

# MIAMI BEACH

## City Commission Meeting SUPPLEMENTAL MATERIAL 2

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive  
October 21, 2015

Mayor Philip Levine  
Vice-Mayor Edward L. Tobin  
Commissioner Michael Grieco  
Commissioner Joy Malakoff  
Commissioner Micky Steinberg  
Commissioner Deede Weithorn  
Commissioner Jonah Wolfson

City Manager Jimmy L. Morales  
City Attorney Raul J. Aguila  
City Clerk Rafael E. Granado

Visit us at [www.miamibeachfl.gov](http://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.**

### SUPPLEMENTAL AGENDA

#### R7 - Resolutions

- R7E A Resolution Accepting The Recommendation Of The City's Finance And Citywide Projects Committee, And Waiving, By A 5/7<sup>th</sup> Vote, The Competitive Bidding Requirement In Section 82-39(a) Of The City Code, Finding Such Waiver To Be In The Best Interest Of The City; Further Waiving, By A 5/7<sup>th</sup> Vote, The Appraisal Requirement In Section 82-39(b) Of The City Code, Finding Such Waiver To Be In The Best Interest Of The City; And Approving, Upon First Reading Of This Resolution, A Ground Lease Agreement, Substantially In The Form Attached To This Resolution, Between The City (Owner Or Landlord) And The Sabrina Cohen Foundation (Tenant), In Connection With The Use Of 5,100 Square Feet Of City-Owned Land, Located At Allison Park, Having A Street Address Of 6475 Collins Avenue (Premises), For A Term Of Ninety-Nine (99) Years With No Renewal Options; And Further Setting The Second And Final Reading And Public Hearing Of The Lease, As Required Pursuant To Section 82-37(a)(2) Of The City Code, For A Time Certain On December 9, 2015. **First Reading**  
(Sponsored by Commissioner Joy Malakoff)  
(Legislative Tracking: Office of the City Attorney/Parks & Recreation/Public Works)  
**(Memorandum & Resolution)**

**THIS PAGE INTENTIONALLY LEFT BLANK**

**Condensed Title:**

**A RESOLUTION ACCEPTING THE RECOMMENDATION OF THE CITY'S FINANCE AND CITYWIDE PROJECTS COMMISSION COMMITTEE, AND WAIVING, BY A 5/7<sup>TH</sup> VOTE, THE COMPETITIVE BIDDING REQUIREMENT IN SECTION 82-39(a) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; FURTHER WAIVING, BY A 5/7<sup>TH</sup> VOTE, THE APPRAISAL REQUIREMENT IN SECTION 82-39(b) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; AND APPROVING, UPON FIRST READING OF THIS RESOLUTION, A GROUND LEASE AGREEMENT, SUBSTANTIALLY IN THE FORM ATTACHED TO THIS RESOLUTION, BETWEEN THE CITY (OWNER OR LANDLORD) AND THE SABRINA COHEN FOUNDATION (TENANT), IN CONNECTION WITH THE USE OF 5,100 SQUARE FEET OF CITY-OWNED LAND, LOCATED AT ALLISON PARK, HAVING A STREET ADDRESS OF 6475 COLLINS AVENUE (PREMISES), FOR A TERM OF NINETY-NINE (99) YEARS WITH NO RENEWAL OPTIONS; AND FURTHER SETTING THE SECOND AND FINAL READING AND PUBLIC HEARING OF THE LEASE, AS REQUIRED PURSUANT TO SECTION 82-37(a)(2) OF THE CITY CODE, FOR A TIME CERTAIN ON DECEMBER 9, 2015.**

**Key Intended Outcome Supported:**

Build and maintain priority infrastructure with full accountability.

**Supporting Data (Surveys, Environmental Scan, etc.):** The 2014 Customer Satisfaction Survey indicated that over 77% of residents rated recently completed capital improvement projects as "excellent" or "good".

**Item Summary/Recommendation:**

At the July 8, 2015 City Commission Meeting, the Sabrina Cohen Foundation (the "Foundation") requested that the City grant the Foundation a lease for the use of City-owned land, in Allison Park (the "Park"), to develop, construct, maintain and manage a Wellness Center at the Foundation's sole cost and expense.

At the September 2, 2015 City Commission meeting, three (3) concepts were presented by the Foundation, proposing to utilize the center, the southern portion of the Park or a combination of both locations. At the September 30, 2015 City Commission meeting, the Mayor and City Commission approved Option A (a circular shaped building, located at the center of the Park), which covers approximately 5,100 square feet of City-owned land in the Park, as it is the concept which preserves the most of the natural greenspace and allows for the relocation of the tree canopy currently at the Park.

Additionally, at the September 30, 2015 meeting, the City Commission approved the expansion of the parking lot, increasing the standard parking spaces to 103 plus the Proposed ADA spaces, for a total of 120 parking spaces, by demolishing the existing restrooms, and requiring the Foundation to construct public restrooms, having approximately 500 sq. ft., on the 1<sup>st</sup> Floor of the Wellness Center, by expanding approximately 21,000 sq. ft. into the West area adjacent to the existing parking lot and requiring the relocation of mature existing trees to the south end of the Park, approving said expansion at the expense of the City. At the September 30, 2015 meeting, the City Commission also authorized the City Manager to negotiate a ground lease for the use of the City-owned land for the development of the Wellness Center, based upon the essential terms set forth in the Term Sheet presented, which final negotiated ground lease shall be subject to approval by the City Commission and by a majority of the voters in a City-wide referendum, pursuant to Section 1.03(b) of the City's Charter.

Finally, on October 5, 2015 the Finance and Citywide Projects Commission Committee recommended moving forward with the ground lease for the use of the City-owned land for the development of the Wellness Center as per the term sheet.

**Administration Recommendation:**

1. That the City Commission accept the recommendation of the City's Finance and Citywide Projects Committee;
2. That the City Commission approve waiving, by a 5/7<sup>th</sup> vote, the competitive bidding requirement in Section 82-39(a) of the City Code, finding such waiver to be in the best interest of the City;
3. That the City Commission approve, upon first reading of this resolution, a ground lease agreement, substantially in the form attached to this Resolution as Exhibit "A", between the City (Owner or Landlord) and the Sabrina Cohen Foundation (Tenant), in connection with the use of the 5,100 square feet of City-owned land, having an address of the 6475 Collins Avenue (Premises), for a term of ninety-nine (99) years with no renewal options.
4. That the City Commission set the second and final reading and public hearing of the lease, as required pursuant to section 82-37(a)(2) of the City Code, for a time certain on December 9, 2015.

**Financial Information:**

Source of Funds:	Amount	Account
OBPI	1	
	<b>Total</b>	

**Financial Impact Summary:**

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

Office of the City Attorney/Parks & Recreation/Public Works/Capital Improvement Projects

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
JR <i>[Signature]</i>	EC <i>[Signature]</i>	JLM <i>[Signature]</i>



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

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: October 21, 2015

**SUBJECT: A RESOLUTION ACCEPTING THE RECOMMENDATION OF THE CITY'S FINANCE AND CITYWIDE PROJECTS COMMISSION COMMITTEE, AND WAIVING, BY A 5/7<sup>TH</sup> VOTE, THE COMPETITIVE BIDDING REQUIREMENT IN SECTION 82-39(a) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; FURTHER WAIVING, BY A 5/7<sup>TH</sup> VOTE, THE APPRAISAL REQUIREMENT IN SECTION 82-39(b) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; AND APPROVING, UPON FIRST READING OF THIS RESOLUTION, A GROUND LEASE AGREEMENT, SUBSTANTIALLY IN THE FORM ATTACHED TO THIS RESOLUTION, BETWEEN THE CITY (OWNER OR LANDLORD) AND THE SABRINA COHEN FOUNDATION (TENANT), IN CONNECTION WITH THE USE OF 5,100 SQUARE FEET OF CITY-OWNED LAND, LOCATED AT ALLISON PARK, HAVING A STREET ADDRESS OF 6475 COLLINS AVENUE (PREMISES), FOR A TERM OF NINETY-NINE (99) YEARS WITH NO RENEWAL OPTIONS; AND FURTHER SETTING THE SECOND AND FINAL READING AND PUBLIC HEARING OF THE LEASE, AS REQUIRED PURSUANT TO SECTION 82-37(a)(2) OF THE CITY CODE, FOR A TIME CERTAIN ON DECEMBER 9, 2015.**

### **BACKGROUND**

Sabrina D. Cohen, the President of the Sabrina Cohen Foundation (the "Foundation") approached the City proposing the implementation of an ADA accessible beach program ("ADA Accessible Beach Program"). The City embraced the idea of implementing an ADA Accessible Beach Program, including an accessible outdoor recreation and playground, to be developed and constructed at the City's sole cost and expense. The City selected the north section of Allison Park (the "Park") for the location of the ADA Accessible Beach Program and has initiated a project to redesign the Park to include providing beach access using an alternative friable wood deck and ramp combined with Mobi-mats, outdoor exercise equipment and picnic tables, and re-striping the existing parking lot to provide twelve additional ADA accessible parking spaces.

At the July 8, 2015 City Commission Meeting, the Sabrina Cohen Foundation (the "Foundation") requested that the City grant the Foundation a lease for the use of City-owned land, in Allison Park (the "Park"), to develop, construct, maintain and manage a Wellness Center at the Foundation's sole cost and expense.

At the September 2, 2015 City Commission meeting, three (3) concepts were presented by the Foundation, proposing to utilize the center, the southern portion of the Park or a combination of both locations, as follows: Option A proposed a circular shaped building, located at the center of the Park; Option B consisted of the conceptual plan proposed for Option A plus reserving the southern portion of the Park for future expansion; and Option C proposed a rectangular building to be constructed at the southern portion of the Park.

At the September 30, 2015 City Commission meeting, the Mayor and City Commission approved Option A, which covers approximately 5,100 square feet of City-owned land in the Park, as it is the concept which preserves the most of the natural greenspace and allows for the relocation of the tree canopy currently at the Park, and which is the least obstructive of the proposed concepts.

Additionally, at the September 30, 2015 meeting, the City Commission approved the expansion of the parking lot, increasing the standard parking spaces to 103 plus the Proposed ADA spaces, for a total of 120 parking spaces, by demolishing the existing restrooms, and requiring the Foundation to construct public restrooms, having approximately 500 sq. ft., on the 1<sup>st</sup> Floor of the Wellness Center, by expanding approximately 21,000 sq. ft. into the West area adjacent to the existing parking lot and requiring the relocation of mature existing trees to the south end of the Park, approving said expansion at the expense of the City.

At the September 30, 2015 meeting, the City Commission also authorized the City Manager to negotiate a ground lease for the use of the City-owned land for the development of the Wellness Center, based upon the essential terms set forth in the Term Sheet attached and incorporated herein as Exhibit "A" hereto, which final negotiated ground lease shall be subject to approval by the City Commission and by a majority of the voters in a City-wide referendum, pursuant to Section 1.03(b) of the City's Charter.

Finally, on October 5, 2015 the Finance and Citywide Projects Commission Committee recommended moving forward with the ground lease for the use of the City-owned land for the development of the Wellness Center as per the term sheet.

## **ANALYSIS**

The Administration recommends the following:

1. That the City Commission accept the recommendation of the City's Finance and Citywide Projects Committee;
2. That the City Commission approve waiving, by a 5/7<sup>th</sup> vote, the competitive bidding requirement in Section 82-39(a) of the City Code, finding such waiver to be in the best interest of the City;
3. That the City Commission approve, upon first reading of this resolution, a ground lease agreement, substantially in the form attached to this Resolution as Exhibit "A", between the City (Owner or Landlord) and the Sabrina Cohen Foundation (Tenant), in connection with the use of the 5,100 square feet of City-owned land, having an address of the 6475 Collins Avenue (Premises), for a term of ninety-nine (99) years with no renewal options.

4. That the City Commission set the second and final reading and public hearing of the lease, as required pursuant to section 82-37(a)(2) of the City Code, for a time certain on December 9, 2015.

Attachments

- Exhibit "A" – Proposed Lease

JLM/EC/JR  


T:\AGENDA\2015\October\Parks and Recreation (October 21)\Memo - Land Lease for Sabrina Cohen Foundation.docx



**BERCOW RADELL & FERNANDEZ**  
ZONING, LAND USE AND ENVIRONMENTAL LAW

Direct Line (305) 377-6238  
Email: MMarrero@BRZoninglaw.com

VIA HAND DELIVERY

October 20, 2015

Gisela Nanson Torres  
Senior Assistant City Attorney  
Miami Beach Office of the City Attorney  
1700 Convention Center Drive, Fourth Floor  
Miami Beach, FL 33139

Re: Sabrina Cohen Foundation Adaptive Wellness Center Lease Review

Dear Gisela:

Upon reviewing the draft of the Sabrina Cohen Foundation Adaptive Wellness Center Lease, I can confirm that I approve of the material terms and that there will not be any need for major substantive changes. As a result, I request that you please place the item to be heard on the October 21, 2015 City Commission Agenda, as we had previously discussed. I look forward to continuing to work with you regarding this matter.

Sincerely,

Michael Marrero

# Exhibit A

*Proposed Lease*

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION ACCEPTING THE RECOMMENDATION OF THE CITY'S FINANCE AND CITYWIDE PROJECTS COMMISSION COMMITTEE, AND WAIVING, BY A 5/7<sup>TH</sup> VOTE, THE COMPETITIVE BIDDING REQUIREMENT IN SECTION 82-39(a) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; FURTHER WAIVING, BY A 5/7<sup>TH</sup> VOTE, THE APPRAISAL REQUIREMENT IN SECTION 82-39(b) OF THE CITY CODE, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY; AND APPROVING, UPON FIRST READING OF THIS RESOLUTION, A GROUND LEASE AGREEMENT, SUBSTANTIALLY IN THE FORM ATTACHED TO THIS RESOLUTION, BETWEEN THE CITY (OWNER OR LANDLORD) AND THE SABRINA COHEN FOUNDATION (TENANT), IN CONNECTION WITH THE USE OF 5,100 SQUARE FEET OF CITY-OWNED LAND, LOCATED AT ALLISON PARK, HAVING A STREET ADDRESS OF 6475 COLLINS AVENUE (PREMISES), FOR A TERM OF NINETY-NINE (99) YEARS WITH NO RENEWAL OPTIONS; AND FURTHER SETTING THE SECOND AND FINAL READING AND PUBLIC HEARING OF THE LEASE, AS REQUIRED PURSUANT TO SECTION 82-37(a)(2) OF THE CITY CODE, FOR A TIME CERTAIN ON DECEMBER 9, 2015.**

**WHEREAS**, Sabrina D. Cohen, the President of the Sabrina Cohen Foundation (the "Foundation") approached the City proposing the implementation of an ADA accessible beach program ("ADA Accessible Beach Program"); and

**WHEREAS**, the City embraced the idea of implementing an ADA Accessible Beach Program, including an accessible outdoor recreation and playground, to be developed and constructed at the City's sole cost and expense; and

**WHEREAS**, the City selected the north section of Allison Park (the "Park") for the location of the ADA Accessible Beach Program and has initiate a project to redesign the Park to include providing beach access using an alternative friable wood deck and ramp combined with Mobi-mats, outdoor exercise equipment and picnic tables, and re-stripping the existing parking lot to provide twelve additional ADA accessible parking spaces; and

**WHEREAS**, at the July 8, 2015 City Commission Meeting, Sabrina Cohen, on behalf of the Foundation, requested that the City grant the Foundation a lease for the use of a different portion of Allison Park to develop, construct, manage and maintain the first accessible public health and wellness center (the "Wellness Center"), at be constructed at the Foundation's sole cost and expense; and

**WHEREAS**, the City commission embraced the goal and priority of being the first city to have a state of the art ADA Accessible Wellness Center, complementing the already approved ADA Beach Program, so that members of the general public who have physical and cognitive disabilities, seniors, or able bodied individuals with temporary injuries will be able to use the Wellness Center to improve their quality of life; and

**WHEREAS**, on September 30, 2015, the City Commission adopted Resolution No. 2015-29150, approving the conceptual plan (the "Conceptual Plan"), and authorized the City Manager to negotiate a ninety-nine year ground lease (the "Lease") for the use of approximately 5,100 square feet of the footprint of the City's Property, located at the center of Allison Park, (the "Leased Premises") for the development of the Wellness Center, including the construction of adjoining public restrooms, all improvements and personalty required to operate the Wellness

Center, and additionally relocating the existing public showers at the Park to a different location within the Park, based upon the essential terms set forth therein; and

**WHEREAS**, the final negotiated Lease would be subject to approval by the City Commission at two hearings, with the second being a public hearing, as required pursuant to Section 82-37 of the City's Code, and thereafter approved by a majority of the voters in a City-wide referendum, as required pursuant to Section 1.03(b) of the City's Charter; and

**WHEREAS**, in connection with the Proposed Improvements, the City has agreed to pay for the expenses of relocating the three turtle exhibits and signage relating thereto, currently located at the Leased Premises, to a different location in the Park, which location shall be determined by the City Manager; and

**WHEREAS**, additionally, on September 30, 2015, pursuant to Resolution No. 2015-29150, the City Commission approved the expansion of the parking lot located at the Park (Parking Lot Expansion Project), at the City's discretion and sole cost and expense, which Parking Lot Expansion Project contemplates: (1) increasing the ADA accessible parking spaces to approximately 17 and increasing total regular spaces to approximately 103, for a total of approximately 120 parking spaces; (2) the relocation of the existing canopy trees, currently on the west side of the Park, to other locations, at the City Manager's discretion, within the Park; and (3) the demolition of the existing public restrooms, currently located at the west side of the Park (the Foundation will be constructing new public restrooms); and

**WHEREAS**, on October 5, 2015, the Finance and Citywide Projects Commission Committee (FCWPC) of the City recommended that the Administration negotiate a ground lease for the use of the Leased Premises, in connection with the development of the Wellness Center, based upon the essential terms approved at the September 30, 2015 City Commission meeting; and

**WHEREAS**, the Administration recommends accepting the recommendation of the FCWPC; waiving, by 5/7<sup>th</sup> vote, the competitive bidding requirement, in Section 82-39(a) of the City Code, as being in the best interest of the City; and waiving, by 5/7<sup>th</sup> vote, the appraisal requirement in 82-39 (b) of the City Code, as being in the best interest of the City; and

**WHEREAS**, the Administration recommends the approval of the draft Lease, substantially in the form attached and incorporated herein as Exhibit "A".

**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 accept the recommendation of the City's Finance and Citywide Projects Commission Committee, waive waiving, by a 5/7<sup>th</sup> vote, the competitive bidding requirement in Section 82-39(a) of the City Code, finding such waiver to be in the best interest of the City; further waive, by 5/7<sup>th</sup> vote, the appraisal requirement in Section 82-39(b) of the City Code, finding such waiver to be in the best interest of the City; and approve, upon first reading of this Resolution, a ground lease agreement, substantially in the form attached to this resolution, between the City (Owner or Landlord) and the Sabrina Cohen Foundation (Tenant), in connection with the use of the 5,100 square feet of the City-owned land located at Allison Park, having a street address of 6475 Collins Avenue (Premises), for a term of ninety-nine (99) years with no renewal options and further set the second and final reading and public hearing of the lease, as required pursuant to section 82-37(a)(2) of the City Code, for a time certain on December 9, 2015.

**PASSED** and **ADOPTED** this 21<sup>st</sup> day of October, 2015.

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado, City Clerk

\_\_\_\_\_  
Philip Levine, Mayor

T:\AGENDA\2015\October\Parks and Recreation (October 21)\Resolution - Land Lease for Sabrina Cohen Foundation.doc

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Rafael Granado 10/20/15  
City Attorney DT Date

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

**Lessor**

**and**

**SABRINA COHEN FOUNDATION, INC.**  
a Florida not-for-profit corporation

**Lessee**

**LEASE**

\_\_\_\_\_, 2015

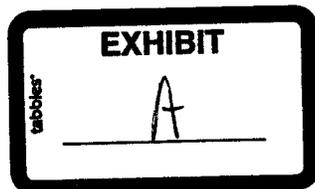


TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
I. DEMISE BY LESSOR .....	11
Section 1.1 Lease of Leased Premises	
II. DURATION AND TERM .....	12
Section 2.1 Commencement and Maturity Dates	
III. AMOUNT OF RENT.....	12
Section 3.1 Rent and payment schedule	
IV. USE AND POSSESSION OF WELLNESS CENTER PROJECT.....	12
Section 4.1 Permitted uses defined	
V. REVENUE FROM THE WELLENESS CENTER PROJECT RELATED ACTIVITIES/FINANCIAL RECORDS AND REPORTS .....	14
Section 5.1 Revenue from Wellness Center Project Related Activities	
Section 5.2 Financial Records and Reports	
VI. BUDGET AND FUNDING FOR THE WELLNESS CENTER .....	15
Section 6.1	
Section 6.2 Programmatic Plan	
VII. OPERATION OF THE WELLNESS CENTER PROJECT RELATED ACTIVIES/FINANCIAL RECORDS AND REPORTS.....	16
Section 7.1 Labor/Personnel/Materials/Equipment/Furnishings	
Section 7.2 Orderly Operation	
Section 7.3 Security	
Section 7.4 Fees for Services offered at the Wellness Center	
Section 7.5 Preference to Veterans and Miami Beach Residents	

<b>VIII.</b>	<b>NET LEASE.....</b>	<b>17</b>
	Section 8.1 Net lease defined	
<b>IX.</b>	<b>PROVISIONS REGARDING PAYMENT OF TAXES.....</b>	<b>17</b>
	Section 9.1 Lessee Pays All Taxes	
	Section 9.2 Contesting Tax Validity	
	Section 9.3 Failure or Refusal to Pay Tax	
	Section 9.4 Proration	
<b>X.</b>	<b>LESSOR'S INTEREST NOT SUBJECT TO MECHANICS' OR MATERIALMEN'S LIENS.....</b>	<b>20</b>
	Section 10.1 Notice to Third-Parties Regarding Liens	
	Section 10.2 Releasing and Discharging Liens	
	Section 10.3 Leasehold Mortgage	
<b>XI.</b>	<b>LESSOR'S RIGHTS AND REMEDIES .....</b>	<b>22</b>
	Section 11.1 Landlord-Tenant Relationship	
	Section 11.2 All Rights and Remedies	
	Section 11.3 Rights and Remedies Cumulative	
<b>XII.</b>	<b>INDEMNIFICATION OF LESSOR AGAINST LIABILITY.....</b>	<b>22</b>
	Section 12.3.1 Indemnification Clause	
	Section 12.3.2 Commercial General Liability Policies	
	Section 12.3.3 Indemnification Clause For Lease Challenges	
	Section 12.3.4 Compliance With All Laws, Etc.	
	Section 12.3.5 Rules On Hazardous Materials	
	Section 12.3.6 Hazardous Materials Defined	
	Section 12.3.7 Further Disclosure of Hazardous Materials	
	Section 12.4.4 Lessor's Right to Inspect	
	Section 12.4.5 Default	
	Section 12.4.6 Lessee Receives Property "As Is"	

<b>XIII.</b>	<b>FIRE AND WINDSTORM, ETC. INSURANCE PROVISIONS .....</b>	<b>26</b>
	Section 13.1 Property All Risk Coverage Policies	
	Section 13.2 Builders' Risk Insurance Policies	
	Section 13.3 Use of Insurance Proceeds	
	Section 13.4 Financing of Premiums	
	Section 13.5 Default after Casualty	
	Section 13.6 Excess Insurance Proceeds	
<b>XIV.</b>	<b>LESSEE'S DUTY TO PAY INSURANCE PREMIUMS .....</b>	<b>32</b>
	Section 14.1 Obligation and Proof of Payment	
	Section 14.2 Lessor's Option to Pay	
<b>XV.</b>	<b>ASSIGNMENT .....</b>	<b>33</b>
	Section 15.1 Right and Conditions of Assignments	
	Section 15.2 Notice and Approval	
	Section 15.3 Transfers or Assignment by Leasehold Mortgagee	
<b>XVI.</b>	<b>CONDEMNATION CLAUSE.....</b>	<b>34</b>
	Section 16.1 Division of Condemnation Proceeds	
	Section 16.2 Lessee's Improvements	
	Section 16.3 Taking Rendering Wellness Center Project Unsuitable for Permitted Uses	
<b>XVII.</b>	<b>ADDITIONAL IMPROVEMENTS.....</b>	<b>35</b>
	Section 17.1 Proposed Improvements Defined; Consistency with Concept Plan	
	Section 17.2 Lessee's Responsibility for Design and Approvals	
	Section 17.3 Preliminary Plans and Specifications	
	Section 17.4 Review of Preliminary Plans and Specifications	
	Section 17.5 Design Review Board Approval	
	Section 17.6 Public Facilities and Concurrency	
	Section 17.7 Construction Plans and Specifications	
	Section 17.8 Conditions Precedent to Construction	

**Section 17.9 Lessor’s Cooperation in Obtaining Approvals**  
**Section 17.10 Phasing**  
**Section 17.11 Commencement of Construction**  
**Section 17.11.1 Unavoidable Delays**  
**Section 17.12 Completion of Construction**  
**Section 17.13 Land Development Regulations**  
**Section 17.14 Licensed Architects and Engineers**  
**Section 17.15 Construction Cost Certification**  
**Section 17.16 Completion Bond**  
**Section 17.17 Diligence in Construction**

**XVIII. DEED RESTRICTIONS CONCERNING THE USE OF THE LEASED PREMISES..... 43**  
**Section 18.1 Restrictions:**  
    **(a) Lessee Remains a Not-For-Profit Corporation**  
    **(b) Religious Services**  
    **(c) Assignments Without Consent Require Fair Market Value**  
    **(d) Lessee’s Costs**  
    **(e) Security**  
    **(f) Insurance obligation**  
    **(g) Signs**  
**Section 18.2 Violation of Restriction is Event of Default**

**XIX. DEFAULT CLAUSE..... 45**  
**Section 19.1 Event of Default**  
**Section 19.2 Statutory Landlord - Tenant Proceedings Apply**  
**Section 19.3 Thirty Day Cure Period**  
**Section 19.4 Lessor’s Other Remedies**  
**Section 19.5 Liquidated Damages**  
**Section 19.6 Receiver**

**XX. LESSEE’S DUTY TO KEEP PREMISES IN GOOD REPAIR ..... 47**  
**Section 20.1 Lessee’s Covenant Regarding Maintenance and Repair**

Section 20.2 Lessee’s Covenant Regarding

**XXI. DEMOLITION CLAUSE..... 48**

Section 21.1 Lessee’s Right to Demolish Conditioned

Section 21.2 Value of Reconstruction

Section 21.3 Expense of Demolition and Right to Salvage

**XXII. ADDITIONAL COVENANTS OF THE LESSEE..... 49**

Section 22.1 Destruction or Casualty No Entitlement to Termination

Section 22.2 No Subordination of Lessor’s Title

Section 22.3 Covenant Regarding Surrender

Section 22.4 Further Covenant Regarding Encumbrances

**XXIII. COVENANT OF QUIET ENJOYMENT ..... 49**

Section 24.1 Lessee’s Right to Quiet Enjoyment

**XXIV. LESSOR’S RIGHT OF ENTRY ..... 50**

Section 24.1 Lessor’s Right of Entry

**XXV. NO REPRESENTATIONS BY LESSOR..... 50**

Section 25.1 Lessor’s Absence of Warranties Regarding Property and Lessee’s Acceptance of Premises

**XXVI. LESSEE TO COMPLY WITH ALL LAWS ..... 50**

Section 26.1 Lessee’s Compliance With All Laws

Section 26.2 Lessee’s Obligation to Pay Fines, Etc.

Section 26.3 No Discrimination Clause

**XXVII.SURRENDER OF THE PREMISES..... 51**

Section 27.1 Surrender of the Premises

Section 27.2 No Subleases, Etc.

<b>XXVIII.FORCE MAJEURE.....</b>	<b>52</b>
<b>Section 28.1 Force Majeure</b>	
<b>XXIX.SIGNAGE/NAMING RIGHTS .....</b>	<b>52</b>
<b>XXVII.MISCELLANEOUS PROVISIONS .....</b>	<b>53</b>
<b>Section 30.1 Grace Periods Run Concurrently</b>	
<b>Section 30.2 Arrearages</b>	
<b>Section 30.3 Landlord-Tenant Relationship Regarding Collections</b>	
<b>Section 30.4 Lessor's Remedies Not Otherwise Provided</b>	
<b>Section 30.5 Receivers</b>	
<b>Section 30.6 Cooperation</b>	
<b>Section 30.7 Captions</b>	
<b>Section 30.8 Index</b>	
<b>Section 30.9 Laws of Florida Apply</b>	
<b>Section 30.10 Covenants Running With the Land</b>	
<b>Section 30.11 Time Is of The Essence</b>	
<b>Section 30.12 Notice</b>	
<b>Section 30.13 Attorneys' Fees</b>	
<b>Section 30.14 Venue</b>	
<b>Section 30.15 Lessor's Limitation on Liability</b>	
<b>Section 30.16 Mediation</b>	
<b>Section 30.17 Recording in the Public Records</b>	

**LEASE**

**THIS INDENTURE** (the "Lease"), made and entered into at Miami Beach, Miami-Dade County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2015 ("Effective Date"), by and between:

**CITY OF MIAMI BEACH,  
a Florida municipal corporation  
(hereinafter referred to as "Lessor" or "City")**

**and**

**SABRINA COHEN FOUNDATION, INC.  
a Florida not-for-profit corporation  
(hereinafter referred to as "Lessee" or "Foundation")**

**WITNESSETH:**

**WHEREAS**, the Lessor is the owner of the fee simple title in and to that certain property located at 6475 Collins Ave, Miami Beach, Florida a/k/a Allison Park, hereinafter demised and more particularly described in the site plan attached as Exhibit "A" (the "City's Property", or "Allison Park", or the "Park"); and

**WHEREAS**, Sabrina D. Cohen, the President of the Sabrina Cohen Foundation (the "Foundation") approached the City proposing the implementation of an ADA accessible beach program ("ADA Accessible Beach Program"); and

**WHEREAS**, the City embraced the idea of implementing an ADA Accessible Beach Program, including an accessible outdoor recreation and playground, to be developed and constructed at the City's sole cost and expense; and

**WHEREAS**, the City selected the north section of Allison Park (the "Park") for the location of the ADA Accessible Beach Program and has initiate a project to redesign the Park to include

providing beach access using an alternative friable wood deck and ramp combined with Mobi-mats, outdoor exercise equipment and picnic tables, and re-stripping the existing parking lot to provide twelve additional ADA accessible parking spaces; and

**WHEREAS**, at the July 8, 2015 City Commission meeting, Sabrina Cohen, on behalf of the Foundation, requested that the City grant the Foundation a lease for the use of a different portion of Allison Park to develop, construct, manage and maintain the first accessible public health and wellness center (the "Wellness Center"), at be constructed at the Foundation's sole cost and expense; and

**WHEREAS**, the City Commission embraced the goal and priority of being the first city to have a state of the art public Wellness Center, complementing the already approved ADA Beach Program, so that members of the general public who have physical and cognitive disabilities, seniors, or able bodied individuals with temporary injuries will be able to use the Wellness Center to improve their quality of life;

**WHEREAS**, the services to be provided by the Wellness Center will also include research and product testing, subject to funding availability, with the goal of developing medication, health products and technologies which will enhance the quality of life for persons living temporarily or permanently with a physical or cognitive disability; and

**WHEREAS**, on September 30, 2015, the City Commission adopted Resolution No. 2015-29150, approving the conceptual plan (the "Conceptual Plan"), in the form attached as Exhibit "B", and authorizing the City Manager to negotiate a ninety-nine year ground lease (the "Lease") for the use of approximately 5,100 square feet of the footprint of the City's Property, located at the center of Allison Park, more particularly described in Section 1.1 (the "Leased Premises") for the development of a state of the art public Wellness Center, including the construction of adjoining public restrooms, all improvements and personalty required to operate the Wellness Center (collectively, the "Wellness Center") (hereinafter, the Leased Premises and Wellness Center shall be collectively referred to as the "Wellness Center Project" or the "Project"), and additionally relocating the existing public showers at the Park to a different location within the Park, based upon the essential terms set forth therein, which final negotiated Lease would be subject to approval by the City Commission at

two hearings, with the second being a public hearing, as required pursuant to Section 82-37 of the City's Code, and thereafter approved by a majority of the voters in a City-wide referendum, as required pursuant to Section 1.03(b) of the City's Charter; and

**WHEREAS**, in connection with the Proposed Improvements, the City has agreed to pay for the expenses of relocating the three turtle exhibits and signage relating thereto, currently located at the Leased Premises, to a different location in the Park, which location shall be determined by the City Manager, in his sole discretion;

**WHEREAS**, additionally, on September 30, 2015, pursuant to Resolution No. 2015-29150, the City Commission approved the expansion of the parking lot located at the Park (Parking Lot Expansion Project), at the City's discretion and sole cost and expense, which Parking Lot Expansion Project may include, without limitation: (1) increasing the ADA accessible parking spaces to approximately 17, plus increasing the total regular spaces to approximately 103, for a total of approximately 120 parking spaces; (2) the relocation of the existing canopy trees, currently on the west side of the Park, to other locations, at the City Manager's discretion, within the Park; and (3) the demolition of the existing public restrooms, currently located at the west side of the Park (the Foundation will be constructing new public restrooms); and

**WHEREAS**, on October 5, 2015, the Finance and Citywide Projects Commission Committee of the City recommended that the Administration negotiate a ground lease for the use of the Leased Premises, in connection with the development of the Wellness Center, based upon the essential terms approved at the September 30, 2015 City Commission meeting; and

**WHEREAS**, on \_\_\_\_\_, the City Commission adopted Resolution No. 2015-\_\_\_\_\_, approving, on first reading, a ninety-nine year lease ("Ground Lease") between the City and the Foundation for the use of the Leased Premises; and

**WHEREAS**, on \_\_\_\_\_, the City Commission adopted Resolution No. \_\_\_\_\_, approving the Lease, at a second and final reading, during a public hearing.

**NOW THEREFORE**, the Lessor and the Lessee, for and in consideration of the mutual covenants, agreements and undertakings herein contained, and in further consideration of the payments herein mentioned, made and to be made, do by these presents mutually covenant and agree as follows:

**ARTICLE I**  
**DEMISE BY LESSOR**

**1.1** Upon the terms and conditions herein stated, and in consideration of the payment from time to time of the rents herein stated, and for and in consideration of the prompt performance by the Lessee of all of the covenants hereinafter contained by the Lessee to be kept and performed, the performance of which are declared to be an integral part of the consideration to be furnished by the Lessee, the Lessor does hereby lease, let and demise unto the Lessee, and the Lessee does hereby lease of and from the Lessor, the following described property, situate, lying and being in Miami-Dade County, Florida, together with all buildings and other improvements located thereon, to wit:

(Legal Description of Leased Premises)

subject to the following:

- (a) Conditions, restrictions and limitations, now appearing of record;
- (b) City and/or County Zoning Ordinances now existing, or which may hereafter exist during the life of this lease;
- (c) All matters shown on the Boundary Survey;
- (d) All of the terms, covenants and conditions contained in this Lease.
- (e) The City Commission's determination by separate resolution of applicable development regulations and appropriate uses for this GU property (as provided in Miami Beach Code Sections 142-422, 142-423 & 142-425(a); Planning Director analysis and City Commission determination of waivers of public bidding and appraisals under Miami Beach Code Sections 82-38 & 82-39); and an approval in an election by majority of the voters in a City-wide referendum, pursuant to Section 1.03(b) of the City's Charter. If the Lease is not approved by voters during the March 16, 2016 referendum, the Lease shall be void ab initio, without the need for further action by any of the parties.

This property is hereinafter referred to as "Leased Premises."

**ARTICLE II - DURATION AND TERM**

- 2.1 The duration and term of this Lease shall be for a period of ninety-nine (99) years, commencing on the 1st day of April, 2016 (the "Commencement Date") and expiring on the 31<sup>st</sup> day of March, 2115 (the "Maturity Date").

**ARTICLE III - AMOUNT OF RENT**

- 3.1 The Lessee covenants and agrees to pay to the Lessor an annual rental of \$18.00 per year, payable annually in advance, the first such annual payment being due and payable on the 1st day of April, 2016, and on the 1st day of April each and every year thereafter during the entire term of the Lease.

**ARTICLE IV - USE AND POSSESSION OF WELLNESS CENTER PROJECT**

- 4.1 The Wellness Center Project shall be used by the Lessee solely and exclusively as a state of the art public health and wellness center catering primarily for individuals living with physical and cognitive disabilities, seniors, and able bodied individuals with temporary injuries, and any and all activities related thereto. It is understood and agreed that the Lessee shall be required, at a minimum, to provide the activities and services described in Sections (A) through (D) below. Additionally, the Wellness Center Project shall be used by the Lessee during the entire term of this Lease only for the purposes described below and for no other purposes or uses whatsoever. In the event that the Lessee uses the Premises for any purposes not expressly permitted herein, such use shall be considered an Event of Default and the Lessor shall be entitled to all the remedies set forth in Article XIX hereof, or without notice to Lessee, restrain such improper use by injunction or other legal action. The activities and uses permitted under this Lease shall be limited to and only include:

- (A) Physical Therapy Room;
- (B) Aqua-therapy Room;
- (C) Adaptive Gym, including training;
- (D) Healing Room, for yoga, meditation, and art therapy
- (E) Research & Product Testing Room (subject to funding availability);
- (F) Office of the Foundation;
- (G) Conference Room; and
- (H) Library;

**4.2** Secondary (ancillary Use). Lessee shall also be authorized to use a portion of the Wellness Center, not to exceed \_\_\_\_\_ square feet, as a Café, offering prepared foods and non-alcoholic beverages (“Food and Beverage Service”) for patrons of the Wellness Center.

**4.2.1** City Vending Contracts. Notwithstanding anything contained in this Subsection 4.2.1, or in the Agreement, Lessee’s Food and Beverage Service shall be subject to and shall not, under any event, conflict with, or otherwise violate, the City’s exclusive vending contract with Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company and Coca-Cola North America, a division of the Coca-Cola Company (“Coca-Cola Contract”) and the City’s exclusive vending contract with Bettoli Trading Corp. (“Bettoli Contract”) (collectively referred to herein as the “City Vending Contracts”); copies of which are attached hereto and made a part hereof as composite Exhibit “C”.

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

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

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

Lessee agrees not to sell, use, provide food in, or offer the use of expanded polystyrene food service articles at the Wellness Center Project or in connection with this Lease. Lessee shall ensure that all vendors operating in the Project abide by the restrictions contained in this Subsection 4.2.2. A violation of this section shall be deemed a default under the terms of this Lease. This subsection shall not apply to expanded polystyrene food service articles used for prepackaged food that have been filled and sealed prior to receipt by the Lessee or its vendors.

Additionally, Lessee agrees to comply (and ensure compliance by its vendors) with Section 46-92 (c) of the City Code, which states that it is unlawful for any person to carry **any** expanded polystyrene product onto any beach or into any park within the City or for any business to provide plastic straws with the service or delivery of any beverage to patrons on the beach.

**4.2** Hours of Operation. The Lessor and Lessee herein agree that normal hours of operation for the Wellness Center shall be from 8:00 AM to 8:00 PM, Monday through Sundays. Any modification to the established hours of operations shall be subject to the prior written approval by the City Manager, in his sole discretion. Notwithstanding the foregoing, the City Manager, in his sole discretion, may submit this issue for consideration and final determination by the City Commission. The failure of the Lessee to operate the Wellness Center continuously during its scheduled hours shall constitute a default under this Lease.

**ARTICLE V. REVENUE FROM THE WELLNESS CENTER PROJECT RELATED  
ACTIVITIES/FINANCIAL RECORDS AND REPORTS**

**5.1** Revenue from the Wellness Center Project Related Activities. The Lessor herein acknowledges that the Lessee may derive additional revenues from a portion of the approved uses it conducts on the Wellness Center Project (such revenue generating uses may include, from time to time, special events on the Wellness Center Project, fundraising, specialty sales, classes, lectures and sale of food and non-alcoholic beverages). The Lessee herein acknowledges that any and all revenue generating uses conducted on the Project must be directly related to, consistent with, or used to help fund the Lessee's management, operation, and maintenance of the Project, and, in the event that annual revenue(s) pertaining to the Project exceed expenses during a particular budget year, (in accordance with projected annual operating budget submitted by the Lessee to the Lessor pursuant to Section VI hereof, the Lessor and the Lessee agree that such excess revenue, if any, shall first be applied to offset any of the capital improvements and/or infrastructure maintenance costs (as set forth in Section XX), and may, thereafter, be applied by the Lessee to support other programming of the Lessee. Any revenue generating uses conducted on the Project that are not consistent with the approved uses in Section 4, or consistent with this Section 5.1, shall first be approved, in writing, by the City Manager (prior to commencement of same).

**5.2** Financial Records and Reports. Lessee shall maintain on the Premises, or at the location set forth in the Notices section of this Lease, or at such other place 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 uses) being 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 Lease, and no later than one hundred and twenty (120) days following the closing of Lessee's fiscal year (June 1<sup>st</sup> – May 31<sup>st</sup>), Lessee shall provide the City Manager with an annual report of all uses, services, programs, events and activities (including without limitation, all revenue generating uses) conducted upon the Project for the prior year, along with audited financial statements. Said statements shall be certified as true, accurate and complete by the Lessee and by its certified public accountant.

#### **ARTICLE VI. BUDGET AND FUNDING FOR THE WELLNESS CENTER**

**6.1** Throughout the Term of this Lease, the Lessee shall prepare and present, by May 15<sup>th</sup> of each year, a proposed, detailed line item annual operating budget for the Wellness Center for the period from the next June 1<sup>st</sup> to May 30<sup>th</sup>, for review 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 uses derived on the Wellness Center Project;
- B. Operating expenses for the Wellness Center;
- C. Administrative, labor and general expenses;
- D. Marketing, advertising and promotion expenses;
- E. Utility costs;
- F. All repairs and maintenance costs, and all costs related to capital improvements and infrastructure of the Wellness Center Project; and
- G. Projected capital improvement costs.

- 6.2 Programmatic Plan. Accompanying the Lessee's proposed annual budget shall be the Wellness Center's programmatic plan for the Wellness Center's upcoming fiscal year, detailing the then-known (planned) uses, services, activities, events, programs, and operations, and the number of users anticipated.

**ARTICLE VII. OPERATION OF THE WELLNESS CENTER PROJECT RELATED  
ACTIVITIES/FINANCIAL RECORDS AND REPORTS**

- 7.1 Labor/Personnel/Materials/Equipment/Furnishings. Lessee must provide and maintain, at its sole cost and expense, all labor, personnel, materials, equipment, and furnishings, as reasonably required, to operate the Project as a full service comprehensive health and Wellness Center, in accordance with the goals and priorities and approved uses set forth herein.
- 7.2 Orderly Operation. Lessee shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Project. There shall be no living quarters nor shall anyone be permitted to live within the Project. Lessee shall make the Project available for inspection by the City Manager or his authorized representatives during hours of operation.
- 7.3 Security. Lessee shall be responsible for and provide reasonable security measures as may be required to protect and secure the Project and any materials, equipment, and furnishings thereon. Under no circumstances shall the Lessor be responsible for any stolen or damaged personal property of the Lessee and/or the Wellness Center's officials, employees, contractors, patrons, guests, invitees, and/or any other third parties.
- 7.4 Fees for Services offered at the Wellness Center. The cost of the services offered at the Wellness Center shall be subject to the prior written consent of the City Manager, which consent shall not be unreasonably withheld.
- 7.5 Preference and Discounts **for Veterans and Miami Beach Residents.** Lessee agrees to make a good faith effort to provide services for military veterans and Miami

Beach residents, to the minimum extent of 10% of the capacity in the programs offered in the Wellness Center. Additionally, Lessee shall provide a 15% discount to military veterans and Miami Beach residents in connection with the services offered by the Wellness Center.

**ARTICLE VIII - NET LEASE**

8.1 Lessee shall pay to the Lessor absolutely net throughout the term of this Lease, the rent and other payments hereunder, free of any charge, assessments, impositions, expenses or deductions of any kind and without abatement, deduction or setoff, and under no circumstances or conditions, whether now existing or hereafter arising, or whether within or beyond the present contemplation of the parties, shall the Lessor be expected or required to make any payment of any kind whatsoever (unless reimbursed by Lessee) or be under any other obligation or liability as to the Premises, except as otherwise specifically stated in this Lease; and the Lessee agrees to pay all costs and expenses of every kind and nature whatsoever arising out of or in connection with the Premises that may arise or become due during the term of this Lease.

Lessee shall be responsible for all expenses relating to the operation and maintenance of the Project including, without limitation, utilities, any applicable taxes (personal and ad valorem).

**ARTICLE IX - PROVISIONS REGARDING PAYMENT OF TAXES**

9.1 Lessee covenants and agrees with Lessor that as a further consideration for the making of this Lease, the Lessee is obligated to and will pay all taxes levied or assessed at any or all times for and after the year in which the Commencement Date occurs, and during the term hereby demised, by any and all taxing authorities, and including not only ad valorem and personal property taxes, but also special assessments and liens for public improvements, and including in general all taxes, sales taxes, tax liens, or liens in the nature of taxes which may be assessed, levied or imposed against the Wellness Center Project or this Lease, including the land and all buildings, (and such personal property by way of furnishings or equipment which

the Lessee has or may bring upon or be obligated to bring upon the Project), during the term of this Lease; but in the event any of these taxes and assessments are payable according to their terms in installments, then the Lessee shall have the right to pay the same as such installments fall due, provided that the Lessee must effect payment of these taxes not later than thirty (30) days before the time when the nonpayment thereof would render them delinquent. The parties agree that in the event any special assessments are payable in installments, the Lessee shall be responsible for such installments during the term of this Lease, and may pay such sums in installments, and the Lessor shall be responsible for any such assessments extending beyond the term of this Lease.

- 9.2** If Lessee desires to contest the validity of any tax or tax claim, Lessee may do so without being in default hereunder as to its obligation to pay taxes, provided Lessee gives Lessor written notice of its intention to do so and furnishes Lessor with a bond from a corporate surety qualified to do business in the State of Florida, in one and one-half times the amount of the tax item or items intended to be contested, conditioned to pay the tax or tax items when the validity thereof shall finally have been determined, which written notice and bond shall be given by Lessee to Lessor not later than a day which is thirty (30) days before the tax item or items proposed to be contested would otherwise become delinquent. If prior to the giving of such bond, Lessee shall have paid into the Registry of a court of competent jurisdiction a sum of money to pay or apply on the payment of such taxes, and if such money is so paid into the Registry of the Court that it may never be withdrawn excepting for its application upon the payment of the contested taxes without the consent in writing of the Lessor hereunder first had and obtained, then the amount of the bond required by the terms of this paragraph may be diminished by the amount so paid into the Registry of the Court. If there shall have been paid into the Registry of the Court in the manner prescribed hereinabove a sum equal to one and one-half times the amount of the tax being contested, then no bond, as otherwise provided for in this Article, need be given by Lessee to Lessor. None of the provisions of this Paragraph 9.2 shall be available to Lessee unless and until the enforcement of the contested tax, whether by way of issuance of Tax Certificates, Tax Deed, reversion to the taxing authority, or otherwise, is fully enjoined by a court of competent jurisdiction or

is otherwise effectively stayed not later than a day which is thirty (30) days before the particular tax item or items proposed to be contested shall become delinquent; if such injunction or other stay is not secured by Lessee within that time, then the Lessor is authorized, as provided for in Paragraph 9.3 of this Article IX, to pay such taxes as then assessed and levied, notwithstanding any pending or proposed suit to contest those taxes.

**9.3** In the event the Lessee shall for any reason fail, refuse or neglect to pay any taxes referred to in Paragraph 9.1 of this Article IX within the time specified therein, or if the Lessee desires to contest, or by suit contests any such tax, but for any reason fails, refuses or neglects to comply with the provisions of Paragraph 9.2 of this Article IX within the time therein specified, then and in any such event, the Lessor may at its option pay such taxes as then assessed and levied and the amount or amounts of money so paid, including reasonable attorneys' fees and expenses which may have been reasonably incurred in connection with such payments or by reason of the nonpayment thereof by the Lessee, together with interest on all such amounts at the rate of ten per cent (10%) per annum from the date of payment, shall be repaid by the Lessee to the Lessor and the payment thereof may be collected or enforced by Lessor in the same manner as though such amounts were an installment of rent specifically required by the terms of this Lease to be paid by Lessee unto Lessor; but the payment of any such taxes by the Lessor shall not waive the default thus committed by the Lessee.

**9.4** Notwithstanding the foregoing, taxes (after deducting all available discounts if utilized) for the last year of the term of this Lease occurs, will be prorated as of the Termination Date of the term of this Lease, Lessee paying such taxes for that portion of the termination year preceding the date of termination of this Lease, and Lessor paying the balance of such taxes for such year, if any.

**ARTICLE X - LESSOR'S INTEREST NOT SUBJECT TO  
MECHANICS' OR MATERIALMEN'S LIENS**

- 10.1** All persons and parties, corporate and otherwise, are hereby notified of the fact that the Lessee does not and shall never under any circumstances have the power, right or authority to subject any interest of the Lessor in the Leased Premises to any mechanics' or materialmen's liens or liens of any other kind or nature; and all persons dealing with the Lessee are hereby notified of the fact that they must look only to the interest of the Lessee in the Wellness Center and not to any interest of the Lessor.
- 10.2** Lessee covenants and agrees with Lessor that Lessee will not permit or suffer to be filed or claimed against the interest of the Lessor in the Leased Premises, or the interest of Lessee in the Wellness Center, during the continuance of this Lease any lien or claim of any kind, and if any such lien is claimed or filed it shall be the obligation of the Lessee, within thirty (30) days after the lien or claim shall have been filed among the Public Records of Miami-Dade County, Florida, or within thirty (30) days after the Lessor shall have been given notice of any such lien or claim and shall have transmitted written notice of the receipt of notice of such lien or claim unto the Lessee (whichever thirty (30) day period expires earlier), to cause the Wellness Center Project to be released and discharged from such lien or claim, either by payment into court of the amount necessary to relieve, release and discharge the Project from such lien or claim, or in any other manner that as a matter of law will result, within the period of thirty (30) days, in releasing and discharging the Lessor and the title of the Lessor from such lien or claim; and Lessee covenants and agrees, within the period of thirty (30) days, so to cause the Project and the Lessor's interests therein to be released from the legal effect of every such lien or claim.
- 10.3** Notwithstanding the foregoing paragraph 10.2, Lessee may encumber the Wellness Center with a leasehold mortgage as follows. Lessor agrees to execute a non-disturbance agreement (containing language reasonably acceptable to the Lessor) for the benefit of Lessee and the holder of any leasehold mortgage (the "Leasehold

Mortgage”) and to cooperate with Lessee’s efforts to obtain financing, including the execution of any necessary documents, so long as such documents are subject to the reasonable approval of the Lessor’s attorney. No leasehold mortgage shall be valid or of any force or effect unless and until Lessor has consented thereto in writing (which consent shall be conditioned upon Lessee’s compliance with this Section 10.3) and a true copy of the original of each instrument creating and effecting such mortgage, certified by Lessee to be a true copy of such instrument, together with written notice containing the name and post office address of the Leasehold Mortgagee, has been delivered to the Lessor. Further, the Leasehold Mortgage shall specifically provide:

- (a) That the Leasehold Mortgage is subject to all of the terms, covenants and conditions of this Lease;
- (b) That the Leasehold Mortgage encumbers only the Lessee’s interest created by this Lease in the Wellness Center and does not encumber Lessor’s interest in the Leased Premises;
- (c) That the rights of the Lessor pursuant to this Lease will not be affected by the terms of the Leasehold Mortgage;
- (d) That the holder of the Leasehold Mortgage shall waive all right and option to obtain and apply proceeds of any insurance or the proceeds of any condemnation award toward payment of the sums secured by the Leasehold Mortgage to the extent such proceeds are required by the terms of this Lease for the demolition, repair or restoration of the Wellness Center Project;
- (e) That the holder of the Leasehold Mortgage shall agree to send Lessor copies of all notices to Lessee in which such mortgagee claims that there exists one or more uncured defaults under the terms and provisions of the Leasehold Mortgage, such notices to be sent simultaneously to Lessor and Lessee;
- (f) That the Leasehold Mortgage is a leasehold mortgage only and that such mortgage has obtained no interest whatsoever in the underlying fee of the Leased Premises as a result of the execution of the Leasehold Mortgage by Lessee;
- (g) Only the Leasehold Mortgagee may acquire any right, title or interest in or to this Lease, by acceptance of a deed or other instrument of conveyance

thereof, by purchase at a foreclosure sale or by transfer in lieu of foreclosure, and will conclusively be deemed to have accepted such right, title or interest subject to all of the terms, covenants and conditions of this Lease; it being the specific intent of Lessee and the Leasehold Mortgagee that the Leasehold Mortgage encumber only Lessee's leasehold interest created by this Lease in the Wellness Center, and that except as specifically set forth in this Lease, the rights of Lessor (including its fee interest in the Leased Premises) shall not be affected by the terms of the Leasehold Mortgage; and (h) That the Leasehold Mortgage and all rights thereunder shall be subject and subordinate to Lessor's interest in the Leased Premises. The Leasehold Mortgagee shall upon demand, at any time, execute, acknowledge and deliver to Lessor, without expense to Lessor, any instrument that may be necessary or proper to confirm the subordination of the Leasehold Mortgage to the Lessor's interests in the Leased Premises.

#### **ARTICLE XI - LESSOR'S RIGHTS AND REMEDIES**

- 11.1 Although this is a long term Lease, all of the rights and remedies of the respective parties shall be governed by the provisions of this instrument and by the laws of the State of Florida as they exist from time to time, as such law relates to the respective rights and duties of landlord and tenant.
- 11.2 During the continuance of this Lease, the Lessor shall have all rights and remedies which this Lease and the law of the State of Florida assures to it.
- 11.3 All rights and remedies accruing to the Lessor shall be cumulative; that is to say, the Lessor may pursue such rights as the law and this Lease afford to it in whatever order the Lessor desire and the law permits, without being compelled to resort to any one remedy in advance of any other.

#### **ARTICLE XII - INDEMNIFICATION OF LESSOR AGAINST LIABILITY**

- 12.1 Lessee covenants and agrees with Lessor that during the entire term of the Lease the Lessee will indemnify and save harmless the Lessor against any and all claims,

debts, demands or obligations that may be made against or upon the Lessor, arising by reason of or in connection with this Lease, or any alleged act or omission of the Lessee or any person claiming by, through or under the Lessee; and if it becomes necessary for the Lessor to defend any action seeking to impose any such liability, the Lessee will pay the Lessor all costs of court and reasonable attorneys' fees incurred by the Lessor in effecting such defense, including appeals, as and when such fees and expenses become due and payable, in addition to any other sums which the Lessor may be called upon to pay by reason of the entry of a judgment against the Lessor or any of them in the litigation in which such claim is asserted.

**12.2** Lessee shall also protect, defend, indemnify and hold Lessor harmless against any loss or damage, including attorneys' fees and costs, arising out of or resulting from any claim, action or law suit brought by a third party to (i) challenge the validity or enforceability of this Lease, or any City action relating to this Lease, including challenges to the referendum approval contemplated of this Lease; (ii) challenge the Lessor's title to the Leased Premises; or (iii) enjoin this Lease. If any litigation is instituted against the Lessor and/or the Lessee as a result of the approval of this Lease, then the Lessee shall defend the Lessor and save the Lessor harmless from any and all reasonable attorneys' fees and court costs that may be incurred, both at the trial and appellate level. Counsel in such actions shall be selected by Lessee, subject to approval of Lessor, which approval shall not be unreasonably withheld or delayed.

**12.3** Lessee, at Lessee's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities pertaining to Lessee's use of the Wellness Center Project and with the recorded covenants, conditions and restrictions, regardless of when they become effective, including, without limitation, all applicable federal, state and local laws, regulations or ordinances pertaining to air and water quality, Hazardous Materials (as hereinafter defined), waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and utility availability, and with any direction of any public officer or officers, pursuant to law, which shall impose any duty upon

Lessor or Lessee with respect to the use or occupation of the Wellness Center Project.

**12.3.1** Lessee shall (i) not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Wellness Center Project by Lessee, its agents, employees, contractors or invitees without the prior written notice to Lessor, demonstrating to Lessor that such Hazardous Material is necessary or useful to Lessee's use of the Premises and will be used, kept and stored in a manner that complies with all laws regulating any such Hazardous Material so brought upon or used or kept in or about the Wellness Center Project. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises results in contamination of the Wellness Center Project, or if contamination of the Project by Hazardous Material otherwise occurs, then Lessee shall indemnify, defend and hold Lessor harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Project, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Project, damages arising from any adverse impact on marketing of space, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees) which arise as a result of such contamination. This indemnification of Lessor by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Project. Without limiting the foregoing, if the presence of any Hazardous Material on the Project results in any contamination of the Project, Lessee shall promptly take all reasonable actions at its sole expense as are necessary to return the Project to the condition existing prior to the introduction of any such Hazardous Material to the Project; provided that Lessor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

**12.3.2** "Hazardous materials" mean (a) pesticides and insecticides; (b) petroleum and its constituents; (c) any substance which is or may hereafter be defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants or contaminants," "solid wastes" or words of similar import under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9061, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §1801 et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq., Chapters 376 and 403, Florida Statutes; Chapter 24 of the Code of Metropolitan Dade County; (d) any other substance, the exposure to or release of which is regulated by any governmental entity having jurisdiction over the Wellness Center Project or the operations thereon; and (e) any substance that does or may pose a hazard to the health or safety of the persons employed at or invitees on the Premises.

**12.3.3** At the commencement of this Lease, and on January 1 of each year thereafter (each such date being hereafter called "Disclosure Date"), including January 1 of the year after the termination of this Lease, Lessee shall disclose, in writing, to Lessor the names and amounts of all Hazardous Materials, or any combination thereof, which were stored, used or disposed of on the Wellness Center Project, or which Lessee intends to store, use or dispose of on the Project. Notice of Lessee's use of Hazardous Materials on the Project shall not be a waiver of any of Lessor's claims, defenses or rights related to Lessee's use of such materials.

**12.3.4** Lessor and its agents shall have the right, but not the duty, to inspect the Premises at any reasonable time to determine whether Lessee is complying with the terms of this Lease. If Lessee is not in compliance with this Lease, Lessor shall have the right to immediately enter upon the Premises to remedy any contamination caused by Lessee's failure to comply notwithstanding any other provision of this Lease. Lessor shall use its best efforts to minimize interference with Lessee's business but shall not be liable for any interference caused thereby.

12.3.5 Any default under this Paragraph shall be a material default enabling Lessor to exercise any of the remedies set forth in this Lease.

12.3.6 Lessee acknowledges it is receiving the Leased Premises in "as is" condition and Lessor is not responsible for the existing condition of the Leased Premises, including any underground conditions.

### **ARTICLE XIII - FIRE AND WINDSTORM, ETC. INSURANCE PROVISIONS**

Lessee shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the term of this Lease:

13.1 Commercial General Liability Insurance, on an occurrence form, in the amount of One Million (\$1,000,000) Dollars, per occurrence, for bodily injury, death, property damage, and personal injury, \$2,000,000 aggregate. This policy must name the City of Miami Beach, Florida, as additional insured.

13.2 Workers Compensation Insurance shall be required under the Laws of the State of Florida and employer's liability insurance of not less than One Five Hundred Thousand (\$ 500,000) per occurrence.

13.3 Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits, subject to adjustment for inflation for a \$1,000,000 combined single limit (only if Lessee provides transportation services).

13.4 Property insurance for the full replacement value of the Wellness Center building and contents, as well as business income with extra expense coverage to cover the 12 month exposure. Coverage shall be on an all-risks basis, including windstorm, flood, and provided under forms, terms, and conditions that are acceptable to the City Manager. This policy must name the City of Miami Beach, Florida, as additional insured.

Primary Coverage. For any claims related to this Lease, the Lessee's insurance coverage shall be primary insurance in respect to the City of Miami Beach. Any

insurance maintained by the City of Miami Beach shall be excess of the Lessee's insurance and shall not contribute with it.

13.6 The policies of insurance referred to in the above Section 13.1, and Sections 13-3 – 13.4 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.

**13.7** Additional Insured Status. The City of Miami Beach must be covered as an additional insured with respect to liability arising out of work or operations performed by or on behalf of Lessee.

**13.8** Waiver of Subrogation. Lessee hereby grants to City of Miami Beach a waiver of any right to subrogation which any insurer of Lessee may acquire against the City and against those for whom the City is in law responsible including, without limitation, its directors, officers, agents, and employees, by virtue of the payment of any loss under such insurance. Lessee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Miami Beach has received a waiver of subrogation endorsement from the insurer.

**13.9** Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than **A:VII**, unless otherwise acceptable to the City of Miami Beach Risk Management Office.

**13.10** Verification of Coverage. Lessee shall provide the required insurance certificates, endorsements or applicable policy language effecting coverage required by this Section. All certificates of insurance and endorsements are to be received prior to any work commencing. However, failure to obtain the required coverage prior to the work beginning shall not waive the Lessee's obligation to provide them. The City of Miami Beach reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- 13.11** Special Risks or Circumstances. The City of Miami Beach, in its sole discretion, reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Certificate Holder**

**CITY OF MIAMI BEACH  
c/o INSURANCE TRACKING SERVICES  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FL 33139**

Compliance with the foregoing requirements shall not relieve the vendor of his liability and obligation under this section or under any other section of this agreement.

- 13.12** In the event of the destruction of or damage to the buildings, or of any of the improvements, by fire, windstorm or other casualty for which insurance shall be payable, and as often as such insurance money shall have been paid to the Lessor and the Lessee, sums so paid shall be deposited in a joint account of the Lessor and Lessee in a bank in Miami-Dade County, Florida designated by the Lessor, and shall be available to the Lessee for the reconstruction or repair, as the case may be, of any building or buildings, damaged or destroyed by fire, windstorm or other casualty for which insurance money shall be payable, and shall be paid out by the Lessor and the Lessee from the joint account from time to time on the estimate of any architect licensed in the State of Florida having supervision of such reconstruction and/or repair, certifying that the amount of such estimate is being applied to the payment of the reconstruction and/or repair and at a reasonable cost therefor; provided, however, that it first be made to appear to the satisfaction of the Lessor that the amount of money necessary to provide for the complete reconstruction and/or repair of any, building or buildings destroyed or damaged as aforesaid, according to the plans adopted therefor and approved by the Lessor, has been provided by the Lessee for such purpose and its application for such purpose assured. The proceeds of the Personal Property Insurance covering personal property belonging to the Lessee shall likewise be deposited in a joint bank account to the credit of the Lessor and the Lessee, and shall be paid out for the replacement or repair, as the

case may require, of destroyed or damaged personal property. The Lessee covenants and agrees that in the event of the destruction of or damage to the buildings and/or improvements or any part thereof, and as often as any buildings or improvements on the Leased Premises shall be destroyed or damaged by fire, windstorm, or other casualty, the Lessee shall rebuild or repair (as the case may require), the same in such manner that the building or improvement so rebuilt and/or repaired shall be of the same or greater value as the building and the improvements upon the Leased Premises were immediately prior to such damage or destruction, and shall have the same rebuilt and/or repaired and ready for occupancy and have received the appropriate certificate of occupancy and/or completion from the City's Building Department within two years from the time when the damage or destruction occurred, and shall within that period replace and repair as the case may require, personal property destroyed or damaged; this obligation of the Lessee to rebuild and repair the buildings and improvements, and to replace and repair the personal property, shall exist and be enforceable irrespective of the availability of any insurance funds for any of these purposes. With Lessor's prior written consent, the two-year period for reconstruction or repair shall be enlarged and extended by delays caused without fault or neglect on the part of the Lessee, by act of God, strikes, lockouts or other conditions beyond the Lessee's control.

**13.13** Nothing herein contained shall be construed as prohibiting the Lessee from financing the premiums on such policies, or from such payments having a deductible amount not exceeding five percent (5%) of the insurable value of the improvements.

**13.14** If at any time any such insurance money comes into the possession of the Lessor and the Lessee after destruction or damage by fire or windstorm or other casualty and the Lessee is in default in the payment of rent, taxes, assessments, liens or other charges which by the terms of this Lease the Lessee is obligated to pay or pay for, or if such default should occur during the time such insurance money or any part thereof is in the joint bank account, as aforesaid, then the Lessor shall be paid so much of the insurance money as may be necessary fully to pay or discharge any such sum of money in the payment of which the Lessee is in default, as aforesaid, and this shall be done whenever and as often as any such default shall occur on the part of the Lessee. Nothing contained herein, however, shall be construed as

permitting the Lessee to default in the payment of rent or other charges herein stipulated to be paid or in the performance of the other covenants in this Lease. The Lessor may, at its option, in case of default in the payment of such rent or other charges or default in the performance of any other covenant in this Lease, proceed against the Lessee for the collection of such rental and charges, and recover and take possession of the Wellness Center Project herein described, and without prejudice to their rights to the benefit of such insurance money as payment of such rental and other charges.

**13.15** It is agreed by and between the Lessor and Lessee that any excess of money received from insurance or other sources remaining in the joint bank account after the completion of the reconstruction, replacement or repair of such building or buildings and personal property, and if there is no default on the part of the Lessee in the performance of any of the covenants of this Lease, shall be paid to Lessee; but in the event the Lessee fails for any reason to commence the reconstruction or repair of such building or buildings within six (6) months after the date of the damage or destruction occasioned by fire, windstorm or other cause for which insurance money shall be payable, or the Lessee for any reason fails within that six (6) month period to provide in the manner required by Paragraph 11.3 of this Article XI, a sufficient sum of money to prosecute the reconstruction and repair work with such dispatch as may be necessary to complete the same within eighteen (18) months after the occurrence of such damage or destruction occasioned as aforesaid, except in the case of Force Majeure, as provided in Article XXVIII, or Unavoidable Delays under paragraph 17.15.1, then and in every such event, the Lessee shall be deemed to have refused to carry out its obligation to reconstruct, replace and repair, and the amount so collected or the balance thereof remaining in the joint account, as the case may be, shall be paid to the Lessor as liquidated and agreed upon damages resulting from the failure of the Lessee to reconstruct, replace and repair, and the Lessor shall have the option, notwithstanding its retention of such sum, to terminate this Lease.

**13.16** Construction Insurance Requirements. Any improvements to the Wellness Center shall be approved in writing, in advance of commencement of any work. Lessee shall require any contractor, who is authorized by the City to conduct improvements to the Wellness Center, to maintain the following insurance coverages, subject to the

same requirements as in the preceding Section 13.1 through Section 13.3 through 13.5, in connection with the approved work:

**13.16.1** 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 Five Hundred Thousand (\$500,000) per occurrence.

**13.16.2** Comprehensive general liability insurance in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence covering personal injury and property damage, Four Million Dollars (\$4,000,000) aggregate. This policy must name the City of Miami Beach, Florida, as additional insured. 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 \$2,000,000 (for three (3) year extension beyond completion of project).

**13.16.3** Excess umbrella liability insurance with a limit of not less than Three Million Dollars (\$3,000,000) per occurrence and in the aggregate in excess of the above mentioned insurance, which shall be required only in any "wrap up" policy. Lessee 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. This policy must name the City of Miami Beach, Florida, as additional insured.

**13.16.4** Comprehensive automobile liability insurance in an amount of not less than One Million Dollars (\$1,000,000) 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.

- 13.16.5** As applicable, to be determined by the City's Risk Management Department, 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 Lessee, City, and Lessee'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); or
- 13.16.6** Installation Floater for the installation of machinery and/or equipment into an existing structure. The coverage shall be "All Risk" coverage including installation and transit for one hundred percent (100%) of the "installed replacement cost value", covering the City as named insured, with deductible of not more than Five Thousand and 00/100 Dollars (\$5,000.00) each claim.
- 13.16.7** A payment and performance bond for the project cost may be required by the City, in its sole discretion, with the City reflected as a dual obligee thereunder.

#### **ARTICLE XIV - LESSEE'S DUTY TO PAY INSURANCE PREMIUMS**

- 14.1** Lessee covenants and agrees with Lessor that Lessee will pay the premiums for all of the insurance policies which Lessee is obligated to carry under the terms of this Lease, and will deliver to the Lessor evidence that all such premiums have been paid on or before the effective date of each such policy or proper evidence of extended credit and/or evidence of financing the payment of such premiums, and Lessee will cause renewals of all expiring policies to be written, and the policies or copies thereof, as the Lease may require, to be delivered to the Lessor at least ten (10) days before the expiration date of such expiring policies. The parties note that in Section 13.16.5, Lessor may review insurance coverages and require increased coverage consistent with the value of improvements to the Leased Premises as improvements to the Leased Premises are made.
- 14.2** Nothing herein contained shall ever be construed as rendering the Lessor personally liable for the payment of any such insurance premiums, but if at any time during the

continuance of this Lease the Lessee shall fail, refuse or neglect to procure any of the policies of insurance required in and by this instrument to be procured by the Lessee, or to keep and maintain the same in full force and effect, or to pay the premium therefore promptly when due, the Lessor may, at its option, procure or renew such insurance, and thereupon the amount or amounts of money paid as the premium or premiums thereon plus interest at the rate of ten per cent (10%) per annum from date of payment thereof shall be collectible as though it were rent then matured hereunder, and shall be due and payable forthwith, or in lieu thereof and notwithstanding the procurement and renewal of such policies by the Lessor, this Indenture and the terms created hereby may, at the option of the Lessor, be terminated and declared at an end and all of the right, estate and interest of the Lessee in such event hereunder shall immediately cease and become null and void.

#### **ARTICLE XV - ASSIGNMENT**

- 15.1** This Lease, or any portion thereof, is not freely assignable, and no assignment, transfer, sublease, concession or license agreement with respect to the Wellness Center Project, or any portion thereof, shall be valid unless there is a prior written consent by the Lessor, which consent shall be within the sole discretion of the Lessor. With respect to any instrument of assignment conveying all or any portion of Lessee's rights and interest in and to the Lease (an "Assignment"), any such Assignment must also be consented to in writing, which Assignment must contain an assumption agreement, duly executed by the Assignee of this Lease and in recordable form, whereby the Assignee accepts the Assignment and assumes and agrees to timely and fully perform and comply with all of the Lessee's covenants and agreements contained in this Lease. The City Commission must provide the approvals required by this Section 15.1
- 15.2** The Lessor covenants and agrees that it will, within sixty (60) days after service of Notice upon it of a proposed assignment of this Lease, giving the name and post office address of the proposed Assignee, advise the Lessee in writing as to whether the Lessor will consent to the assignment of the Lease and further advise the Lessee in writing of the existence or nonexistence of any default on the part of the Lessee

under the terms of this Lease, and if there is any default or defaults, a statement setting forth such default or defaults. Lessor's failure to give such advice in writing within the time required shall not constitute either notice of the absence of any default, or consent to the proposed assignment. Only Lessor's response in writing of the existence or not of a default and permission or not of an assignment shall be effective with respect to each such item.

- 15.3** Any transfer or assignment of this Lease, as a result of the Leasehold Mortgagee having acquired title to the leasehold estate of Lessee by foreclosure of the Leasehold Mortgage, or transfer in lieu of foreclosure, shall require prior written consent of the Lessor predicated upon the transferee or assignee being a not-for-profit corporation that will solely conduct activities on the Leased Premises, as provided in section 4.

#### **ARTICLE XVI - CONDEMNATION CLAUSE**

- 16.1** It is further understood and agreed that if at any time during the continuance of this Lease the Leased Premises or the improvements and buildings located thereon or any portion thereof be taken, appropriated or condemned by reason of eminent domain, there shall be such division of the proceeds and awards in such condemnation proceedings, and such abatement of rent and other adjustments made, as shall be just and equitable under the circumstances. If the Lessor and the Lessee are unable to agree upon what division, annual abatement of rent or other adjustments are just and equitable within thirty (30) days after such award shall have been made, then the matters in dispute shall by appropriate proceedings, be submitted to a court having jurisdiction of the subject matter of such controversy in Miami-Dade County, Florida, for its decision and the determination of the matters in dispute. If the legal title to the entire Wellness Center Project is wholly taken by condemnation, the Lease shall automatically and without notice be canceled. No allocation of condemnation proceeds between Lessor and Lessee shall be based upon Lessee's interest in the land; notwithstanding, the Lessee shall be compensated for Lessee's interest in the improvements under this Lease in accordance with the condemnation award.

**16.2** Although the title to the buildings and improvements placed by the Lessee upon the Leased Premises will pass to the Lessor upon the termination of this Lease, nevertheless, for purposes of condemnation only, the fact that the Lessee placed such buildings and improvements on the Leased Premises, at Lessee's cost and expense, shall be taken into account in determining the portion of the condemnation award to which the Lessee is entitled. In general, it is the intent of this Article that upon condemnation, the parties shall share in their awards to the extent that their interests respectively are depreciated, damaged or destroyed by the exercise of the right of eminent domain.

**16.3** If a partial taking or a total taking renders the Premises unsuited for the permitted uses as provided for herein, Lessee, may at its sole option and expense, remove all of its personal property from the portion of the property taken, however, Lessee shall continue to be liable under this Lease and continue its rights and obligations as to the remainder of the Property not so taken, unless released in writing by Lessor.

#### **ARTICLE XVII - ADDITIONAL IMPROVEMENTS**

**17.1** This Lease is made with the understanding and agreement that Lessee will design, develop and construct additional improvements, at its sole cost and expense, valued at no less than \$5,400,000 on the Leased Premises, subject to the prior written consent of the Lessor (the "Proposed Improvements"). The Proposed Improvements are contemplated to construct a state of the art public Wellness Center, which will consist of: (1) a three (3) story circular building, on the footprint of the Leased Premises, having approximately 15,400 square feet, which shall be consistent with the conceptual plan presented by Lessee to Lessor, attached as Exhibit "B" to this Lease (the "Concept Plan"); (2) the construction of public restrooms (each containing an ADA accessible stall and two (2) regular stalls), to be located on the first floor of the Wellness Center, accessible for use by the general public, and which public restrooms, once completed and accepted by Lessor, shall be maintained by Lessor; and (3) the design and construction of public showers at a different location within the Park, which location will be subject to the written approval of the City Manager, at

his discretion.

- 17.2** Design and Governmental Approvals. Lessee is solely responsible for the design of any improvements to the Leased Premises, and obtaining all approvals from City and other applicable regulatory agencies therefor, including approvals by City as Lessor, and approvals by City in its regulatory capacity under the City Code and other applicable laws, including the requisite approvals from the Florida Department of Environmental Protection and Florida Fish and Wildlife Conservation Commission.
- 17.3** Lessor's approval of General Contractor/Construction Insurance/Work Letter. The general contractor and the construction agreement between the Lessee and the general contractor shall be subject to review and approval by the City Manager, in his sole discretion. The approval of the construction contract shall also entail approval of the requisite construction insurance coverages, as set forth in Section 13.16, plus any additional insurance coverages which the City may reasonably require from the Contractor, subcontractor and/or architect.
- 17.4** Pre-construction site work. Lessee shall be responsible for any site and underground studies, and any remediation which may be needed in connection with the development of the Wellness Center at the Leased Premises. The Development of the Wellness Center shall neither impact the surrounding areas nor compromise nor modify access to the beach from its current condition.
- 17.5** Lessee, at its own cost and expense, shall submit to Lessor (acting in its proprietary capacity as owner of the Leased Premises) Preliminary Plans and Specifications for the Proposed Improvements, which shall include, but not be limited to, a detailed site plan, a landscape plan, elevation drawings of each facade, a detailed floor plan for each of the floors of the Proposed Improvements, a calculation of the floor areas for each floor, and a calculation of the total floor area dedicated to each use within the Proposed Improvements (the "Preliminary Plans and Specifications").
- 17.6** Lessee shall submit its Preliminary Plans and Specifications to Lessor's City Manager for approval within one year of the Commencement Date. The failure of

Lessee to timely submit its Preliminary Plans and Specifications to the City Manager shall constitute a default under this Lease. The City Manager shall have twenty (20) Business Days to review the Preliminary Plans and Specifications. If the City Manager, in his sole discretion, concludes that the Preliminary Plans and Specifications are materially inconsistent with the Concept Plan, the City Manager shall, and in any event the City Manager may, submit the Preliminary Plans and Specifications to the City Commission for its review and approval as Lessor (acting in its proprietary capacity as owner of the Leased Premises), at the next City Commission meeting, along with a written report of the Administration's review and recommendations, including a review and recommendation from the City's Planning Director. The City Commission may refer the matter to the City's Planning Board for its review and recommendations before acting thereon. If Lessor disapproves the Preliminary Plans and Specifications, then Lessee shall, submit a revised modification to the Preliminary Plans and Specifications to meet Lessor's objections, which revised modification shall be submitted and reviewed as provided above. Failure of the Lessee to submit revised Preliminary Plans and Specifications within sixty days from the date of Lessor's disapproval, but no later than one year from the Commencement Date, shall constitute a Default under this Lease.

**17.7** Lessee shall, within two months of Lessor's approval of the Preliminary Plans and Specifications, but no later than two years from the Commencement Date, submit an application for approval of the design for the Proposed Improvements to the City's Historic Preservation Board (HPB) and to other City boards, as applicable. Failure of the Lessee to submit its application, as provided in this Section, to the HPB, by the date which is two months from the receipt of Lessor's final approval as above provided, but no later than two years from the Commencement Date, shall constitute a Default under this Lease. Lessee shall pursue approval of its applications to the City boards, as applicable, diligently and in good faith.

**17.8** Public Facilities and Concurrency. Lessee shall be solely responsible for obtaining all land use permits, including, but not limited to, all permits and approvals required pursuant to Chapter 122, Miami Beach City Code, with respect to concurrency

requirements for roads, sanitary sewer, solid waste, drainage, potable water, parks and recreation (the "Concurrency Requirements").

**17.9** Plans and Specifications. Upon receipt of the HPB's approval of the Proposed Improvements, and all other City boards' approvals, as applicable, Lessee shall prepare for review by Lessor construction Plans and Specifications for construction of the Proposed Improvements, consistent with the Preliminary Plans and Specifications, as approved by the Lessee, the HPB, and other City boards, as applicable. The Plans and Specifications shall be submitted to the Lessor (acting in its proprietary capacity as owner of the Leased Premises) within twelve months from the date on which the HPB approves the Proposed Improvements, but no later than three years from the Commencement Date (if appealed, the time shall run from the issuance of a final nonappealable order). The Plans and Specifications, or modifications thereto, shall be reviewed by the City Manager, within twenty (20) business days, except for modifications thereto, which shall be reviewed within ten (10) business days, solely for consistency with the Preliminary Plans and Specifications as the same may have been modified by the HPB or other City boards, as applicable. If Lessor disapproves the Plans and Specifications, then Lessee shall, submit a revised modification to the Plans and Specifications to meet Lessor's objections, which revised modification, shall be submitted and reviewed as provided above. Lessee shall pursue approval by the City of the Plans and Specifications diligently and in good faith.

**17.10** Any building operation, once commenced, must be carried through continuously to completion, but any interruption or delay in the doing and completion of the work which shall have been caused by act of God, or the public enemy, or strike, or natural casualty, or other circumstances not occasioned by or attributable to the fault, default or neglect of the Lessee shall not be deemed to cause the Lessee to be in default under this paragraph, so long as the Lessee 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.

**17.11** Conditions Precedent to Lessee's Commencement of Construction of the Proposed Improvements. Lessee cannot commence construction until the following conditions have been met: (1) Lessor has approved the Plans and Specifications; (2) Lessor has provided Lessee with a written Notice to Proceed; (3) Lessee has provide Lessor with verification, satisfactory to the City Manager, in his discretion, that Lessee has sufficient funds available to complete the construction, based upon the statement of values provided by the general contractor and architect; (4) Lessee has obtained and delivered to Lessor copies of all final Permits and Approvals required to commence construction; and (5) Lessee shall have delivered to Lessor original certificates of the policies of insurance required to be carried pursuant to this Lease. Failure of Lessee to obtain the final building permits within four years from the Commencement Date shall constitute a default under this Lease.

**17.12** Lessor (solely in its capacity as the owner of the Leased Premises and not in its regulatory capacity) shall reasonably cooperate with Lessee in obtaining the Permits and Approvals required to construct the Proposed Improvements, shall sign any application reasonably made by Lessee that is required in order to obtain such permits and approvals and shall provide Lessee with any information and/or documentation not otherwise reasonably available to Lessee (if available to Lessor) that is necessary to procure such permits and approvals. Any such accommodation by Lessor shall be without prejudice to, and shall not constitute a waiver of, Lessor's rights to exercise its discretion in connection with its regulatory functions. Lessee shall reimburse Lessor, within ten (10) days after Lessor's demand, for any reasonable out-of-pocket cost or expense payable to Lessor's technical consultants (other than Lessor's employees), such as architects and engineers, so incurred by Lessor in connection with Lessor's assistance in obtaining the permits and approvals required by the Proposed Improvements.

**17.14** The Lessee's right to terminate. The Lessee shall have the right to terminate the Lease without cause at any time prior to obtaining the full building permit for the construction of the Wellness Center, each party to bear their own costs and fees. Following termination, Lessor shall have no further obligation and/or

liability to the Lessee with regard to the lease.

**17.15 Commencement and Completion of Construction of the Proposed Improvements.**

Lessee shall, at its sole cost and expense, (a) commence construction on or before sixty (60) days after all permits and approvals necessary for the commencement of construction are issued, but no later than four years 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, Lessee shall notify Lessor in writing of the 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. Failure of Lessee to timely commence construction shall constitute a default under this Lease. If, after Lessee has commenced construction, Lessee fails to diligently prosecute construction of the Proposed Improvements (subject to unavoidable delays), and such failure continues (subject to unavoidable delays) for thirty (30) consecutive days after Lessee's receipt of notice of such failure, Lessor shall, in addition to all of its other remedies under this Lease, 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 (subject to unavoidable delays) by Lessee, it being understood that construction of the Proposed Improvements is a material inducement to Lessor to enter into the Lease and monetary damages shall be inadequate to compensate Lessor for harm resulting from such failure. Notwithstanding anything to the contrary contained herein, if Lessee fails to substantially complete construction of the Proposed Improvements by the date provided for in this Lease, then the same shall constitute a default under this Lease.

**17.15.1** "Unavoidable delays" shall mean delays due to strikes, slowdowns, lockouts, 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 (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), in the application of any requirement. The party alleging unavoidable delay shall notify the other within twenty 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 set forth in this Lease shall be extended to the extent performance is delayed by unavoidable delays.

**17.16** Completion of Construction of the Proposed Improvements. Substantial completion of the Proposed Improvements shall be accomplished in a diligent manner, and in any event no later than two years from the issuance of a full building permit. "Substantial Completion" as used herein shall require the issuance of a temporary or final certificate of occupancy by City's Building Department. Such date may be extended for good cause shown upon request in writing to Lessor's City Manager, which extension by the City Manager shall not be unreasonably withheld. Final completion of the construction of the Proposed Improvements, shall be accomplished in a diligent manner, in each case in a good and workmanlike manner, in substantial accordance with the Plans and Specifications (with no material deviations except as expressly permitted herein), at Lessee's sole cost and expense. Upon Substantial Completion of construction of the Proposed Improvements, Lessee shall furnish Lessor with the following:

(a) a certification of the Architect (certified to Lessor 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 Improvements comply with all applicable codes and laws;

(b) a copy or copies of the temporary and final certificates of occupancy for the Proposed Improvements (or portion thereof, as applicable) issued by the City of Miami Beach Building Department;

(c) lien waivers in form and substance reasonably satisfactory to Lessor from each contractor, subcontractor, supplier or materialman retained by or on behalf of Lessee 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) (excluding personalty) for which the construction of the Proposed Improvements has been completed. Lessor shall have an unrestricted license to use such "as built" plans and survey for any purpose related to the Leased Premises without paying any additional cost or compensation therefor, subject to copyright and similar rights of the Architect to prohibit use of designs for purposes unrelated to the Leased Premises, as such rights exist in law or may appear in the Architect's contract, and subject to applicable public records laws. The foregoing requirement with respect to "as built" plans shall be satisfied by Lessee furnishing to Lessor, at Lessee's expense, 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) a Contractor's Final Affidavit in form and substance reasonably satisfactory to Lessor executed by the General Contractor (i) evidencing that all contractors, subcontractors, suppliers and materialmen retained by or on behalf of Lessee 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.

**17.17** Construction of the Proposed Improvements shall be carried out pursuant to Plans and Specifications prepared by licensed architects and engineers, with controlled inspections conducted by a licensed architect or professional engineer as required by applicable requirements.

**17.18** Upon Substantial Completion of the project, Lessee shall certify to Lessor that it has, in fact, expended not less than said amounts for total construction costs.

**17.19** Conditions Precedent to Commencement of Operations. Lessee shall provide Lessor with the following requirements before Lessee may commence operations at the Wellness Center: (1) Secured Substantial Completion of the Wellness Center Project and provided Lessor all of the items set forth in the preceding Section 17.16; (2) Evidence deemed sufficient, in the City Manager's discretion, substantiating that the Wellness Center has sufficient funds to operate the Wellness Center during the first year of operation, including a cash reserve moving forward; and (3) Evidence that Lessee has deposited \$25,000.00 in a maintenance account and \$100,000.00 in a capital improvement account to cover the cost of maintenance during the first year. Thereafter, every year, Lessee shall deposit any additional funds as may be needed to ensure a minimum balance is maintained in each account, subject to increases which may be necessary, based upon needed repairs or capital improvement projects.

#### **ARTICLE XVIII-DEED RESTRICTIONS CONCERNING THE USE OF THE LEASED PREMISES**

**18.1** The Leased Premises shall hereby contain the following restrictions, covenants and limitations:

- (a) That the Lessee shall at all times remain a not-for-profit corporation;
- (b) That the Lessee shall affirmatively make the Leased Premises, its facilities, and the Lessee's programs and activities open to persons of all races, colors, creeds or national origins, and take reasonable steps to publicize the availability thereof;
- (c) That the Lessee shall not discriminate as to race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age or disability;
- (d) That the Leased Premises shall at no time during the term of the Lease be assigned, sublet, or in any way shall the dominion and control over the

Leased Premises be in any person or entity other than the Lessee, without the prior written consent of the Lessor, and if such consent is given, Fair Market Value shall be paid by Lessee or its successor to Lessor for such space assigned or sublet, unless this provision is waived by action of the City Commission;

- (e) That all fire and extended coverage and flood insurance, maintenance, and other costs for the improvements and the general upkeep of the Wellness Center Project, and all replacements necessary in connection therewith, shall be the sole cost and expense of the Lessee;
- (f) That the Lessee shall provide personnel on the Wellness Center Project during operating hours and either a security service or electronic security service during non-operating hours during the entire term of the Lease, proof of which shall be provided to Lessor via copy of security agreement and receipts therefor.
- (g) That the Lessee shall be obligated to provide, amongst other insurance coverages, public liability insurance and property damage insurance at its cost and expense for the Wellness Center Project during the term of this Lease.
- (h) Exterior signs, if any, will be of a design and form approved by the Lessor, and in accordance with the Miami Beach City Code and other applicable laws and codes. Lessee shall assume the cost of any such signs. Lessee shall remove all signs upon the termination of this Lease and any damage or unsightly condition caused to the Leased Premises because of or due to such signs shall be corrected or repaired by Lessee to the satisfaction of Lessor.

**18.2** The violation by the Lessee of any of the covenants, restrictions and undertakings as set forth in Paragraph 18.1 above, shall be considered an Event of Default and the Lessor shall be entitled to all of the remedies as set forth in Article XIX hereof.

#### **ARTICLE XIX - DEFAULT CLAUSE**

- 19.1** It is further covenanted and agreed by and between the parties hereto that in case at any time default shall be made by the Lessee with regard to any of its obligations as provided in this Lease, except as specifically elsewhere provided, each of which shall be an "Event of Default," then, in any of such events, following notice in writing by certified mail, return receipt requested, or by hand delivery, or such other conveyance then permitted by law, and an opportunity to cure within the thirty-day period following delivery of such notice, and Lessee after such notice and opportunity to cure has failed to cure, as provided for in section 19.3, it shall and may be the Lessor's right to declare such demised term ended and to re-enter upon the Leased Premises and the building or buildings and improvements situate thereon or any part thereof, either with or without process of law, the Lessee hereby waiving any demand for possession of the Leased Premises and any and all buildings and improvements then situate thereon; and the Lessee covenants and agrees that upon the termination of the demised term, the Lessee will surrender and deliver up the Leased Premises peaceably to the Lessor, its agents and attorneys, immediately upon the termination of the demised term; and if the Lessee, its agents, attorneys or other persons or entities claiming by or through Lessee, shall hold the Leased Premises or any part thereof one (1) day after the same should be surrendered according to the terms of this Lease, they shall be deemed guilty of forcible detainer of the Leased Premises under the Statute and shall be subject to eviction or removal, forcibly or otherwise, with or without process of law.
- 19.2** Although this is a ninety-nine (99) year lease, the parties understand and agree that the relationship between them is that of landlord and tenant, and the Lessee specifically acknowledges that the statutory proceedings in the State of Florida relating to the recovery of possession of the Leased Premises accrues to the landlord hereunder.
- 19.3** Nothing herein contained shall be construed as authorizing the Lessor to declare this Lease in default until thirty (30) days after the Lessor shall have given the Lessee written notice of a violation of this Lease, and Lessee has failed to cure such violation within such time period. If the default complained of is of such a nature that

it cannot be cured within thirty (30) days, and if the Lessee has commenced taking all reasonable steps to cure such default and is in the process of eliminating the facts which are the basis for the declaration of a default, then the Lessee shall not be deemed to be in default and the Lessor shall not be entitled to cancel or otherwise enforce the termination of this Lease. Nothing herein contained shall be construed as precluding the Lessor from having such remedy as may be and become necessary in order to preserve the rights and the interests of the Lessor in the Leased Premises and in this Lease even before the expiration of the grace or notice periods provided for in this paragraph if, under particular circumstances then existing, the allowance of such grace or the giving of such notice would prejudice or endanger the rights and estate of the Lessor in this Lease and in the Leased Premises, or the public health, safety and welfare.

**19.4** In addition to the rights set forth elsewhere in this Lease, Lessor shall have the right to pursue any or all of the following: (a) the right to injunction or other similar relief available to it under Florida law against Lessee; and/or (b) the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Lessee's default.

**19.5** It is further covenanted and agreed by and between the parties hereto, in the event of the termination of this Lease at any time before the expiration of the term hereby created, for the breach by the Lessee of any of the covenants herein contained, that in such case all of the right, estate and interest of the Lessee in and under this indenture and in the Leased Premises hereinabove described, and all improvements and buildings then situate on the Leased Premises, together with all rents, issues and profits of the Leased Premises and the improvements thereon, whether then accrued or to accrue, and all insurance policies and all insurance monies paid or payable thereunder, and all of them, shall without any compensation made therefore unto the Lessee, at once pass to and become the property of the Lessor, not as a penalty or forfeiture, but as liquidated damages to the Lessor because of such default by the Lessee and the consequent cancellation of the Lease, each of the parties acknowledging it to be the fact that for breach and consequent cancellation of

a long-term lease of this character, the Lessor will sustain substantial damage, being damage of such character as to make it most burdensome and tedious, if not actually impossible, to ascertain with mathematical precision, and each of the parties therefore having agreed upon this provision for liquidated damages in the interests of obviating what would otherwise be burdensome and difficult litigation to maintain or to defend, as the case may be; and this provision for liquidated damages has been taken into account by both parties in fixing the term of and the consideration for the making of this Lease.

- 19.6** The Lessee pledges with and assigns unto the Lessor all of the rents, issues and profits which might otherwise accrue to the Lessee for the use, enjoyment and operation of the Leased Premises, and in connection with such pledging of the rents, the Lessee covenants and agrees with the Lessor that if the Lessor, upon the default of the Lessee, elects to file a suit to enforce the Lease and protect the Lessor's rights thereunder, then the Lessor may, as ancillary to such suit, apply to any court having jurisdiction thereof for the appointment of a Receiver of all and singular the Leased Premises, and the improvements and buildings located thereon; and thereupon, it is expressly covenanted and agreed that the court shall forthwith appoint a Receiver with the usual powers and duties of Receivers in like cases, and such appointment shall be made by such court as a matter of strict right to the Lessor, and without reference to the adequacy or inadequacy of the value of the property which is subject to the landlord's lien or to the solvency or insolvency of the Lessee, and without reference to the commissions of waste.

#### **ARTICLE XX - LESSEE'S DUTY TO KEEP PREMISES IN GOOD REPAIR**

- 20.1** Lessee covenants and agrees with the Lessor that during the Lease term the Lessee will keep in good state of maintenance and repair any and all buildings and other improvements constructed upon the Leased Premises; Lessee will not suffer or permit any strip, waste or neglect of any building to be committed; and the Lessee will repair, replace and renovate the real property, and improvements located thereon, as often as it may be necessary to keep the building and improvements on the Leased Premises in a good state of repair and condition.

**20.2** Lessee covenants and agrees with the Lessor that Lessee shall be obligated to pay for all utilities utilized on the Leased Premises for the entire term of this Lease.

**20.3** The Foundation shall be responsible for the operation, maintenance and repair of the Wellness Center including, without limitation, roof, structure, mechanical, plumbing, electrical, and general maintenance and upkeep, as well as all utilities.

#### **ARTICLE XXI - DEMOLITION CLAUSE**

**21.1** Although it is the Lessee's duty under the terms hereof to keep and maintain any buildings and improvements on the Leased Premises in good repair, this shall not be construed as empowering the Lessee to at any time tear down and destroy any buildings or improvements, on the Leased Premises, or any part thereof, unless and until the Lessee:

- (a) Follows all procedures necessary for development approval as provided for in this Lease, and causes construction plans and specifications for the new building or the new construction to be prepared in full accordance with all applicable laws, building codes, zoning ordinances, statutes and regulations, and delivers the plans to the Lessor at least ninety (90) days before the work proposed to be done pursuant thereto is actually commenced; and
- (b) Obtains the written approval of the construction plans and specifications by the Lessor, in Lessor's discretion, which shall, in writing, approve or disapprove such plans and specifications within twenty (20) days working days after their delivery to the Lessor; and
- (c) Furnishes the Lessor with all requisite Construction Insurance requirements set forth in Section 13.16.

**21.2** In any event, the work of reconstruction, repair and replacement must have a value of not less than the current market value of the buildings or improvements or the portion thereof then being demolished and replaced and repaired.

**21.3** The expense of demolition shall be no part of the cost of any subsequent

replacement or rebuilding or addition; but by the same token, any salvage resulting from the demolition shall belong to the Lessee.

**ARTICLE XXII - ADDITIONAL COVENANTS OF THE LESSEE**

- 22.1** Lessee covenants and agrees with Lessor that no destruction to any building or improvement by fire, windstorm or any other casualty shall be deemed to entitle the Lessee to surrender possession of the Leased Premises or to terminate this Lease or to violate any of its provisions or to cause any abatement or rebate in the rent then due or thereafter becoming due under the terms hereof. If the Lease is canceled as the result of Lessee's default at any time while there remains outstanding any obligation from any insurance company to pay for the damage or any part thereof, then the claim against the insurance company shall, upon the cancellation of the within Lease, be deemed immediately to become the absolute and unconditional property of the Lessor.
- 22.2** Lessee covenants and agrees with Lessor that nothing in this Lease contained shall ever be construed as empowering the Lessee to encumber or cause the Lessor to encumber or subordinate the title or interest of the Lessor.
- 22.3** Lessee covenants and agrees with Lessor that at the termination of this Lease the Lessee will peaceably and quietly deliver possession of the Wellness Center Project and all improvements thereon unto the Lessor.
- 22.4** Lessee shall not mortgage, pledge, hypothecate or otherwise encumber its leasehold interest without the prior written consent of Lessor, as provided for in this Lease.

**ARTICLE XXIII - COVENANT OF QUIET ENJOYMENT**

- 23.1** Lessor covenants and agrees with Lessee that as long as the Lessee keeps and performs all of the covenants and conditions by the Lessee to be kept and performed, the Lessee shall have quiet and undisturbed and continuous possession of the Leased Premises, free from any claims against the Lessor and all persons claiming under, by or through the Lessor.

**ARTICLE XXIV - LESSOR'S RIGHT OF ENTRY**

- 24.1 The Lessor or its agents shall have the right to enter upon the Wellness Center Project at all reasonable times to examine the condition and use thereof, provided, only, that such right shall be exercised in such manner so as not to interfere with the Lessee in the conduct of the Lessee's business on the Wellness Center Project; and if the Wellness Center Project is damaged by fire, windstorm or by other casualty that causes the Project to be exposed to the elements, then the Lessor may enter upon the Project to make emergency repairs; but if the Lessor exercises its option to make emergency repairs, such act or acts shall not be deemed to excuse the Lessee from his obligation to keep the Project in repair. If Lessor makes any emergency repairs pursuant to the terms hereof, Lessee shall reimburse Lessor for all such repairs upon receipt by Lessee of Lessor's notice of repairs made and statement and proof of costs incurred.

**ARTICLE XXV - NO REPRESENTATIONS BY LESSOR**

- 25.1 Lessee acknowledges that it has examined the Leased Premises and knows the condition thereof and accepts the Leased Premises in its present condition, "as is," and without any representations or warranties of any kind or nature whatsoever by Lessor as to its condition or as to the use or occupancy which may be made thereof. The Lessee assumes, in accordance with provisions of this Lease, the sole responsibility for the condition, operation, maintenance and management of the Leased Premises and all improvements now or hereafter situated thereon, and the Lessor shall not be required to furnish any facilities or services, or any funding, or make any repairs or structural changes, additions or alterations thereto.

**ARTICLE XXVI - LESSEE TO COMPLY WITH ALL LAWS**

- 26.1 Lessee shall at all times comply with all laws, ordinances, regulations and orders of Federal, State, County and municipal authorities pertaining to the Wellness Center Project and Lessee's improvements and operations thereon.
- 26.2 Lessee shall pay all costs, expenses, fines, penalties and/or damages which may be

imposed because of the failure of Lessee to comply with this Article, and Lessee shall indemnify Lessor from any and all liability arising from such noncompliance.

- 26.3** Lessee covenants and agrees that there will be no discrimination as to race, color, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, creed or national origin in its use of the Wellness Center Project.

#### **ARTICLE XXVII - SURRENDER OF THE PREMISES**

- 27.1** The Lessee 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 Lessor the Wellness Center Project, together with any and all equipment, fixtures, furnishings, appliances or other personal property located at or on the Project and used by Lessee in the maintenance, management or operation of the Project, excluding any trade fixtures or personal property which can be removed without material injury to the Project, free of all liens, claims and encumbrances and rights of others and broom-clean, together with all structural changes, alterations, additions, and improvements which may have been made upon the Project, in good order, condition and repair, reasonable wear and tear excepted, subject, however, to the subsequent provisions of this Article. Any property which pursuant to the provisions of this Article is removable by Lessee on or at the Project upon the termination of this Lease and is not so removed may, at the option of the Lessor, be deemed abandoned by the Lessee, and either may be retained by the Lessor as its property or may be removed and disposed of by Lessor at the sole cost of the Lessee in such manner as the Lessor may see fit. If the Project and personal property are not surrendered at the end of the term as provided in this Article XXVII, the Lessee shall make good to the Lessor all damages which the Lessor shall suffer by reason thereof, and shall indemnify, the Lessor against all claims made by any succeeding tenant, or purchaser, so far as such delay is occasioned by the failure of the Lessee to surrender the Project as and when herein required.

- 27.2** The Lessee covenants and agrees that it will not enter into any subleases, subtenancies, licenses or concession agreements relating to the Wellness Center

Project for a period of time beyond the stated expiration date of this Lease.

**ARTICLE XXVIII - FORCE MAJEURE**

**28.1** Either party hereto shall be excused from performing any of its respective obligations or undertakings provided in this Lease, except as provided in Article XXVII hereof, "Surrender of the Premises," and excepting any of its respective obligations or undertakings to pay any sums of money under the applicable provisions hereof, for so long as the performance of such obligations are prevented or delayed, retarded or hindered (plus such additional time mutually consented to by the parties) by act of God, weather or unusual severity, fire, earthquake, flood, hurricane, explosion, action of the elements, war (declared or undeclared), invasion, insurrection, riot, mob violence, sabotage, malicious mischief, inability to produce or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, public requisition, laws, order of government or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the respective party if such party hereto gives notice of such delay to the other party within twenty (20) days of the occurrence of such event.

**ARTICLE XXIX SIGNAGE/NAMING RIGHTS**

Interior/Exterior Signage/Sponsorship: the Foundation shall have the right to erect interior signage, including, without limitation, temporary banners (temporary signage is subject to City Manager's approval) and exterior signage; provided, however, that the names affixed thereon (including, without limitation, any sponsorship names) shall be subject to approval as required by the City's Naming Ordinance, as codified in Chapter 82, Article VI, Sections 82-501 through 82-505 of the City Code, as shall be amended from time to time. If approved, any exterior or interior signage shall be subject to review and approval by the City. In no event may any approved interior or exterior signage include the names of any company selling the following types of products ("Prohibited Names"): guns, tobacco or sexual products.

**ARTICLE XXX- MISCELLANEOUS PROVISIONS**

- 30.1** All periods of notice and/or grace, including any periods of notice which the law may require as conditions precedent to the exercise of any rights by the Lessor against the Lessee shall, at the option of the Lessor, run concurrently and not successively.
- 30.2** All arrearages in the payment of rent shall bear interest at the rate of ten percent (10%) per annum from the date when they became due and payable hereunder until the date when they are actually paid.
- 30.3** Although this is a long-term Lease, the relationship between the parties is that of landlord and tenant, and all statutory provisions in the State of Florida regulating the relationship of landlord and tenant, respecting the collection of rent and other charges, or the repossession of the Leased Premises, shall accrue to the Lessor hereunder.
- 30.4** In the event of a breach or threatened breach by the Lessee of any of the agreements, conditions, covenants or terms hereof, the Lessor shall have the right of injunction to restrain the same, and the right to invoke any remedy allowed by law or in equity as if specific remedies, indemnity or reimbursement were not herein provided for.
- 30.5** In the event of any default on the part of the Lessee in the performance of or compliance with any of the terms, covenants, provisions or conditions of this Lease, and the Lessor is required to bring any action or proceedings as a result thereof, then it is agreed that the Lessor shall have the right to apply to any court having jurisdiction for the appointment of a Receiver of all and singular the Leased Premises, buildings, fixtures, furnishings and improvements located thereon, together with the rents, issues and profits therefrom, and the Lessee does hereby expressly consent to the appointment of such Receiver by the court with the usual powers and duties of Receivers in such cases, and that such appointment be made by the court as a matter of strict right to the Lessor and without reference to the adequacy or inadequacy of the value of the property which is subject to the Lessor's liens, or to the solvency or insolvency of the Lessee, and without reference to the

commissions of waste.

- 30.6** The Lessor and Lessee hereby agree to cooperate fully with each other at all times, and in addition to those matters hereinabove specifically referred to, to perform such other and further acts, and sign and deliver such papers and documents, as may be necessary in the circumstances from time to time during the term of this Lease to give full effect to all of the terms, covenants, conditions and provisions of this Lease.
- 30.7** The captions of this Lease are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Lease nor in any way affect this Lease.
- 30.8** The index preceding this Lease, but under the same cover, is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.
- 30.9** This Agreement shall be governed by the laws of the State of Florida regardless of the diversity of citizenship of the parties in interest or the place of execution of this Lease.
- 30.10** That all covenants, promises, conditions and obligations herein contained or implied by law are covenants running with the land and shall attach to and be binding upon the heirs, executors, administrators, successors, legal representatives and assigns of each of the parties to this Lease.
- 30.11** Time is of the essence in every particular and particularly where the obligation to pay money is involved.
- 30.12** When the parties desire to give notice unto the other or others in connection with and according to the terms of this Lease, such notice shall be given by Registered or Certified Mail, Return Receipt Requested, and shall be deemed given when it shall have been deposited in the United States Mails with sufficient postage prepaid

thereon to carry it to its addressed destination, or by such conveyance then permitted by law, and the notice shall be addressed as follows:

**To the Lessor: City Manager, City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139**

**and with a copy to: City Attorney, City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139**

**To the Lessee:** \_\_\_\_\_  
\_\_\_\_\_

**and with a copy to:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Where the parties on either side, Lessor or Lessee, consist of more than one person, notice unto or default by one of the persons on that side shall constitute notice unto or default by all of the persons on that side.

**30.13** If, in connection with the enforcement of this Lease and by reason of the Lessee's failure to keep and observe all of the covenants and conditions herein contained by the Lessee to be kept and performed, it shall be necessary for the Lessor to employ an attorney, then the Lessee shall pay the Lessor all reasonable attorneys' fees and court costs incurred and/or expended by the Lessor, including all appellate fees and costs. And conversely, if, in connection with the enforcement of this Lease and by reason of the Lessor's failure to keep and observe all of the terms, covenants and conditions herein contained by the Lessor to be kept and performed, it becomes necessary for the Lessee to employ an attorney, then the Lessor shall pay the Lessee for all reasonable attorneys' fees and court costs incurred and/or expended by the Lessee, including all appellate fees and costs. Such fees and costs shall be awarded only to the prevailing party.

- 30.14** 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 or all of the terms or conditions herein exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida.
- 30.15** The Lessor desires to enter into this Agreement only if in so doing the Lessor can place a limit on Lessor's liability for any cause of action for money damages due to an alleged breach by the Lessor of this Agreement, so that its liability for any such breach never exceeds the sum of Ten Thousand (\$10,000.00) Dollars. Lessee hereby expresses its willingness to enter into this Agreement with the Lessee's recovery from the Lessor for any damage action for breach of contract, or any other cause of action for money damages, to be limited to a maximum amount of Ten Thousand (\$10,000.00) Dollars. Accordingly, and notwithstanding any other term or condition of this Agreement, Lessee hereby agrees that the Lessor shall not be liable to Lessee for damages in an amount in excess of Ten Thousand (\$10,000.00) Dollars for any action or claim for breach of contract, or any other cause of action for money damages, arising out of the performance or nonperformance of any obligations imposed upon the Lessor by this Agreement. Nothing contained in this subparagraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon Lessor's liability as set forth in Florida Statutes, Section 768.28.
- 30.16** If a dispute arises out of or relates to this Lease, 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.
- 30.17** A memorandum of agreement reflecting the execution hereof, and any modifications, assignments or transfers of this Lease, shall be recorded in the public records of Miami-Dade County, Florida, at Lessee's cost.

**IN WITNESS WHEREOF, the Lessor and Lessee have hereunto affixed their respective hands and seals at the place, and on the day and date first hereinabove written.**

**Signed, sealed and delivered in the presence of:**

**Attest:**

**CITY OF MIAMI BEACH**

\_\_\_\_\_  
**Rafael E. Granado, City Clerk**

\_\_\_\_\_  
**Philip Levine, Mayor**

**Witnesses:**

**SABRINA COHEN FOUNDATION, INC.**  
**a Florida corporation not-for-profit**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

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

\_\_\_\_\_  
**Print Name/Title**

\_\_\_\_\_  
**Signature**

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by Mayor Philip Levine and Rafael E. Granado, 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 the instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2000.

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

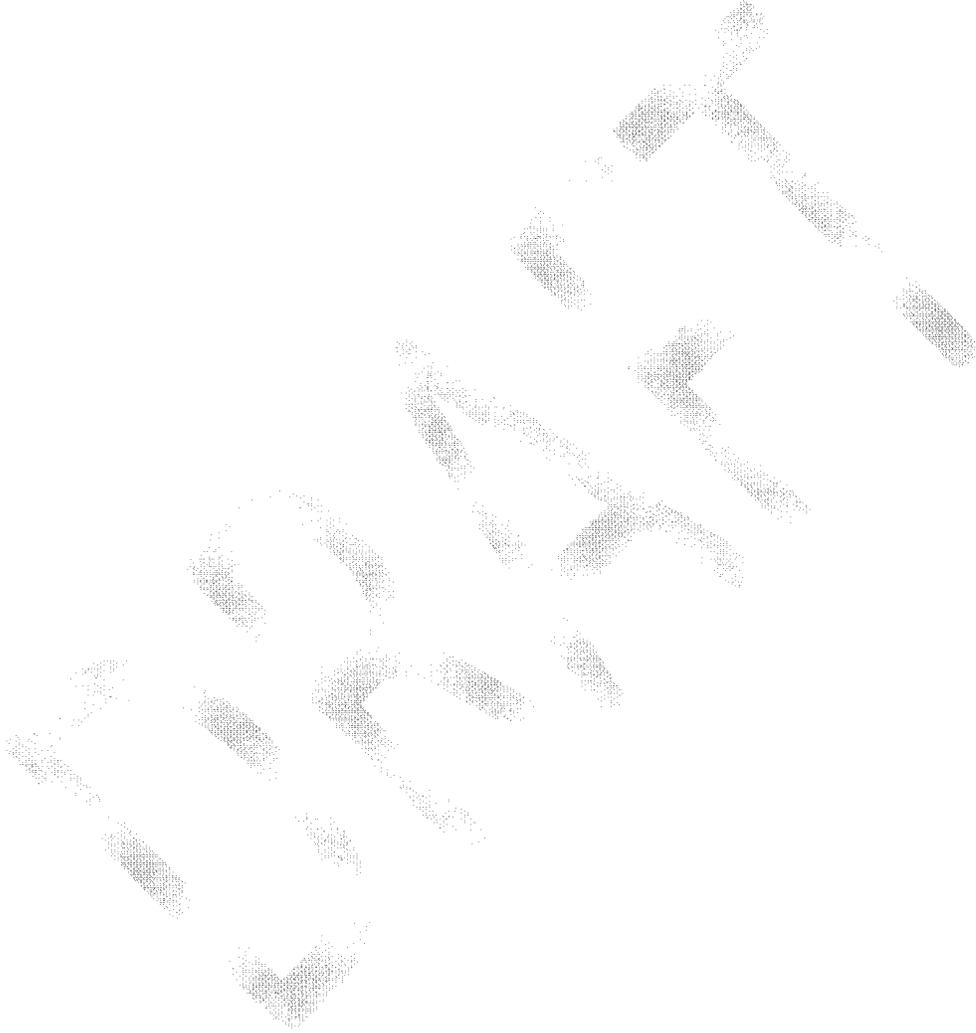
STATE OF FLORIDA        )  
  )        SS:  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, on behalf of the \_\_\_\_\_ a Florida corporation not-for-profit, known to me to be the persons described in and who executed the foregoing instrument, and acknowledged to and before me that they executed the instrument for the purposes therein expressed.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2015.

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

**Exhibit A**  
**Site Plan of City's Property**



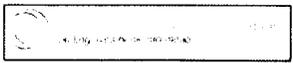
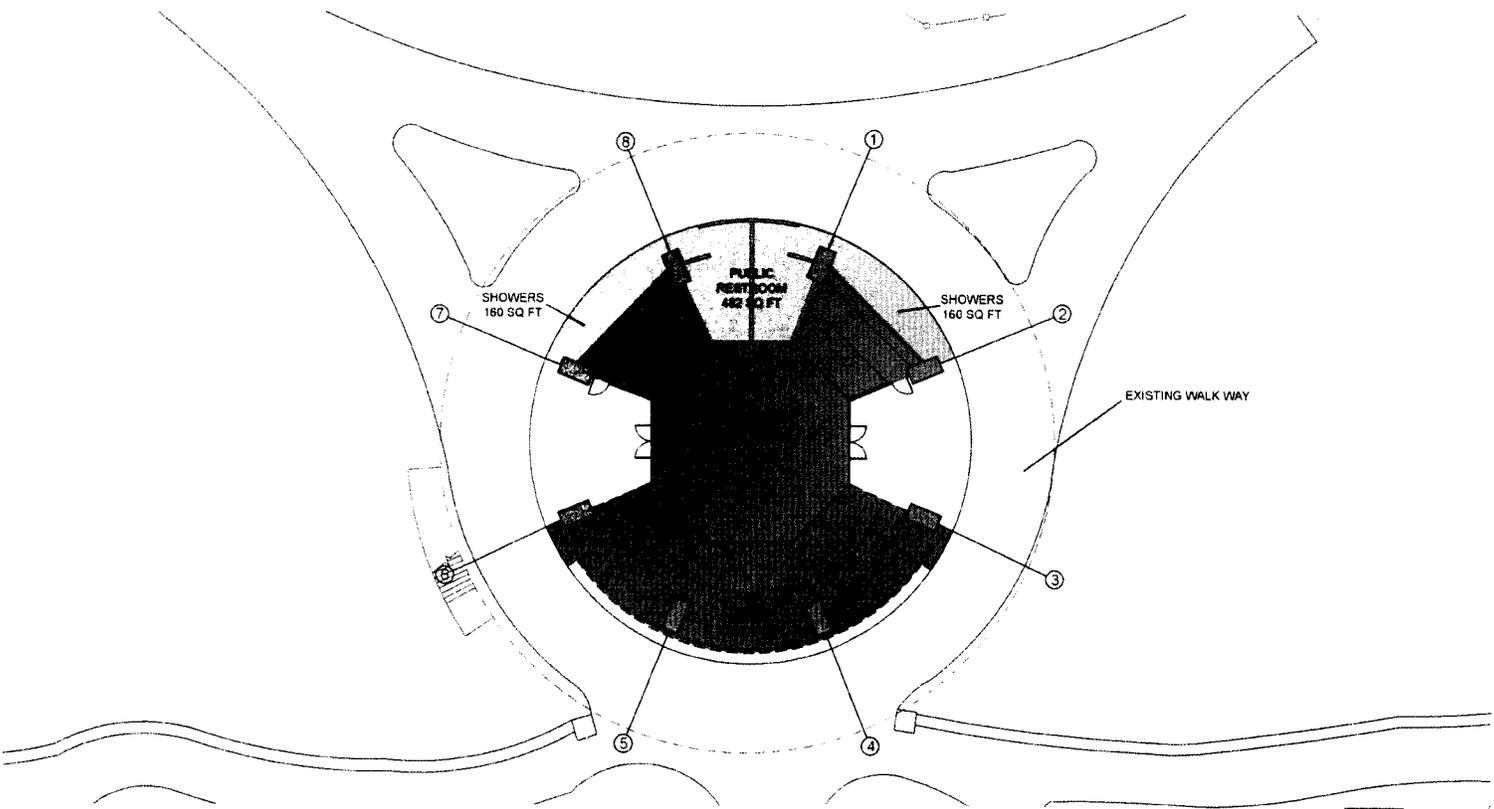


**Exhibit B**  
**Conceptual Plan for Wellness Center**



**Exhibit C  
City Vending Contracts**

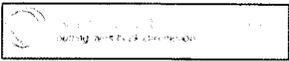
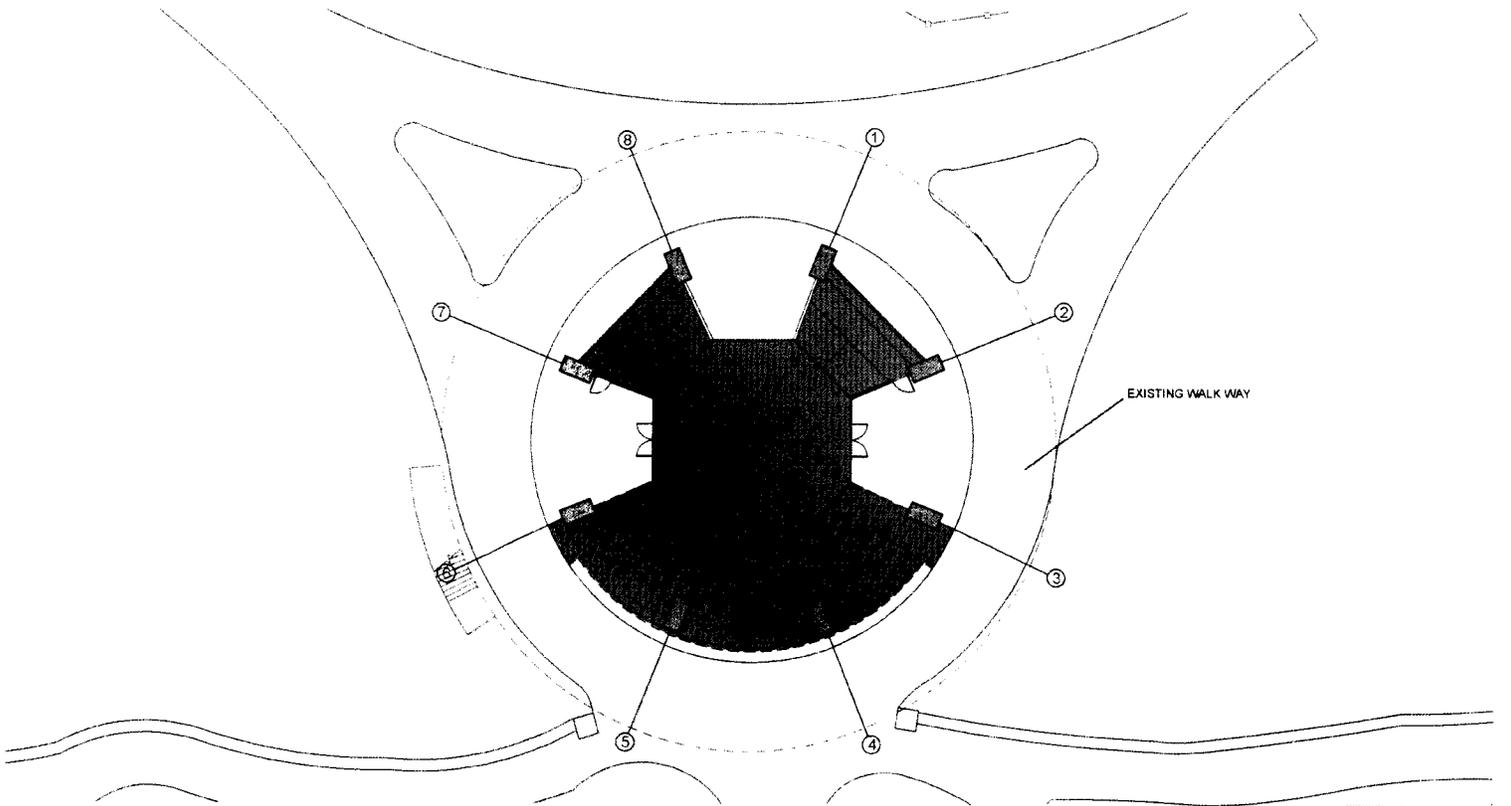
DRAFT



# CENTRAL CIRCULAR

SEPTEMBER 2015

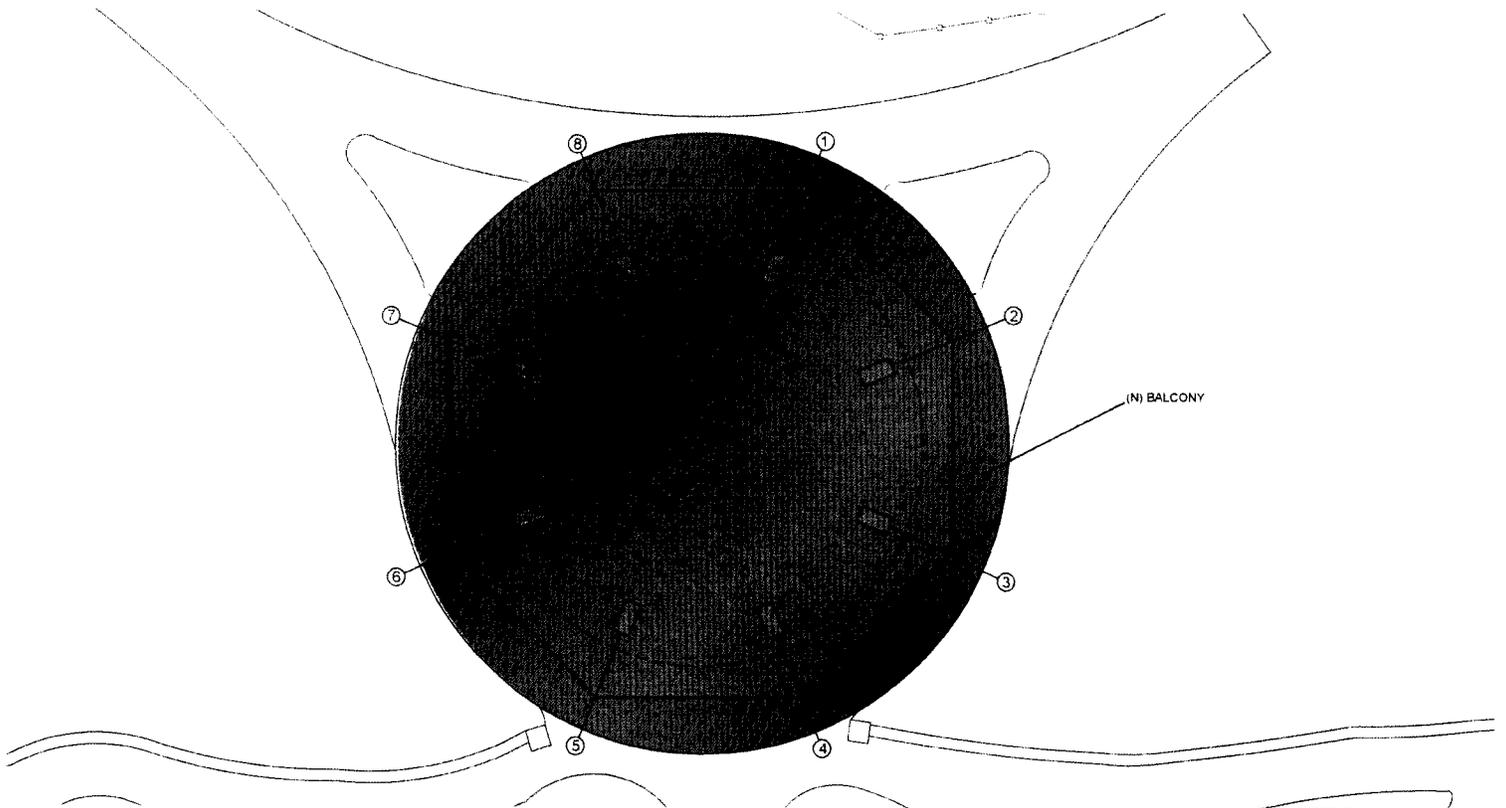




# CENTRAL CIRCULAR

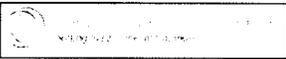
SEPTEMBER 2015

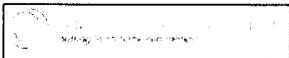
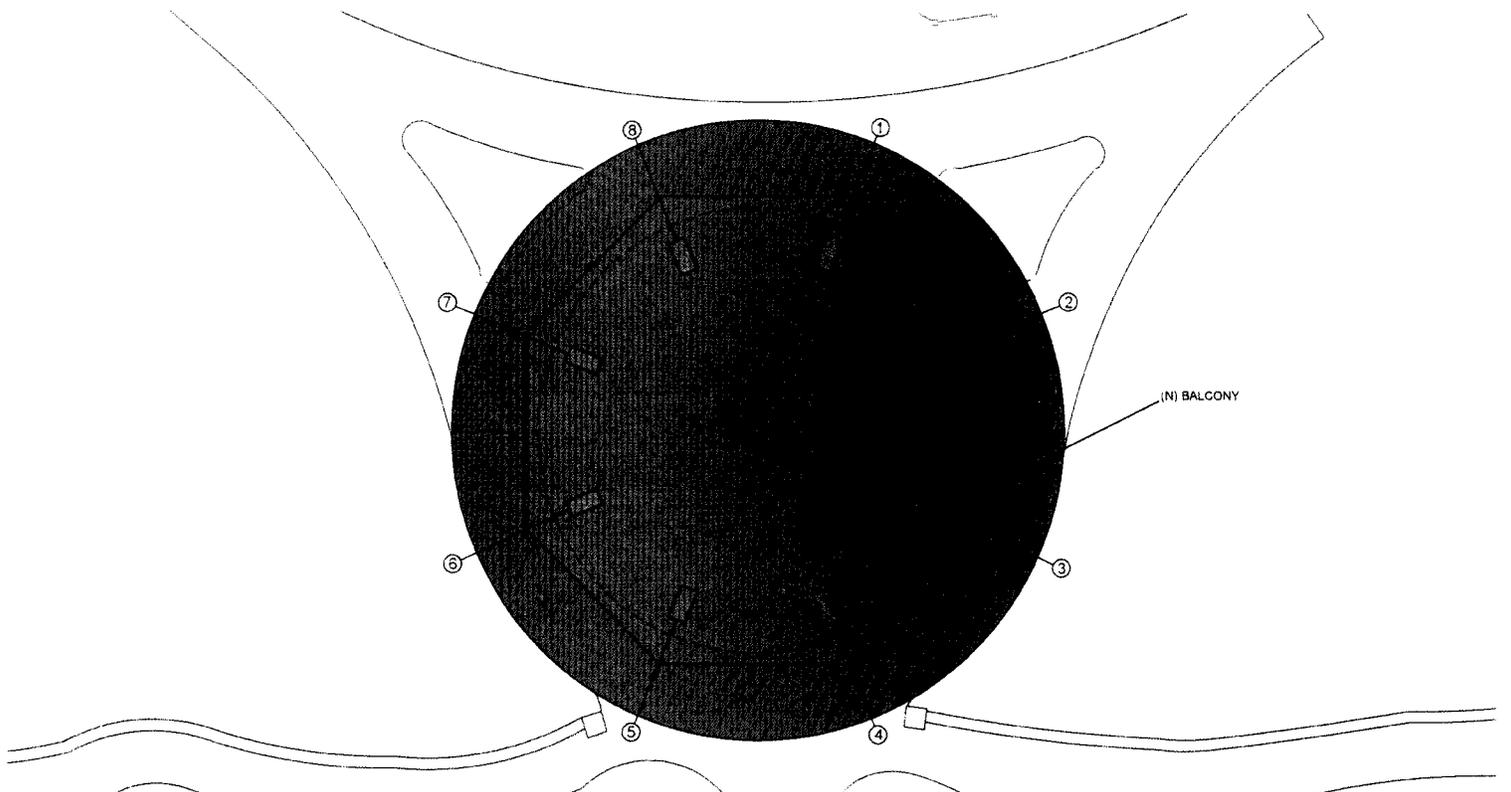




**CENTRAL CIRCULAR**

SEPTEMBER 2015





# CENTRAL CIRCULAR

SEPTEMBER 2015



March 14, 2012

Mayor Matti Herrera Bower  
Mayor of City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33138

Dear Mayor:

This letter confirms the agreement made by and among the City of Miami Beach, Florida ("City"), Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company ("Bottler") and Coca-Cola North America, a division of The Coca-Cola Company ("Company", and collectively with Bottler, "Sponsor"), which sets forth certain exclusive rights granted to Bottler by City, as set forth in the Term Sheet and Exhibits attached thereto, all of which are attached hereto as Attachment A.

1. Term Sheet and Definitive Agreement

The Term Sheet and Exhibits attached thereto are hereby incorporated herein in their entirety. This letter and the Term Sheet, together with any other attachments referenced in either, will constitute a legally binding agreement (the "Agreement") when this letter is signed by all parties in the spaces provided below. All capitalized terms not defined in this letter shall have the meanings assigned to them in the Term Sheet. This letter shall prevail in the event of any conflict between the provisions of this letter and the Term Sheet.

2. Advertising Rights

(a) City agrees that Bottler's advertising shall be positioned at all times in such a manner that the advertising message is in no way obscured (electronically or otherwise) and is clearly visible to the general public. The Products shall be prominently listed on any menu boards located at the Facilities and all Equipment (as such term is defined herein) dispensing Products shall be prominently identified with the appropriate trademarks/logos.

(b) City further agrees that all Products will be dispensed in Sponsor's Equipment and that no other trademarked, equipment, coolers or containers will be permitted.

3. Product Rights

(a) City shall purchase or shall cause its Concessionaires to purchase, all Products, (and cups, lids and carbon dioxide, if applicable) directly from Bottler.

(b) City hereby grants to Bottler the exclusive Beverage rights at the Facilities, except as may be otherwise provided for in this Agreement and Exhibits.

(c) If City contracts a concessionaire, City will cause concessionaire to purchase from Bottler all requirements for Beverages (and cups, lids and carbon dioxide, if applicable). Such purchases will be made at prices and on terms set forth in Bottler's existing agreement with concessionaire, if any. If no agreement exists between concessionaire and Bottler, such purchases will be made at prices and on terms set forth in this Agreement. City acknowledges that there will be no duplication of allowances, funding or benefits (including pricing) to City or concessionaire if concessionaire has an existing agreement with Bottler.

4. Equipment and Service

(a) Bottler Equipment and Service: During the Term, Bottler will loan to City, pursuant to the terms of Bottler's equipment placement agreements, at no cost, that Beverage vending equipment reasonably required and as mutually agreed upon to dispense Products at the Facilities ("Bottler Equipment"). In addition, Bottler will provide at no charge regular mechanical repair reasonably needed for Bottler Equipment, as further outlined in Exhibit 7 to the Term Sheet. Prior to Bottler's installation of Bottler's Equipment at a particular Facility, the City shall provide Bottler with written confirmation that it has conducted an inspection of the electrical service at such Facility and that, based on such inspection, the City finds that the electrical service at the Facility is proper and adequate for installation of Bottler's Equipment. Notwithstanding the preceding, if at any time following Bottler's installation of Bottler's Equipment at a Facility, Bottler's Equipment is damaged as the direct result of defective electrical service at the Facility, then the City will reimburse Bottler for the cost of repair or replacement, as the case may be, of Bottler's Equipment, pursuant to the filing of a claim with the City's self-insurance fund. Notwithstanding the preceding, the City shall not be responsible nor liable to Bottler under this subsection for any damages to Bottler's Equipment which is not caused as a direct result of defective electrical service at a Facility (including, without limitation, any damage to Bottler's Equipment which is caused due to the negligence or misconduct of Bottler's employees, contractors, and/or agents, or from any other cause or act other than faulty electrical service).

(b) Fountain Equipment and Service: During the Term, Company will loan to City, pursuant to the terms of Company's equipment placement agreement, at no cost, that Fountain Beverage dispensing equipment reasonably required and as mutually agreed upon to dispense a quality fountain Beverages at the Facilities ("Fountain Equipment")(collectively, Bottler Equipment and Fountain Equipment are called "Equipment"). No ice makers or water filters will be provided. All Fountain Equipment provided by Company will at all times remain the property of Company and is subject Company's equipment agreement, but no lease payment will be charged. To the extent that Fountain Equipment loaned from Company under this Agreement is located at Facilities that are owned, controlled or managed by a concessionaire of City or other persons not party to this Agreement, City will include provisions in its agreements with such concessionaires that recognize that the Fountain Equipment is owned by Company and that obligates the concessionaires to honor the terms and conditions such equipment agreement.

Company (or Bottler) will provide at no charge regular mechanical repair reasonably needed for Fountain Equipment. Any removal, remodel, relocation or reinstallation of dispensing equipment, flavor changes, summerize/winterize, line changes, or service necessitated by damage or adjustments to the equipment resulting from misuse, abuse, failure to follow operating instructions, service by unauthorized personnel, unnecessary calls (equipment was not plugged in, CO<sub>2</sub> or fountain syrup container was empty), or calls that are not the result of mechanical failure (collectively "Special Service Calls"), are not considered regular service and will not be provided free of charge. Charges for Special Service Calls will be charged at Company's (or Bottler's) then current rate and will be invoiced on a semi-annual basis. Charges will include labor, travel time, parts, and administrative costs.

5. Competitive Products Prohibited.

(a) City agrees that it will not knowingly permit any Competitive Products to be sold, distributed, served, sampled, marketed, advertised, or promoted in any manner at the Facilities, or in association with City, the Facilities or the City trademarks, during the Term, except as outlined in this Agreement.

(b) City agrees that City will not grant any rights, or enter into any contractual or other relationship, whereby City, the Facilities, and/or the City trademarks will be, or have the potential to be, associated in any manner, with any Competitive Products, except as outlined in this Agreement and the Term Sheet.

(c) If City learns of any Competitive Products being marketed, advertised, or promoted in any manner which implies an association with City, Facilities or City trademarks (hereinafter referred to as "**Ambush Marketing**"), City will promptly notify Bottler in writing of the Ambush Marketing; and also will promptly use its efforts, and cooperate in good faith with Bottler, to prevent or stop such Ambush Marketing in order to protect the exclusive associational rights granted to Bottler under this Agreement.

(d) Special Promotional Events Exception. See Exhibit 8.

(e) The City will provide Bottler with no less than thirty (30) calendar days prior written notice of each event which it intends to designate as a Special Promotional Event.

(f) The private, personal consumption of Competitive Products by athletes, coaching staff, musicians, actors, comedians, or other entertainment personalities appearing and performing at the Facility is allowed and will not be considered a Special Promotional Event. City shall use efforts to ensure such consumption is limited to private areas and may not be permitted in any area of the Facility to which the public or any member of the print or electronic media has legal access.

(g) Product availability at Facilities for private events. A private event at a Facility shall mean the use of a Facility, either through the rental of the Facility or through the issuance of a City-approved Special Event Permit, by a person(s) or business entity (ies) (i.e. such as a corporation) which is not open or accessible to the general public either free or via a purchased ticket. For example purposes only, private events may include, but not be limited, to the following: weddings, bar mitzvah/bat mitzvah and corporate events. Product availability and exclusivity at private events shall be handled as follows: Only Products will be sold, distributed, sampled or otherwise served at Facilities at any time. Notwithstanding the foregoing, Competitive Products may be distributed at no cost by the user of the Facility for private events, provided that Products will continue to be the only Products sold, distributed, sampled, or otherwise served by Facilities concession operations.

(h) Product availability at Facilities as it relates to charitable events (including, events produced by not-for-profit entities with valid tax exemption from the IRS) at Facilities or at City-Permitted Special Events (e.g., Relay for Life, Aids Walk, American Cancer Society), shall be handled as follows: Only Products will be sold, distributed, sampled or otherwise served at Facilities at any time. Notwithstanding the foregoing, Competitive Products may be distributed at no cost by the charitable organization using the Facility provided that Products will continue to be the only Products sold, distributed, sampled, or otherwise served by Facilities concession operations and that Bottler had opportunity to supply Products for the charitable event and declined.

#### 6. Consideration.

(a) Pricing. Pricing (including price increases) will be implemented as outlined in the Term Sheet.

(b) Credit Card Readers and Funding. Bottler and City will mutually agree to install credit card readers in select Beverage dispensers, which are identified as high traffic locations. Bottler will pay for the credit card readers in an aggregate amount of not to exceed Ten Thousand Dollars (\$10,000). This funding will be earned over the Term of the Agreement. City shall have no responsibility to fund any overage for payment of the credit card readers should they exceed Ten Thousand Dollars (\$10,000). Bottler shall be responsible for all maintenance and repair of the credit card readers. Upon termination or expiration of the Agreement, City shall return all credit card readers to Bottler.

#### 7. Trademarks; Approvals.

(a) City acknowledges that The Coca-Cola Company is the owner of all right and title in the trademarks "Coca-Cola", "Diet Coke", "Sprite", "DASANI", "Minute Maid", "POWERADE", "Fanta", "vitaminwater", "Full Throttle", "NOS" and other trademarks of The Coca-Cola Company, and it acquires no rights whatsoever in these trademarks

by virtue of this Agreement. City agrees to submit all proposed uses of The Coca-Cola Company marks to Sponsor for approval prior to use, but such approval shall not be unreasonably withheld.

(b) Bottler acknowledges that City is the owner of all right and title in the service mark "MiamiBeach" and that Bottler acquires no rights whatsoever in the service mark by virtue of this Agreement. Bottler shall have the right to use the City's service mark during the Term in connection with its marketing activities at the Facilities. Bottler agrees to submit all proposed uses of City's service marks to City for approval prior to use, but such approval shall not be unreasonably withheld.

#### 8. Termination

(a) Notwithstanding the other provisions of this Agreement, if any federal, state or local law, rule, regulation or order prohibits, restricts or in any manner interferes with the sale or advertising of Beverages at any time during the Term of this Agreement, and the City fails to cure such breach within thirty (30) days following written notice of same from Bottler then, at its option, Bottler may terminate this Agreement and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any, as well as any other upfront funding deemed earned over the Term, if any, prorated through the date of termination.

(b) City represents and warrants that it has full right and authority to enter into this Agreement and to grant and convey to Bottler the rights set forth herein. In the event of expiration or revocation of such authority, and if the City fails to cure such breach within thirty (30) days following revocation of full right and authority, then at its option, Bottler may terminate this Agreement, and City shall (i) return any Equipment; and (ii) pay to Bottler the unearned portion of pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any, as well as any other upfront funding deemed earned over the Term, if any, pro-rated through the date of termination.

(c) If Bottler breaches any of its material obligations under this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from the City, then City may terminate this Agreement and Bottler shall remove all Equipment from the Facilities, and the City shall be entitled to retain the earned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination), if any; other upfront funding deemed earned over the Term, if any, prorated through the date of termination; and any fees or payments due for the Agreement year in which the termination occurs, such as commission fees, if any.

(d) Notwithstanding the above, nothing in this section shall operate to restrict any other remedies that either party may have against the other in the event of a material breach by a defaulting party.

#### 9. Insurance

The Bottler acknowledges that the City is self-insured, as provided in **Attachment B** to this Agreement.

Bottler shall, at its sole cost and expense, obtain, provide and maintain, during the Term, the following types and amounts of insurance, which shall be maintained with insurers licensed to sell insurance in the State of Florida and have a B+ VI or higher rating in the latest edition of AM Best's Insurance Guide:

- 1) Commercial General Liability. A policy including, but not limited to, commercial general liability, including bodily injury, personal injury, property damage, in the amount of \$1,000,000 per occurrence. Coverage shall be provided on an occurrence basis.

- 2) Workers' Compensation per the statutory limits of the State of Florida and Employer's Liability Insurance.
- 3) Automobile Liability - \$1,000,000 combined single limit for all owned/non-owned/hired automobiles.

Said policies of insurance shall be primary for Sponsor/Bottler's negligence only to and contributing with any other insurance maintained by Bottler or City, and all shall name City of Miami Beach, Florida as an additional insured on the commercial general liability and automobile liability policies. Sponsor shall provide thirty (30) days written notice to City prior to policy cancellation.

Bottler shall file and maintain certificates of the above insurance policies with the City's Risk Management Department showing said policies to be in full force and effect at all times during the Term.

10. Notices

Any notice or other communication under this Agreement must be in writing and must be sent by registered mail or by an overnight courier service (such as Federal Express) that provides a confirming receipt. A copy of the notice must be sent by fax when the notice is sent by mail or courier. Notice is considered duly given when it is properly addressed and deposited (postage prepaid) in the mail or delivered to the courier. Unless otherwise designated by the parties, notice must be sent to the following addresses:

(A) **Notice to Sponsor.**

Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company  
3350 Pembroke Road  
Hollywood, Florida 33021  
Attention: V.P. Market Unit, South Florida  
Fax: 954-986-3173  
Ticket Addressee: V.P. Market Unit, South Florida  
Fax: 954-986-3173

With a copy to: Coca-Cola Refreshments USA, Inc.  
2500 Windy Ridge Pkwy  
Atlanta, Georgia 30339  
Attention: General Counsel

(B) **Notice to City.**

City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33138  
Attention: Hilda Fernandez  
Fax: 305-673-7782

11. Governing Law

This Agreement and any dispute arising out of or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Florida, without reference to its conflict of law rules.

12. Compliance with Law

Each of the parties hereto agrees that it will, in its performance of its obligations hereunder, fully comply with all applicable laws, regulations and ordinances of all relevant authorities and shall obtain all licenses, registrations or other approvals required in order to fully perform its obligations hereunder.

13. Retention of Rights

No party shall obtain, by this Agreement, any right, title or interest in the trademarks of the other, nor shall this Agreement give any party the right to use, refer to, or incorporate in marketing or other materials the name, logos, trademarks, service marks or copyrights of the other, except as may be expressly provided and authorized herein.

14. Jury Waiver

**EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.**

15. Entire Agreement

This Agreement and its exhibits contains the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be assigned without the prior written consent of all parties; provided, however, that Bottler may assign this Agreement in connection with its reorganization or the sale of all or substantially all of its assets. All amendments to or waivers of this Agreement must be in writing signed by all the parties.

The Coca-Cola Company, acting by and through its Coca-Cola North America Division

By: Susanne Geldert  
Print Name: Susanne Geldert  
Title: Sr. VP, Southeast Region Sales  
3/26/12

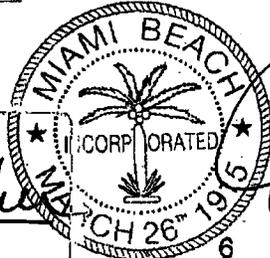
City of Miami Beach

By: Matti H. Bower  
Print Name: Matti H. Bower  
Title: Mayor  
3/16/12

Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company

By: Sally Forsyth  
Print Name: SALLY FORSYTH  
Title: REGIONAL CONTROLLER 3/22/12

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



[Signature] 3-15-12  
City Attorney Date

Robert Parche  
ATTEST

**Attachment A**

**TERM SHEET**

**EXCLUSIVE NON-ALCOHOLIC BEVERAGE AGREEMENT**

**CITY OF MIAMI BEACH AND COCA-COLA REFRESHMENTS USA, INC.  
and COCA-COLA NORTH AMERICA, A DIVISION OF THE COCA-COLA  
COMPANY**

<p><b>1. DEFINITIONS:</b></p>	<p><u>Bottler:</u> Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company</p> <p><u>Company:</u> Coca-Cola North America, a division of The Coca-Cola Company</p> <p><u>Sponsor:</u> Collectively, "Bottler" and "Company"</p> <p><u>City:</u> City of Miami Beach</p> <p><u>Agreement:</u> Exclusive Non-Alcoholic Beverage Agreement</p> <p><u>Facilities:</u> Includes the following Miami Beach property, including any land, building, structures and/or other facilities thereon: Miami Beach Golf Club; the Normandy Shores Golf Club; The Fillmore Miami Beach at the Jackie Gleason Theater (upon the expiration of the current management agreement); the Miami Beach Convention Center; all currently existing City of Miami Beach owned parks and recreational facilities; all currently existing City of Miami Beach owned public parking garages which are either directly operated by the City, through its Parking System, or by a third party who, pursuant to a management or concession agreement with the City, is contractually authorized to operate and manage such garage on behalf of the City; all currently existing public beachfront concessions which are either directly operated by the City or by a third party who, pursuant to a concession or management agreement with the City, is contractually authorized to operate and manage such concession on behalf of the City; and any additional future Facilities or expansion of existing or future Facilities, including but not limited to, the concession facilities at 21<sup>st</sup> and 46<sup>th</sup> street and at South Pointe Park and the Miami Beach Convention Center facility expansion, except as may be otherwise be excluded in the Agreement.</p> <p><u>Beverage:</u> all non-alcoholic beverages of any kind including but</p>
-------------------------------	---

	<p>not limited to coffee products; tea products; concentrated energy drinks, including those in small servings; protein-enhanced dairy beverages; frozen drinks (e.g. ICEE) and smoothies made from concentrate; and the pre-mix and/or post-mix syrups used to prepare fountain Beverages. "Beverage" or "Beverages" shall not include dairy products except as noted above (e.g. milk, yogurt, ice cream), water drawn from the public water supply, or unbranded juice squeezed fresh at the Facilities.</p> <p><u>Products:</u> Beverage products purchased directly from Bottler, or with written Bottler approval from, or Bottler's authorized distributor, or sold through vending machines owned and stocked exclusively by Bottler.</p> <p><u>Competitive Products:</u> Beverages which are not Products.</p>
<b>2. AGREEMENT TERM:</b>	The Term shall begin January 1, 2012 and will continue until December 31, 2021 (the "Term"). When used in this Term Sheet, the term "Agreement Year" means each consecutive twelve-month period during the Term, beginning with the first day of the Term.
<b>3. EFFECTIVE DATE:</b>	January 1, 2012
<b>4. EXPIRATION DATE:</b>	December 31, 2021 as to all Facilities
<b>5. SPONSORSHIP FEE:</b>	<p>\$3,725,000 for the Term of the Agreement.</p> <ul style="list-style-type: none"> <li>• First installment of \$800,000 (includes sponsorship fee for Agreement Year One and signing bonus) will be paid within sixty (60) days of execution of the Agreement by all parties. The portion pertaining to the signing bonus (\$475,000) will be deemed earned over the Term and the portion pertaining to the sponsorship fee for the Agreement Year One (\$325,000) shall be deemed earned evenly on a monthly basis during the first Agreement Year.</li> <li>• \$325,000 due each Agreement Year thereafter during the Term of the Agreement, due upon the anniversary date of the Agreement and will be deemed earned over the Agreement Year. (Subject to purchase of a minimum of 22,500 cases of bottles/cans per year.)</li> </ul>
<b>6. COMMISSIONS:</b>	Commissions to be paid quarterly in arrears by Bottler to City based upon cash collected less taxes and as per the Commission Rate Structure according to Bottler's sales records. (Exhibit 1)
<b>7. COMMUNITY SUPPORT/</b>	Bottler will provide City with a total of \$17,500 in cash for the

<b>COMPLIMENTARY PRODUCT:</b>	<p>purchase of equipment or other products (mutually agreed upon)</p> <p>Bottler shall provide City, upon City's request, with up to 450 standard physical cases of complimentary Product (12 ounce CSD cans and/or DASANI 12 ounce bottles) per Agreement year for a Product bank to be used by the City. If City does not request complimentary Product by the end of each year, any remaining complimentary Product shall be retained by Bottler with no further obligation to Account. Bottler will provide complimentary Product donation report upon Account's request.</p>
<b>8. ADVERTISING &amp; SPONSORSHIP:</b>	<p>Bottler has the exclusive right to advertise Products (i) at the Facilities and (ii) in connection with the Facilities. No permanent or temporary advertising, signage or trademark visibility for Competitive Products are permitted anywhere at the Facilities, except as permitted pursuant to the Agreement. Advertising rights are further delineated in Exhibit 2. Bottler has the exclusive right to advertise the Products as the "Official" or "Exclusive" soft drink, sports drink, dairy-based protein drink, water, tea, energy drink, and/or juice or juice drink, etc. of the Facilities, of the City of Miami Beach and of South Beach. Bottler will be the exclusive advertiser of Products associated with the Facilities.</p>
<b>9. PRODUCT RIGHTS:</b>	<p>Bottler has the exclusive right to sell or distribute Products at the Facilities. No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facilities, or on the City's public rights-of-ways, except as may otherwise be provided for in this Agreement.</p>
<b>10. EXCEPTIONS:</b>	<p>Except for those Facilities specifically enumerated in Section 1., "Facilities" shall NOT include any City of Miami Beach property (including any City-owned land, buildings, structures, and/or other facilities thereon) which—as of the Effective Date—is used, occupied, controlled, and/or managed and operated by a third party (or parties) pursuant to any of the following agreements between the City and such third party(ies): (i) lease agreement; (ii) concession agreement; (iii) operation and management agreement; (iv) development agreement; (v) easement agreement; (vi) license and/or use agreement; (vii) revocable permit; and/or (viii) any other written instrument between the City and such third party(ies) which establishes a contractual right on behalf of such third party(ies) for the use and/or occupancy of City property. This shall include, but not be limited to, any City property occupied by a tenant through a lease or rental agreement (including, without limitation, leases or rental agreements for office,</p>

retail, and/or commercial uses(s) in City-owned buildings); any City property managed and operated, and/or otherwise used, by a third party(ies) pursuant to a management agreement or concession agreement; private upland owner beachfront concessions which are issued a permit by the City (and which are neither operated directly by the City, nor by a third party on behalf of and pursuant to a contract with the City); sidewalk cafes which are issued a permit to operated pursuant to the City's Sidewalk Café Ordinance, as may be amended from time to time; "public-private" projects developed and constructed pursuant to a Development Agreement (pursuant to the requirements of the Florida Local Government Development Agreement Act under Chapter 163, Florida Statutes); any hotel or retail development related to the expansion of the Miami Beach Convention Center that is not managed as part of the Convention Center operations (e.g. adjacent commercial retail, hotel, etc.); public bus shelter advertising managed by a third party under contract with the City; and advertising permitted pursuant to the City's current agreement for the public bike-share concession. Notwithstanding the preceding, the City will: i) make reasonable good faith efforts to meet with the bike-share concessionaire and negotiate an amendment to the existing bike-share concession agreement, which must also be subject to agreement by the bike-share concessionaire, to prohibit the bike-share concessionaire from advertising Competitive Products; ii) if City renews the bike-share concession agreement with the bike-share concessionaire, then, as a condition to such renewal, the City Manager will recommend that such renewal be conditioned that such renewal include a term prohibiting the bike-share concessionaire from advertising Competitive Products; and iii) no advertising of Competitive Products shall be permitted on bike-share station kiosks during the Term should the City, after the Effective Date, approve advertising for placement on bike-share kiosks. Should the City enter into any new bike-share agreements during the Term, no advertising of Competitive Products shall be permitted on the bicycles used for that bike-share agreement(s).

Further, for the following locations which are under a pre-existing concession and/or use agreement (i.e. in effect prior to the Effective Date of the Agreement) with a Competitive Products supplier, those Facilities will come under this Agreement after such Competitive Products agreement is terminated or expires, or until such time as the concession or use agreement with the City for those Facilities is terminated, expires or is subject to any renewal provisions. The current

list of such facilities, and their expiration dates, are as follows:

- 1) 21<sup>st</sup> Street/46<sup>th</sup> Street Beachfront Concession/Tim Wilcox, Inc. – 11/30/2012
- 2) South Pointe Park Concession/Blissberry – 11/30/2012
- 3) Normandy Isle Pool Concession Stand/E. Gomez – 11/09/2011

City agrees that it will not knowingly permit any Competitive Products to be sold, distributed, served, sampled, marketed, advertised or promoted at the Facilities, or in association with City, except, and as further explained, in Exhibit 8:

- Third party exhibitor set ups at Facilities or during City-Permitted Special Events in accordance with the City's Special Event Permit Guidelines, as same may be amended from time to time.
- Charitable events at Facilities or at City-Permitted Special Events where Competitive Product are donated to the charitable event;
- Availability at City-Permitted Special Events only within Special Event Permit Area (as such term is defined in the City's Special Event Permit Guidelines, as same may be amended from time to time).
- Up to four (4) sponsorship events at the Miami Beach Golf Club, and up to four (4) sponsorship events at the Normandy Shores Golf Club each Agreement year;
- up to three (3) sponsorship events at the Miami Beach Convention Center each Agreement Year (the number limitation for the sponsorship events at the Miami Beach Convention Center is subject to a review after three (3) Agreement Years);
- a mutually agreed upon number of sponsorship events at the Fillmore Miami Beach at the Jackie Gleason Theater (upon expiration of the existing management agreement); and
- up to four (4) City-issued Special Event Permits for a "City Approved Major Sponsorship Public Event", each Agreement Year, which includes an event sponsored by a manufacturer, distributor, or marketer of Competitive Products under a master sponsorship agreement with the owner or operator of the sponsorship event; an event conducted on a national or regional multi-market basis; and/or an event where a competitor is the presenting, title or other primary sponsor of the event. The number limitation for City-Issued Special Events is subject to a review after three (3) Agreement Years.

	Whenever possible, City will make reasonable good faith efforts to encourage third party users of the Golf Courses and Convention Center, and Special Event organizers, to use Bottler's Products for their non-alcoholic beverage needs. Since third party organizers who apply for Special Event Permits will be permitted to sell only Bottler's Products, City will amend City's Special Events Permit Application and City will provide Sponsor contact information through the City's Special Events Permit Application process.
<b>11. MARKETING PROGRAM:</b>	Bottler agrees to provide Account with annual in-kind marketing support fund with an approximate retail value of Two Hundred Thousand Five Hundred Dollars (\$200,500) as further delineated in <b>Exhibit 3</b> .
<b>12. RECYCLING PARTNER:</b>	Bottler shall be designated the official "Recycling Partner" of Account. In consideration of this designation, Bottler shall provide, at their cost, the services/products delineated in <b>Exhibit 4</b> , with a minimum total value of \$15,000; and up to \$25,000 over the entire Term
<b>13. VENDING PROGRAM/OTHER EQUIPMENT</b>	City agrees that Bottler shall place a minimum of sixty-five (65) Product vending machines in mutually agreed upon locations at the Facilities, and Bottler will loan to City at no cost, Beverage dispensing equipment as reasonably required and as mutually agreed upon to dispense Products at the Facilities, and in accordance with <b>Exhibit 5</b> .
<b>14. CITY SUPPORT:</b>	In consideration of the partnership, City grants to Bottler: Twenty-six (26) rounds of golf each Agreement Year (max of eight during peak season; no more than twelve at Miami Beach Golf Course; benefit does not roll over); a minimum of four (4) free tickets to at least six (6) ticketed events at Facilities each Agreement Year, subject to availability (e.g. Art Basel Miami Beach, Auto Show, South Beach Comedy Festival at the Fillmore, etc.). Additional tickets will be provided as available. Benefit does not roll over.
<b>15. PRICING:</b>	<p>Bottle/Can Pricing: City is entitled to purchase bottle/can Products from Bottler in accordance with the price schedule set forth in <b>Exhibit 6</b>; prices shall remain in effect until July 31, 2012. Thereafter, such prices will be subject to an annual increase of no more than four percent (4%) over the previous Agreement Year's price.</p> <p>Fountain Products or Georgia Coffee Pricing: Bottler will sell fountain Products to City at the National Account prices, as</p>

	<p>announced by the Bottler in January of each year. Georgia Coffee pricing shall be provided quarterly based on commodity markets.</p> <p>Purchasing: All Product shall be purchased directly from Bottler, except for those Products that Bottler identifies can be purchased from an authorized Coca-Cola distributor.</p>
<b>16. TERMINATION:</b>	<p>If City breaches any of its material obligations set forth in this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from Bottler, then, Bottler may terminate this Agreement, and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination).</p> <p>If Bottler breaches any of its material obligations set forth in this Agreement, and fails to cure such breach within thirty (30) days following written notice of same from City, then, City may terminate this Agreement, and Bottler shall (i) remove any Equipment, and (ii) pay to City the earned portion of any pre-paid Sponsorship Fees or other fees or payments due for the Agreement year in which the termination occurs (pro-rated through the date of termination).</p> <p>City shall not be in default in the event of any claim filed in relation to City's restriction on Competitive Product sampling; provided, however, the Bottler shall have the following remedies: 1) ability to renegotiate financial terms, as appropriate, within a specified time (e.g. 90 days); or, 2) failing to negotiate terms acceptable to both parties within specified time, Bottler may terminate the Agreement, and City shall (i) return any Equipment, and (ii) pay to Bottler the unearned portion of any pre-paid Sponsorship Fees for the Agreement Year in which the termination occurs (pro-rated through the date of termination). Nothing in this section shall operate to restrict either party's other remedies in the event of a material breach by the other.</p>
<b>17. MAINTENANCE &amp; SERVICE:</b>	<p>Bottler agrees to provide reasonable service and maintenance for the equipment during the Term. City shall allow Bottler to enter its premises for the purpose of inspection or performance of such maintenance and repair, or necessary replacement or return of the equipment. Bottler and City will establish a mutually agreed upon refund bank and customer service program, as delineated in Exhibit 7.</p>
<b>18. REPORTS/AUDITING:</b>	<p>Bottler will provide an annual business review report within 90</p>

	<p>days following each Agreement Year during the Term; Commission reports will be provided monthly. The format of such reports shall be mutually agreed upon. City has the right to audit/inspect account statements with reasonable prior notice to Bottler and during normal business hours. If City requests an audit, City agrees to pay for such audit. Account records must be retained for a minimum of two (2) Agreement Years after the payment of the annual Sponsorship Fee is paid, in addition to the current Agreement Year of the Term, and for two (2) Agreement Years following expiration or termination of the Agreement.</p>
--	--

Exhibit 1 to Term Sheet

**COMMISSIONS**

**Workplace Facilities (City Hall, Police Station, and other City Facilities):**

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
20 oz. PET carbonated/NESTEA®	\$1.25	30%
20 oz. PET Minute Maid®	\$1.25	30%
20 oz. PET DASANI®	\$1.25	30%
300 ml PET DASANI®	\$0.75	30%
20 oz. PET POWERADE®	\$1.50	30%
20 oz. PET vitaminwater®	\$1.75	15%
16 oz. cans Energy Beverages	\$2.00	30%
16.5 oz. PET FUZE ®	\$2.00	15%
15.2 oz. PET Minute Maid® Juices to Go	\$1.50	15%

**All other public locations (such as South Beach):**

<u>Product</u>	<u>Vend Price</u>	<u>Commission Rate</u>
20 oz. PET carbonated/NESTEA®	\$1.50	30%
20 oz. PET Minute Maid®	\$1.50	30%
20 oz. PET DASANI®	\$1.50	30%
300 ml PET DASANI®	\$1.00	30%
20 oz. PET POWERADE®	\$1.75	30%
20 oz. PET vitaminwater®	\$2.00	15%
16 oz. cans Energy Beverages	\$2.25	30%
16.5 oz. PET FUZE®	\$2.25	15%
15.2 oz. PET Minute Maid® Juices to Go	\$1.75	15%

In Agreement Years Four and Seven, the Vend Prices will increase by twenty-five cents for each Product listed above. For example, in Agreement Year Four, 300ml. DASANI will increase to \$1.00 Vend Price and then in Agreement Year Seven, 300ml. DASANI will increase an additional twenty-five cents to \$1.25. The Commission Rates will not change during the Term of this Agreement. There are two vend rates (one for workplace and one for public locations) that will be outlined in the final formal agreement between the parties, but note that commission rates will remain the same.

Commissions are paid based upon cash collected after deducting taxes, deposits, recycling fees, other handling fees, communication charges and credit and debit card fees, if any. Commissions shall not be payable on any sales from vending machines not filled or serviced exclusively by Bottler. Bottler may adjust the vend prices and/or commission rates as necessary to reflect changes in its costs, including cost of goods, upon prior written notice and approval by City. Commissions will be paid each month following the month in which they are earned, with an accounting of all sales and monies in a form reasonably satisfactory to the City, and shall become immediate property of City.

## Exhibit 2 to Term Sheet

### ADVERTISING RIGHTS

(Except as otherwise noted, the following rights may not be transferred or assigned by Bottler)

1. Recognition of Bottler as the "Official Non-Alcoholic Beverage Sponsor" of City. Official status will include Official Status Recognition for City across all non-alcoholic beverage categories i.e. "Coca-Cola Official Soft Drink of Miami Beach" and Official Status Recognition for South Beach across all non alcoholic beverage categories (i.e. "POWERADE Official Sports Drink for South Beach")
2. Official Sponsor Status (for Products) of all City-produced citywide Special Events, whether now existing or as may exist in the future (i.e. including, without limitation, and for example purposes only Sleepless Nights); Bottler to have highest sponsorship level and benefits available other than presenting or title sponsorship. In addition, Bottler will be recognized as the "Title Sponsor" of City's "Fire on the 4<sup>th</sup> Annual Independence Day Celebration" each Agreement Year during the Term.
3. Recognition of Bottler as the "Official Recycling Partner" for the City of Miami Beach & South Beach
4. Joint Bottler/City Logo placement on City and City-related websites (e.g. Miami Beach Convention Center, Miami Beach Golf Club, Normandy Shores Golf Club, Miami Beach Culture web site (MBCulture.com); and any other City websites, whether now existing or as may exist in the future, to such extent as permitted by any federal or state regulations on .gov domains. City will use reasonable commercial efforts to include joint Bottler/City Logo on all printed convention and tourism materials, as appropriate and available.
5. Waiver of any Special Event Permit and/or Permit Application Fees for Bottler's use of certain Account Facilities for up to two (2) mutually agreed upon events per Agreement Year, based on availability. For purposes of the Special Event Permit and/or Permit Application Fee waiver, these Facilities shall include public beachfront areas and Parks and Recreation facilities where Special Events are permitted. All other fees and costs of production, including but not limited to, taxes, security, sanitation, etc., shall be the responsibility of Bottler. Right may not be transferred or assigned.
6. Waiver of any rental or use fees for Bottler's use of certain City Facilities for up to (two) 2 mutually agreed upon events per Agreement Year, based on availability. For purposes of the rental or use fee waiver, these Facilities shall include the use of meeting room space or ballroom space at the Miami Beach Convention Center. All other fees and costs of production, including but not limited to taxes, security, audio/visual, decoration, etc., shall be the responsibility of the Bottler. Right may not be transferred or assigned.
7. Unlimited, royalty-free Product sampling at City produced and/or sponsored events; Royalty-free Product sampling permits per Agreement Year, as follows: 48 permits each Agreement Year, but permits will be limited to not more than six (6) permits in any one month period. Right may not be transferred or assigned. If Sponsor does not use all 48 permits by the end of each Agreement Year, any remaining permits will not roll-over to the following Agreement Year, but will be forfeited.
8. Mutual agreement on the development and use of a joint logo between Bottler and Account.
9. Right to use mutually agreed upon joint logo on any point-of-sale, marketing materials, and/or signage that may be mutually agreed upon.
10. Royalty-free advertisement in City's magazine (i.e. MB Magazine); minimum of a quarter page each issue; larger ad size as may be available. Right may be transferred or assigned.
11. Royalty-free prominent advertisement in any Special Promotional Event programs or collaterals produced for City-produced citywide Special Promotional Events (i.e. including, without limitation, July 4<sup>th</sup> and Sleepless Nights). City shall use best efforts to provide a full page ad.

12. The right to brand City's public beach concession area(s) with approved Bottler and City joint branding graphics (e.g. concession stands, storage shed, umbrellas, etc.), subject to proposed branding meeting all necessary administrative and regulatory approvals. Implementation of any approved branding shall be at the Bottler's expense. All trademark usage must be pre-approved prior to usage. The erection of any other signage other than vending machine display shall be subject to approval by the City.
13. One Royalty-free joint City/Bottler message PSA advertising panel at the 5<sup>th</sup> and Alton bus shelter; production/installation costs paid by Bottler. Minimum of full use of one PSA ad panel for the entire term of the Agreement.
14. Minimum of one (1) Royalty-free advertising panel at the 5<sup>th</sup> and Alton bus shelter, on a space availability (remnant) basis; production/installation costs paid by Bottler. Right may be transferred or assigned.
15. Minimum of one (1) one-month Royalty-free electronic joint City/Bottler message PSA run on Atlantic Broadband and Welcome Channel; Additional months based on ongoing availability;
16. Minimum of one (1) unlimited run on MBTV of City/Bottler message PSA;
17. Royalty-free POF ticket ad based on space availability; production costs paid by Bottler. Right may be transferred or assigned.

The parties agree to perform such additional marketing activities, as the parties may mutually agree upon to drive traffic to the Facilities and to increase Product sales.

### Exhibit 3 to Term Sheet

#### MARKETING PROGRAM

Bottler shall provide City for approval with the proposed annual marketing plan for promotion of the partnership no later than ninety (90) days prior to the beginning of each Agreement Year, except for the first Agreement Year when the marketing plan shall be provided to the City within ninety (90) days after execution of Agreement. The annual value of the marketing plan shall be no less than \$200,500, as determined in good faith by Bottler and based on generally accepted marketing values. Some examples of activation may include the following; however, actual marketing programs will depend on availability of these programs.

- Inclusion of the City in the My Coke Rewards program, or other customer reward program offered by Bottler, through an annual promotional program (e.g. sweepstakes); estimated value \$100,000, or equivalent value. Activation based on availability
- Truck-back promotions program - value: \$24,000/year based on availability
- Box Topper program or other similar high-visibility promotional program; value: \$25,000/year
- Neck Ringer program: a Neck Ringer program shall be available with a minimum distribution of neck ringers
- Touring Program: Bottler will bring the Open Happiness Tour, or such other promotional touring program offered by Bottler, to the City based on availability.
- Bottler to develop and implement at least five (5) strategic marketing partnerships with the Account and the Bottler's other sponsorship partners during the Term of the Agreement. Such strategic marketing partnerships may include, but are not limited to, cross promotion, product, tickets, etc., with other brands or products currently under a sponsorship or other promotional/marketing agreement with the Bottler.
- Lebron James Event/celebrity event; value: \$45,000 based on availability, or equivalent value

City acknowledges the intent of the Bottler to develop a joint marketing logo incorporating the Bottler's mark and the City's mark. Bottler shall obtain approval from the City, in writing, of the joint logo for use in promotion of the Agreement, including, but not limited to, its use in all commercial, marketing, media advertisements, web sites and promotional products.

A party's use of the other party's marks in promotions, on products and signage, shall be first approved by the other party in writing, and all uses of a party's marks shall be acknowledged as that party's intellectual property and include appropriate trademark notices.

The parties agree to perform those additional marketing activities, as the parties may mutually agree upon to drive traffic to the Facilities and to increase Product sales. City agrees to provide Bottler with reasonable marketing assets inventory (e.g., to be used with a My Coke Rewards national consumer sweepstakes, or other such similar sweepstakes) for mutually agreed upon promotions each year during the Term to promote Bottler Products and City.

**Exhibit 4 to Term Sheet**

**RECYCLING PARTNERSHIP**

Bottler shall be designated the official "Recycling Partner" of City.

Bottler shall provide, at its cost, the following services/products (value of \$15,000-\$25,000):

- Assess, consult and offer a Recycling Program Plan for bottle/can recycling initiatives
- Propose messaging strategy for the City's bottle/can recycling initiatives (within 90 days after execution of Agreement)
- Provide Temporary recycling bins for special events (minimum of 30) to City at Bottler's cost;
- Provide Recycling bins for placement in Facilities or agreed upon public areas (minimum of 15) to City at Bottler's cost; design subject to review and approval of City;
- Place reverse vending machines (crushers) in vending banks in the Facilities; minimum of five (5) crushers placed during the first five Agreement Years of the Term, at Bottler's cost.
- Use of Recycling Educational Vehicle (REV,) or other Education Recycling material, at City events; scheduled at least one time every 18 months during the Term.

## Exhibit 5 to Term Sheet

### VENDING PROGRAM

Bottler shall place, at their cost, all vending machines in agreed upon locations pursuant to the following:

- 1) Bottler shall provide to City within 90 days after execution of Agreement the proposed equipment plan for the Agreement Term; to include the machine allocation plan by type (e.g. interactive vending machines, glass front etc.) and location; equipment replacement schedule; and vend front replacement and schedule for existing vending machines that need the vend front replaced. All equipment shall be UL energy star rated.
- 2) Bottler shall install vending machines within 180 days after the proposed equipment plan has been approved by all parties. Both parties agree that the installation of vending machines shall be completed within 180 days after the proposed equipment plan has been approved by all parties, Agreement execution. The already approved beach thematic vend fronts will be used unless other mutually agreed upon vend fronts have been selected and approved, and if beach thematic vend fronts are available. The vend fronts shall include advertising panels for use by the City, as approved by Bottler, provided that the vending machines are equipped with advertising panel(s). Bottler shall pay all costs for the production and installation of the City vend front advertising panels. A minimum of two (2) and a maximum of four (4) City vend panel ads shall be produced/installed each Agreement Year.
- 3) Bottler shall provide within 90 days after execution of Agreement the proposed credit card reader installation plan and schedule. All credit card reader installation shall be completed within Agreement Year One.
- 4) City shall provide all electrical power necessary to operate the vending machines, and City shall pay up to \$200 for the cost of any electrical modifications or connections necessary to accommodate any new vending machine placement, upon mutual agreement of the proposed location for the placement of the vending machine.
- 5) All vending machines remain the property of the Bottler.
- 6) Bottler shall provide a product list to the City to be included in the vending program. Any changes to the Product list shall be provided to the Account prior to Product placement in a vending machine. Bottler shall work with the City's Parks and Recreation Department to identify the appropriate vending products for inclusion in vending machines located in any City park. The City's Park and Recreation Department shall provide approval, in writing, of the Products to be sold in the vending machines placed in City parks.
- 7) Bottler shall maintain vending machines reasonably well-stocked with Products.

**Exhibit 6 to Term Sheet**

**INITIAL PRICE SCHEDULE\***

<b><u>Package</u></b>	<b><u>Price per case</u></b>
20 oz. CSD	\$17.85
12 oz. CSD	\$9.46
15.2 oz. MMJTG	\$23.36
12 oz. DASANI®	\$8.88
1 liter CSD	\$16.29
20 oz. DASANI®	\$10.82
20 oz. vitaminwater®	\$27.00
8 oz. CSD	\$16.00
20 oz. NESTEA®/ Minute Maid® Refreshment	\$17.85
20 oz. POWERADE®	\$19.00
16 oz. Monster®	\$34.00
2-liter CSD	\$12.35
16.9 Honest Tea®	\$12.60
500 ml Gold Peak®	\$13.99
8 oz. aluminum bottle	\$16.48

<b><u>Post-Mix</u></b>	<b><u>Price per gallon</u></b>
5 gallon BIB CSD and NCB	\$12.24
2.5 gallon BIB CSD and NCB	\$12.78
5 gallon BIB Unsweet NESTEA®	\$11.82
2.5 gallon BIB Unsweet NESTEA®	\$12.40
5 gallon BIB Premium NCB	\$12.75
2.5 gallon BIB Premium NCB	\$13.30
5 gallon BIB Frozen Dispensed	\$13.88
2.5 gallon BIB Frozen Dispensed	\$14.26

<b><u>Cups</u></b>	
24 ounce	\$52.89 per 1,200

<b><u>Lids</u></b>	
24 ounce	\$34.55 per 2,000

<b><u>CO2</u></b>	
20 lb. cylinder	\$25.00 per cylinder (plus \$75.00 deposit)

\*All prices are per standard physical case and exclusive of taxes, deposits, handling fees, and recycling fees.

**Georgia 64 Oz Brew; Price per Case and package size:** (Prices effective for the period: 1/1/2012-3/31/2012) (All coffee is priced FOB to Distributor, prices do not include any distributor markup.)

<b>Product</b>	<b>Package (Frac)</b>	<b>Small Filters</b>	<b>Large Filters</b>
Dark Roast	100, 2.75 oz	\$110.38	\$110.38
Light Roast	128, 2.25 oz	\$117.87	\$117.87
Decaf	75, 2.00 oz	\$67.95	\$67.95
Organic	75, 2.75 oz	\$110.10	\$110.10

**Exhibit 7 to Term Sheet**

**MAINTENANCE & SERVICE**

During the Term, Bottler will loan to Account, pursuant to the terms of Bottler's equipment placement agreements, at no cost, that Beverage equipment reasonably required and as mutually agreed upon to dispense Beverages at the Facilities.

Bottler agrees that all equipment shall be new or in "like new" condition and that it shall operate and manage the equipment, services and facilities offered in a first-class manner. Bottler shall provide City with the Maintenance Plan and Schedule for all Bottler equipment within 90 days of execution of Agreement, to include the Bottler's plan and schedule for servicing the City.

Bottler shall provide throughout the Term of this Agreement, at Bottler's expense, all repairs, replacements and technical services necessary to maintain and preserve the Bottler's equipment in a decent, safe, healthy and sanitary condition satisfactory to City and in compliance with applicable laws.

Bottler warrants that it shall correct all mechanical problems with vending machines no later than four (4) business days after notice and no later than twenty-four (24) hours after notice for all other dispensing equipment.

Acts of vandalism to Bottler's equipment will be reported to Bottler immediately and addressed within four (4) business days. If the vending machine is repairable, the vending machine will be repaired within four (4) business days. If the vending machine is not repairable, vending machine will be condemned and swapped within seven (7) business days.

Bottler is the only party allowed to make repairs on Bottler-owned equipment.

All vending machines shall display a "service hotline" sticker to expedite calls. A toll free ("1-800") number shall be provided and a 24-four hour per day, seven days a week continuously operating telephone answering service shall be provided.

A reimbursement fund in the amount adequate to handle all necessary refunds between service calls shall be made available to City at designated location(s) mutually agreed upon by City and Bottler. Each person requesting a refund shall complete a form which shall be maintained by the City and provided to the Bottler as required. The reimbursement fund shall be checked by the Bottler no less than once a month and replenished as needed. Information on refunds shall be provided on each machine.

## Exhibit 8

The term "Special Promotional Events" ("Event") shall mean and is limited to the following: concerts; theatrical or comedic performances; conventions; trade shows; religious events; athletic events; or other special events occurring at a Facility that meet the following requirements: (i) they are sponsored by a manufacturer, distributor, or marketer of Competitive Products under a master sponsorship agreement with the owner or operator of the subject Event (including, without limitation, a concert or theatrical production company, or a trade show or convention production company, but NOT including in any instance the City or its affiliates or agents); (ii) they are conducted on a national or regional multi-market basis; (iii) they are NCAA collegiate championship athletic events; and, (iv) the event sponsorship agreement referred to in subsection (i) above requires on-site temporary signage for Competitive Products.

The term "Special Promotional Events Exceptions" shall refer to those exceptions granted under the Agreement, for each Agreement year, to permit the following fifteen (15) Special Promotional Events at the following Facilities: (i) four (4) events at the Miami Beach Golf Club; (ii) four (4) events at the Normandy Shores Golf Club (The Miami Beach Golf Club and Normandy Shores Golf Club may also be referred to collectively herein as "Golf Courses"); (iii) three (3) events at the Miami Beach Convention Center ("Convention Center"); and (iv) four (4) City Approved major Sponsorship Public Special Events (as defined below); provided, however, that the number limitation for City Approved Major Sponsorship Public Special Events shall be revisited and reviewed by the parties, in good faith, at the conclusion of the third Agreement Year.

- a. Golf Courses and Convention Center/Special Promotional Events Exception. In any Agreement Year, temporary signage (such as, but not limited to, banners) for Competitive Products may be displayed at each of the Golf Courses during up to four (4) Special Promotional Events, and during up to three (3) Special Promotional Events at the Convention Center; PROVIDED, HOWEVER, that: (i) Sponsor's Beverage availability, marketing, advertising, promotional, and other rights under this Agreement will not otherwise be affected during any such Event; (ii) Competitive Products may be distributed at no cost, but no Competitive Products will be sold or otherwise made available during the Event (except as permitted in this exception); (iii) no blockage of any signage or other trademark/service mark display Sponsor may have at the Facility will occur during the Event, except for incidental blockage due to the construction and/or placement of a person, stage or other structure necessary to and actually used during the Event; or, in the case of NCAA championship events, religious events or political conventions where no advertising is allowed and all advertisers are treated equal with all signage covered in the seated area of the Facility; (iv) all temporary signage for Competitive Products will be promptly removed from the Facility upon the conclusion of the Event; and (v) at no time will the Competitive Products make any statements, or use any temporary signage, that uses the trademarks/service marks of the City of Miami Beach, South Beach, Golf Courses or the Convention Center, nor in any way associate these Competitive Products with the City of Miami Beach, "South Beach," the Golf Courses, or the Convention Center. The Special Promotional Events at the Golf Clubs and the Convention Center must occur over a period of no more than twenty-four (24) hours. The twenty-four hours does not include set up or tear down time required, or NCAA Championship events or political conventions which may exceed the aforesaid time limitation. The Convention Center may use the three one day

(one day = twenty-four hours) in the aggregate in each Agreement Year during the Term. Aggregate, as used in this paragraph, shall mean the total of twenty-four hours multiplied by the total number of Special Promotional Events permitted, as provided for herein. For example purposes only, the Miami Beach Convention Center are provided three Special Promotional Event Exceptions per Agreement Year. As such, the three Special Promotional Events may occur in the Miami Beach Convention Center for a total of 72 hours in an Agreement year (24 hours x 3 events = 72 hours/year).

- b. City Approved Major Sponsorship Public Special Events/Special Promotional Events Exception. In any Agreement Year, temporary signage (such as, but not limited to, banners) for Competitive Products may be displayed during up to four (4) Special Promotional Events for City Approved Major Sponsorship Public Special Events. The term "City Approved Major Sponsorship Public Special Event" shall refer to a City-approved public event (i.e. where public access is allowed either via no cost or via pre-purchased ticket) held on City property, and permitted pursuant to the City's approved Special Event Permit process, as same may be amended from time to time during the Term of this Agreement (for example purposes only, this may include, but not be limited to events such as Super Bowl Pepsi Jam and Red Bull Illume); and may also include an event sponsored by a manufacturer, distributor or marketer of Competitive Products pursuant to a sponsorship agreement with the owner, operator or promoter of the event; an event conducted on a national or regional multi-market basis; and/or an event where a Competitive Product is the naming, presenting, title, brought to you by, or other primary sponsor of the Event. Temporary signage for Competitive Products at City Approved Major Sponsorship Public Events may be displayed as an Event "naming sponsor", Event "presented by" sponsor, Event "brought to you by" sponsor, or as a sponsor represented as a "Gold" or "Platinum" (or such other equivalent) sponsor of the Event; PROVIDED, HOWEVER, that: (i) Sponsor's Beverage availability, marketing, advertising, promotional, and other rights under this Agreement will not otherwise be affected during any such Event; (ii) no blockage of any signage or other trademark/service mark display Sponsor may have at the Facility will occur during the Event, except for incidental blockage due to the construction and/or placement of a person, stage or other structure necessary to and actually used during the Event; or, in the case of NCAA championship events, religious events or political conventions where no advertising is allowed and all advertisers are treated equal with all signage covered in the seated area of the Facility; and (iii) all temporary signage for Competitive Products will be promptly removed from the Facility upon the conclusion of the Event. At no time will the Competitive Products make any statements or use any temporary signage that uses the trademarks/service marks of the City of Miami Beach, "South Beach," or the Facilities, or in any way associate these Competitive Products with the City of Miami Beach Facilities. Notwithstanding the above, Competitive Products may be distributed, sampled or made available during a City Approved Major Sponsorship Public Special Event for which there is a Special Promotional Events Exception. Such distribution, sampling or availability shall occur ONLY within the approved site plan for the event. However, should concession service (sales) for any non-alcoholic beverage other than Products be required or necessary for the event, and there are no existing concessions at the location of the City Approved Major Sponsorship Public Special Event for which there is a Special Promotional Events Exception, the City Manager shall submit a letter to Sponsor requesting that Sponsor grant a waiver to permit such sale at the Event; outlining the details of the exception and the business reasons for the request and such request shall require Sponsor's prior written approval. Sponsor reserves the right to not approve the limited waiver for this purpose. Sponsor will notify the City Manager of whether the request for waiver will be approved within twenty (20) business days of Sponsor receiving the City Manager's letter. -

The Special Promotional Event Exception for a City Approved Major Sponsorship Public Special Event must occur over a period of no more than seventy-two (72) hours. The seventy-two hours does not include set up or tear down time required, or NCAA Championship events or political conventions which may exceed the aforesaid time limitation. The seventy-two hours may be used in the aggregate in each Agreement Year during the Term. Aggregate, as used in this paragraph, shall mean the total of seventy-two hours multiplied by the total number of Special Promotional Events Exceptions, as provided for herein. As such, the four Special Promotional Events may occur on public property for a total of 288 hours in an Agreement year (72 hours x 4 events = 288 hours/year).

- c. Other permitted Exceptions. Exhibitors at Conventions or trade shows, or third party exhibitor set ups at Facilities shall have the right to serve Competitive Products within their booth provided that same is limited to the duration of the corresponding event and, provided further, that the Competitive Products are not marketed, advertised or promoted in association with the City of Miami Beach and/or the Facilities, and their respective trademarks. For example purposes only, a Cadillac booth at the Auto Show in the Convention Center would be allowed to give away bottled water with the Cadillac Logo. Notwithstanding, Sponsor's Products would continue to be the only Products allowed to be sold, distributed or sampled at the Facility's concession operations.
- d. Competitive Beverages may also be permitted to be distributed, at no cost, at third party events that are not affiliated with the City, but where the City has permitted the event through the issuance of a City of Miami Beach Special Events Permit, subject to the City's notification to Sponsor prior to the event; and, provided further, that the third party event operator is not a manufacturer, distributor or seller of a Competitive Product; that the Competitive Products are not marketed, advertised or promoted in association with the City of Miami Beach or the Facilities, and their respective trademarks; that no Competitive Products will be sold during such event; and that the distribution of the Competitive Product is limited to Special Event Permit Area (as such term is defined in the City's Special Event Permit Guidelines, as same may be amended from time to time through the Term of this Agreement). For example purposes only, a third party event contemplated under this paragraph might include, but not be limited to, a walkathon or marathon where one of the event sponsors might request to be permitted to distribute free bottled water to the event participants. Notwithstanding the above, Sponsor shall have first right of refusal to provide donated Beverages through a sponsorship agreement to the non-profit events, permitted by the City through the issuance of a City of Miami Beach Special Events Permit, known as the White Party, Winter Party and Miami Beach Pride (based on the level of non-alcoholic Beverages provided for the White Party, Winter Party and Miami Beach Pride events in 2012.) for the sale of these Beverages by these three (3) events as part of their annual charity fundraisers. If Sponsor elects to participate, Sponsor will notify the organizer six (6) months prior to start date of White Party, Winter Party and Miami Beach Pride events. If at any time during the Term the Sponsor cannot or does not provide donated non-alcoholic Beverages through a sponsorship agreement to these three (3) non-profit events for this purpose, these three (3) events shall be permitted to secure Competitive Products for use and sale consistent with the use and sale of non-alcoholic Beverages in the 2012 White Party, Winter Party and Miami Beach Pride events.

Per Section 9 of Term Sheet, No Competitive Products may be sold, dispensed, sampled or served anywhere at the Facilities, or on the City's public rights-of-ways, unless otherwise expressly spelled out in the Agreement.



# 2014 Product List



### 20oz Bottles/24per case

- Coca-Cola Classic
- Coke Zero
- Vanilla Coke
- Cherry Coke
- Cherry Coke Zero
- Diet Coke
- Caffeine Free Diet Coke
- Diet Coke w/ Lime
- Sprts
- Sprts Zero
- Mello Yello
- Barqs Root Beer
- Pibb Xtra
- Seagram's Ginger Ale
- Fanta Orange
- Fanta Orange Zero
- Fanta Grape
- Fanta Strawberry
- Minute Maid Lemonade
- Minute Maid Pink Lemonade
- Minute Maid Fruit Punch
- Fuze Sweet Tea
- Fuze Lemon Tea
- Fuze Diet Tea
- Fuze Strawberry Tea

- 20oz Bottle 24/case
- 330 ml 24/case
- 18.9oz (.5Liter) Bottles 24/case
- 12oz Bottles/24 case
- 1L 12 per case

### Orange Flavors

- Lemon
- Strawberry



- 1.1oz 4pk
- Strawberry Kwif
- Mixed Berry
- Pineapple Coconut
- Pink Lemonade
- Grape
- Cherry Pomegranate

- 20oz Bottles 24/case
- 750 ML Sportscap 24/Case
- 1.0 L 12/case
- 1.5 L 12/case

- 14oz PET NB, Choc, Pineapple 12/case
- 11.2oz Tetra NB 12/case
- 1.0 L NB, Choc 12/case

### 100% Fruit Juices

- 100% Orange Juice
- 100% Apple Juice
- 100% Cranberry Apple Raspberry
- 100% Cranberry Grape
- 100% Ruby Red Grapefruit
- 100% Strawberry Passionfruit
- Tropical Blend
- Berry Blend

### Corn Puffs

- Lite Platform
- Chocolate
- Strawberry Banana
- Corn Platform
- Chocolate
- Vanilla
- Banana

### Strawberry Flavors

- Black Raspberry
- Orange Mango
- Strawberry Kwif
- Lemon-Lime
- Watermelon Punch



### 20oz Bottles 24/case (also available in 32oz & 12oz)

- Mountain Blast
- Fruit Punch
- Lemon Lime
- Orange
- Strawberry Lemonade
- Grape
- Fruit Punch (Red)
- Grape (purple)
- Mixed Berry (Blue)

### FUZE

- 18.9oz (.5 Liter) Case
- Strawberry Melon
- Peach Mango
- Tropical Punch
- Cranberry Raspberry
- Blue Raspberry
- Acai Berry Pomegranate
- Banana Colada

- 16oz 24 per case
- Full Throttle
- Black (original)
- Blue Agave
- 16oz 12 per case
- Red Berry

### NOS

- 16oz Cans 24/case
- Original (Orange Mango)
- Grape
- 16oz Cans 12/case
- Charged Citrus
- Sugar Free
- Loaded Cherry

### MONSTER

- 18oz Cans 24/case
- Original-Green
- Lo Carb-Blue
- Assault-Red
- Khaos-Orange
- Absolute Zero- Blue/Purple
- Absolute Ultra- White
- 15.7oz Cans 24/case
- Rehab - Half Tea Half Lemonade
- Rehab - Orangeade
- Rehab - Green Tea
- Rehab - Rojo Red Tea

### Monster Juvs

- 18oz Cans 12/case
- Mean Bean
- Loca Moca
- Vanilla Light
- Toffee
- Kona Blend
- Irish Blend

### Monster Munch

- 16oz Cans 12/case
- Chocolate
- Coffee
- Vanilla

### Powerade Zero Drops

- Mountain Berry
- Fruit Punch
- Orange

### Zero Cal Lemonade

- Honey Green Tea
- Peach White Tea
- Half n Half Tea

### Mixed Aids 18.9oz 12/Case

- Pomegranate Blue Berry
- Orange Mango
- Superfruit

### Vitamin 3+

- 20 oz Bottles 24/Case
- XXX (Blueberry Pomegranate)
- Power C. (Dragon Fruit)
- Focus (Kiwi Strawberry)
- Essential (Orange)
- Energy (Tropical Citrus)
- Multi-V (Lemonade)
- Revive (Fruit Punch)
- Defense (Raspberry Apple)
- Attention

### VW Zero-ZERO Calories per serving

- 20 oz Bottles 24/Case
- Squeezed (Lemonade)
- XXX (Blueberry Pomegranate)
- Go Go (Mixed Berry)
- Glow
- Mega-C (Grape/Raspberry)
- Rise (Orange)
- 18.9oz (.5L) 12 case
- XXX Zero
- Power C. Squeezed Zero
- Revive Rise Zero

### 8oz GLASS Bottles

- 24 per Case
- Coca-Cola Classic
- Diet Coke
- Sprite

### 12 per case

- Cappuchino
- Latte Macchiato
- Nochiccino
- Cafe



### 12oz Cans 24/case

- Coca-Cola Classic
- Coke Zero
- Caffeine Free Classic
- Vanilla Coke
- Cherry Coke
- Cherry Coke Zero
- Diet Coke
- Diet Coke w/ Splenda
- Caffeine Free diet Coke
- Diet Coke w/ Lime
- Tab
- Sprts
- Sprts Zero (Diet)
- Fresca
- Fresca w/ Peach

### Fresca w/ Black Cherry

- Barq's Root Beer
- Diet Barq's Root Beer
- Pibb Xtra
- Pibb Zero
- Minute Maid Lemonade
- Minute Maid Pink Lemonade
- Minute Maid Fruit Punch
- M Maid Lite Lemonade
- Fanata Orange
- Fanta Strawberry
- Fanta Grape
- Fanta Orange Zero
- Seagram's Ginger Ale
- Seagram's Diet Ginger Ale



### 16oz TETRA TETRA Cherry Case

- Caddy Shack (half & half)
- Texas Tea (sweet tea)
- Pink Lemonade
- Razzleberry (raspberry)
- Snowberry (white berry)
- Georgia Peach
- Green Tea
- Sweet Lemon

### Gold Peak Tea 18.5oz Bottle 12/case

- Sweet
- Lemon
- Diet
- Green
- Unsweet

### 10.1oz 12/case

- Fruit Punch
- Green Apple
- Orange
- Sour Raspberry
- Very Berry

### Mexican Coke 355ml 24pk

- Coke de Mexico
- Fanta Orange de Mexico
- Sprts de Mexico



10/19/11

2011-27776

**Concession  
Agreement for  
Operation of  
Snack Machines  
by  
Bettoli Trading Corp.**

# INDEX

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
1	TERM .....	4
2.	CONCESSION LOCATIONS .....	4
3.	USE(S) .....	4
3.2	Scope of Services .....	5
3.2.1	Snack Machines .....	5
3.2.1.1	Definition .....	5
3.2.1.2	Controls .....	5
3.2.1.3	Conditions .....	5
3.2.1.4	Design .....	5
3.2.1.5	Placement .....	6
3.2.1.6	Quality of Products .....	6
3.2.1.7	Cleanliness .....	6
3.2.1.8	Operation Schedule .....	7
3.2.2	Changes Machines .....	7
3.2.2.1	Definition .....	7
3.2.2.2	Placement .....	7
3.2.3	Maintenance of Snack Machines and Change Machines .....	7
3.2.4	Refund Procedure .....	9
3.2.5	Pricing and Availability of Services .....	9
3.2.6	Concessionaire's Supervisory / Management Employee .....	10
3.2.7	Removal of Snack Machines and/or Change Machines .....	10
3.2.8	Hurricane Evacuation Plan .....	10
3.2.9	City Business Tax Receipts .....	11
4.	CONCESSION FEES .....	11
4.1	Security Deposit .....	11
4.2	Minimum Guarantee (MG) .....	11
4.3	Percentage of Gross Metered Receipts (PGMR) .....	12
4.4	Non-Cash Remuneration .....	12
4.5	Interest For Late Payment .....	12
4.6	Sales and Use Tax .....	12
5.	MAINTENANCE AND EXAMINATION OF RECORDS .....	13
6.	INSPECTION AND AUDIT .....	13
7.	TAXES, ASSESSMENTS, AND UTILITIES .....	14
7.2	Utilities .....	14
7.3	Procedure if Ad Valorem Taxes Assessed .....	14
8.	EMPLOYEES AND INDEPENDENT CONTRACTORS .....	15
9.	SCHEDULE OF OPERATION .....	15
10.	MAINTENANCE OF CONCESSION LOCATIONS .....	15
10.2	Garbage Receptacles .....	16
10.3	Pressure Cleaning .....	16
10.4	Facilities .....	16
10.5	Orderly Operation .....	16
10.6	No Dangerous Materials .....	16
10.7	Security .....	17
10.8	Maintenance Vehicles .....	17
10.9	Inspection .....	17
11.	INSURANCE .....	17

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
12.	INDEMNITY.....	18
12.4	Subrogation.....	19
12.5	Force Majeure.....	19
12.6	Labor Dispute.....	19
12.7	Waiver of Loss from Hazards.....	19
13	DEFAULT AND TERMINATION.....	20
13.1	Bankruptcy.....	20
13.2	Default in Payment.....	20
13.3	Non-Monetary Default.....	20
13.4	City's Remedies for Concessionaire's Default.....	21
13.6	Termination for Convenience/Partial Termination.....	22
13.7	Surrender of Concession Locations.....	22
14.	PERFORMANCE BOND OR ALTERNATE SECURITY.....	23
15.	ASSIGNMENT.....	23
16.	SPECIAL EVENTS.....	23
17.	NO IMPROPER USE.....	23
18.	PRICE SCHEDULES.....	23
19.	NOTICES.....	24
20.	LAWS.....	24
20.1	Compliance.....	24
20.2	Governing Law.....	25
20.3	Equal Employment Opportunity.....	25
20.4	No Discrimination.....	25
20.5	Compliance with American with Disabilities Act (ADA).....	25
21.	MISCELLANEOUS.....	25
21.1	No Partnership.....	25
21.2	Modifications.....	25
21.3	Complete Agreement.....	26
21.4	Headings.....	26
21.5	Binding Effect.....	26
21.6	Clauses.....	26
21.7	Severability.....	26
21.8	Right of Entry.....	26
21.9	Not a Lease.....	26
21.10	Signage.....	27
21.11	Use of the Right-of-Way.....	27
21.12	Conflict of Interest.....	27
21.13	Reasonableness.....	27
21.14	Procedure for Approvals and/or Consents.....	27
21.15	No Waiver.....	27
21.16	No Third Party Beneficiary.....	27
21.17	Attorneys' Fees.....	27
22.	LIMITATION OF LIABILITY.....	28
23.	VENUE.....	28
	EXHIBITS	
	Exhibit 2.0	
	Exhibit 3.2.1.4	
	Exhibit 3.2.5.1	
	Exhibit 5.0	

**CONCESSION AGREEMENT BY AND BETWEEN  
CITY OF MIAMI BEACH, FLORIDA, AND BETTOLI TRADING CORP.  
FOR OPERATION OF SNACK MACHINE CONCESSIONS AT  
VARIOUS LOCATIONS ON CITY OF MIAMI BEACH PROPERTIES  
PURSUANT TO REQUEST FOR PROPOSALS #44-10/11**

THIS AGREEMENT made the 3<sup>RD</sup> day of May, 2012, between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida (hereinafter called "City"), having its principal address at 1700 Convention Center Drive, Miami Beach, Florida, 33139, and **BETTOLI TRADING CORP.**, a corporation established pursuant to the laws of the State of Florida, with offices at 6095 NW 167 Street, Suite D, Miami, Florida 33015 (hereinafter called "Concessionaire").

**WITNESSETH**

**WHEREAS**, on July 13, 2011, the Mayor and City Commission approved the issuance of Request for Proposals (RFP) No. 44-10/11; to solicit proposals for the operation of snack vending machine concessions at various locations on City-owned properties and facilities; and

**WHEREAS**, on August 5, 2011, said RFP was issued, with an original opening date of September 7, 2011; and

**WHEREAS**, on October 19, 2011, the Mayor and City Commission adopted Resolution No. 2011-27776, accepting the recommendation of the City Manager pertaining to the ranking of proposals, and authorizing the Administration to enter into negotiations with Bettoli Trading Corp. d/b/a Bettoli Vending (Concessionaire), as the successful proposer, for the operation of said snack machine concessions; and

**WHEREAS**, the Administration has successfully negotiated the foregoing Concession Agreement with Concessionaire.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:

The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the exclusive right to operate the following described concession within the Concession Locations, as defined herein, 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 1. TERM.

- 1.1 This Agreement shall be for an initial term of five (5) years, commencing on **May 1, 2012** (the "Commencement Date"), and ending on **April 30, 2017**.
- 1.2 Provided that the Concessionaire is not in default under Section 13 hereof, and at the City's sole discretion, the City, through its City Manager, may extend the term of this Agreement, upon the same terms and conditions as set forth herein, for five (5) additional one (1) year terms, by providing written notice to Concessionaire no later than sixty (60) days prior to the expiration of the initial term or of a renewal term (as the case may be).
- 1.3 For purposes of this Agreement, the "Term" shall be defined as the initial term and renewal term (if exercised by the City), and a "Contract Year" shall be defined as each one (1) year period during the Term, commencing on the Commencement Date, or the anniversary of the Commencement Date, and ending one year thereafter.

## SECTION 2. CONCESSION LOCATIONS.

The City hereby grants to the Concessionaire the exclusive right, during the Term of this Agreement, to operate snack vending machine concessions, in the locations delineated in Exhibit 2.0 herein (hereinafter referred to as the "Concession Locations").

## SECTION 3. USE(S).

The Concessionaire is hereby authorized to conduct the following kind(s) of business(es) in the Concession Locations, as provided below, all at its sole cost and expense:

- 3.1 Concessionaire shall install, operate, manage, service and maintain Snack Vending Machines (as defined in Subsection 3.2.1.1) and Change Machines (as defined in Subsection 3.2.2.1), at the Concession Locations, which shall provide snack services for patrons, employees, and the general public at City owned properties and facilities throughout the Term of this Agreement, in accordance with the scope of services delineated in Section 3.2.

The City hereby approves the use of the Concession Locations, for the placement of the specific Snack Machines, as reflected in Exhibit 2.0, which shall offer for sale the specific products at the specific prices reflected in Exhibit 3.2.5.1.

Any amendment to any Exhibit attached hereto must be approved in writing by the City Manager or his designee prior to implementation of same, and, if approved, a new and/or updated Exhibit shall be attached and incorporated herein.

3.2 Scope of Services.

3.2.1 Snack Machines.

3.2.1.1 Definition.

Snack Machine shall be defined as any and all equipment that is used to hold and dispense products to be offered for sale as provided pursuant to this Concession Agreement, which shall accept United States paper currency in one dollar (\$1.00), five dollar (\$5.00), and ten dollar (\$10.00) denominations, and will provide change in United States coins in one dollar (\$1.00), quarters (\$0.25), dimes (\$0.10) and nickels (\$0.05).

3.2.1.2 Controls.

Each Snack Machine must be equipped with a non-resetting transaction counter, or other control acceptable to the City, and must be licensed as provided in Subsection 3.2.9 and as may also be required by other applicable law (as provided in Section 20.1), and shall include DEX resident capabilities.

3.2.1.3 Condition.

As of the Commencement Date, all equipment including, without limitation, any and all Snack Machines, installed under this Agreement shall be new or remanufactured in excellent condition prior to installation. The City, at its sole discretion, may also request that vandal proof and weather proof Snack Machines be provided at certain outdoor City parks and other venues that may be subjected to the natural elements (i.e. wind, rain, sand, salt-air, etc.).

3.2.1.4 Design.

The design, type, material, and color and exterior facades of any and all Snack Machines, as defined in Subsection 3.2.1.1, shall be approved in writing by the City prior to the Commencement Date. A photo or photo(s) of City-approved Snack Machines are incorporated herein as Exhibit 3.2.1.4. Thereafter, Concessionaire shall not change, alter, or modify such City-approved design, type, material and color of any Snack Machine without the prior written consent of the City Manager or his designee and, if so approved, a new or updated Exhibit 3.2.1.4 will be made a part of and incorporated into this Agreement.

- 3.2.1.5 Placement.**  
Placement of Snack Machines shall be in accordance with and shall not exceed the maximum numbers and types, as set forth at the Concession Locations referenced in Exhibit 2.0.
- 3.2.1.5.1** Concessionaire shall obtain written approval from the City Manager, or the City Manager's designee, prior to the installation, transfer or removal of any Snack Machine.
- 3.2.1.5.2** Notwithstanding Subsection 3.2.1.5, City and Concessionaire may, from time to time, meet to review and, subject to the City Manager's prior written consent, revise the maximum numbers set forth in Exhibit 2.0.
- 3.2.1.6 Quality of Products.**  
Quality of products offered in Snack Machines will be first-rate and comparable to that available in other public vending machines located in public facilities in other world class cities on par with the City of Miami Beach or, in the alternative, and at a minimum, comparable to the quality of products provided by privately owned businesses selling like products within the City of Miami Beach. No product shall be offered for sale with a "sell by" date that has expired.
- 3.2.1.6.2 Snack Vending Options.**  
Snack vending options should include healthy snacks such as whole grain, multigrain or vegetable chips and crackers; nuts; reduced fat popcorn; baked or popped chips; sugar free chewing gum; fruit trail mix; nutrition, granola, or trail bars; fresh fruits and yogurt. The City's Parks and Recreation Department will review and approve any product to be sold in the Snack Machines placed in the City's parks and youth centers prior to such product(s) being initially offered for sale in the Machines.
- 3.2.1.7 Cleanliness.**  
In addition to Concessionaire's general maintenance obligations for the Snack Machines and Change Machines, as set forth in Section 3.2.3, and the Concession Locations, as set forth in Section 10 hereof, all portions of the Snack Machines, Change Machines, and Concession Locations, retrospectively, shall at all times be maintained in a clean and sanitary manner.

3.2.1.8 **Operation Schedule.**  
Snack Machines and Change Machines shall be operable during the days and hours of operation set forth in Section 9 herein.

3.2.2 **Change Machines.**

3.2.2.1 **Definition.**  
Change Machine shall be defined as any and all equipment that is required pursuant to this Concession Agreement that is capable of providing change, primarily for the purposes of use in a Snack Machine, which will accept United States paper currency in one dollar (\$1.00), five dollar (\$5.00), and ten dollar (\$10.00) denominations, and will provide change in United State coins in one dollar (\$1.00), quarters (\$0.25), dimes (\$0.10) and nickels (\$0.05).

For purposes of this Subsection, and this Agreement, Snack Machines, as defined herein, that are equipped and capable of providing change (without the requirement that a purchase be made) shall also be considered Change Machines.

3.2.2.2 **Placement.**  
Change Machines shall be provided by Concessionaire at each interior (i.e. not subject to the natural elements) Concession Location where two (2) or more Snack Machines are situated.

Concessionaire shall obtain written approval from the City Manager, or the City Manager's designee, prior to the installation, transfer or removal of any Change Machine.

3.2.3 **Maintenance of Snack Machine and Change Machines.**

3.2.3.1 The condition and quality of Concessionaire's Snack Machines shall at all times be maintained in a manner that is consistent with the condition and quality of similar public vending machines located in public facilities in other world class cities on par with the City of Miami Beach. Accordingly, Concessionaire shall not only, at a minimum, ensure that all Snack Machines placed in the Concession Locations are well maintained and in usable condition, but shall adhere, as indicated in this subsection, to high ongoing maintenance standards for same, consistent with the aforementioned condition and quality.

3.2.3.2 The Concessionaire shall be responsible for all maintenance and repair of Snack Machines and Change Machines, including but not limited to:

3.2.3.2.1 Cleaning and polishing of Snack Machines and Change Machines, and removal of litter within and surrounding the Concession Location(s) created by filling, servicing, and/or maintaining of Machines. The Concessionaire shall ensure that each route driver's schedule allows for time to thoroughly and appropriately clean each Machine as it is replenished, maintained and/or serviced. This includes cleaning with a sanitizing solution, the interior and exterior of each Machine, each time that Machines are re-stocked, serviced, or maintained.

3.2.3.2.2 All Snack Machines and Change Machines shall be checked weekly and accurate records of service calls (including time and date, location, machine type and serial number) are to be maintained, and forwarded to the City, along with the monthly report (see Section 5) that shall be provided to the City within thirty (30) days of the end of each month.

3.2.3.2.3 The Concessionaire shall maintain all Snack Machines and Change Machines in good working order and shall repair or replace any equipment that is not immediately repairable, within two (2) business days, if found to be inoperable.

3.2.3.2.4 Concessionaire shall post and maintain Concessionaire's information, including a contact name and toll free customer service telephone number, immediately adjacent to the coin slot, of a size no less than 4" x 6", on each Snack Machine and Change Machine, to facilitate responding to refunding, re-stocking, maintenance, and repair related problems that may arise.

3.2.3.2.5 Concessionaire shall maintain an inventory of all Snack Machines and Change Machines, with corresponding identification information.

3.2.4 Refund Procedure.

- 3.2.4.1 In addition to any other remuneration provided herein, Concessionaire shall provide two "banks," each of one hundred dollars (\$100.00) in cash, to the City. One shall be held by the City Finance Department's City Hall Cashier, and the other shall be held by the Parks Department Administrative Office, located at the 21<sup>st</sup> Street Recreation Center, 2100 Washington Avenue, for the purpose of distributing refunds due to any malfunction of the Snack Machines. An individual itemized refund list, including the amounts and names of the persons the funds were refunded to, will be maintained by the City Hall Cashier and by the Parks Department, respectively, and will be submitted to the Concessionaire upon requested replenishment of the "bank" funds by the City.
- 3.2.4.2 Malfunctions of Snack Machines that are reported to the Concessionaire shall be forwarded to the City, in writing, including the amounts and names of the persons the funds were refunded to, on a monthly basis, along with (and at the same time) all other reporting documents required under this Agreement.

3.2.5 Pricing and Availability of Services.

- 3.2.5.1 Initial prices for Snack Machine products shall be in accordance with the attached schedule in Exhibit 3.2.5.1. Any subsequent changes proposed by Concessionaire to said prices must be submitted in writing to the City Manager or his designee, and prior written approval must be secured from the City before implementing any changes to same.
- 3.2.5.1.1 The City Manager or his designee may request services at additional locations and/or request additional products for Snack Machines at any time during the Term. The Concessionaire may, at its sole cost and expense, test market these additional locations and/or products for a sixty day (60) period. If the Concessionaire demonstrates to the City Manager or his designee's satisfaction that the commercial demand does not exist for the additional locations and/or products, the Concessionaire will not be obligated to continue the additional locations and/or products.
- 3.2.5.2 **In the event that the City Manager or his designee determine, in their respective sole option and discretion,**

that all or a portion of Concessionaire's proposed services, pursuant to Subsection 3.1 (and as delineated in Subsection 3.2) are no longer desired, then the City may revoke Concessionaire's right to provide all or a portion of said services, and terminate all or a portion of this Agreement, without cause, and without liability to the City, upon sixty (60) days written notice to Concessionaire.

3.2.6 Concessionaire's Supervisory/Management Employee.

On or before the Commencement Date of this Agreement Concessionaire shall designate (and provide notice of same in writing to the City), a supervisory/management employee who shall be authorized and responsible to act on behalf of Concessionaire with respect to directing, coordinating, and administering all aspects of Concessionaire's day to day operations pursuant to this Agreement.

Concessionaire's supervisory/management employee shall be available via telephone, at all times during which the Snack Machines at all Concession Locations are operating, as provided in Section 9 herein.

3.2.7 Removal of Snack Machines and/or Change Machines.

Concessionaire acknowledges that there may be circumstances under which the City Manager may require the removal of any or all of the Snack Machines and/or Change Machines. As such, Concessionaire agrees that any or all of its Snack Machines and Change Machines used in the concession operations will be removed from the Concession Locations upon fifteen (15) days written notice to Concessionaire, and said removal shall be done in compliance with the applicable section(s) as set forth herein, and without liability to the City.

3.2.8 Hurricane Evacuation Plan.

Concessionaire agrees that upon the issuance of a Hurricane Warning by the Miami-Dade County Office of Emergency Management, it shall ensure that all exterior Snack Machines and Change Machines, and any and all other items used in the concession operations shall be secured. Additionally, and notwithstanding the foregoing, Concessionaire agrees that upon receipt of notification from the City Manager or his designee, whether in writing or verbally, which may be communicated to Concessionaire via telephone, fax and/or email, all exterior Snack Machines and Change Machines, and any and all other items used in the concession operations shall be removed from the Concession Locations and stored at a private, off-site location, within 24 hours of said notification.

**Concessionaire's failure to remove Snack Machines, Change Machines, or any and all other items used in the concession operations upon notice from the City Manager or his designee within the time period provided in this Subsection may, at the City's sole discretion, constitute an automatic default of the Agreement under which the City may, upon written notice to Concessionaire, immediately terminate this Agreement.**

3.2.9

City Business Tax Receipts.

Concessionaire shall obtain, and maintain current and in good standing throughout the Term of this Agreement, at its sole cost and expense, any Business Tax Receipts required by City law, as amended from time to time, for its proposed uses, as contemplated in Section 3 of this Agreement. For purposes of this Agreement, Concessionaire shall obtain the applicable "Coin Vending Distributor" and/or "25 Cents and Over Machine" category City Business Tax Receipts.

SECTION 4. CONCESSION FEES.

4.1

Security Deposit.

Concessionaire shall furnish to the City Manager or his/her designee a Security Deposit, in the amount of Three Thousand Dollars (\$3,000), as security for the faithful performance of the terms and conditions of this Concession Agreement, to be remitted on or before the Commencement Date.

4.2

Minimum Guarantee (MG).

In consideration of the City executing this Agreement and granting the rights provided in this Agreement, commencing May 1, 2012, and thereafter on May 1<sup>st</sup> of each year during the Term of this Agreement, the Concessionaire shall pay to the City a Minimum Guaranteed (MG) Annual Concession Fee of Twelve Thousand Dollars (\$12,000), plus applicable Sales and Use Taxes (as provided in Section 4.6 herein); said MG shall be subject to the annual increases in Subsections 4.2.1. and 4.2.2 below.

4.2.1

Commencing with the third Contract Year, said MG shall be automatically increased annually, on the anniversary of the Commencement Date, by the greater of (i) the Consumer Price Index (CPI), or (ii) three percent (3%). "CPI" shall mean that consumer price index established by the Bureau of Labor Statistics of the United States department of Labor which is entitled "Consumer Price Index, All Urban Consumers, City Average All Items; (1982-84 = 100)" or, in the event said index is no longer provided by said Bureau of Labor Statistics, the index furnished by said Bureau or other agency which is

most accurate, completely replaces, and/or is the equivalent of the above referenced index, whichever is greater.

4.2.2 Additionally, commencing with the first anniversary of this Agreement, the MG shall be increased annually in the event the number of Snack Machines is increased pursuant to Subsection 3.2.1.5.2. of this Agreement. The MG shall be increased based on the projected classification (Low = \$150, Medium = \$300 and High = \$500) of each additional Snack Machine, as contained in Exhibit 2.0.

4.2.3 **IN NO EVENT SHALL THE MG BE LESS THAN \$12,000 ANNUALLY.**

4.3 Percentage of Gross Metered Receipts (PGMR)

During the Term of this Agreement, in the event that the amount equal to twenty percent (20%) of Concessionaire's annual Gross Metered Receipts (PGMR) exceeds the Minimum Guarantee (MG) provided in Section 4.2 above (as increased annually pursuant to Subsection 4.2.1.), then the Concessionaire shall also pay to the City within thirty (30) days of the anniversary of this Agreement, the difference between the amount of the PGMR and the MG amount, each year during the Term of this Agreement, including any renewal terms.

The term "gross metered receipts" is understood to mean all income registered at each and every Snack Machine, whether collected or accrued, derived by the Concessionaire under the privileges granted by this Agreement. Any amounts that may be due for any Federal, State, or City sales tax, or other tax, governmental imposition, assessment, charge or expense of any kind and required by law to be remitted to the taxing authority, or other governmental authority, shall be the sole responsibility of Concessionaire.

4.4 Intentionally Omitted.

4.5 Interest for Late Payment.

Any payment which Concessionaire is required to make to City which is not paid on or before the respective date provided for in this Agreement shall be subject to interest at the rate of twelve percent (12%) per annum, or the highest rate allowed pursuant to Florida law, whichever is greater, from the due date of payment until such time as payment is actually received by the City.

4.6 Sales and Use Tax.

It is also understood that the required Florida State Sales and Use Tax shall be added to Concessionaire's payments and forwarded to the City as part of said payments. It is the City's intent that it is to receive all payments due

from Concessionaire as net of such Florida State Sales and Use Tax.

**SECTION 5. MAINTENANCE AND EXAMINATION OF RECORDS.**

Concessionaire shall maintain current, accurate, and complete financial records on an accrual basis of accounting related to its operations pursuant to this Agreement. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit, but not photocopying, by the City Manager or his designee upon reasonable prior request and during normal business hours. Such records and accounts shall include a breakdown of gross receipts, expenses, and profit and loss statements, and such records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

A monthly report of gross metered receipts, as well as CompuVend data in a format consistent with Exhibit 5.0, must be submitted to the City, through the Finance Department's Revenue Manager, to be received no later than thirty (30) days after the close of each month.

**SECTION 6. INSPECTION AND AUDIT.**

Concessionaire shall maintain its financial records pertaining to its operations for a period of three (3) years after the conclusion of the initial term, or (if approved) the last renewal term, and such records shall be open and available to the City Manager or his designee, as they may deem necessary. Concessionaire shall maintain all such records at its principal office, currently located at 6095 NW 167 Street, Suite D4, Miami, Florida, 33015 or, if moved to another location, all such records shall be relocated, at Concessionaire's expense, to a location within the City of Miami Beach, within ten (10) days' written notice from the City Manager or his designee that the City desires to review said records.

The City Manager or his designee shall be entitled to audit Concessionaire's records pertaining to its operation as often as it deems reasonably necessary throughout the Term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement, regardless of whether such termination results from the natural expiration of the Term or for any other reason. The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five percent (5%) or more in Concessionaire's statement of gross receipts for any year or years audited, in which case the firm shall pay to the City, within thirty (30) days of the audit being deemed final (as specified below), the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest; provided, however, the audit shall not be deemed final until Concessionaire has received the audit and has had a reasonable opportunity to review the audit and discuss the audit with the City. Nothing contained within this Section shall preclude the City's audit rights for resort tax collection purposes.

Concessionaire shall submit at the end of the initial term (and, if approved, any renewal term), a certified audited annual statement of gross receipts, in a form consistent with generally accepted accounting principles.

It is Concessionaire's intent to stay informed of comments and suggestions by the City regarding Concessionaire's performance under the Agreement. Within thirty (30) days after the end of the initial term (and, if approved, each renewal term), Concessionaire and City may meet to review Concessionaire's performance under the Agreement. At the meeting, Concessionaire and City may discuss quality, operational, maintenance and any other issues regarding Concessionaire's performance under the Agreement.

## SECTION 7. TAXES, ASSESSMENTS, AND UTILITIES.

7.1 Concessionaire agrees to and shall pay before delinquency all taxes (including but not limited to resort taxes) and assessments of any kind assessed or levied upon Concessionaire by reason of this Agreement or by reason of the business or other activities and operations of Concessionaire upon or in connection with the Snack Machines and/or the Concession Locations. Concessionaire will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax and/or assessment by appropriate proceedings diligently conducted in good faith. Concessionaire may refrain from paying a tax or assessment to the extent it is contesting the assessment or imposition of same in a manner that is in accordance with law; provided, however, if, as a result of such contest, additional delinquency charges become due, Concessionaire shall be responsible for such delinquency charges, in addition to payment of the contested tax and/or assessment if so ordered.

Concessionaire shall also pay for any fees imposed by law for licenses or permits for any business, activities, or operations of Concessionaire upon the Concession Locations, as permitted pursuant to this Agreement.

7.2 Utilities.  
Electrical service, including maintenance of outlets, shall be provided by the City at the Concession Locations at no cost to the Concessionaire, if and where feasible. No water service will be provided by the City in connection with the operation of Snack Machines under this Concession Agreement.

If not currently existing, requests for installation of new and/or additional outlets shall be submitted in writing to the City Manager or his/her designee, for review and approval. If approved by the City Manager or his/her designee, installation of new and/or additionally outlets will be performed by the City and/or an electrical contractor approved by the City, in writing, to perform said work on the City's behalf, at Concessionaire's sole cost and expense.

7.3 Procedure If Ad Valorem Taxes Assessed.  
Notwithstanding Subsection 7.1 herein, the parties contemplate that the concession uses and operations contemplated under this Agreement are for

public purposes and, therefore, no ad valorem taxes should be assessed by the Miami-Dade County Tax Appraiser as a result of such operations. If, however, said taxes are assessed, Concessionaire shall be solely responsible for payment of same, in the same manner as taxes due pursuant to Subsection 7.1 herein.

#### SECTION 8. EMPLOYEES AND INDEPENDENT CONTRACTORS.

- 8.1 In connection with the performance of its responsibilities hereunder, Concessionaire may hire its own employees who will be employees of Concessionaire and not employees or agents of the City. Additionally, Concessionaire's vendors (i.e. entities who provide products and/or Snack and Change Machines to Concessionaire) shall not be considered agents or employees of the City. Concessionaire shall select the number, function, qualifications, compensation, including benefits (if any), and may, at its discretion and at any time, adjust or revise the terms and conditions relating to its employees and/or independent contractors.
- 8.2 Concessionaire shall ensure that all its employees and vendors while working at or within the Concession Locations observe all the graces of personal grooming. The Concessionaire shall hire people to work in its concession operation who are neat, clean, well groomed and shall comport themselves in a professional and courteous manner, and ensure that its vendors comply with same. The Concessionaire and any persons hired by same, shall never have been convicted of a felony. If Concessionaire materially fails to comply with this provision the City may default Concessionaire pursuant to Section 13 herein.

#### SECTION 9. SCHEDULE OF OPERATION.

Snack Machines and Change Machines shall be made available to patrons twenty four (24) hours a day, seven days a week, based on the particular hours of operation of each individual Concession Location, events of force majeure permitting. Any change in the days or hours of operation shall require the prior written consent of the City Manager or his designee.

#### SECTION 10. MAINTENANCE OF CONCESSION LOCATIONS.

- 10.1 The Concessionaire accepts the Concession Locations in their "AS IS" "WHERE IS" condition. Concessionaire assumes sole responsibility and expense for maintenance of the immediate confines surrounding the Concession Locations. This shall include removal of litter, garbage and debris, said removal to be the sole responsibility and expense of Concessionaire. Daily maintenance shall be accomplished on all days and hours Concessionaire operates. Concessionaire agrees, also at its sole cost and expense, to pay for all garbage disposal generated by its operations.

10.2 Intentionally Omitted.

10.3 Intentionally Omitted.

10.4 Intentionally Omitted.

10.5 Orderly Operation.

The Concessionaire shall have a neat and orderly operation at all times and shall be solely responsible for the necessary housekeeping services to properly maintain the Snack Machines, Change Machines and Concession Locations. The Concessionaire shall make available all Snack Machines and Change Machines within the Concession Locations for examination during days and hours of operation by the City Manager or his authorized representative(s).

10.6 No Dangerous Materials.

10.6.1 The Concessionaire agrees not to use or permit in the Concession Locations 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 being used within or in the vicinity of the Concession Locations shall be immediately removed and shall be considered cause for default and/or termination.

10.6.2 Notwithstanding any contrary provisions of this Agreement, Concessionaire, after the Commencement Date, 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 Concessionaire, and/or its employees, vendors, agents and/or subcontractors, after the Commencement Date, but during the term of this Agreement, of any hazardous substance or petroleum products on, under, in, upon, or in the vicinity of the Concession Locations as those terms are defined by applicable Federal and State Statute, or any environmental rules and environmental regulations promulgated thereunder; provided, however, Concessionaire shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees.

10.6.3 The provisions of this Subsection 10.6 shall survive the termination or earlier expiration of this Agreement.

- 10.7 Security.  
The Concessionaire shall be responsible for and provide reasonable security measures which may be required to protect the Snack Machines and Change Machines at all Concession Locations. Under no circumstances shall the City be responsible for any stolen or damaged goods, materials and/or other equipment, including but not limited to the Snack Machines and Change Machines, nor shall City be responsible for any stolen or damaged personal property of Concessionaire's employees, vendors, patrons, guests, invitees, and/or other third parties.
- 10.8 Maintenance Vehicles.  
Concessionaire shall not permit the use of any vehicle, in any way that violates any Municipal, County, State or Federal Laws. Vehicles may only be driven and/or parked in areas designated for such purposes and as provided for by applicable law.
- 10.9 Inspection.  
The Concessionaire agrees that the Snack Machines, Change Machines and Concession Locations may be inspected at any time during days and hours of operation by the City Manager or his designee, or by any other municipal, County, State officer, or agency having responsibilities for inspections of such operations. The Concessionaire hereby waives all claims against the City for compensation for loss or damage sustained by reason of any interference (which interference, if by the City, must be reasonable) with the concession operation by any public agency or official in enforcing their duties or any laws or ordinances. Any such interference (which interference, if by the City, must be reasonable) shall not relieve the Concessionaire from any obligation hereunder.

#### SECTION 11. INSURANCE.

Concessionaire shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the term of this Agreement.

- a. Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. This policy must also contain coverage for premises operations, products, completed operations and contractual liability (with hold harmless endorsement).
- b. Workers Compensation Insurance and Employers Liability Insurance shall be provided as required under the Laws of the State of Florida.
- c. Automobile Insurance for any vehicles used for, or associated with concessionaire's operations shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

**Failure to procure or maintain the required insurance program shall, at the City's discretion, either (i) constitute an automatic default of the Concession Agreement under which the City may, upon written notice to Concessionaire, immediately terminate the Agreement; or (ii) the City, in its sole discretion, may obtain the insurance itself, in which case said insurance shall be charged back to the Concessionaire as provided in the following paragraph.**

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his designee. Prior to the Commencement Date of this Agreement, Concessionaire shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH FLORIDA AS AN ADDITIONAL NAMED INSURED. All such policies, and any replacement or substitute 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 of B+ VI. Should Concessionaire fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, automatically terminate this Agreement or, in the alternative, deem to obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Concessionaire to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If Concessionaire fails to repay 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, or, at its option, the City may declare the Agreement in default pursuant to Section 13 herein.

Said policies of insurance shall be primary to and contributing with any other insurance maintained by Concessionaire or City. Concessionaire shall file and maintain certificates of all insurance policies with the City's Risk Management Department showing said policies to be in full force and effect at all times during the course of the contract.

If any of the required insurance coverages contain aggregate limits, or apply to other operations or tenancies of Concessionaire outside this Agreement, Concessionaire shall give City prompt written notice of any incident, occurrence, claim settlement or judgment against such insurance which may diminish the protection such insurance affords the City. Concessionaire shall further take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits.

**SECTION 12. INDEMNITY.**

12.1 In consideration of a separate and specific consideration of \$10.00 and other

good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of Concessionaire, and/or its vendors, agents, servants, employees and/or subcontractors and/or sub concessionaires in the performance of services under this Agreement.

12.2 In addition, in consideration of a separate and specific consideration of \$10.00 and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Concessionaire shall indemnify, hold harmless and defend the City, its agents, servants or employees, from and against any claim, demand or cause of action of whatever kind or nature arising out of any misconduct of Concessionaire, and/or its vendors, agents, servants, employees and/or subcontractors and/or subconcessionaires, not included in the paragraph in the Subsection above and for which the City, its agents, servants or employees are alleged to be liable.

12.3 Subsections 12.1 and 12.2 shall survive the termination or expiration of this Agreement.

12.4 Subrogation.  
The terms of insurance policies referred to in Section 11 shall preclude subrogation claims against Concessionaire, the City and their respective officers, employees and agents.

12.5 Force Majeure.  
Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:

- a. earthquake; hurricane; flood; act of God; civil commotion occurring on the Concession Locations during or in connection with any event or other matter or condition of like nature; or
- b. any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war.

12.6 Intentionally Omitted.

12.7 Waiver of Loss from Hazards.  
The Concessionaire hereby expressly waives all claims against the City for loss or damage sustained by the Concessionaire resulting from fire, water, natural disasters/acts of God (e.g. hurricane, tornado, etc.), civil commotion, riot, or any other Force Majeure contemplated in Subsection 12.5 above, and the Concessionaire hereby expressly waives all rights, claims, and demands

against the City and forever releases and discharges the City of Miami Beach, Florida, from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

**SECTION 13. DEFAULT AND TERMINATION.**

Subsections 13.1 through 13.3 shall constitute events of default under this Agreement. An event of default by Concessionaire shall entitle City to exercise any and all remedies described as City's remedies under this Agreement, including but not limited to those set forth in Subsection 13.4. An event of default by City shall entitle Concessionaire to exercise any and all remedies described as Concessionaire's remedies under this Agreement, including but not limited to those set forth in Subsection 13.5 herein.

**13.1 Bankruptcy.**

If either the City or Concessionaire shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within sixty (60) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within sixty (60) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

**13.2 Default in Payment.**

In the event Concessionaire fails to submit any payment within five (5) days of its due date, there shall be a late charge of \$50.00 per day for such late payment, in addition to being subject to interest at the rate of twelve percent (12%) per annum or at the highest rate allowable by Florida law, whichever is greater. If any payment and accumulated penalties are not received within fifteen (15) days after the payment due date, and such failure continues three (3) days after written notice thereof, then the City may, without further demand or notice, terminate this Concession Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

**13.3 Non-Monetary Default.**

In the event that Concessionaire or the City fails to perform or observe any of the covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without

being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Concessionaire cures any default pursuant to this Subsection, it shall promptly provide City with written notice of same.

13.4

City's Remedies for Concessionaire's Default.

If any of the events of default, as set forth in this Section 13, shall occur, the City may, after notice (if required) and the expiration of cure periods (as provided above), at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate City for damages resulting from such defaults, including but not limited to the right to give to Concessionaire a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Concessionaire. On the date so specified, Concessionaire shall then quit and surrender the Concession Locations to City pursuant to the provisions of Subsection 13.7. Upon the termination of this Agreement, all rights and interest of Concessionaire in and to the Concession Locations and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Concessionaire under this Agreement. In addition to the rights set forth above, City shall have the rights to pursue any and all of the following:

- a. the right to injunction or other similar relief available to it under Florida law against Concessionaire; and or
- b. the right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Concessionaire's default.

13.5

If an event of default by the City, as set forth in this Section 13, shall occur, the Concessionaire may, after notice (if required) and the expiration of the cure periods (as provided above), at its sole option and discretion, terminate this Agreement upon written notice to the City and/or sue for damages. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Concessionaire specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Concessionaire shall quit and surrender the Concession Locations to City pursuant to the provisions of Subsection 13.7.

13.6 Termination for Convenience/Partial Termination.

13.6.1 Notwithstanding the provisions of this Section 13, this Agreement may be terminated, in whole or in part, by the City, for convenience and without cause, upon the furnishing of thirty (30) days prior written notice to Concessionaire.

13.6.2 Concessionaire acknowledges that the City may develop a schedule of capital improvements, including all or a portion of the Concession Locations, which may entail a closure of all or a portion of the Concession Locations, at the City's sole discretion. In the event that the City closes down any Concession Location, or a portion thereof, for the purpose of undertaking a capital improvement thereon, then the parties agree that the portion of the Agreement referencing said individual Concession Locations shall be partially terminated for convenience, without cause and without penalty to either party, and only as to the Concession Location, or portion thereof, which have been closed. Such a termination shall become effective upon thirty (30) days prior written notice to Concessionaire.

13.6.3 Notwithstanding Subsections 13.6.1 and 13.6.2 above, the City and Concessionaire acknowledge that the City also has certain rights in Subsections 3.2.5.2 and 3.2.7, which, if exercised by the City may necessitate a termination of a portion or all of the Agreement. In that event, the City shall also have no liability to Concessionaire, in the same manner as provided in Subsection 13.6.4 below.

13.6.4 In the event of termination or partial termination by City of the Agreement pursuant to this Subsection 13.6, Concessionaire herein acknowledges and agrees that it shall not have any claim, demand, or cause of action of whatsoever kind or nature, against the City, its agents, servants and employees (including, but not limited to, claims for interference in business or damages for interruption of services or interference in its concession operations by Concessionaire or its vendors).

13.7 Surrender of Concession Locations.

At the expiration of this Agreement, or in the event of termination or partial termination of the Agreement, Concessionaire shall surrender the Concession Locations in the same condition as the Concession Locations were prior to the Commencement Date of this Agreement, reasonable wear and tear excepted. Concessionaire shall remove all its Snack Machines, Change Machines, and any and all other equipment, fixtures, personal property, etc. upon thirty (30) days written notice from the City Manager or his designee unless a longer time period is agreed to by the City.

Concessionaire's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of the Concession Locations (or portions thereof) after termination (or partial termination) of the Agreement shall constitute trespass by the Concessionaire, and may be prosecuted as such. In addition, the Concessionaire shall pay to the City one thousand dollars (\$1,000) per day as liquidated damages for such trespass and holding over.

SECTION 14. Intentionally Omitted.

SECTION 15. ASSIGNMENT.

Concessionaire shall not assign, sublease, grant any concession or license, permit the use of by any other person other than Concessionaire, or otherwise transfer all or any portion of this Agreement and/or of the Concession Locations without the prior written consent of the City Commission.

SECTION 16. Intentionally Omitted.

SECTION 17. NO IMPROPER USE.

The Concessionaire will not use, nor suffer or permit any person to use in any manner whatsoever, the Concession Locations, operations, or facilities for any improper, immoral or offensive purpose, or for any purpose in violation of any Federal, State, County, or Municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. The Concessionaire will protect, indemnify, and forever save and keep harmless the City, its agents, employees and contractors from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of the Concessionaire, its vendors, employees, agents, and/or subcontractors regarding the Concession. In the event of any violation by the Concessionaire, or if the City or its authorized representative shall deem any conduct on the part of the Concessionaire, its vendors, agents, employees and/or subcontractors, to be objectionable or improper, the City shall have the option, at its sole discretion, to either (i) automatically terminate the Agreement, upon prior written notice to Concessionaire, or to (ii) suspend the concession operations should the Concessionaire fail to correct any such violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving written notice of the nature and extent of such violation, conduct, or practice, and such suspension shall continue until the violation is cured. The Concessionaire further agrees not to commence operations during the suspension until the violation has been corrected to the satisfaction of the City.

SECTION 18. PRICE SCHEDULES.

Concessionaire agrees that prices charged for goods/products in the Snack Machines shall be consistent with the price schedule(s) herein submitted by the Concessionaire and approved by the City and incorporated herein as Exhibit 3.2.5.1 to this Agreement. All subsequent price increases and amendments to Exhibit 3.2.5.1 must be approved in writing by the City Manager, or his designee, and prior to such changes being implemented

within the Concession Locations a new updated Exhibit 3.2.5.1 will be incorporated into this Agreement.

The City shall have the final right of approval for all such prices and changes, but said right shall not be arbitrarily or unreasonably exercised. The Concessionaire agrees to refrain from the sale of any item identified as prohibited by City law and/or other applicable law and to sell only those items approved by the City.

**SECTION 19. NOTICES.**

All notices from the City to the Concessionaire shall be deemed *duly* served upon receipt, if mailed by registered or certified mail with a return receipt to the Concessionaire at the following address:

Mr. Maurizio L. Bettoli  
Bettoli Trading Corp. d/b/a Bettoli Vending  
6095 NW 167<sup>th</sup> Street, Suite D-4  
Miami, Florida 33015

All notices from the Concessionaire to the City shall be deemed *duly* served upon receipt, if mailed by registered or certified mail, return receipt requested, to the City of Miami Beach at the following addresses:

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

With copies to:

Office of Real Estate, Housing & Community Development  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139  
Attention: Anna Parekh / Director

The Concessionaire and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Concession Agreement must be in writing.

**SECTION 20. LAWS.**

20.1 Compliance.  
Concessionaire shall comply with all applicable City, Miami-Dade County, State, and Federal ordinances, statutes, rules and regulations, including but

not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.

20.2

Governing Law.

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. In case of any inconsistency between the terms of this Agreement, and any applicable general or special law, said general or special law shall govern, unless otherwise provided herein.

20.3

Equal Employment Opportunity.

Neither Concessionaire nor any affiliate of Concessionaire performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, religion, sex, gender identity, sexual orientation, disability, marital or familial status or age. Concessionaire will make good faith efforts to utilize minorities and females in the work force and in correlative business enterprises.

20.4

No Discrimination.

The Concessionaire agrees that there shall be no discrimination as to race, color, national origin, religion, sex, gender identity, sexual orientation, disability, marital and familial status, or age, in its employment practice or in the operations referred to by this Concession Agreement; and further, there shall be no discrimination regarding any use, service, maintenance, or operation within the Concession Locations. All concession operations and services offered shall be made available to the public, subject to the right of the Concessionaire and the City to establish and enforce rules and regulations to provide for the safety, orderly operation and security of the operations and the facilities.

20.5

Compliance with American with Disabilities Act (ADA) and any other applicable accessibility standards.

Concessionaire agrees and acknowledges that, if applicable, it shall comply with ADA standards, Florida Accessibility Code standards, and any other applicable accessibility standards required by law.

SECTION 21. MISCELLANEOUS.

21.1

No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Concessionaire.

21.2

Modifications.

This Agreement shall not be changed or modified except by agreement in writing executed by all parties hereto. Concessionaire acknowledges that no

modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager or his designee.

21.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and agreements of whatsoever nature or kind existing between the parties with respect to Concessionaire's operations, as contemplated herein.

21.4 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

21.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

21.6 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

21.7 Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified remains in full force and effect.

21.8 Right of Entry.

The City, at the direction of the City Manager or his designee, shall at all times during days and hours of operation, have the right to enter into and upon any and all parts of the Concession Locations for the purposes of examining the same for any reason relating to the obligations of parties to this Agreement.

21.9 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, facility,

equipment or space is leased to the Concessionaire, that it is a concessionaire and not a lessee; that the Concessionaire's right to operate the concession shall continue only so long as this Agreement remains in effect.

- 21.10      Signage.  
Concessionaire shall provide, at its sole cost and expense, any required signs at its concessions. All advertising, signage and postings shall be approved, in writing, by the City in its proprietary capacity, and shall be in accordance with all applicable Municipal, County, State and Federal laws and regulations. Any signage posted by Concessionaire within each Concession Location, and/or on its Snack Machines and Change Machines shall be subject to the prior approval of the City as to size, shape and placement of same.
- 21.11      Intentionally Omitted.
- 21.12      Conflict of Interest.  
Concessionaire shall perform its services under this Agreement and conduct the concession operations contemplated herein, in a manner so as to show no preference for other concession operations/facilities owned, operated, managed, or otherwise controlled by Concessionaire with regard to its responsibilities pursuant to this Concession Agreement.
- 21.13      Intentionally Omitted.
- 21.14      Intentionally Omitted.
- 21.15      No Waiver.  
No waiver of any covenant or condition of this Agreement by either party shall be deemed to imply or constitute a waiver in the future of the same covenant or condition or of any other covenant or condition of this Agreement.
- 21.16      No Third Party Beneficiary.  
Nothing in this Agreement shall confer upon any person or entity, including, but not limited to subconcessionaires, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.
- 21.17      Attorneys' Fees.  
If it becomes necessary for City or Concessionaire to enforce their respective rights under this Agreement or any part hereof through litigation, Concessionaire and City agree that the prevailing party shall be entitled to recover from the other party all costs and expenses of such litigation,

including a reasonable attorneys' fee and costs, for all trial and appellate proceedings.

SECTION 22. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement only if in so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000.00. Concessionaire hereby expresses its willingness to enter into this Agreement with a \$10,000.00 limitation on recovery for any action for breach of contract. Accordingly, and in consideration of the separate consideration of \$10.00, the receipt of which is hereby acknowledged, the City shall not be liable to Concessionaire for damages to Concessionaire in an amount in excess of \$10,000.00, for any action for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 68.28.

SECTION 23. VENUE.

This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any and all the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. **CITY AND CONCESSIONAIRE HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND CONCESSIONAIRE MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE CONCESSION LOCATIONS.**

[The remainder of this page has been 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 the day and year first above written, indicating their agreement.

Attest:

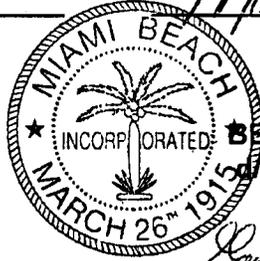
CITY OF MIAMI BEACH, FLORIDA



CITY CLERK



MAYOR

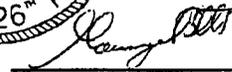


Attest:

BETTOLI TRADING CORP.  
d/b/a BETTOLI VENDING



Signature / Secretary



Signature / President  
Director

MARK MILISITS

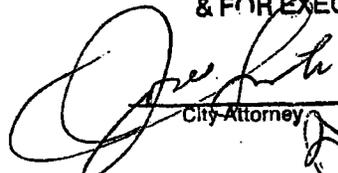
Print Name

Maurizio Bettoli

Print Name

F:\RHCD\5ALLIECON\5ALLIASSETVENDING\Bettoli Vending Contract (For Form Approval 4-6-12).doc

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney

4/19/12  
Date

EXHIBIT 2.0 (PAGE 1 OF 2)

2/24/2012

Bettoli Vending Sites	Snack Machine	Minimum Guarantee	Ice Cream Machine	Minimum Guarantee	Combo Machine	Minimum Guarantee	Total Machines	Total Min. Guarantee
<b>Machines</b>								
13th Street Garage	1	\$500	0	\$0	0	\$0	1	\$500
17th Street Garage	1	\$300	1	\$300	0	\$0	2	\$600
42nd Street Garage	1	\$150	0	\$0	0	\$0	1	\$150
7th Street Garage	1	\$300	0	\$0	0	\$0	1	\$300
City Hall Parking Garage	1	\$150	0	\$0	0	\$0	1	\$150
Sub-total	5	\$1,400	1	\$300	0	\$0	6	\$1,700
<b>City Structures</b>								
City Hall	2	\$600	1	\$300	1	\$300	4	\$1,200
City Hall Parking Garage (Ground Office)	1	\$300	0	\$0	0	\$0	1	\$300
1701 Meridian Ave	1	\$500	0	\$0	0	\$0	1	\$500
Convention Center	2	600	1	300	0	\$0	3	\$900
Historic City Hall	1	\$300	0	\$0	0	\$0	1	\$300
Miami Beach Police Station	2	\$600	1	\$300	1	\$300	4	\$1,200
Miami Beach Police Station Garage	1	\$150	0	\$0	0	\$0	1	\$150
Lobby of 833 6th Street	1	\$300	0	\$0	0	\$0	1	\$300
Public Works Operations Center	1	\$150	0	\$0	0	\$0	1	\$150
Sub-total	12	\$3,500	3	\$900	2	\$600	17	\$5,000

EXHIBIT 2.0 (PAGE 2 OF 2)

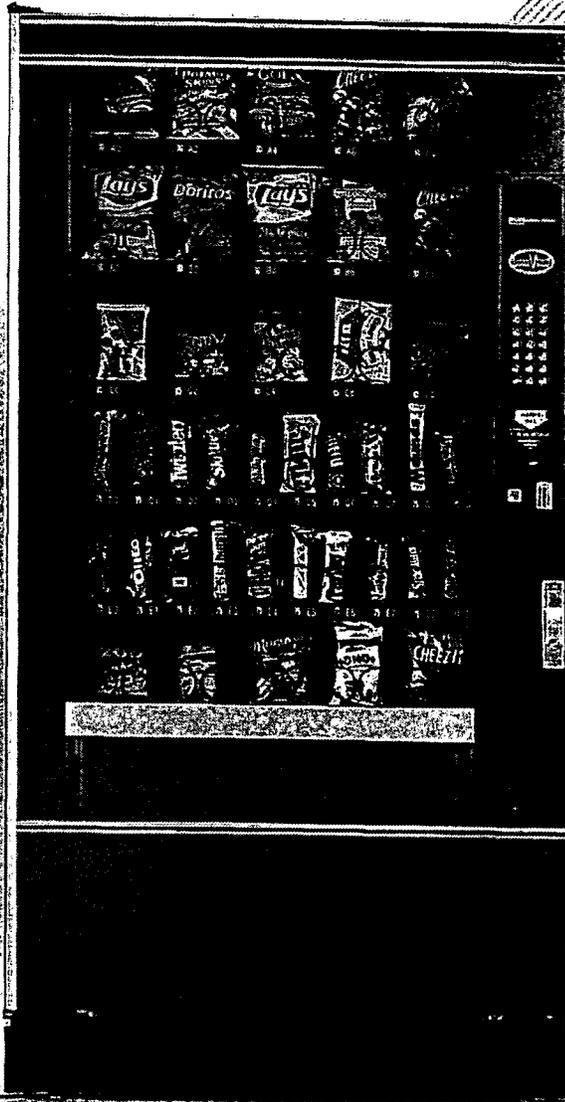
Parks & Recreation										
Normandy Shore Pool	1	\$150	1	\$150	0	\$0	2	\$300		
North Shore Youth Center	2	\$600	1	\$300	0	\$0	3	\$900		
Parks & Recreation (21 & Washington)	1	\$300	1	\$300	0	\$0	2	\$600		
Scott Rakow Youth Center	2	\$1,000	1	\$500	0	\$0	3	\$1,500		
Scott Rakow Youth Center Ice Skating	1	\$300	0	\$0	0	\$0	1	\$300		
South Point Park	1	\$150	1	\$150	0	\$0	2	\$300		
Flamingo Park	1	\$150	1	\$150	0	\$0	2	\$300		
Muss Park	1	\$150	0	\$0	0	\$0	1	\$150		
Band Shell	1	\$300	1	\$300	0	\$0	2	\$600		
Sub-total	11	\$3,100	7	\$1,850	0	\$0	18	\$4,950		
<b>Total</b>	<b>28</b>	<b>\$8,000</b>	<b>11</b>	<b>\$3,050</b>	<b>2</b>	<b>\$600</b>	<b>41</b>	<b>\$11,650</b>		

The Minimum Guarantee (MG) shall be classified in three categories of projected revenue as follows:

	Revenue	MG
Low Performing Machines	\$750	\$150
Medium Performing Machines	\$1,500	\$300
High Performing Machines	\$2,500	\$500

*elb*

Measure your commute to the convenience store in steps, not miles.



Have snacks on demand with your favorite brands of candy, pastries, cereal bars and salty snacks... all guaranteed to deliver thanks to our exclusive SureVend™ technology.

*SnackCenter 1* *ellb*

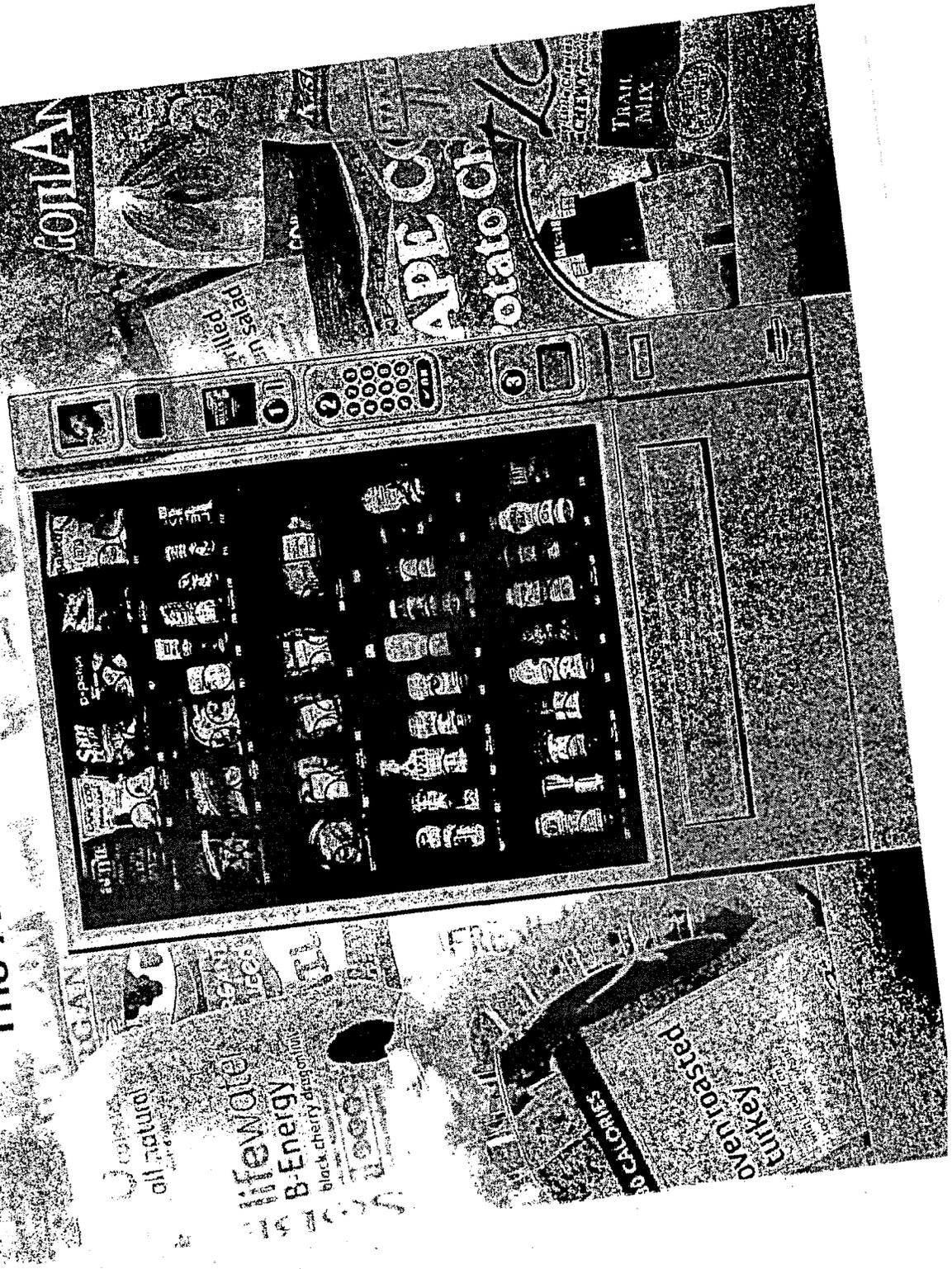


llb

EXHIBIT 3.2.1.4 (PAGE 2 OF 3)

# merchant **SIX COMBO**

## The All-in-One Vending Solution



*JB*

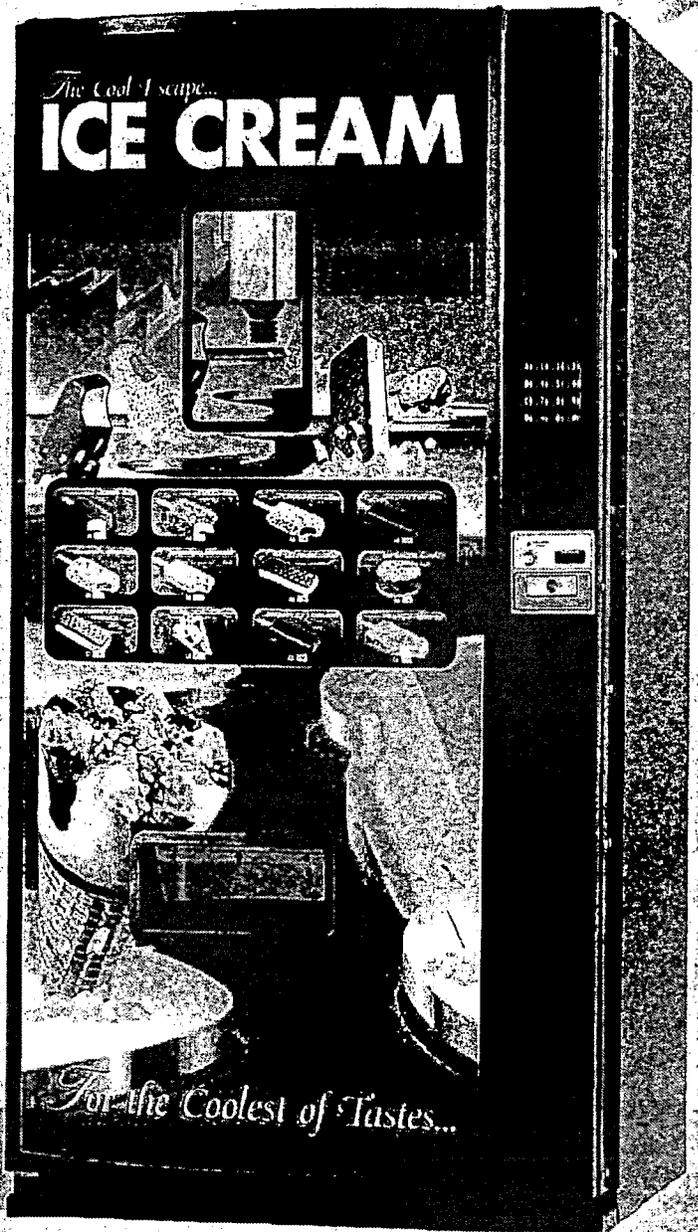
THE *key piece*  
of a  
*profitable*  
vending business

- *Win bids on new accounts*
- *Earn high profit margins*
- *Most reliable frozen vendor*

**FASTCORP**  
THE LEADER IN FROZEN VENDING TECHNOLOGY LLC

60 East Hanover Avenue B2  
Morris Plains, New Jersey 07950  
Toll Free: 888-441-3278  
Main: 973-455-0400 • Fax: 973-455-7401  
Sales: 973-448-3636 • Fax: 973-448-6767  
[www.fastcorp vending.com](http://www.fastcorp vending.com)

Z-400 Ice Cream Vendor



### EXHIBIT 3.2.5.1

ITEM	PRICE
Chips / Crackers	\$0.75
Candy / Chocolate / Pastries	\$1.00
100% Milk / 8oz	\$1.00
100% Milk / 16oz	\$2.25
Ice Cream	\$1.00
Ice Cream Premium	\$2.00
Health Snacks	\$0.80
Health Snacks Premium	\$1.50
Refrigerated food items small	\$1.50
Refrigerated food items large	\$3.50

*ees*

## EXHIBIT 5.0

**BETTOLI VENDING**  
 6095 N.W. 167TH STREET SUITE D-5  
 HIALEAH, FL. 33015  
 TEL 305-626-0740  
 FAX 305-623-0108  
 Full Line Vending  
 Snack, Soda, Juice, Food, Coffee, Water.

Customer: **OKEEHEELEE M.S.**  
 Address **2200 PINEHURST DR.**  
**Greenacres, FL. 33413**

Vending Machines Commissions for :

January-12

Type	Percentage		Sold	Commission
Teacher's Lounge	25.00%		\$\$\$\$\$.\$\$	\$\$\$.\$\$
Soda 5170	25.00%		\$\$\$\$\$.\$\$	\$\$\$.\$\$
Soda 5171	25.00%		\$\$\$\$\$.\$\$	\$\$\$.\$\$
Soda 5172	25.00%		\$\$\$\$\$.\$\$	\$\$\$.\$\$
Soda 5176	25.00%		\$\$\$\$\$.\$\$	\$\$\$.\$\$
Soda 5177	25.00%		\$\$\$\$\$.\$\$	\$\$\$.\$\$
Soda 5178	25.00%		\$\$\$\$\$.\$\$	\$\$\$.\$\$
Snack 3253	20.00%		\$\$\$\$\$.\$\$	\$\$\$.\$\$

Total Sales	\$\$\$\$\$.\$\$	
Total Commissions Due		\$\$\$\$\$.\$\$

*llb*