great deal of the increase in the budget. There were no community budget projects permitted this Session so the City's request for stormwater funding was not met. There were no specific water projects in the budget.

The budget allocates $15 million for statewide beach renourishment projects. The Miami-Dade County project which covers renourishment for the City of Miami Beach was the second project on the recommendation list for funding provided to the Legislature by the Department of Environmental Protection. The request was for $5.8 million. Proviso language requires that local and federal funding be in place for the projects to be funded. The Miami-Dade project was dependent upon stimulus money from the feds which was not forthcoming. As of this report, DEP has not decided on the distribution of the $15 million. However, according to Debbie Flack with the Beaches and Shores Preservation Society, Miami-Dade County will get a minimum of $1.7 million for that project. She thinks there is a possibility for $2 million toward the project which will help lessen the impact for next Session's request.

The team worked to ensure that at least $10.8 million emerged from conference from the House position of $5 million for the Entertainment Incentive Program. The implementing bill, SB 2062, changes 5% of the distribution of incentive funds for independent filmmakers to 10% and decreases by 5% the allocation for digital media. Bills which were filed to change the incentive program to a Corporate Tax Credit Program did not pass this Session. They received significant exposure and may pass next year.

Historic Preservation Grants were funded at $612,450. Art Grants were funded at $297,200 and the Cultural Museum Grants were funded at $2.5 million. Senate Bill 1780 related to Cultural Affairs is a conforming bill for the budget. It consolidates the Cultural Grants Program and revises the duties and responsibilities of the Division of Cultural Affairs. New rules are to be adopted to implement these changes. The Florida Arts Council is renamed and membership is revised.

Section 59 of the budget sweeps $588 million from Trust Funds to General Revenue. Included in these Trust Funds are $55.1 million from the Local Government Housing Trust Fund and $36.8 million from the State Housing Trust Fund.

Within the core budget of the Department of Elder Affairs, a number of community organizations were funded, including: the Alzheimer Caregiver Program at Mount Sinai Medical Center, Elder House Call Program at Mount Sinai Medical Center, the Miami Beach Senior Center, the In-home Respite Services at the Jewish Community Center and the Seymour Gelber Adult Day Care Program.

In regard to education, there was no attempt to reinstate the District cost differential. After Session, approval for a waiver was granted to Florida to qualify for education stimulus funds. The budget conforming bill, SB 1676, provides a reduction calculation formula for class size. It provides for an additional millage to be levied by a school district if the prior period unrealized required local effort funds are greater than zero. A district may also levy an additional 0.25 mills for capital outlay under certain circumstances.

Federal Stimulus Funding

Members of the team worked with the City staff in obtaining federal stimulus dollars from the MPO. The projects approved for the City total $2,128,921. They include the following:

- Henedon Avenue Bridge - $325,496
- Sunset Drive Bridge 1 - $250,092
- Sunset Drive Bridge 2 - $340,443
- Indian Creek Drive - $365,000
- Dickens Avenue - $847,890

The team also assisted the City in obtaining transit dollars from the MPO from the federal stimulus package. The project will either fund the West Avenue Bridge or 17 bus bulbs throughout the City and is funded at $945,461 if FDA qualified.

The Legislative Budget Commission met on April 15, giving the Florida Department of Transportation authority to administer $1.347 billion of transportation funds from the American Recovery and Reinvestment Act (ARRA).

At that same Commission meeting, the Department of Legal Affairs and the Florida Attorney General were given the authority to spend $8 million in stimulus funds for Victims of Crimes Grants.

The Department of Agriculture and Consumer Services was given authority to spend $5.5 million for emergency food which will be distributed to 15 different agencies and $900,000 for wildfires.

The Department of Education was given authority to spend federal grants in the amount of $571.9 million for K-12. Also, $5.4 million for school lunch programs and $4.1 million for client services to the blind was funded.

The Department of Community Affairs was given the authority to spend $176 million from the U.S. Department of Energy. $18 million of that will assist low income families with weatherization projects.

The Department of Children and Families was given authority to spend $3.2 million in federal grants for technology upgrades from the Economic Self-Sufficiency Program to address the large growth in case load due to the state of the economy. The Department was also given the authority to send $2 million for subsidizing the adoption of children with special needs.

The Department of Elder Affairs was given authority to spend $1.7 million on elder nutrition programs and $280,000 for senior employment programs. The Agency for Health Care Administration was given the authority to use $1.9 billion from stimulus funds for Medicaid services.

The Department of Revenue was given the authority to use $11.2 million in federal funds in administering the state's Child Support Enforcement Program.

The Agency for Work Force Innovation was given the authority to spend $22.1 million on one-stop centers, $80.6 million for dislocated workers, $42.0 million for youth programs, $19.9 million for training, $15 million to address unemployment compensation legal issues, $32 million for school readiness and $500,000 to provide administrative support to pay the $25 weekly supplement to unemployment compensation claims.

The budget has the following stimulus funds:

- Line item 1541A, CDBG, $7.5 million affordable housing
- Line item 1559B, CSBG, $29.1 million
- Line item 1555, Home Energy Grants, $91 million

Other budget items are listed at the end of the report.

## OTHER ISSUES OF INTEREST TO THE CITY

### Taxes

House Joint Resolution 532 by Lynn passed. The constitutional amendment provides for an additional homestead exemption for first time home buyers.

Senate Bill 1580 by Ring passed. This bill authorizes Tax Collectors to accept partial payments of taxes and sets up a processing fee.

House Bill 521 by Lopez Cantera passed. It provides that the presumption of correctness to assessment of property value now lies with the Property Appraiser rather than the taxpayer.

House Joint Resolution 833 by Horner passed. This bill provides an ad valorem tax credit for deployed military personnel.

Of importance to the City are two bills that did not pass which would have restricted local government revenue. Senate Joint Resolution 1906 by Haridopolos did not pass. This would have set limits on both state and local government revenues by requiring voter approval of new taxes and fees. Also, House Joint Resolution 385 by Rivera did not pass. This bill would have limited the aggregate ad valorem taxes on real property with a 1.35% cap.

House Bill 61 by Precourt related to temporary accommodations passed. This bill imposes taxes on occupancy of timeshare resort products.

### Transportation

House Bill 1021 by Aubuchon passed. This Department of Transportation package deals with numerous subjects, including the following: costs associated with utility facilities relocation, transportation backlog, and placement of pay phones on state owned roads and rights-of-way within local governments, but requires permission of the local government. It requires DOT to notify local governments regarding amendments to the adopted 5-year work plan. The legislation also modifies the outdoor advertising and logo programs. It gives local governments the authority to determine the customary use with respect to regulating commercial wall murals.

Again this session, no red light camera legislation passed.

### Growth Management

Under the guise of economic development, the House and Senate spent a great deal of time on revisions to the growth management statutes. Initially, DCA Secretary Pelham was on board, thinking that the Legislature would concentrate primarily on transportation concurrency, which everyone agreed was not working under current law. However, the Legislature went much further. Senate Bill 360 passed. This was not 360 as filed by Senator Bennett but rather a

compromise between the House and the Senate. The emphasis of the bill is defining "urban service area" and exempting transportation concurrency and DRI within that urban service area. Miami-Dade has an exemption from transportation concurrency exception areas in urban service areas with the language that says if you already have 40% of your urban service area designated as a transportation concurrency exception area, then those provisions of the bill do not apply. The bill also deals with school concurrency. The bill prohibits local governments from establishing standards for security cameras around businesses. The bill also tries to expedite development by offering exemptions from the twice per year limitation on comprehensive planning amendments and by authorizing the use of alternative state review processes under certain circumstances. The bill requires mandatory mediation under certain circumstances. It directs the Department of Transportation to continue its mobility fee study. They are hoping to replace transportation concurrency with mobility fees. The bill extends to two years certain permits and provides that a local government does not have to wait 90 days before changing an impact fee.

Affordable Housing

Section 15 of Senate Bill 360 contains affordable housing language which deals with the Community Land Trust, and places restrictions on allocations to the Florida Housing Finance Corporation. The language helps determine whether property is entitled to a charitable, religious, scientific or literary exemption from ad valorem taxation.

Section 19 of the bill amends Florida Statute 212.055, discretionary sales surtaxes. For purposes of the Florida Housing Finance Corporation, the bill redefines "moderate rehabilitation." It further directs the Corporation to give preference to developers and contractors who are domiciled in the state. In regard to the State Apartment Incentive Loan Program, the bill adds for consideration, projects which include green building principles, storm resistant construction and other elements that reduce long term cost. In regard to homeless housing grants, the language adds acquisition, in addition to construction rehabilitation of housing units for project eligibility. The bill creates Florida's Chapter 420.628, Affordable Housing for Children and Young Adults Needing Foster Care. The bill also directs the Florida Housing Finance Corporation to consider manufactured housing. The bill provides that a local government may extend a portion of the housing distribution to provide a one-time relocation grant to persons who are evicted from rental property subject to foreclosure. Fund distribution from the Florida Finance Housing Corporation is changed from monthly to "quarterly or more frequent." The Corporation is given permission to hold $5 million of its total distribution to provide additional funding to local governments who are in a state of emergency. It is also given permission to withhold $5 million for the purchase of homes through the State Housing Initiative Partnership Program where foreclosure proceedings have been initiated.

Economic Development

House Bill 485 by Weatherford, which passed, creates the Florida New Markets Development Program to provide state tax credits for investments in low income communities. The state

program is designed to be a draw for a new federal markets tax credit program. Under the program, federally certified Community Development Entities would apply to OTTED for certification under the Florida tax credit. These CDEs would then receive both state and federal tax credits for their development.

House Bill 7031 by Carroll, which passed, makes a number of changes to economic development programs currently in the statutes. In addition, it changes the outdated SIC codes with the new North American Industry Classification System (NAICS). The bill also changes the provision which provides exemptions from sales and use tax for the purchase of boats by non-residents. The Legislature made known its displeasure with the Office of Tourism, Trade and Economic Development by moving up its date of review from 2022 to 2010.

Insurance

House Bill 1495 by Nelson, which passed makes some changes to the Citizens Property Insurance Corporation. It raises rates capped at 10% per year to a sliding scale. It allows private insurers to offer wind policies to homeowners in high risk accounts who do not qualify for Citizens because they own properties worth $2 million or more, or properties of $750,000 or more without shutters. The bill attempts to reduce the CAT fund exposure by phasing in a temporary increase in coverage over a six year period at a rate of $2 billion per year, and authorizes the CAT fund to implement a cash buildup factor phased in over a 5-year period. It makes changes to the My Safe Florida Homes Program which allows access to federal weatherization stimulus money.

Environmental

Of particular concern to the coastal communities was HB 1219 by Van Zant. This bill passed the House but not the Senate. Had it passed, it would have allowed the Board of Trustees of the Internal Improvement Trust Fund to accept bids for oil and gas leases on state submerged lands. It also dealt with the distribution of the royalties and the permitting and construction restriction. This was pushed by the business community and we expect to see it return next Session.

In the name of water conservation, the Legislature passed Senate Bill 494 by Bennett. This bill amends 373.62, F.S., revising the requirements for automatic landscape irrigation systems. It directs the Department of Environmental Protection to create a model ordinance to be adopted by local governments. The funds collected by local governments for violations of the ordinance are to be maintained for local governments. The bill also encourages local governments to enforce the model ordinance for Florida Friendly Fertilizer used on urban landscapes unless the government already has in place an ordinance with more stringent provisions.

Senate Bill 2080 by Alexander, which began as a Southwest Florida Water Management Bill ended up with several different environmental bills placed on it. In regard to water conservation, it requires Water Management Districts to provide model ordinances to local governments for Florida Friendly Landscaping Ordinances.

Professional Regulation

House Bill 425 by Plakon, which passed, is a package from the Department of Business & Professional Regulation. Of interest to the City are provisions which would change the regulations in Chapter 468 regarding talent agents. With this legislation, the talent agents won a battle for stricter regulation rather than deregulation. The bill removes the requirement for posting room rates on the doors of public lodging facilities. The bill also amends 509.233, Florida Statutes, which had established a pilot program to allow patrons' dogs within certain designated outdoor portions of public food service establishments. In removing the pilot program, it also establishes the ability for local governments to accomplish this by ordinance.

It has been our pleasure to represent the City of Miami Beach during the 2009 Florida Legislative Session. We look forward to following all of the bills on the way to the Governor and implementation of various provisions and rulemaking. We look forward to keeping you abreast of rulemaking relative to federal stimulus funds and meeting with the Commission at appropriate times.

# 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: June 3, 2009

SUBJECT: **STATUS REPORT ON THE PALM & HIBISCUS ISLANDS UNDERGROUND UTILITIES PROJECT**

At it's May 13, 2009 meeting, the City Commission adopted Resolution No. 2009-27065 – *"A Resolution Endorsing, As Required Pursuant To Section 18-2 Of The Miami-Dade County Code, The Creation By Miami-Dade County Of A Special Taxing district For Palm Island And Hibiscus Island, Respectively, For The Undergrounding Of Overhead Utilities, Subject To And contingent Upon Compliance With And Satisfaction Of The Requirements for the Creation Of Special Taxing Districts, As Set Forth In Chapter 18 Of The Miami-Dade County Code.*

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 final negotiations with the Utility companies are received, the final cost of this project could be higher or lower than the current estimated cost of $4,302,902.

**Legal Process**

In addition to the City resolution (which is the only action required of the City pursuant to the County's requirements for the creation of Special Taxing Districts under Chapter 18 of the County Code) the County requires a petition requesting a special taxing district signed by the County Mayor or by 50% of the property owners within the proposed district. The petition must be certified by the County Clerk. The County Manager then conducts a cost and feasibility study and files a report with the County Clerk for placement on a Board of County Commissioners (BCC) meeting agenda, as a public hearing. At the public hearing, the BCC listens to any objections to the creation of the district. Upon closing the public hearing, the BCC may then establish an ordinance establishing the district, either with or without modification (granting the petition).

**Costs**

It is anticipated that the City will still manage the construction of these improvements with County financing. For this reason, an Interlocal Agreement with the County will be required.

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 and the second binding estimate from FPL. Further, the cost associated with the vote by the property owners is not included.

In December 2008, the Palm & Hibiscus Islands Homeowners Association (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



**Agenda Item** G

**Date** 6-3-09

work privately. FPL must still install the wiring and transformers. This reduced the FPL cost by $1,506,147, from $2,583,997 to $1,077,850 as detailed in the second binding estimate provided by FPL on April 20, 2009. 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 $614,269, a 24% savings.

In order to take advantage of this lower cost, the City would need to waive the competitive bid process and award the project to the FPL-certified private contractor, Hypower Inc. It should be noted that two other firms certified by FPL were contacted in order to obtain prices for the work and were not responsive. The City is attempting to negotiate a similar arrangement with AT&T and Atlantic Broadband by performing certain scope of work thru a certified AT&T and ABB private contractor.

The current 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 | $136,973* | $243,507* | $380,480 |
| FPL Materials Estimates | $91,965 | $163,494 | $255,459 |
| FPL Engineering, Supervision, & Support | $147,340* | $261,938* | $409,278 |
| 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 | $20,000 | $30,000 | $50,000 |
| **Estimated Total Cost** | **$1,819,375** | **$2,483,527** | **$4,302,902** |

** Reflects recent adjustment based on FPL's second binding estimate.*

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 HOA is now requesting the removal of the trenching, conduits, junction boxes, and backfilling from the AT&T and ABB proposal in order to obtain quotes from private contractors to reduce the cost of the project.

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 needs to be installed on the Islands once the existing poles are removed. The City is providing a $95,000 credit from the GO Bond money, that was slated for lighting on these islands, to offset these costs.

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 $1,506,147. FPL provided on April 20, 2009 a second binding estimate that reduced the total amount from $2,583,997 to $1,077,850. If all residences convert to the underground system, the binding estimate would be reduced by the 25% CIAC waiver to $808,388.

*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.

*HOA*
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.

## Schedule

The current schedule developed with the HOA, utility companies and financial consultant will be updated to reflect the timeframe required by Miami-Dade County Special Taxing District Division to approve the establishment of the Palm and Hibiscus Islands Special Taxing Districts.

JMG\TAFHB\JCC\AJC

T:\AGENDA\2009\June 3\Regular\Status Report Underground PH Islands 2009-06-03.doc

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

# MEMORANDUM

TO: Mayor and Commissioners

CC: Jorge Gonzalez, City Manager

FROM: Deede Weithorn, Commissioner DW/aks

DATE: May 11, 2009

SUBJECT: Miami Dade County League of Cities

Please find attached the minutes for the February 5, 2009 and March 5, 2009 Miami Dade County League of Cities meetings, for your information.

DW/aks

Agenda Item H1

Date 6-3-09

RICHARD KUPER, ESQ.
EXECUTIVE DIRECTOR
HOWARD B. LENARD
GENERAL COUNSEL

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Commissioner, Aventura
HON. JOEL JACOBI
Councilman, Bal Harbour
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Mayor, Bay Harbor Islands
HON. JOHN HORNBUCKLE
Mayor, Biscayne Park
HON. DON SLESNICK
Mayor, Coral Gables
HON. MICHAEL DiPIETRO
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HON. JOYCE DAVIS
Mayor, El Portal
HON. R.S. SHIVER
Commissioner, Florida City
HON. JUDY LUSSKIN
Vice M[illegible], Golden Beach
HON[illegible]N CASALS MUÑOZ
Cou[illegible]n, Hialeah
HON. [illegible]ET DE LA CRUZ
Mayor, Hialeah Gardens
HON. LYNDA BELL
Mayor, Homestead
HON. ROBERT DIENER
Mayor, Indian Creek
HON. ROBERT VERNON
Mayor, Key Biscayne
HON. RAMON RODRIGUEZ
Mayor, Medley
HON. TOMAS REGALADO
Commissioner, Miami
HON. JOSE "PEPE" DIAZ
Vice Chairman, Miami-Dade County
HON. RENIER DIAZ DE LA PORTILLA
Board Member
Miami-Dade County School Board
HON. DEEDE WEITHORN
Commissioner, Miami Beach
HON. MELVIN L. BRATTON
Councilman, Miami Gardens
HON. MICHAEL PIZZI
Mayor, Miami Lakes
HON. PROSPERO HERRERA
Councilman, Miami Shores
HON. BILLY BAIN
Mayor, Miami Springs
HON. DR. PAUL VOGEL
Commissioner, North Bay Village
HON. KEVIN BURNS
Mayor, North Miami
HON. MYRON ROSNER
Councilman, North Miami Beach
HON. LADY MYRA TAYLOR
Vice Mayor, Opa-Locka
HON. EUGENE FLINN
Mayor, Palmetto Bay
HON. CINDY LERNER
Mayor, Pinecrest
HON. VELMA PALMER
Commissioner, South Miami
HON. NORMAN EDELCUP
Mayor, Sunny Isles Beach
HON. HOWARD WEINBERG
Commissioner, Surfside
HON. ORLANDO LOPEZ
Commissioner, Sweetwater
HON. SPENCER DENO IV
Mayor, Virginia Gardens
HON. CESAR CARASA
Mayor, West Miami

Minutes
February 5, 2009

President, **Shirley Gibson,** Mayor, City of Miami Gardens, called the meeting to order at 7:15 p.m. and welcomed the guests and gave the Invocation. Past President Manuel Maroño, Mayor, City of Sweetwater led us in the Pledge of Allegiance.

The **municipalities represented** at the board meeting: Aventura, Bal Harbour, Bay Harbor Islands, Biscayne Park, Doral, El Portal, Hialeah, Hialeah Gardens, Homestead, Indian Creek, Medley, Miami Beach, Miami-Dade County, Miami Gardens, Miami Shores, North Bay Village, North Miami, North Miami Beach, Opa-Locka, Pinecrest, South Miami, Sweetwater, Virginia Gardens, West Miami **Associate Members** and guests: Arriaga Sterling & Associates, C.A.P. Government, C3TS, CAC Medical Centers, FIU, FPL, Greater Miami Convention & Visitors Bureau, Kimley-Horn & Associates, Levy & Associates, LINC, Miccosukee Tribe of Indians, Metro Dade Firefighters, Public Rick Underwriters, SFWMD, Stearns, Weaver, Miller, etal.., University of Miami, Waste Management, Weiss, Serota, Helfman, Pastoriza Cole & Boniske, P.L..

President Gibson asked for a motion to approve the minutes and the consent agenda. The motion passed by a unanimous vote.

President Gibson asked everyone whose birthday is in the month of February to please stand and together we all wished them a happy birthday. She also introduced a few very special guests Commission Chair Dennis Moss, Vice-Chair Commissioner Jose "Pepe" Diaz, and Commissioner Carlos Gimenez.

President Gibson introduced the sponsor for the evening, **Eloy Villasuso** of **FPL.** Mr. Villasuso stated that he has been involved with the League since 1991 and the only one who was here back then was Howard Lenard. Mr. Villasuso said he was not going to give a presentation, he just wanted to introduce a few of the members of the FPL team that provides service to the customers in your municipalities. Aletha Player is the manager that handles the Northeast part of the County, Ramon Ferrer works on the South end, and Lou Perez is an account manager. It has been a pleasure being involved with the League for the last 18 years and I have the honor of calling many of you friends. I enjoy attending the League meeting on a monthly basis and listening to the leaders of our communities discuss the main topics that are going on and potential

solutions to them. We hope to do it for many more years to come. Thank you very much and enjoy the evening. President Gibson presented Mr. Villasuso and FPL with a plaque for their sponsorship of the dinner this evening.

President Gibson recognized MDCLC Past President State Representative **Eduardo Gonzalez** and thanked him for his continued support. President Gibson also recognized **Scott Madox** a former Mayor of our State Capital Tallahassee and former President of the Florida League of Cities.

Executive Director, **Richard Kuper** began his comments by reminding our members and guests that this past November we held our second annual Thanksgiving Turkey drive and the Miami-Dade County League of Cities along with our Board Members were able to give out over 500 turkeys to constituents that otherwise may not have an opportunity to celebrate this holiday. We are very fortunate to have two special individuals that are very involved with our League and that for the second consecutive year have donated turkeys in order for our Board Members to distribute them to members of our community. Mayor Gibson and I along with the Executive Board want to call them up to make a special presentation. Mr. Kuper and President Gibson called **Julio Arriaga** from Arriaga, Sterling & Associates and **Julio Martinez** from the Miccosukee Tribe of Indians. They were presented with a beautiful award from MDCLC President Gibson and the Executive Board. These two individuals along with their respective organizations are committed to the League's Annual Turkey Drive and have committed to us to donate the turkeys for our 3rd Annual Thanksgiving Turkey Drive. They deserve a round of applause for that. Mr. Arriaga and Mr. Martinez were both presented with an award for their participation and sponsorship of the Leagues 2nd Annual Thanksgiving Turkey Drive.

President Gibson introduced Councilman **Isaac Salver**, Town of Bay Harbor Islands, and Treasurer for The Children's Trust Committee. Councilman Salver serves on this committee as the Leagues representative. Councilman Salver said that 2008 was a pivotal year for the Children's Trust. Most importantly, the agency was reauthorized by the voters of the Miami-Dade County with 85 percent of the vote. It also marked the completion of its first full five years of grant making, in which more than a half-billon dollars was budgeted to help children and families in Miami-Dade County. The Children's Trust has made a tremendous impact in the community, increasing standards of professionalism for after-school and summer programs, and child care centers, while encouraging collaboration between agencies and organizations. As the largest founder of children's prevention programs in the county, it is uniquely positioned to provide leadership and direction. The Children's Trust has invested wisely and deserves to be proud of its accomplishments. Fifty thousand children are benefiting from higher-quality after-school care and summer camp. School health teams are serving 165 public schools, millions are being invested in programs for children with disabilities, and still more millions are being invested in incentives for higher quality, brain-stimulating child care, programs to diminish violence, engage children in the arts, and much more. But The Children's Trust is faced with the same harsh economic reality as the rest of the nation. Over these next two years, its budget will be reduced by 25 percent as a result of decreased property values and an increased homestead exemption. This means The Children's Trust staff and Board of Directors are faced with some tough decisions. The Children's Trust must take steps to reduce its budget by an estimated $25 million in fiscal year 2009-2010, including $1 million from its own administrative budget. The

agency is working very hard to minimize reductions to services for children and families by exploring alternative provider reimbursement models that may be based on unit costs and performance and it is also devising criteria to help determine which programs will ultimately experience reductions or be eliminated. Criteria being considered when making reductions may include attendance, performance, impact on children and their families, the density of like programs in a geographic area and many other factors. Additionally, at a Board of Directors strategic planning meeting held this past December, members decided to explore the reaffirmation of its original investment goals, which The Children's Trust campaigned on in 2002, Those goals are part of an existing comprehensive investment strategy for children birth to 18, which always earmarked 50 percent of Trust resources to programs benefiting children prenatal through age 5. However, less that 25% of The Trust's current funding is invested in early childhood programming. In the early part of its history, The Children's Trust was unable to reach its original investment goals for a variety of reasons, including a lack of available early learning programs with the capacity to absorb large influxes of funding and the complexity of bringing together large numbers of agencies to work collaboratively for the creation of "systems of care". The Board decision to return to its historical investment model is supported by research about the long term benefits of high quality early learning and parenting programs. This decision also was aided by public opinion surveys of parents, providers and community leaders. Programs for adolescents, particularly summer camps and after-school programs, will always be a cornerstone of Children's Trust funding. The mission will always remain to improve and have impact on the lives of ALL children, youth and families in Miami Dade, from prenatal through adolescence and beyond. However, because programs for children ages 6-18 have been receiving a disproportionate share of Trust funding for quite some time, a gradual funding realignment will likely take place over the next five years. As early learning programs are held harmless, they will naturally grow to represent a larger percentage of The Trust's overall budget. It is not the organizations intent, in these difficult economic times, to take dollars away from one age group of children to give to another. Early learning programs will not see a budget increase in the foreseeable future. Having said all this, The Board and staff will be engaged in healthy discussions with service providers and the public well into the spring about how best to reduce the budget and continue making wise investments. As The Children's Trust experiences significant Board turnover this year, as a result of term limits, new members are expected to bring new and fresh ideas to the table. And of course, in the interest of complete transparency, The Children's Trust always welcomes anyone who is interested in contributing to this dialog. I am currently in the middle of my second term as a trust board member and was recently re-elected as Treasurer and Chair of the finance committee. I represent the Dade League on the board, and if there are issues in your particular communities or you are aware of providers within your cities that have questions relating to programming, RFP's, health connect or the 211 hotline please feel free to contact me directly through the league office. I am at your service.

President Gibson thanked MDCLC Past President Salver for his participation on this committee and for all the work he does with the League. President Gibson continued the meeting by introducing Miami-Dade County Commission Chair **Dennis Moss.** Commissioner Moss commended the Board and the elected officials present for their leadership throughout Dade County. Commissioner Moss recognized Vice- Chair Jose "Pepe" Diaz. Commissioner Moss apologized to President Gibson because during a speech he said that he had a chance to meet with the President-Elect of the Miami-Dade

County League of Cities and that he wants to work closely with the Cities and that has been his pronouncement ever since. During that time I said that the President-Elect was Councilman Michael Blynn and I did not know that Mayor Gibson had been sworn in as the Leagues current President. We were at a conference and Commissioner Gimenez (who was here earlier) said to me well you know we have the President-Elect of the League of Cities here Michael so maybe you want to go and talk to him. So I went to talk to Michael and I asked him if he was the President-Elect and Michael said yes I am the President-Elect. The one thing I did not know at the time is that he will not take office until next year. Let me say that as the new Chairman coming into office it is my desire to set a new tone and a new direction. I plan to operate my chairmanship based on three principles: 1.) Is it right? 2.) Is it in the best interest of the people and the community? 3.) Is it in the best interest of the Commission and the County? And that is the way that I plan to operate going forward. I am committed to working with the Mayor of Miami-Dade County. We are not always going to agree on everything. He has a job to do and we as a Board have a job to do. But one thing that we can agree on is that its to important to make sure that this community moves forward and for us not to allow our disagreements to hamper that. I also want to say that I am committed to working with our business communities to work with the Chambers; the Greater Miami Convention and Visitors Bureau, the Beacon Council and to begin to bring them more into the County Commission process and for us to reach out more to them as well. I am committed to work with our Dade Delegation. Again sometimes we have our ups and downs but what I am trying to do is foster the kind of relationship that is going to help us move our community forward. I am committed to work with our Cities and that has been what I have been talking about since I was elected to this position. I had the opportunity to go to the chambers yesterday and I talked about wanting to have a closer working relationship with the Cities. So you have my commitment and some people may ask well how are you going to do this, let me just go through a couple of issues. First I want to open up the lines of communication by doing what I am doing tonight and that is coming to this event and networking. Secondly, I want to appoint a County Commissioner to attend the League meetings on a regular basis and I think I have a volunteer. I want to offer the opportunity to the League leadership to come down and talk to us at County hall about issues that are important to the League and the Cities and not just in times where we are fighting (I hope that we are going to minimize that) and when we disagree. But to begin and have an opportunity to really understand what is going on with the Cities and our communities and what it is that we can do to make things better. Commissioner Moss committed to sponsor one of the League's monthly Board meetings. He also wants all of us to work more cooperatively in the areas such as pursuing an economic stimulus package. I believe that there is room for the Cities and the County to work together to bring resources to the communities. In an MPO meeting the other day my statement was that anywhere in the County that we create a job the entire community benefits. Therefore, I believe that there is room for us to work together as it relates to that issue as well. I also want to work to resolve some of the outstanding County/City issues. The mitigation issues involving the newly formed Cities, the fire district issue, those are the kind of issues that we must resolve and put behind us. We must try to move forward in a very positive way. There are some current County issues that I want to touch on quickly. As you know we have the issue with the Port Tunnel that has been a major concern for a part of the County and some of the Municipalities and that is an issue that we continue to work with. This issue was dead at one time and I would like to thank the Dade Delegation for their help in helping revive it so at least its back on the radar screen. What I want to say about the port is that

the Port of Miami is the second largest economic engine in the County and the largest in the State. So you see how important the Port of Miami is to our economy and it goes beyond our local economy, it is also important to the economy of the State of Florida. We could not be the number one economic engine as a County if we did not have the Port of Miami. So finding some solution to getting 18 wheeler trucks on and off the port is a major concern in order for us to continue being competitive going forward. What we have to bare in mind is that you have investments going on in Cuba and you have investments going into other areas where folks are looking to take our business. So this is why the port is so important to us and why we need to find a solution for the trucks going on and off. The baseball stadium on the 13th ; the County Commission is going to take up that issue and we are hoping to resolve it. I am supportive of building the baseball stadium, my main concern is that we will be able to finance the stadium. I believe that great communities have great facilities, you go to any great town (and we want to be a world class community) or great community in America and you are going to find baseball stadiums, football stadiums, basketball arenas, museums and great parks, so this is an issue that we will be taking up on the 13th. I also want to talk about the convention center because there has been some controversy involving the convention center. I believe in supporting the convention center as well, I think that we need to expand it and provide other opportunities to bring people to this community. You only have to go to Orlando to see that they have expanded it once and they are in the process of expanding it again. So those are some things that I think are very important. Let me just close by saying that it is a new day and I look forward to a closer less controversial relationship with our Cities. I want to thank you for the opportunity to address you.

President Gibson thanked Chairman Moss for accepting the invitation to come and speak to us. I do want to thank you for sharing your comments with us. All around the Country there is a change flowing and the change is coming. It is a signal to all of us to know that we can change from where we were and we can do things differently, we can do it better and in a more responsible manner. We can let go of some of past things we have experienced and some of the past relationships that have not been good. I believe that it will give us a brighter future to look forward to. I welcome your extending your self and your leadership to say that you want to work with Cities and with the League. We know we have a lot to over come and we're not always going to agree on everything but I think that we have to begin to take that step, to begin to work together for the good of the people that elect us to try to make their lives better. We can not do our jobs as public servants if the only thing we do is fight among ourselves. That is not why they elect us into public office, so I want to thank you again Mr. Chair for being with us tonight and we look forward to working with you, your Colleagues and the administration for the benefit of our community.

President Gibson then introduced Mr. **William Talbert**, President, Greater Miami Convention and Visitor's Bureau. He said that last week he had the opportunity to meet with Chairman Moss. Chairman Moss chairs a group called the Community Image Advisory Board and they meet every month in the Bureau's offices. Chairman Moss is there at every meeting and in this meeting there are City officials, County officials and State officials. So I publicly want to commend the Chairman every time he gets to meet in our offices for wanting to work with his colleagues at all levels of government. Many elected officials start things but this guy starts something and he stays with it and it makes a difference in the community. We see it in our customer

surveys. So I want to compliment you for your leadership with the Community Image Advisory Committee. I want to recognize another important partner Commissioner Deede Weithorn from the City of Miami Beach. I want to publicly thank her and I am going to give her credit for doing something good. We had the opportunity to meet with my Board Chair Jean Prescott who is a CPA (non-practicing) so they talked the CPA talk and the Commissioner offered to help us with some business. We had a financial group come to town and we called her. She came and talked to the group and I am pleased to tell you that group booked Miami and Miami Beach at the convention center because of Deede Weithorn. That is the kind of volunteer effort that brings business to the community. As you know when people come to this town they spend money and they support jobs. You did see some articles today about our budget. I got some calls from some members of the national press and they asked why I had cut the budget. I said because the revenues were down. So we at the bureau manage our bottom line. Our expenses do not exceed our revenues. We have done this since 9/11. Let me tell you that this community was blessed prior to September because we had record tourism levels. The rest of the Country was down and the numbers here were up (record levels) but nobody is recession resistant to a global recession. I can tell you that we are down less than others. In the month of December for hotel occupancy Countywide this community was in the top 25 destinations. We were number 3 in hotel occupancy and in average daily rates. While the numbers were down, our ranking was third in the top 25 destinations. So while we are down we are doing better than others. People ask me so when are things going to get better. I say if somebody can tell me when the global recession, depression, crisis ends I'll tell you when things are going to get better. There are some good signs. The beach still maintains themselves as a top resort destination in the world and there is the AIG effect. The good news is that while some groups won't come to this very sophisticated upscale destination vacationers continue to come. People are still going to travel even if it's tough, because vacations are for you to get away from it all. I can tell you that in our budget adjustments we have not affected our sales effort. We might have affected our wallets and we will continue to do that. If we need to reduce the salaries even more we will; if I need to lay off people I will also do that. But I can assure you that we are aggressively marketing this great destination around the world, we are not slowing down. We are in every market that we were in before and there is still great demand for this great destination. We will all be back so we all just need to stick together. Its tough and everybody are feeling it. This economy will get better and we are staying in the market on your behalf to support jobs in this community. I thank you for the opportunity to speak.

President, Shirley Gibson introduced Executive Director, **Richard Kuper** for the Executive Director's Report. Executive Director, **Richard Kuper**, thanked everyone for listening to all the presentations and specially thanked the sponsor for the evening **FPL**. Mr. Kuper thanked and congratulated the City of Opa-Locka and the City of South Miami for inviting the League to attend their respective State of the City Addresses. The City of Opa-Locka celebrated their fifth ($5^{th}$) State of the City Address. The City of South Miami celebrated their eleventh ($11^{th}$) State of the City Address. I want to say that they are two distinct Cities in two different areas of Miami-Dade County but the common denominators are the same. They both want to provide quality services to their communities. The issues are basically the same both Cities are doing a wonderful job for the residents and the business community. The League was also present at the Public Defender's Installation. We have a new public defender in Miami-Dade County Carlos Martinez. The League was

mentioned at all three events. In both of the presentations there were photographs of the President and many of you giving out turkeys and toys during our events during the year. Additionally, we hosted with Robert Levy a Legislative Luncheon which was attended by many of our Board Members. This was an extremely important luncheon because the Florida League of Cities sent down a member from their legislative team to make a presentation to our elected officials. As part of his presentation he discussed the issues that we will be dealing with in Tallahassee and he also discussed the *federal stimulus package*. We are not going to get into details tonight but the stimulus is something that we all have to keep our eyes on. We have to make sure that the Cities stay together and work together. There are a number of lobbyist and consultants that have contacted President Gibson and myself and we hope to be able to work with them for the benefit of our municipalities. Possibly we at the League will be able to assist smaller Cities as we are provided with additional information. Usually the County has their lobbyist and the bigger Cities have their lobbyist also. We don't know how the funding is going to come down, whether it is going to go to the State, the County, if it is going to go to certain Cities we don't have that information as of yet. However, we must be vigilant and united as municipalities in order to be able to actively pursue these funds.

I also want to thank Chairman Moss for speaking to us this evening. We are looking forward to working with him, his colleagues on the Commission and the administration for the betterment of our entire community. With reference to the fire opt-out issue I am pleased to hear his remarks as I am sure many of you are also. As you all know the Village of Indian Creek and the Village of Pinecrest took the lead on this matter and we should be committed to helping them financially with their legal bills since the ruling on this case favors all of our municipalities.

I also want to recognize the law firm of Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. and John Herin, Esq. along with Jimmy Morales, Esq. They have volunteered their services to represent the League pro-bono with reference to this issue. They have been monitoring this issue for us and we are grateful for their advice and counsel. I also want to remind everyone that on February 10 we will have our City Attorney Seminar. Our guest speaker is Eugene Stearns, Esq. and he will be talking about home rule among other issues. It is important for all of your city attorneys to attend these lectures since they will also be able to apply for C.L.E.R. credits. Mr. Kuper then recognized the City Managers, the City Clerks, the City Attorneys that were present along with the Board Members and Judges. Mr. Kuper acknowledged the following Associate Members that attended the meeting and thanked them for their continued support: Reinaldo Valdes and Julio Arriaga from Arriaga, Sterling & Associates; Fatima Perez from AT & T; Rod Rodriguez from C3TS; Bert Valdes from CAC Medical Centers; William Talbert from GMCVB; Gary Ratay, Cecilia Viloria, Juan Jimenez and Carlos Castaneira from Kimley-Horn & Associates; Beverly Gerald from LINC; Paul Blake from Metro Dade Firefighters; Margret Gross from Public Rick Underwriters; Lewis Beilman and Ed Hernandez from SFWMD; John Herin, Jimmy Morales and Jose Jimenez from Stearns, Weaver, Miller; Juan Carlos del Valle from the University of Miami; Jason Neal from Waste Management; Nina Boniske, MacAdam Glinn, Gloria Velazquez-Meitin and Raquel Elejabarrieta from Weiss, Serota, etal..

Meeting adjourned at 8:55 p.m.

RICHARD KUPER, ESQ.
EXECUTIVE DIRECTOR
HOWARD B. LENARD
GENERAL COUNSEL

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HON. [illegible]N CASALS MUÑOZ
Cour[illegible], Hialeah
HON. [illegible]T DE LA CRUZ
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HON. JOSE "PEPE" DIAZ
Vice Chairman, Miami-Dade County
HON. RENIER DIAZ DE LA PORTILLA
Board Member
Miami-Dade County School Board
HON. DEEDE WEITHORN
Commissioner, Miami Beach
HON. MELVIN L. BRATTON
Councilman, Miami Gardens
HON. MICHAEL PIZZI
Mayor, Miami Lakes
HON. PROSPERO HERRERA
Councilman, Miami Shores
HON. BILLY BAIN
Mayor, Miami Springs
HON. DR. PAUL VOGEL
Commissioner, North Bay Village
HON. KEVIN BURNS
Mayor, North Miami
HON. MYRON ROSNER
Councilman, North Miami Beach
HON. LADY MYRA TAYLOR
Vice Mayor, Opa-Locka
HON. EUGENE FLINN
Mayor, Palmetto Bay
HON. CINDY LERNER
Mayor, Pinecrest
HON. VELMA PALMER
Commissioner, South Miami
HON. NORMAN EDELCUP
Mayor, Sunny Isles Beach
HON. HOWARD WEINBERG
Commissioner, Surfside
HON. ORLANDO LOPEZ
Commissioner, Sweetwater
HON. SPENCER DENO IV
Mayor, Virginia Gardens
HON. CESAR CARASA
Mayor, West Miami

Minutes
March 5, 2009

President, **Shirley Gibson,** Mayor, City of Miami Gardens, called the meeting to order at 7:15 p.m. and welcomed the guests. Vice Mayor Stephen Loffredo, Village of Miami Shore gave the Invocation. Councilman Prospero Herrera, Village of Miami Shores led us in the Pledge of Allegiance.

The **municipalities represented** at the board meeting: Aventura, Bal Harbour, Bay Harbor Islands, Biscayne Park, Doral, El Portal, Hialeah, Hialeah Gardens, Homestead, Indian Creek, Medley, Miami Beach, Miami-Dade County, Miami Gardens, Miami Shores, North Bay Village, North Miami, North Miami Beach, Opa-Locka, Pinecrest, South Miami, Sweetwater, Virginia Gardens, West Miami **Associate Members** and guests: Arriaga Sterling & Associates, C.A.P. Government, C3TS, CAC Medical Centers, FIU, FPL, Greater Miami Convention & Visitors Bureau, Kimley-Horn & Associates, Levy & Associates, LINC, Miccosukee Tribe of Indians, Metro Dade Firefighters, Public Rick Underwriters, SFWMD, Stearns, Weaver, Miller, etal.., University of Miami, Waste Management, Weiss, Serota, Helfman, Pastoriza Cole & Boniske, P.L..

President Gibson asked for a motion to approve the minutes and the consent agenda. The motion passed by a unanimous vote.

President Gibson introduced Rod Rodriguez, C3TS. Mr. Rodriguez informed the attendees that The Future City Competition has been held since 1992 for 7th and 8th grade students from across the nation. This year 40 cities and regions sent their winners to Washington. Florida's winners this year were the students from St. Thomas the Apostle School in South Miami. The 3 students from Ms. Susy Chu's class came home last week with a Third Place Trophy in the National Competition. The competition involves designing a city in the year 2050 or later using SimCity software game; writing a 700 word essay on the reuse and conservation of water in the home; in building a 3-D model of their city; and preparing a 7 minute presentation. By participating in the competition students learn about city government, infrastructure, traffic, taxes, energy conservation, science and math applications, and learn how to work together and how to communicate their ideas and their knowledge. Mr. Rodriguez introduced the 3 students, Susana Becerra, Nicole Fernandez-Valle and Lauren Rodriguez and congratulated the students and their teacher for their victory, for working together and reminded them that they are our future leaders. The students,

teacher and parents were all commended by President Gibson, the Board and everyone gave them a round of applause.

President Gibson continued the meeting by asking everyone whose birthday is in the month of March to please stand and together we all wished them a happy birthday.

President Gibson then introduced our sponsor for the evening, Jason Neal from Waste Management. Mr. Neal introduced one of his colleagues Alex Gonzalez. Mr. Gonzalez then introduced Cycler (the robot). This is one of the gadgets that they have in a recycling state of the art facility which processes all the residential recycling materials that are collected in Dade County and also at those cities that subscribed to the agreement with Dade County. We are talking of about 350,000 homes. This is a new technology, a single screen technology. Those of you who have seen the blue bins you know that you can throw everything away in the blue bins which means you no longer need to segregate anything. We do the segregating, it is actually done with state of the art technology, there are very few hands touching the material. We have magnets, air classifiers, screeners, movers and we'd like to extend an open invitation to anyone who would like to take a tour of that facility. Please take us up on it so that you can see what is going on with the material that is being recycled. With that I am not going to take up more of your time I want to wish the birthday people a happy birthday. Cycler the robot informed all the guest in attendance that he works a lot cheaper and he is available for community outreach. President Gibson presented Mr. Neal and Waste Management with a plaque for their sponsorship of the dinner this evening.

President Gibson said that one of her priorities as President is to support the educational system. To that end she gave an update about the meeting she had with Superintendent Carvalho. She informed the group that she advised Mr. Carvalho that we, as a League, will do anything we can to support him and the administration for the benefit of our children. "My philosophy is to invest in our children's education so that we don't need to keep increasing our jail population". There are many other and all negative impacts that our society confronts because of lack of an appropriate education for our children. She advised that while she was meeting with the Superintendent he explained the four areas and principles that he is very concerned with and he is advocating for. One of the issues now facing our school system is finanacial. He will do all he can to avoid layoffs of employees in the school system, maintain salaries, reduce the school systems deficit and increase its reserves. As you know that were the negatives facing the school system when he became Superintendant. A priority is to preserve and protect educational programs. Those are the four areas that he is advocating for and that he is very serious about. President Gibson then introduced Assistant Superintendent Iraida Mendez-Cartaya and she is the intergovernmental affairs department. She does lobbying here in Florida and in Washington to help Miami-Dade County School System at the State and National levels. In the MDCLC Board Agenda you can find the 2009 State Legislative Program that the Superintendent and his staff came up with. We need to encourage all of our Council Members, Mayors, and Managers to ask their city lobbyist to work with us to help our school system. We are in a crisis and I think that all of us have heard about it. The session as you know has begun and we need to address this issue in Tallahassee immediately. President Gibson asked for a motion to approve MDCLC Resolution 2009-1 and 2009-2. The motion passed by a unanimous vote.

President Gibson gave some highlights about the FAST trip that she took to Washington. On that trip she had the opportunity to meet with some of our Senators,

Representatives and their staff. They met with Senator Nelson, Congresspersons Meek, Diaz-Balart, Mario and Lincoln, Ross-Leighton, Wasserman Shultz, and Klein. We discussed several issues that are our priorities and also discussed the stimulus package. This is on everyone's mind these days. As of last week the details are not complete but we will keep monitoring this at the Federal and State levels to try and find out what it is you need to do and how we need to access the stimulus package as it comes down. We will be going to Tallahassee and I will be going on behalf of the League so that our legislators know that we are going to be proactive. I will also try to acquire as much information as possible so that our members are in the loop. I am also suggesting that each of you continue to work with your lobbyist and legislators and monitor this issue. We at the League are going to try and keep you informed as much as possible. As you know we give out most of our information through e-mail so we hope that you are checking your e-mails and that you are getting the information that you need. If at any point you don't, please call the League office and speak to our Executive Director Richard Kuper. Also please do not forget to register for Dade Days which will be April 1st and 2nd. It is important for us to be present in Tallahassee.The Legislators, the Governor and the Administrators need to see us there in large numbers. Miami-Dade County has always demonstrated its power and we need to continue demonstrating that we are powerful and willing to do our part for our community. We have sent via e-mail a list of committees that have vacancies on them. I want to make sure that the League is represented on those committees and that we have a seat. Therefore I ask that if any of our Board members are interested in serving please reply to the e-mail by no later than March 17. If there is any elected official that would like to volunteer to serve please give your e-mail to Richard Kuper and he will forward you the information that you need. Obviously I will not be able to appoint all of you but we will keep a list of those wanting to serve and as openings become available you will be considered. Every month we will have a Board member that serves on a committee give a report. Tonight I will ask Commissioner Weithorn followed by Vice Mayor Wallace to give an update on the committees that they serve on.

President Gibson introduced Board Member **Deede Weithorn**, Commissioner of the City of Miami Beach to give a committee update on the Miami-Dade Climate Change Task Force. Commissioner Weithorn spoke about a survey that the CCTF was sending to all the municipalities. The survey is for any municipality that is interested in climate change. The CCTF is trying to find out what municipalities are doing with regards to climate change, sustainability and green initiatives. It is really important that we all work together so that we don't duplicate efforts. Therefore, whatever we do legislatively will have some commonality and we can do this as a region where we can have a voice now more than ever. The more we do together the more that we can band together and hopefully the better results. I am going to ask you to please look for the survey and send it in. Once we get the results I encourage all of you that are interested to let me know because there are many sub-committees of this particular task force that we have with Miami-Dade County. I also want to mention that on April 7 at Jungle Island there is going to be an event where De. Halness is going to discuss the sea level rise. I urge for every City to send someone and make sure that you are well apprised to some of the geological issues that we are going to have to face. Thank you.

Vice Mayor Ileene Wallace, Town of Bay Harbor Islands gave a committee update on the two committees that she represents the League on, the School Site Planning and Construction Committee (SSPCC) and the School Board Concurrency Task Force (SCCTF). The SSPCC built a K-8 Community School in the City of Sunny Isles Beach. The City of Doral is the future host site for a Senior High School. One of the

things that they did was host a working group at the Westland/ Hialeah High School. We look for alternative means. We don't have the land so we had 6 ½ acres to work with to build a senior high school and we did it. We built a parking garage, basketball courts, band room, and chorus room in this magnificent school that you each should take a tour of. Our focus is going to have to change because there is no money. We are going to change it as far as the feeder. pattern is concerned But we are doing an incredible job and thank you so much. The next thing that I have to talk about is the concurrency. Did anybody here sign the concurrency agreement for the inter-local concurrency agreement. I know that Bay Harbor has and so has Sunny Isles Beach and many other municipalities have. Vice Mayor Wallace asked her counterpart from the School System to please come up and give an update on what is going on with concurrency because there have been some changes and she needs to explain it to you. Ms. Mendez-Cartaya thanked the League for adopting the Boards Legislative priorities earlier this evening for this upcoming session. As it relates to School Board concurrency there is legislation currently filed and actually moving rather rapidly in the Senate SB360 and other companion bills in both chambers that would basically negate school currency and it eliminates all the penalties for local governments for not entering the inter local agreement. What that creates is an inequity and we have many municipalities that have entered into the inter-local agreements with the School Board. This is a statewide issue all the School Boards across the state are advocating in opposition of that portion of the bill. So please when you get an e-mail from the School Board or the League we need your help because we worked for 3 years to bring the school concurrency into compliance, for it to be approved by the MDCSB,and. for it to be approved by the DCA So when you get this information please help and support the School Board. Thank you so much. .

Councilman **Isaac Salver**, Town of Bay Harbor Islands introduced Executive Director **Mike Sophia** and Vice Chairman **Dr. Jeff Solomon** from the Miami Dade County Sports Commission. Dr. Jeff Solomon introduced the Chair of the Miami Dade County Sports Commission, Miami-Dade County Commissioner Jose "Pepe" Diaz. Dr. Solomon spoke about a pet project that relates to quality of life in the community. There are several legislative concerns that we have. The pet project is called "Open our Schoolyards and Gyms". We are looking for the support of this organization, the members and the municipalities throughout Miami-Dade County. We have a feeling that this is something that might help to solve some of the issues that you have to deal with in your communities. It began with us having a couple of public hearings to hear the concerns of the communities as it relates to sports and recreation nearly a year ago. What we kept hearing over and over again was that there weren't enough places for people to participate in, different sports and recreational activities. And we don't just mean football, basketball, baseball and soccer.Those in fact have competition in finding places but more so there was more concern for those that like to play volleyball, badminton. There was a community that wanted to play cricket. There are quite a number of sports that have no place to play at. They were very concerned and asked the Sports Commission to find them a place. Its not that nothing is available, but what we see in being available is not open. Those are the schoolyards and the gyms at the schools. If there is anything that you can do to help us get these places open we are glad to put our hands in our pocket and pullout a few dollars. We are talking about youths to adults. Why would this be important to the community besides the obvious health and fitness related reasons which is certainly an issue today. Well another couple of reasons that it will be helpful is that it takes people with idle time off of the streets and puts them into productive activities. It puts people to work because you have to maintain the facilities, secure the facilities and you have to administrate the whole

operation. So this is where we're going trying to work this out with Miami-Dade County Public Schools, with the municipalities, as well as with Mr. Jack Kardys the Director of the Parks and Recreation. What we are looking to do is get you all engaged in helping us find schoolyards and gyms within your municipalities and getting your educators in those facilities to support us. Dr. Solomon asked the guest in attendance if they had any questions.

President, Shirley Gibson introduced Executive Director, **Richard Kuper** for the Executive Director's Report. Executive Director, **Richard Kuper**, thanked everyone for listening to all the presentations and specially thanked the sponsor for the evening **Waste Management**. Mr. Kuper said that the League has a dynamic President who is nonstop. She had me in Washington last week, we're going to Tallahassee next week, and we're meeting with the Superintendent, the Chair of the County Commission. Chairman Moss has committed to sponsor our May BOD meeting in Sunny Isles Beach, he is keeping his word and he is willing to work with all of you. He understands the importance of what we do as municipalities and he has told President Gibson and myself that there will definitely be a change at County hall. We are very pleased to have the opportunity to work closer with Chairman Moss, his colleagues on the commission, Mayor and manager at the County. Much of the credit goes to President Gibson for this taking the initiative and going to meet with Chairman Moss and discussing the importance of working together.

I would like to take this opportunity to remind everyone about Dade Days. They are very grateful for all the support we have always given. We want to see a full charter plane going to Tallahassee. Diane Raulson wanted me to let everyone know that if you had any questions to ask her.

Mr. Kuper thanked Pedro Quijada for assisting us with the audio at all of our meetings. He also thanked Rod Rodriguez for coordinating the beautiful presentation that we had by the students from St. Thomas the Apostle. Mr. Kuper again thanked our sponsor Waste Management, he specifically thanked Alex Gonzalez and Jason Neal for being sponsors not only tonight but consistently throughout the years. Mr. Kuper then recognized the City Managers, the City Clerks, the City Attorneys that were present along with the Board Members and Judges. Mr. Kuper acknowledged the following Associate Members that attended the meeting and thanked them for their continued support: Reinaldo Valdes and Julio Arriaga from Arriaga, Sterling & Associates; Rod Rodriguez and Jorge Corzo from C3TS; Sheryl Dickey from Dickey Consulting Services; Eloy Villasuso and Aletha Player from FPL; Mudassar Alam and Jack Perry from Kimley-Horn & Associates; Oscar Marrero from Law Offices of Oscar Marrero; Beverly Gerald from LINC; Stan Hills, Paul Blake and Joaquin del Cueto from Metro Dade Firefighters; Bennett Brummer from the Public Defenders Office; Jerry Chiocca and Andrew Fierman from Rachlin LLP; Carlos Trueba from Rodriguez Trueba & Company; Lewis Beilman and Ed Hernandez from SFWMD; John Herin from Stearns, Weaver, Miller; Juan Carlos del Valle from the University of Miami; Enrique Sarabia from Waste Services; Matthew Mandel and Nancy Stuparich from Weiss, Serota, etal..

Meeting adjourned at 8:35 p.m.

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MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

# MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Matti Herrera Bower, Mayor

DATE: May 21, 2009

SUBJECT: For Your Information-Provided by the Wolfsonian-Florida International University

Attached please find the minutes from the April 3, 2009 Advisory Board Meeting and the agenda from the May 29, 2009 Advisory Board Meeting.

MHB/lw



Agenda Item H2

Date 6-3-09

**The Wolfsonian–Florida International University**
**Advisory Board Meeting**
**April 3, 2009**
**The Wolfsonian-FIU**
**1001 Washington Avenue**
**2nd floor conference room**

**Board members present:** Gonzalo Acevedo, Mehmet Bayraktar, Christina Cuervo, Charles Cowles, Rene Gonzalez, Nina Herrick, Iran Issa-Khan, Nasir Kassamali, Michael Kreitzer, Ray E. Marchman, Richard Massey, Finlay B. Matheson, Kevin Miller, Susan Richard, Philip Scaturro, Rob Schechter, David Schwarz, Pat Wallace, Robert Wennett, Louis Wolfson, and Mitchell Wolfson, Jr.

**Board members present by phone:** Jacqueline Weld Drake, Chad Oppenheim, Aurelia Reinhardt, Federico Sanchez, and Sandy Seligman.

**Board members absent:** André Balazs, Alberto Cardenas, Marisa Fort, Nina Herrick, Mike Holden, Neisen Kasdin, Michele Oka Doner, Gary Wasserman, James Zematis, and Bernard Zyscovich.

**Ex-officio members present:** Sandra B. Gonzalez-Levy, FIU Vice President for University and Community Relations and Executive Director of the FIU Foundation; Stephen Sauls, FIU Vice President for Government Relations; and Robert Conrad, FIU Vice President for University Advancement

**Guests:** Rafael Paz, FIU Associate General Counsel Office of General Counsel.

**Staff present:** Cathy Leff, Regina Bailey, Jeanne Brace, Michael Hughes, Marianne Lamonaca, and David Skipp.

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**Call to order**
Finlay Matheson, Chairman of the Wolfsonian Advisory Board, called the meeting to order at 4:05pm.

**Approval of the Minutes of December 2, 2008**
Finlay Matheson noted omissions to the minutes. Relative to the discussion of the Miami Beach Women's Club (MBWC), he asked that it be noted that his honorary membership in the MBWC is not a conflict of interest since he is only an honorary member and cannot vote. In addition, Charles Cowles asked that it be noted that he supports selling the Miami Beach Women's Club building. Finlay also stated that during the discussion regarding Board committees that "the executive committee" should be changed to "an executive committee," since one has not yet been constituted. The revised minutes are attached.

To avoid any corrections/omissions, in the future, Finlay asked that all drafts of the minutes be clearly marked "draft copy" and dated, to avoid confusion. Sandy Gonzalez-Levy suggested that

the Board be given a deadline for submitting corrections to draft minutes before final minutes are sent to the Board for approval.

**Chairman's report**

Finlay thanked everyone for attending the meeting and stated that The Wolfsonian–FIU Advisory Board operates under the State's Sunshine laws and that the meeting was properly noticed. He welcomed new member Christina Cuervo and recognized The Wolfsonian's founder Micky Wolfson.

Finlay gave an update on the status of the Miami Beach Women's Club. Both he and Cathy met with some of the club members to discuss the need to sell the building and their request to amend the original gift agreement. They gave members a document titled, "First Amendment to Contribution Agreement," which, if approved, would lift certain restrictions on sale set forth in the original contribution agreement between The Wolfsonian, Inc. and the Miami Beach Women's Club. In summary, the amending document removes the restriction limiting the sale of the property to a not-for-profit organization and allows for it to be sold on the open market; closes the building to club members; and invites members to hold their meetings at The Wolfsonian.

Cathy said that the members understood that the cost to repair the building was prohibitive. Finlay stated that The Wolfsonian, Inc. will receive an insurance settlement of $385,000 from the fire.

Finlay praised the staff for their fundraising efforts and commended them for receiving the $500,000 Mellon grant to enhance the use of the collection by FIU faculty and students for teaching and research. He thanked the staff for their work in raising $165,000 at the two Mouton Rothschild dinners and auctions. Finlay noted that these events were underwritten entirely by Mouton Rothschild.

Finlay announced that Charlie Cowles and Michele Oka Donor are hosting a progressive cocktail party for our New York friends and donors on April 30 and asked Board members to let him know of anyone who should be invited. He thanked Charlie and Michele for their support.

Finlay deferred a planned vote on the revision of the by-laws to later in the meeting, since several of the Board members were held up in traffic and he wanted to wait for a quorum.

**President's report**

Ray Marchman announced that first meeting of Development Group was held that day, prior to the Board meeting. He said that it was a success. Each member of the group submitted at least five names of potential donors whom they are willing to contact. He thanked David Skipp and Michael Hughes for their work. The next meeting of the Development Group will be May 29th at 2:00pm at the museum, and Ray invited anyone interested to attend.

Ray asked everyone to go to the lobby after the meeting to review the Donor Wall. The minimum donation for a recognition book is $50,000, and the books increase in size as the donation grows. The first inductees will be based on cumulative giving and David Skipp said that he would be pleased to review Board members' donations with them. Details of the giving categories were

included in the Board packet. The dedication of the Donor Wall will be November 10th in the evening. Cathy noted that the donors are asked to place something in their books that describes or represents them.

Ray said the outlook for FIU's budget is bleak and asked all members to contact their legislators on FIU's behalf.

Finlay thanked Ray and every member of the Development Group for taking on the important task of fundraising.

**By-Law Revisions**

With a quorum present, Finlay called for a vote on the proposed by-law revisions, which were mailed to each Board member. The revisions include reducing the mandatory Board meetings from four to three; removing restrictions on Board term limits; adding adherence to the State's Sunshine laws; creating a plan for emergency meetings; and changing the wording from "shall consist of " to "may consist of " regarding the number of committees.

Finlay asked for any other suggestions for the Advisory Board By-Laws. Pat Wallace suggested adding language to clarify that the Board is responsible for recruiting and recommending new members and that these members are appointed by the University President. Finlay asked that instead of holding meetings in April, October, and December the by-laws be changed to read "the Board shall meet from time to time and not less than three times each year" and to remove "in April, October, and December." Both changes were unanimously approved by the Board.

**Finance Committee**

Robert Wennett reported on both the current and FY2010 budgets. He said the museum's current budget is on target. However revenues are projected to be less in next year's budget, while expenses (80% of the budget is salaries) are not projected to change. Robert stressed that individual giving is a large variable in the FY2010 budget and urged the Board to give. The finance committee recommended the proposed FY2010 budget using a one-time revenue source of $385,000 from the Miami Beach Women's Club insurance proceeds to fill the deficit. Cathy said the insurance proceeds from Miami Beach Women's Club will be paid to the Wolfsonian, Inc. She further noted the use of this funding for The Wolfsonian's FY2010 budget must by approved by the Board of The Wolfsonian, Inc and the University. Sandy Gonzalez-Levy noted that she, Noel Guillama-Alvarez (treasurer of the FIU Foundation), Ray Marchman, and Mitchell Wolfson, Jr., serve on The Wolfsonian, Inc. Board.

Sandy noted that the University is preparing for a 15% budget cut and is being very prudent at this time.

**Director's Report**

Cathy asked that everyone review the summary of activities included in the Board packet. In order to meet the FY2010 budget, it is essential that every Board member pay his/her dues. The statements are going out in the next few weeks.

Cathy said we will do whatever we can to survive and that the museum has done well with grants that will offset some operating costs; the only variable is individual donations, which include the Board dues. Cathy thanked Phil Scaturro and said without him the museum would have not received both Mellon Foundation and MacArthur Foundation grants.

Cathy asked that the Board make a motion to recommend the proposed FY2010 budget, subject to approval of by The Wolfsonian, Inc. Micky proffered the motion, and Gonzalo Acevedo seconded it. The budget was recommended unanimously for approval. Cathy thanked the Board members for their continued support.

Cathy noted that the staff will concentrate on the back-of-the-house activities during the next year. We will be working on our Mellon grant with faculty and students; digitizing the collection; planning the reinstallation of the permanent collection; and finalizing our work on the Eberson Archives.

Cathy introduced Robert Conrad, the new FIU Vice President for Advancement. Robert noted the University has received several large gifts and that he hoped that this was a signal that donors are still willing to support education. He also said that Advancement may see some funding surprises arising from good old-fashioned hard work.

In light of the budget crisis Steve Sauls asked Board members to have a carefully worded conversation regarding FIU with any legislators that they know.

Micky noted that he hoped the University administrators understand how the museum supports the University's research agenda and is not extraneous to the core mission.

**New Business**

Finlay led a discussion about future meetings. He suggested that the Board meet Friday, May 29th after the Development Group meeting. He felt it was important to meet because by that time the State budget will be set and we will know about possible cuts. Robert Wennett suggested that Cathy develop a contingency budget in case of further cuts and the MBWC insurance funds not being approved as revenue for the FY2010 budget. David Schwarz commented that he could not support a budget with a reliance on a one-time insurance payment. The next Board meeting is May 29th, at 4:00pm in the conference room.

There was a brief discussion of a possible Board meeting and trip to Pensacola November 13-16th. Cathy noted that we would need a critical mass of Board members to attend to warrant a Board meeting out of town.

**Curator's Update**

Marianne Lamonaca gave a slide review of recent gifts to the collection, which include gifts from Board member David Schwarz, and former Board member Fred Sharf and his wife Jean. In addition, the former head of the FIU libraries, Lawrence Miller, donated his entire collection of ocean liner ephemera. This collection complements our existing collection. Marianne also noted that as a direct result of the **American Streamlined Design** exhibition, we received thirty objects from the Lillian and David M. Stewart Collection. She showed a rendering by muralist Abraham Joel Tobias, which was a recent gift from his widow Carolyn Tobias, who is also bequeathing additional works by him to the museum.

Marianne discussed changes in the upcoming exhibition schedule made after the museum canceled the Lautner show. This summer, The Wolfsonian will present **Beauty on the Beach,** an exhibition organized from our collection and the Jantzen archives. To complement the exhibition, we have invited photographer Miles Geist Laden to create a series of works on Miami and Miami Beach bathing and body culture for an exhibition in the lobby. This exhibition will open Thursday, July 9.

The museum will present an exhibition on the American automobile October16-March 14, 2009 (members' preview on October15, 2009), using Jean and Fred Sharf's and The Wolfsonian's collections. Marianne has asked FIU English professor Nathaniel Cadel to contribute to the catalogue. **Rhythms of Modern Life: British Prints 1914-1939** will be presented November 20, 2009–February 28, 2010 (members' preview on October 15, 2009). Cathy noted that the Museum of Fine Arts, Boston asked The Wolfsonian to be a part of the tour of this exhibition and gave us a greatly reduced fee.

Marianne noted that the curatorial department has just finished editing **Speed Limits,** the book for an exhibition of the same name. The project is in collaboration with the Canadian Centre for Architecture in Montreal. She thanked The Wolfsonian Alliance for their support of this international project. The exhibition will open in Montreal on May 19 and will be presented at The Wolfsonian in fall 2010. Cathy invited the Board to the May opening.

Cathy spoke about the **Thoughts on Democracy** exhibition. Currently it is at the Miami International Airport and has the recently opened at the National Autonomous University of Mexico in Mexico City. Cathy and Tim Hossler both participated in panel discussions at the exhibition opening. It also has been shown at the Cranbrook Academy of Art and will possibly tour American embassies in Latin America. She thanked Susan Richard for her work in selecting the twenty-six images for the *Thoughts on Democracy* portfolios, and she reminded the Board that portfolios are available for purchase.

Cathy spoke briefly about the 2009 Art Basel project. She said that the museum has applied for a $50,000 Knight Foundation New Work Grant through the Funding Arts Network. The project, if funded, would include a work created for The Wolfsonian by the artist Jenny Holzer for the exterior of the building and a competition for five local artists to create murals for other cultural institutions.

Micky reminded the Board of the September Genoa trip for Alliance members. Information on the Genoa trip will be sent to Board members shortly.

The meeting adjourned at 5:35.

# THE WOLFSONIAN-ADVISORY BOARD MEETING

May 29, 2009 4:00PM
The Wolfsonian-FIU
2nd Floor Conference Room
Conference call number 888 808 6959
Conference Code 8151010

I. Call to order

II. Approval of Minutes

III. Chairman's Report

IV. President's Report

V. Director's Report
   a. Revised FY 2010 Budget

VI. Nominating Committee Report

VII. Curatorial Update

VIII. Old Business

IX. New Business

X. Adjournment

# METROPOLITAN PLANNING ORGANIZATION FOR THE MIAMI URBANIZED AREA GOVERNING BOARD

## SUMMARY MINUTES

## MEETING OF THURSDAY, APRIL 30, 2009 AT 2:00 P.M.

## STEPHEN P. CLARK CENTER
## 111 NW FIRST STREET
## COUNTY COMMISSION CHAMBERS

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The following members were present for the meeting of the Miami-Dade County Metropolitan Planning Organization on April 30, 2009:

Board Member Bruno A. Barreiro
Board Member Lynda Bell
Board Member Matti Herrera Bower
Board Member Kevin A. Burns
Board Member Jose "Pepe" Diaz
Board Member Audrey M. Edmonson
Board Member Shirley M. Gibson
Board Member Carlos A. Gimenez
Board Member Sally A. Heyman
Board Member Barbara J. Jordan
Board Member William H. Kerdyk
Board Member Joe A. Martinez
Board Member Julio Robaina
Board Member Dorrin D. Rolle
Board Member Marc D. Sarnoff
Board Member Natacha Seijas
Board Member Katy Sorenson
Board Member Javier D. Souto

Vice Chairwoman Perla Tabares Hantman
Chairman Dennis C. Moss

Non-voting members present: Mr. Gus Pego, FDOT District VI Secretary and Mr. Gary Donn, Florida Department of Transportation (FDOT).

The following staff members were present: Jose Luis Mesa, Director, MPO Secretariat; Bruce Libhaber, Assistant County Attorney and Zainab Salim, MPO Board Clerk.

## CALL TO ORDER

Chairman Moss called the meeting to order at 2:18 p.m.

## ROLL CALL

Chairman Moss requested Mrs. Salim call the roll.

| | | | |
|---|---|---|---|
| Board Member Barreiro | -Present | Board Member Jordan | -Absent |
| Board Member Bell | -Present | Board Member Kerdyk | -Absent |
| Board Member Bower | -Present | Board Member Martinez | -Absent |
| Board Member Burns | -Present | Board Member Robaina | -Present |
| Board Member Diaz | -Absent | Board Member Rolle | -Absent |
| Board Member Edmonson | -Absent | Board Member Sarnoff | -Present |

| | | | |
|---|---|---|---|
| Board Member Gibson | -Absent | Board Member Seijas | -Present |
| Board Member Gimenez | -Absent | Board Member Sorenson | -Present |
| Board Member Gutierrez | -Present | Board Member Sosa | -Absent |
| Board Member Heyman | -Present | Board Member Souto | -Present |

**Chairman** Dennis C. Moss-Absent
**Vice Chairwoman** Perla Tabares Hantman-Present

Mrs. Salim announced quorum was attained.

## 1. APPROVAL OF AGENDA

Chairman Moss thanked Vice Chairwoman Hantman for conducting the meeting last month. He explained to the Board that his absence was as the result of serving on the screening committee to select the president of the Jackson Memorial Hospital and Public Health Trust. He then reminded the Board of the decorum in the chambers. He further stated to the Board that all conversations must flow through the Chair. He then mentioned that he would be sending a memorandum to the Board in the future detailing further decorum issues as it relates to the Board. He concluded by reminding the Board members that seating in the chambers is based on a first come basis except for the Chair and Vice Chair seats. He further concluded by requesting the Sergeant-At-Arms maintain the decorum in the chambers including ensuring that everyone remains seated and cell phones are off during the meeting.

Attorney Libhaber informed the Board that staff received a request to move the Report Items 6.A.1, 6.A.2 and 6.A.3 to the front of the agenda.

Board Member Rolle moved for approval of the agenda as amended. Vice Chairwoman Hantman seconded the motion. The agenda was approved as amended.

## 2. APPROVAL OF MINUTES

Board Member Souto moved for approval of the March 26, 2009 minutes. Board Member Diaz seconded the motion. The minutes were approved.

## 3. MPO COMMITTEES AND SPECIAL REPORTS

### A. SPECIAL PRESENTATION

#### 1. 2009 Senior High School Safety Campaign Winners

Vice Chairwoman Hantman announced the winners from the 2009 Senior High School Safety Campaign. She stated that the event was cosponsored by the Miami-Dade MPO under the Unified Planning Work Program (UPWP) to promote pedestrian and vehicle drive safety at the Senior High level. She further informed the Board that the Miami-Dade Public Schools formally recognized the winners at their April 22, 2009 Board meeting. She concluded by presenting the posters and the 30-sec public safety announcements.

## B. CITIZEN COMMITTEES

### 1. COMMITTEES VACANCY LIST

Board Member Martinez reappointed Mrs. Bonnie Sterling to CTAC and Ms. Karnelia Tiede to FTAC. He also appointed Ms. Anamarie Garces de Marcilla to BPAC.

Board Member Seijas moved the acceptance of the appointments. Vice Chairwoman Hantman seconded the motion. The appointments were accepted.

Several Board members mentioned discrepancies in the committee vacancy report and requested staff make the necessary updates to the report.

### 2. FREIGHT TRANSPORTATION ADVISORY COMMITTEE (FTAC)

*No report provided.*

### 3. TRANSPORTATION AESTHETIC REVIEW COMMITTEE (TARC)

*No report provided.*

### 4. BICYCLE PEDESTRIAN ADVISORY COMMITTEE (BPAC)

Ms. Gabrielle Redfern, BPAC Vice Chair, provided the Board with an update on BPAC activities. She began the report by expressing concern with the lack of communication from the Public Works Department (PWD) as it relates to the closing of the Venetian Causeway. She stated that BPAC passed a resolution supporting the concept of the River of Grass Greenway project between Naples and Krome Avenue. She further stated that BPAC is working with staff to distribute information on traffic laws related to bicyclists and pedestrians to the Miami-Dade and municipal police departments to raise awareness in the importance of enforcement in preventing crashes involving people who walk and bike. She concluded by stating that BPAC passed a resolution supporting the observance of Walk to Our Children to School Day on October 7, 2009 and encouraged the Board to do the same.

Vice Chairwoman Hantman thanked BPAC for continuing to support and endorse the International Walk Our Children to School Day. She concluded by stating that she would return next month with an item to seek the MPO Board endorsement of this special safety event. She further thanked BPAC for their support of the Safe Route to Schools Infrastructure Grant Program for the Overtown Greenway Project that would benefit the Frederick Douglas and Paul Lawrence Elementary Schools which are both located within the Overtown area.

5. **CITIZENS TRANSPORTATION ADVISORY COMMITTEE (CTAC)**

*No report provided.*

C. **MIAMI DADE EXPRESSWAY AUTHORITY (MDX)**

1. **MDX Status Report**

*No report provided.*

Chairman Moss informed the Board that the MDX report was placed on the agenda to allow the Authority an opportunity to share project information with the Board that do not normally flow through the MPO process.

4. **ACTION ITEMS**

A. **PUBLIC HEARING ITEMS**

1. **FY 2009 TRANSPORTATION IMPROVEMENT PROGRAM AMENDMENTS: SECTION 5309 FUNDS**
*RESOLUTION APPROVING AMENDMENTS TO THE TRANSPORTATION IMPROVEMENT PROGRAM (TIP) TO INCLUDE MIAMI-DADE PROJECTS ELIGIBLE FOR THE FEDERAL TRANSIT ADMINISTRATION (FTA) SECTION 5309 FIXED GUIDEWAY MODERNIZATION FUNDING PURSUANT TO THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009*

Chairman Moss opened the public hearing. Chairman Moss closed the public hearing.

Board Member Sorenson requested clarity from staff on whether all the stimulus funds have been applied for. Mr. David Clodfelter, MDT, responded that MDT is currently in the process of applying for all of the ARRA funding available including the FTA Section 5309 funds. He further stated that the deadline from FTA was moved up to June 1, 2009. He concluded by stating that MDT is on schedule to meet this new deadline. Mrs. Bravo added that the FDOT is moving forward with applying for all funds that have been allocated to the District. She further stated that FDOT is working with the municipalities and Miami-Dade Public Works on moving forward with their respective projects.

Chairman Moss requested that Mrs. Salim conduct a roll call vote.

| | | | |
|---|---|---|---|
| Board Member Barreiro | -Aye | Board Member Jordan | -Aye |
| Board Member Bell | -Aye | Board Member Kerdyk | -Aye |
| Board Member Bower | -Aye | Board Member Martinez | -Aye |
| Board Member Burns | -Aye | Board Member Robaina | -Aye |

| | | | |
|---|---|---|---|
| Board Member Diaz | -Aye | Board Member Rolle | -Aye |
| Board Member Edmonson | -Aye | Board Member Sarnoff | -Absent |
| Board Member Gibson | -Aye | Board Member Seijas | -Aye |
| Board Member Gimenez | -Aye | Board Member Sorenson | -Aye |
| Board Member Gutierrez | -Absent | Board Member Sosa | -Absent |
| Board Member Heyman | -Aye | Board Member Souto | -Aye |

**Chairman** Dennis C. Moss -Aye
**Vice Chairwoman** Perla Tabares Hantman -Aye

Mrs. Salim announced the motion passed.

**2. 2030 LONG RANGE TRANSPORTATION PLAN AND FY 2009 TRANSPORTATION IMPROVEMENT PROGRAM AMENDMENTS**

*RESOLUTION APPROVING AMENDMENTS TO THE 2030 LONG RANGE TRANSPORTATION PLAN AND THE FY 2009 TRANSPORTATION IMPROVEMENT PROGRAM TO INCLUDE PROJECTS RELATED TO THE AMERICAN RECOVERY AND REINVESTMENT ACT AS REQUESTED BY FLORIDA DEPARTMENT OF TRANSPORTATION*

Chairman Moss opened the public hearing. Chairman Moss closed the public hearing.

Board Member Diaz expressed concern that the Board has not been provided any guarantees that the NW 25th Street Viaduct project will be funded through other means should the Board agree with the FDOT proposed request. He reminded the Board that the State requested the MPO to support the Port Tunnel Project which was believed to be a sure thing and now the community is fighting to keep the project alive. He concluded by requesting clarity from the attorney on the MPO Board's role in the transportation process. Attorney Libhaber stated that the MPO role is to develop a Long Range Transportation Plan (LRTP) which is a federal requirement in order to obtain federal funding. He further stated that the MPO must exist and approve projects. He concluded by stating that it is the MPOs discretion whether or not to include a project in its LRTP.

Board Member Gibson expressed concern that the MPO Board approved the previous Work Program that removed the NW 25th Street Viaduct project and therefore was aware that the bridge to nowhere would be constructed as a result of those actions. She further stated that the removal of funds from the SR 826/836 Interchange project was the result of unforeseen circumstances and not by Board actions.

Mrs. Bravo informed the Board that FDOT looked to the MPO for direction. She further clarified by stating that the SR 826/836 Interchange project is currently listed in the Plan as a Priority 1 and had this status since 1990. She further stated that the NW 25th Street Viaduct project was listed as a Priority 2 project in the Plan. She concluded by stating that the Plan is currently going through the process of being updated and would take into consideration the new revenue reality amounts. She further concluded by stating that the Department process of selecting and removing projects always take into account the MPO priorities.

Vice Chairwoman Hantman expressed discontent with the nature of the discussion. She further clarified by stating that the issue is about an un-kept promise or commitment by FDOT as it relates to the NW 25th Street Viaduct Project. She further stated that FDOT's actions display a lack of respect to the MPO Board. She then stated that the previous action by the MPO Board to advance the NW 25th Street Viaduct project was approved unanimously. She also stated that the issue is not whether the MPO is disagreeing with the State but whether the State has ignored the actions of the Board. She expressed concern with the predicament the Board is being placed in as a result of recent actions taken by the State.

Board Member Burns expressed concern that the federal stimulus funds were being proposed to be used for Turnpike projects. He further stated that the Turnpike receives funds through tolling. He then stated that the funds collected from tolling should be used to reinvest in the Turnpike system and therefore not include stimulus funds. Mrs. Bravo responded that the Turnpike has experienced significant decrease in toll funds. She then stated that the stimulus funds are being used to assist in the completion of the Open Road Tolling project on the Turnpike system.

Board Member Burns suggested that staff consider partnership with MDX to complete the NW 25th Street Viaduct Project.

After much discussion, Board Member Bell moved for approval of the resolution. Board Member Sorenson seconded the motion.

Chairman Moss requested that Mrs. Salim conduct a roll call vote.

| | | | |
|---|---|---|---|
| Board Member Barreiro | -Absent | Board Member Jordan | -Absent |
| Board Member Bell | -Aye | Board Member Kerdyk | -Aye |
| Board Member Bower | -Nay | Board Member Martinez | -Aye |
| Board Member Burns | -Aye | Board Member Robaina | -Nay |
| Board Member Diaz | -Nay | Board Member Rolle | -Aye |
| Board Member Edmonson | -Aye | Board Member Sarnoff | -Absent |
| Board Member Gibson | -Aye | Board Member Seijas | -Nay |
| Board Member Gimenez | -Aye | Board Member Sorenson | -Aye |
| Board Member Gutierrez | -Absent | Board Member Sosa | -Absent |
| Board Member Heyman | -Absent | Board Member Souto | -Aye |

**Chairman** Dennis C. Moss - Aye
**Vice Chairwoman** Perla Tabares Hantman - Nay

Mrs. Salim announced the resolution passed 11-5.

## B. NON-PUBLIC HEARING ITEMS

### 1. REQUEST BY MPO BOARD MEMBER JOSE "PEPE" DIAZ *RESOLUTION ENDORSING RIVER OF GRASS GREENWAY ALONG THE TAMIAMI TRAIL*

*Board Member Diaz requested that this item be deferred until the next meeting.*

Board Member Martinez moved on the deferral of the proposed item. Board Member Bower seconded the motion. The deferral was approved.

2. **REQUEST BY MPO BOARD MEMBER JAVIER D. SOUTO**
*RESOLUTION DIRECTING STAFF TO PREPARE A SCOPE OF WORK AND BUDGET TO EVALUATE THE FEASIBILITY OF ESTABLISHING AN AUTOMATED BIKE RENTAL SYSTEM IN MIAMI-DADE COUNTY*

Board Member Souto moved for approval of the resolution. Board Member Sorenson seconded the motion. The resolution was approved unanimously.

3. **2035 LONG RANGE TRANSPORTATION PLAN UPDATE CONGESTION MANAGEMENT PROCESS AND BICYCLE/PEDESTRIAN FINANCIAL SET ASIDES**
*RESOLUTION APPROVING FINANCIAL SET ASIDES FOR THE CONGESTION MANAGEMENT AND FOR THE BICYCLE/PEDESTRIAN PROGRAM IN THE 2035 LONG RANGE TRANSPORTATION PLAN UPDATE*

*The sponsoring agency requested that this item be deferred.*

Board Member Martinez moved on the deferral of the proposed item. Board Member Bower seconded the motion. The deferral was approved.

4. **SOUTHEAST FLORIDA TRANSPORTATION COUNCIL: INTERLOCAL AGREEMENT AMENDMENT TO MEMBERSHIP SECTION**
*RESOLUTION APPROVING AN AMENDMENT TO THE SOUTHEAST FLORIDA TRANSPORTATION COUNCIL INTERLOCAL AGREEMENT MEMBERSHIP SECTION*

Chairman Moss stated that he had no intention on serving on the Southeast Florida Transportation Council (SEFTC) and therefore the MPO Board would have an opportunity to vote for its representative. He then stated that he originally was not going to support the item. However, since the other two MPOs passed the amendment without concern he would go along with the will of the Board.

Board Member Barreiro added that this amendment allows the Board to select its representative to the SEFTC without it automatically being the Chairman of the Board.

Board Member Bell moved for approval of the resolution. Board Member Barreiro seconded the motion. The resolution was approved 11-1.

Board Member Seijas moved to appoint Board Member Barreiro as the representative on the SEFTC. Board Member Burns seconded the motion. The motion was approved unanimously.

Board Member Burns moved to appoint Board Member Bower to serve as the alternate representative on the SEFTC. Board Member Diaz seconded the motion. The motion passed unanimously.

## 5. INFORMATION ITEM

A. PRESENTATION ON THE SOUTH DADE MANAGED LANES STUDY

*Chairman Moss requested that this item be deferred until the next meeting.*

Board Member Martinez moved on the deferral of the proposed item. Board Member Bower seconded the motion. The deferral was approved.

## 6. REPORTS

### A. MPO BOARD MEMBERS

*This item was heard at the beginning of the meeting.*

1. Request by MPO Board Member Marc D. Sarnoff: Discussion on the Port Tunnel Project

   Board Member Sarnoff stated that this item was placed on the agenda to allow the MPO Board an opportunity to hear the latest from the State as it relates to the Port Tunnel project instead of reading it in the paper.

   Mr. Gus Pego, District VI Secretary, stated that the Department has been asked to reconsider its decision to stop the procurement process for the Tunnel Project. He then stated that sometime next week the Department will meet with the concessionaire to further those discussions. He further stated that the goal is to give the concessionaire an opportunity to review contract changes proposed by the department and execute a commitment agreement with the concessionaire by June 1, 2009. He then stated that the schedule includes closing/finalizing the deal by October 1, 2009. He concluded by stating that the Department is moving swiftly to make this project a reality.

   Board Member Sarnoff requested clarity on what the June 1st deadline entails. Mr. Pego responded that the June 1st deadline includes closing the commercial items that are technical in nature and include details on how to build, design, operate, and maintain the Tunnel Project for the next thirty-five years. He further stated that part of the deadline includes the financial matrix on how the project will be financed. He further stated that the Department is currently vetting the requested substitute financial equity partner, Meridiam Infrastructure to ensure they meet the RFP requirements. He then explained that should the commercial close take place on June 1, 2009, the firm would have ninety days to get their financial package complete which includes engaging TIFIA.

Board Member Martinez expressed that he was against the Port Tunnel Project. He then stated that he was not convinced that the tunnel would provide enough benefit to the community other than taking a small number of trucks off the roadway. He then requested clarity from staff on how this project would enhance the vitality of the Port of Miami and make it competitive with other ports throughout the state. Mr. Pego responded that the benefits of the Port Tunnel are not for today. He further clarified by stating that this project has a time horizon of twenty years from now. He then stated that the current pressure on the community is to provide jobs and prepare the port for projects like the opening of the Panama Canal. He then stated that the current issue is how the port will be able to accommodate the trucks once the movement of cargo increases. He further stated that the trucks have to go through six traffic signals before entering the port's limited access system. He also reminded the Board that the current system is not efficient and wastes a lot of fuel in addition to the conflict it causes with the development of downtown Miami.

Board Member Martinez responded that he did not believe the Port of Miami had the room to grow. He further clarified by stating that the port was geographically considered an island that only has the capability to grow vertically. He then stated that the issue of getting the trucks to and from the port could be addressed with the construction of the 5th/6th Street slip Ramp. He then stated that he believed cost savings had more to do with the turn around time for the trucks while at the port. He further stated that having more advance technology would assist the port in getting the cargo processed quicker through Customs. He concluded by stating that he believes the Port Tunnel project is more a legacy project and will not provide real benefits to the community.

2. Request by MPO Board Member Marc D. Sarnoff: Report on the process followed by FDOT on selection of American Recovery and Reinvestment Act (ARRA) Projects

*This item was heard at the beginning of the meeting.*

Board Member Sarnoff reminded the Board of the letter he sent April 22, 2009 that addressed the issue regarding the NW 25th Street Viaduct project and the SR 826/836 Interchange. He then stated that he was very concerned with FDOT's decision to not take into account the MPO Board's actions. He further stated that he was briefed by FDOT staff today and believed it would be beneficial to the Board if FDOT explain why the course of action as it relates to the prioritization of the stimulus funds were taken.

Mrs. Alice Bravo, FDOT District VI, provided the Board with an update on the local projects progression through the stimulus process. She then stated that the other funds discussed at previous MPO meetings related to the State's discretionary funds. She further stated that these funds were at the discretion of the

Department to use on top priority Projects. Mrs. Bravo reminded the Board that their previous vote to allocate the discretionary ARRA funds to the NW 25th Street Project was under the assumption that the SR 826/836 Interchange project was fully funded in the State's Work Program. She then stated that the recent revenue estimating conference has reduced the State's work program by $2 billion. Therefore, FDOT made the decision to use some of the stimulus funds to plug the $87 million shortfall on the SR 826/836 Interchange project resulting from this conference. She stated that the Department determined this decision because the project was funded in the current year of the Work Program and because of the existing partnership with the Miami-Dade Expressway Authority (MDX). She further stated that the NW 25th Street Viaduct Project is still considered a top priority for the Department and staff is doing everything possible to develop a financial plan to complete the project in conjunction with the portion already under construction. Mrs. Bravo concluded by going over the projects being proposed in the Attachment-A Substitute.

Board Member Diaz requested clarity on which project the MPO Board recommended as priority to receive the stimulus funds. Mr. Pego responded that the resolution passed by the MPO Board was very clear that the NW 25th Street Viaduct Project was top priority. Board Member Diaz added that the Board selected NW 25th Street Project unanimously because of the number of jobs created as a result of the project. He further stated that funds have already been expensed in order to move this project forward. He then expressed concern with FDOT's decision to not use the priorities set by the MPO Board. He concluded by stating that it would be unwise and very unsightly to have an incomplete elevated roadway constructed. He further concluded by stating that he was not clear why Miami-Dade would close its ability to improve its transportation of cargo when other areas are currently opening and enhancing theirs.

Mr. Pego stated that the Department recognizes the needs of the community and understands that the Port of Miami is the second largest economic engine for the county. He then stated that the Department is developing a financial plan to save the NW 25th Street Viaduct Project. He concluded by stating that he is not supportive of any plan to have a roadway to nowhere constructed under his administration.

Board Member Robaina requested clarity on the SR 826/836 Interchange Project and whether it was fully funded in the Work Program. He then stated that the intent of the ARRA was to guarantee that the stimulus funds be used towards projects above and beyond the projects that were already scheduled in the Program. He further stated that he believed the actions taken by FDOT violates the agreement and messages sent out by members of Congress, leaders in this community and members of the state

legislature who stated that the bait and switch game will not played with these funds. He also stated that these funds were not to be used to plug in holes but to stimulate new jobs. He concluded by stating that he voted for the NW 25th Viaduct Project as the top priority for the stimulus funds because the project was not listed in the Work Program.

Mr. Pego stated that the SR 826/836 Interchange Project is in partnership with MDX who is contributing $200 million. He then stated that the remaining balance of those project funds would have included about $90 million from the Documentary Stamps. He also stated that the project has been listed as a priority 1 in the Long Range Transportation Plan for many years and in the current Work Program. He added that the Department was scheduled last year to advertise the project to receive bids but because of the revenue reductions the Department was not given the authority to advertise the project. The opportunity of the stimulus funds was fortunate because it allowed the Department to move ahead and avoid deferring this project outside of the Work Program.

Chairman Moss stated he clearly understands that situations change and requires for previous commitments to change. He then stated that his concern is whether the $87 million funding gap wasn't created as an excuse to fund another project somewhere else in the State. He further stated that this scenario appears very similar to the struggle the community is currently experiencing with the Port Tunnel Project. He then stated that he could support FDOT's decision if it is made clear in his mind that this is not the case. Chairman Moss concluded by stating that the recent experience from the Port Tunnel Project has created the doubt and frustration that Board members are displaying today.

Attorney Libhaber informed the Board that the item today is on the agenda as a discussion but relates to Item 4.A.2 on the agenda. He further informed the Board that under Item 4.A.2 the issue before them would be whether to amend the LRTP and TIP in accordance to the FDOT request. He further explained that the other option for the Board would be to reject the proposed resolution and/or reaffirm the Board's previous action in which case a clear distinction between the Board's priority of projects and the projects FDOT wish to move forward with would be made. He then informed the Board that the federal government has made clear that they are seeking that the state agency and the local MPOs reach agreement. He further clarified by stating that a lack of consensus between the parties could potentially jeopardize that component of funding to be received by the State. He concluded by stating that the third option would be modification of the item through a compromise.

Board Member Bell urged the Board to consider the request from FDOT. She then stated that the issue has more to do with adaptability as si710ons change. She further stated that she could

not support any action that would put the community in jeopardy of losing the funds for any project. She concluded by stating that she understands the importance of the SR 826/836 Interchange project to this community.

Board Member Burns expressed similar concerns raised by Board Member Robaina. He further added that the actions of the MPO Board should have been held to a higher standard by FDOT. He concluded by stating that FDOT should have approached the MPO regarding how to fill the $87 million gap for the SR 826/836 Interchange before making the decision to use the stimulus funds.

After much discussion, the Chairman reminded the Board that there would be another opportunity to discuss this issue further under agenda Item 4.A.2.

3. Request by MPO Board Member Natacha Seijas: Status Report on a municipal allocation of American Recovery and Reinvestment Act of 2009

   *This item was heard at the beginning of the meeting.*

   Board Member Seijas stated that this item was placed on the agenda due to concerns she raised at the last meeting. She further stated that since that time the staff has meet with the Town of Miami Lakes and all the information she requested concerning the bus shelters locations have been clarified. She concluded by advising the Town of Miami Lakes to continue to coordinate with Miami-Dade Transit (MDT) on the placement of the shelters. She further concluded by stating that she wanted to make sure the town operate the circulator because of the recent funding amounts they received from Congress as a result of Congressman Mario Diaz-Balart .

   Board Member Seijas moved for the acceptance of the report. Vice Chairwoman Hantman seconded the motion. The report was accepted.

4. Request by MPO Board Member Rebeca Sosa: Discussion on SE 57th Avenue Project

   *Due to the absence of Board Member Sosa it was requested that this item be deferred until the next meeting.*

   Board Member Martinez moved on the deferral of the proposed item. Board Member Bower seconded the motion. The deferral was approved.

**B. COUNTY MANAGER**

**C. COUNTY ATTORNEY**

**D. FLORIDA DEPARTMENT OF TRANSPORTATION (DISTRICT VI)**

**E. MPO SECRETARIAT**

1. MPO March Meeting Follow-up Report

*No discussion under this item.*

**7. ADJOURNMENT** The meeting adjourned at 4:30 PM.

Governing Board

**Chairman**
Dennis C. Moss

**Vice Chairwoman**
Perla Tabares Hantman

**Voting Members**
Bruno A. Barreiro
Lynda Bell
Matti Herrera Bower
Kevin A. Burns
Jose "Pepe" Diaz
Audrey M. Edmonson
Shirley M. Gibson
Carlos A. Gimenez
Maritza Gutierrez
Sally A. Heyman
Barbara J. Jordan
William H. Kerdyk
Joe A. Martinez
Julio Robaina
Dorrin D. Rolle
Marc D. Sarnoff
Natacha Seijas
Katy Sorenson
Rebeca Sosa
Javier D. Souto

**Non-Voting Members**
(FDOT District VI)
Gus Pego, P.E.
Gary L. Donn, P.E.

**MPO Secretariat Director**
Jose Luis Mesa, Ph.D.

**Contact Information**

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zsalim@miamidade.gov
www.miamidade.gov/mpo

# METROPOLITAN PLANNING ORGANIZATION GOVERNING BOARD

## MEETING OF THURSDAY, MAY 28, 2009 AT 2:00 PM

STEPHEN P. CLARK CENTER
111 NW FIRST STREET
MIAMI, FLORIDA 33128
COUNTY COMMISSION CHAMBERS

RECEIVED
09 MAY 20 AM 10:39
MAYOR/COMMISSIONERS
BY

## AGENDA

1. **APPROVAL OF AGENDA**

2. **APPROVAL OF MINUTES**

   - April 30, 2009

3. **MPO COMMITTEES AND SPECIAL REPORTS**
   A. SPECIAL PRESENTATION
      1. 6TH Annual Miami-Dade MPO Public Service Announcement (PSA) Contest Winners

   B. CITIZEN COMMITTEES
      1. COMMITTEES VACANCY LIST
      2. FREIGHT TRANSPORTATION ADVISORY COMMITTEE (FTAC)
      3. TRANSPORTATION AESTHETICS REVIEW COMMITTEE (TARC)
      4. BICYCLE PEDESTRIAN ADVISORY COMMITTEE (BPAC)
      5. CITIZENS TRANSPORTATION ADVISORY COMMITTEE (CTAC)
         - Resolution #4-09

   C. MIAMI-DADE EXPRESSWAY AUTHORITY (MDX)
      1. Status Report

4. **ACTION ITEMS**

   A. **PUBLIC HEARING ITEMS**
      1. **FY 2009 TRANSPORTATION IMPROVEMENT PROGRAM AMENDMENTS: FEDERALLY EARMARKED PROJECTS**
         RESOLUTION APPROVING AMENDMENTS TO THE FY 2009 TRANSPORTATION IMPROVEMENT PROGRAM (TIP) TO INCLUDE MIAMI-DADE PROJECTS RECEIVING FEDERAL EARMARKS **(ROLL CALL REQUIRED)**

      2. **FY 2010-2014 TRANSPORTATION IMPROVEMENT PROGRAM**
         RESOLUTION APPROVING THE FY 2010-2014 TRANSPORTATION IMPROVEMENT PROGRAM **(ROLL CALL REQUIRED)**

   B. **NON-PUBLIC HEARING ITEMS**

      1. **REQUEST BY MPO VICE CHAIRWOMAN PERLA TABARES HANTMAN**
         RESOLUTION ENDORSING THE INTERNATIONAL WALK OUR CHILDREN TO SCHOOL DAY ON OCTOBER 7, 2009

      2. **REQUEST BY MPO BOARD MEMBER JAVIER D. SOUTO**
         RESOLUTION APPROVING THE SCOPE OF WORK AND BUDGET FOR A STUDY TO EVALUATE THE FEASIBILITY OF ESTABLISHING AN AUTOMATED BIKE RENTAL SYSTEM AND BIKE PARKING CENTERS IN MIAMI-DADE COUNTY

3. **REQUEST BY MPO BOARD MEMBER JOSE "PEPE" DIAZ**
   RESOLUTION ENDORSING RIVER OF GRASS GREENWAY ALONG THE TAMIAMI TRAIL

4. **2035 LONG RANGE TRANSPORTATION PLAN UPDATE CONGESTION MANAGEMENT PROCESS AND BICYCLE/PEDESTRIAN FINANCIAL SET ASIDES**
   RESOLUTION APPROVING FINANCIAL SET ASIDES FOR THE CONGESTION MANAGEMENT AND FOR THE BICYCLE/PEDESTRIAN PROGRAM IN THE 2035 LONG RANGE TRANSPORTATION PLAN UPDATE

5. **VANPOOL CONTRACT EXTENSION**
   RESOLUTION APPROVING AN AMENDMENT TO EXTEND FOR SIX MONTHS THE EXISTING CONTRACT BETWEEN THE METROPOLITAN PLANNING ORGANIZATION (MPO) AND VPSI, INC., TO PROVIDE VEHICLES, MAINTENANCE AND MANAGEMENT SERVICES FOR THE SOUTH FLORIDA VANPOOL PROGRAM

5. **INFORMATION ITEM**
   A. PRESENTATION ON THE SOUTH DADE MANAGED LANES STUDY

6. **REPORTS**

   A. MPO BOARD MEMBERS
      1. Request by MPO Board Member Rebeca Sosa: Discussion on SW 57th Avenue Project

   B. COUNTY MANAGER
   C. COUNTY ATTORNEY
   D. FLORIDA DEPARTMENT OF TRANSPORTATION (DISTRICT VI)
   E. MPO SECRETARIAT

7. **CORRESPONDENCE**

*It is the policy of Miami-Dade County to comply with all of the requirements of the Americans with Disabilities Act. The facility for this meeting is accessible. For sign language interpreters, assistive listening devices, or materials in accessible format, please call 305-375-4507 at least five business days in advance.*

MIAMIBEACH

OFFICE OF THE MAYOR AND COMMISSION

# MEMORANDUM

TO: Jorge Gonzalez, City Manager

FROM: Matti Herrera Bower, Mayor

DATE: May 21, 2009

SUBJECT: For Your Information-Provided by the Miami-Dade Metropolitan Planning Organization (MPO)

Attached please find the summary minutes of the April 30, 2009 Metropolitan Planning Organization Governing Board meeting and the agenda for the upcoming meeting on May 28, 2009.

MHB/lw

Agenda Item H3

Date 6-3-09