

MIAMI BEACH

City Commission Meeting SUPPLEMENTAL MATERIAL 1

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive
December 9, 2015

Mayor Philip Levine
Commissioner John Elizabeth Alemán
Commissioner Ricky Arriola
Commissioner Kristen Rosen Gonzalez
Commissioner Michael Grieco
Commissioner Joy Malakoff
Commissioner Micky Steinberg

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

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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

- R7B A Resolution Approving Upon Second And Final Reading Of This Resolution And Following A Duly Noticed Public Hearing, A Ground Lease Agreement In The Form Attached To This Resolution, Between The City (Owner Or Landlord) And Sabrina Cohen Wellness Center Project, Inc. (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 (Leased Premises), For A Term Of Ninety-Nine (99) Years, For The Purpose Of Constructing And Operating An ADA Accessible Wellness Center At The Tenant's Sole Expense. **10:35 a.m. Second Reading Public Hearing**

(Sponsored by Commissioner Joy Malakoff)
(Legislative Tracking: Office of the City Attorney/Parks & Recreation/Public Works)
(First Reading on October 21, 2015 - R7E)
(Resolution)

R7K A Resolution Calling For A March 15, 2016 Special Election, For The Purpose Of Submitting To The Electorate Of The City Of Miami Beach, Florida A Question Asking Whether The City Should Lease 5,100 Square Feet Of Beachfront Property At Allison Park, 6475 Collins Avenue, To Sabrina Cohen Wellness Center Project, Inc., A Non-Profit Corporation, For 99 Years, Requiring, Per Resolution 2015 _____, Construction/Operation Of Privately Funded Wellness Center With 50 Foot Height Limit, Which May Include Adaptive Gym, Pool, And Physical Therapy Facilities Exclusively Serving Persons With Disabilities, Lease Restrictions Prohibiting Assignment Or Subcontracting Without City Consent; Rent To City, \$18.00 Annually.

(Office of the City Attorney)
(Memorandum & Resolution)

R7Z A Resolution Approving And Authorizing The City Manager To Execute Change Order No. 3 To The Construction Contract Between The City Of Miami Beach, Florida, And Lanzo Construction Co., Florida, For The Construction Of The City Of Miami Beach Right-Of-Way Infrastructure Improvement Program, Venetian Islands Bid Package 13C (Project), Dated March 13, 2013 (The Contract); The Change Order Includes: 1) Construction Work Associated With Six (6) New Stormwater Pump Stations That Meet The Enhanced Stormwater Criteria In The Not-To-Exceed Amount Of \$12,257,864 Plus Time Extension Of 365 Calendar Days Required To Complete This Work Within San Marino, Dilido And Rivo Alto Islands; And 2) Increasing The Owner's Contingency In The Amount Of \$1,225,787; The Resulting Amount Of \$13,483,651 Will Be Added To The Construction Contract.

(Capital Improvement Projects Office)
(Revised Memorandum)

R7AA A Resolution Accepting The Written Recommendation Of The City Manager Regarding The Existence Of A Public Emergency And, Accordingly, Waiving, By 5/7th Vote, The Competitive Bidding Requirement, Finding Further That The Best Interest Of The City Would Be Served By Such Waiver; Authorizing The City Manager Or His Designee To Negotiate Amendment No. 4, To The Design-Build Agreement Between The City And Lanzo Construction Co., Approved Pursuant To Resolution No. 2014-28765, For The Sunset Harbour Pump Station Retrofit And Drainage Improvements Project; Said Amendment, In The Not To Exceed Amount Of \$2,721,607, To Bring Sunset Drive To A 3.7 Feet NAVD Elevation, Including Associated Water, Sewer, Stormwater Improvements, Landscaping, Lighting And Irrigation; Further Authorizing The Mayor And City Clerk To Execute The Amendment, Upon Completion Of Successful Negotiations.

(Public Works)
(Memorandum)

R7BB A Resolution Accepting The Recommendation Of The City Manager To Enter Into Further Negotiations With Lanzo Construction Co., Florida, For Phase 2 Construction Services And Further Authorizing The Mayor And City Clerk To Execute A GMP Amendment No. 3, In The Not-To-Exceed Amount Of \$35 Million, To The Design-Build Agreement Between The City Of Miami Beach And Lanzo Construction Co., Florida, For Design-Build Services For Neighborhood No. 13: Palm And Hibiscus Islands Right-Of-Way Infrastructure Improvements (The Project), Dated September 18, 2014 (The Contract), Upon Conclusion Of Successful Negotiations, Plus A Ten Percent Owner's Project Contingency For A Grand Total Of \$38,500,000, With Previously Appropriated Funding And Additional Funding Request Subject To The 1st Amendment To The FY 15/16 Capital Budget.

(Capital Improvement Projects Office)
(Memorandum)

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA APPROVING, UPON SECOND AND FINAL READING OF THIS RESOLUTION AND FOLLOWING A DULY NOTICED PUBLIC HEARING, A GROUND LEASE AGREEMENT IN THE FORM ATTACHED TO THIS RESOLUTION, BETWEEN THE CITY (OWNER OR LANDLORD) AND SABRINA COHEN WELLNESS CENTER PROJECT, INC. (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 (LEASED PREMISES), FOR A TERM OF NINETY-NINE (99) YEARS, FOR THE PURPOSE OF CONSTRUCTING AND OPERATING AN ADA ACCESSIBLE WELLNESS CENTER AT THE TENANT'S SOLE EXPENSE.

WHEREAS, 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, 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 a public health and wellness center (the "Wellness Center"), to be constructed at the Foundation's sole cost and expense; and

WHEREAS, the City commission embraced the goal and priority of being one of the first cities to have a state of the art ADA accessible Wellness Center, complementing the already approved ADA Accessible Beach Program, so that members of the general public who have physical and cognitive disabilities, or able bodied individuals with temporary disabilities will be able to use the Wellness Center to heal and 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 public restrooms, all improvements 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)(1) 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 authorized the concept of expanding of the parking lot located at the Park (Parking Lot Expansion Project), at the City's 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, On October 21, 2015, The City Commission accepted the recommendation of the FCWPC; waived, by 5/7th vote, the competitive bidding requirement in Section 82-39(a) of the City Code, as being in the best interest of the City; waived, by 5/7th vote, the appraisal requirement in Section 82-39 (b) of the City Code, as being in the best interest of the City; and approved, upon first reading, a draft of the lease agreement in substantial form; and

WHEREAS, pursuant to Section 82-38 of the City Code, the City's Planning Department prepared a Planning Analysis and found that the proposed Lease for the construction of a public health and wellness center at the Leased Premises is consistent with the Goals, Objectives, and Policies, and that said use would not have a negative impact upon the surrounding area; and

WHEREAS, the Administration recommends the approval of the Lease for use of the Leased Premises as a Wellness Center, exclusively serving persons with a temporary or permanent disability, attached hereto and incorporated herein by reference 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 approve, upon second and final reading of this Resolution and following a duly noticed public hearing, a ground lease agreement in the form attached to this Resolution, between the City (Owner or Landlord) and Sabrina Cohen Wellness Center Project, Inc. (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 (Leased Premises), for a term of ninety-nine (99) years, for the purpose of constructing and operating an ADA accessible Wellness Center at the Tenant's sole expense.

PASSED and ADOPTED this 9th day of December, 2015.

ATTEST:

Rafael E. Granado, CITY CLERK

Philip Levine, MAYOR

T:\AGENDA\2015\December\Parks and Recreation\RESOLUTION - Land Lease for Sabrina Cohen Wellness Center\RESOLUTION - Land Lease for Sabrina Cohen Wellness Center.doc

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

[Signature] 12/4/2015

City Attorney *[Signature]* Date

CITY OF MIAMI BEACH
a Florida municipal corporation

Lessor

and

SABRINA COHEN WELLNESS CENTER PROJECT, INC.
a Florida not-for-profit corporation

Lessee

LEASE

_____, 2015



TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
I. DEMISE BY LESSOR, EFFECTIVE DATE AND DEFINITIONS.....	11
Section 1.1 Recitals	
Section 1.2 Demise	
Section 1.3 Effective Date	
Section 1.4 Definitions	
II. DURATION AND TERM	15
Section 2.1 Commencement and Maturity Dates; Possession Period; Pre- Possession Period; Site Inspections; Easements	
III. AMOUNT OF RENT.....	18
Section 3.1 Rent and payment schedule	
IV. USE AND POSSESSION OF WELLNESS CENTER.....	18
Section 4.1 Permitted uses defined	
Section 4.2 Secondary Use as Nutrition Café	
Section 4.3 Use by City	
Section 4.4 Joint Use	
Section 4.5 Amendment to Approved Uses	
V. OPERATION OF THE WELLNESS CENTER	21
Section 5.1 Hours of Operation	
Section 5.2 Management	
Section 5.3 Labor/Personnel/Materials/Equipment/Furnishings	
Section 5.4 Orderly Operation	
Section 5.5 Security	
Section 5.6 Fees for Services offered at the Wellness Center	
Section 5.7 Operational Priority and Discounts	

VI.	REVENUE FROM THE WELLENES CENTER RELATED ACTIVITIES/FINANCIAL RECORDS AND REPORTS.....	23
	Section 6.1 Revenue from Wellness Center Related Activities	
	Section 6.2 Financial Records and Reports	
VII.	BUDGET AND FUNDING FOR THE WELLNESS CENTER	25
VIII.	NET LEASE	26
	Section 8.1 Net lease defined	
IX.	PROVISIONS REGARDING PAYMENT OF TAXES.....	26
	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	
X.	LESSOR’S INTEREST NOT SUBJECT TO MECHANICS’ OR MATERIALMEN’S LIENS.....	29
	Section 10.1 Notice to Third-Parties Regarding Liens	
	Section 10.2 Releasing and Discharging Liens	
XI.	LESSOR’S RIGHTS AND REMEDIES	29
	Section 11.1 Landlord-Tenant Relationship	
	Section 11.2 All Rights and Remedies	
	Section 11.3 Rights and Remedies Cumulative	
XII.	INDEMNIFICATION OF LESSOR AGAINST LIABILITY.....	30
	Section 12.1 Indemnification Clause	
	Section 12.2 Indemnification Clause For Lease Challenges	
	Section 12.3 Compliance With All Laws, Etc.	
	Section 12.3.1 Rules On Hazardous Materials	
	Section 12.3.2 Hazardous Materials Defined	

	Section 12.3.3 Further Disclosure of Hazardous Materials	
	Section 12.3.4 Lessor’s Right to Inspect	
	Section 12.3.5 Default	
	Section 12.3.6 Lessee Receives Property “As Is”	
XIII.	FIRE AND WINDSTORM, ETC. INSURANCE PROVISIONS	33
	Section 13.1 Property All Risk Coverage Policies	
	Section 13.2 Worker’s Compensation	
	Section 13.3 Automobile Insurance	
	Section 13.4 Property Insurance	
	Section 13.5 Additional Insured	
	Section 13.6 Waiver of Subrogation	
	Section 13.7 Acceptability of Insurers	
	Section 13.8 Verification of Coverage	
	Section 13.9 Special Risks or Circumstances	
	Section 13.10 Use of Insurance Proceeds	
	Section 13.11 Financing of Premiums	
	Section 13.12 Default after Casualty	
	Section 13.13 Excess Insurance Proceeds	
	Section 13.14 Construction Insurance Requirements	
XIV.	LESSEE’S DUTY TO PAY INSURANCE PREMIUMS	39
	Section 14.1 Obligation and Proof of Payment	
	Section 14.2 Lessor’s Option to Pay	
XV.	ASSIGNMENT	39
	Section 15.1 Right and Conditions of Assignments	
	Section 15.2 Notice and Approval	
	Section 15.3 Operational Subcontracts	
XVI.	CONDEMNATION CLAUSE.....	41
	Section 16.1 Division of Condemnation Proceeds	

Section 16.2	Lessee's Improvements	
Section 16.3	Taking Rendering Project Unsuitable for Permitted Uses.....	42
XVII.	ADDITIONAL IMPROVEMENTS.....	42
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	Pre-construction site work	
Section 17.5	Review of Preliminary Plans and Specifications	
Section 17.6	Phasing for Review of Preliminary Plans and Specifications	
Section 17.7	Design Review Board Approval	
Section 17.8	Public Facilities and Concurrency	
Section 17.9	Construction Plans and Specifications	
Section 17.10	Diligence in Construction	
Section 17.11	Conditions Precedent to Construction	
Section 17.12	Lessor's Cooperation in Obtaining Approvals	
Section 17.13	Lessee's Right to Terminate	
Section 17.14	Commencement and Completion of Construction of Proposed Improvements.	
Section 17.15	Unavoidable Delays	
Section 17.16	Completion of Construction	
Section 17.17	Licensed Architects and Engineers	
Section 17.18	Construction Cost Certification	
Section 17.19	Conditions Precedent to Commencement of Operations	
XVIII.	COVENANTS RUNNING WITH THE LAND CONCERNING THE USE OF THE LEASED PREMISES.....	50
Section 18.1	Restrictions:	
	(a) Lessee Remains a Not-For-Profit Corporation	
	(b) Public Health and Wellness Center	
	(c) Open to Public;	
	(d) No Discrimination	

- (e) Lessee's Costs
- (f) Security
- (g) Personnel
- (h) Insurance obligation
- (i) Signs subject to approval by Lessor and pursuant to City Code

Section 18.2 Violation of Restriction is Event of Default

XIX. DEFAULT CLAUSE..... 51

- 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 53

- Section 20.1 Lessee's Covenant Regarding Maintenance and Repair**
- Section 20.2 Lessee's Covenant Regarding**

XXI. DEMOLITION CLAUSE..... 54

- 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..... 55

- 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. CITY'S OBLIGATIONS RELATING TO THE PUBLIC COMPONENTS 55

- Section 23.1 Parking Lot Expansion Project.**

Section 23.2 Public Restroom Facilities.
Section 23.3 Public Shower Facilities.

XXIV. COVENANT OF QUIET ENJOYMENT 56
Section 2.1 Lessee’s Right to Quiet Enjoyment

XXV. LESSOR’S RIGHT OF ENTRY 56
Section 25.1 Lessor’s Right of Entry

XXVI. NO REPRESENTATIONS BY LESSOR 57
Section 26.1 Lessor’s Absence of Warranties Regarding Property and Lessee’s
Acceptance of Premises

XXVII. LESSEE TO COMPLY WITH ALL LAWS 58
Section 27.1 Lessee’s Compliance With All Laws
Section 27.2 Lessee’s Obligation to Pay Fines, Etc.
Section 27.3 No Discrimination Clause

XXVIII. SURRENDER OF THE PREMISES 58
Section 28.1 Surrender of the Premises
Section 28.2 No Subleases, Etc.

XXIX. FORCE MAJEURE 59
Section 29.1 Force Majeure

XXX. SIGNAGE/NAMING RIGHTS 59

XXXI. MISCELLANEOUS PROVISIONS 60
Section 31.1 Grace Periods Run Concurrently
Section 31.2 Arrearages
Section 31.3 Landlord-Tenant Relationship Regarding Collections
Section 31.4 Lessor’s Remedies Not Otherwise Provided

- Section 31.5 Receivers**
- Section 31.6 Cooperation**
- Section 31.7 Captions**
- Section 31.8 Index**
- Section 31.9 Laws of Florida Apply**
- Section 31.10 Covenants Running With the Land**
- Section 31.11 Time Is of The Essence**
- Section 31.12 Notice**
- Section 31.13 Attorneys' Fees**
- Section 31.14 Venue**
- Section 31.15 Lessor's Limitation on Liability**
- Section 31.16 Mediation**
- Section 31.17 Recording in the Public Records**

LEASE

THIS INDENTURE (the "Lease"), made and entered into at Miami Beach, Miami-Dade County, Florida, this ____ day of _____, 2015, by and between:

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

And

**SABRINA COHEN WELLNESS CENTER PROJECT, 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, 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 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-designing the existing parking lot to provide seventeen (17) additional ADA accessible parking spaces; and

WHEREAS, at the July 8, 2015 City Commission meeting, 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 one of the first cities 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, or able bodied individuals with a temporary disability, will be able to use the facility to improve their quality of life, while providing disabled Miami Beach Residents, disabled Military Servicemembers, and disabled seniors with a discounted price for the use of said services; and

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 a conceptual plan for the Wellness Center (the "Conceptual Plan"), 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 1.2 (the "Leased Premises"), to develop, design, construct, finance, equip, operate, and maintain a Wellness Center, including the design and construction of public restrooms; and 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, 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, 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 October 21, 2015, the City Commission adopted Resolution No. 2015-_____, accepting the recommendation of the City's Finance and Citywide Projects Commission Committee, and approving, on first reading, a draft ninety-nine year lease ("Ground Lease"), in substantial form, between the City and the Foundation for the use of the Leased Premises; waiving, by a 5/7th 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; and further waiving, by a 5/7th 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; and

WHEREAS, on December 9, 2015, 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, EFFECTIVE DATE AND DEFINITIONS

1.1 The recitals set forth above are true and correct and are incorporated herein by reference.

1.2 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 property, situate, lying and being in Miami-Dade County, Florida, together with all buildings and other improvements located thereon, as more particularly described in the attached Exhibit "C":

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) Planning Director analysis and City Commission determination of waivers of public bidding and appraisals under Miami Beach Code Sections 82-39(a) & 82-39(b)); 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; and the adoption of a resolution by the City Commission accepting the certification of the official results of the March 15, 2016 election with respect to the Referendum. If the Lease is not approved by voters during the March 15, 2016 referendum and the City Commission does not accept the certification of the official results of the March 15, 2015 election, the Lease shall be void ab initio, without the need for further action by any of the parties, and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

This property is hereinafter referred to as the "Leased Premises". The Leased Premises and Wellness Center shall be collectively referred to herein as the "Project".

1.3 Effective Date. If the Referendum is successful and all requirements of the City Code and applicable law are satisfied, this Lease shall be effective upon the City Commission's adoption of a resolution accepting the certification of the official results of the March 15, 2016 election with respect to the Referendum ("Effective Date").

1.4 Defined Terms. As used herein the term:

"City" shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139, In all respects hereunder, City's obligations and performance is pursuant to City's position as the owner of the Leased Premises acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Lease or in any way be deemed in conflict with, or a default under, the City's obligations hereunder.

"City Code" the Miami Beach City Charter and Code of Ordinances.

"City Commission" shall mean the governing and legislative body of the City.

"City Delays" shall mean the number of days in which the City performs any obligation under Section 17 hereof in excess of the number of days set forth for such performance therein.

"City Manager" shall mean the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized representatives designated in writing with respect to any specific matter(s) concerning this Lease (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to this Lease).

"Commence Construction" or "Commencement of Construction" shall have the meaning as set forth in Section 17.15.

"Complete Construction" or "Completion of Construction" means the date Lessee has completed the Wellness Center substantially in accordance with the requirements of the Approved Plans and all conditions of permits and regulatory agencies have been satisfied, all Governmental Authorities have issued a Certificate of Occupancy, the Wellness Center has been accepted by the City and is ready for occupancy, utilization and continuous operation for the uses and purposes intended by this Lease, without material interference from incomplete or improperly completed Work, and substantially all of the furniture, fixtures and equipment ("FF&E") required for the opening date has been purchased, delivered to and installed in the Wellness Center.

"Disabled" as referred to herein shall refer to an individual with a temporary or permanent physical disability, including, but not limited to: (1) a physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; (2) an individual with a physical impairment that substantially limits one or more major life activities such as caring for one's self, performing manual tasks, walking, or working; (3) a mental disability that prevents the person from performing day-to-day physical activities; or (4) a medical condition which may prevent the person from performing day-to-day physical activities including, without limitation, Cerebral Palsy, Developmental Disabilities, Down Syndrome, Lupus, Multiple Sclerosis, Parkinson's Disease, Scoliosis, or Stroke.

"Foreign Instrumentality" means a foreign (i.e., non-United States of America) government or instrumentality thereof or a Person controlled thereby. A Person shall be deemed to be "controlled by" a foreign government or instrumentality if such government or instrumentality,

directly or indirectly, directs or causes the direction of the management and policies of such Person.

"Lease Year" means a year, other than the first and last year of the Term, consisting of twelve (12) consecutive calendar months. The first Lease Year during the term of this Lease shall commence on the Possession Date and end on December 31st of the first full year. The second and following Lease Years shall commence on the 1st day of January each calendar year and end on December 31st of such year, except that the last year shall commence on the 1st day of January and end on the Maturity Date (as defined in Section 2.1).

"Miami Beach Resident" means any person who has resided in the City of Miami Beach for longer than six (6) consecutive months. Proof of residency may be established by presenting two of the following documents: a driver's license, voter's registration, automobile registration, a recorded deed, a lease for place of residence, or a utility bill. Lessee may require annual recertification for Miami Beach Residents.

"Military Servicemember" means any person who is on active duty in, or a veteran of the United States Armed Forces. A veteran of the United States Armed Forces shall mean any person who served honorably on active duty in the armed forces of the United States. The Foundation will accept a Form DD Form 214, Certificate of Release or Discharge from Active Duty (discharge papers marked "General and Under Honorable Conditions" will be deemed sufficient) to substantiate that the person is a military veteran.

"Outside Construction Commencement Date" means two (2) years from the Effective Date, by which date Commencement of Construction must take place, as such date may be reasonably extended for a Force Majeure Event and/or City Delays, if any.

"Outside Completion Date" means two (2) years from obtaining full building permit, by which date Completion of Construction shall have occurred, as such date may be reasonably extended by (i) the number of days by which the Outside Construction Commencement Date was extended, and thereafter for (ii) a Force Majeure Event and/or City Delays.

"Outside Opening Date" means two (2) years from obtaining full building permit, the date by which the opening date must have occurred, as such date may be reasonably extended by (i) the number of days by which the Outside Construction Commencement Date was extended, and thereafter for (ii) a Force Majeure Event in accordance with this Lease, or (iii) City Delays.

"Outside Possession Date" means May 1, 2018 or the Outside Construction Commencement Date, whichever occurs first, by which date the Possession Conditions must be satisfied, as such date may be reasonably extended for (i) a Force Majeure Event or (ii) City Delays.

"Parties" means City and Lessee, and "Party" is a reference to either City or Lessee, as the context may indicate or require.

"Senior" means a person who is 62 years of age or older.

"Sublease" means any lease, sublease, license or other agreement by which Lessee demises, leases, or licenses the use and occupancy by another Person of a portion or all of the Wellness Center.

"Subtenant" means any person using and occupying or intending to use and occupy the Wellness Center, or any part thereof, pursuant to a Sublease.

"Transfer" means any sale, assignment or conveyance or any other transaction or series of transactions in the nature of a sale, assignment or conveyance of:

- (a) the Wellness Center or any part thereof;
- (b) any legal or beneficial interest in the Wellness Center, or any part thereof;
- (c) any direct or indirect legal or beneficial interest in Lessee (including the syndication of tax benefits); or

any series of such Transfers that have the cumulative effect of a sale, transfer or conveyance of any of the foregoing (a), (b), or (c).

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 Possession Date, as such term is defined in Section 2.1(a) hereof, with the last day of the lease term being the Maturity Date ("Term").

(a) **Possession Date; Conditions Precedent to Possession.** The Parties recognize that, as of the Effective Date, there remain various items and matters to be satisfied, obtained and approved in order that the Wellness Center may proceed as intended by the Parties. The date that the City delivers possession of the Leased Property to Lessee according to this Section 2.1(a), as designated by the City to Lessee in writing, is referred to herein as, the "**Possession Date.**" The City shall not be obligated to deliver possession of the Leased Property and Lessee's rights as tenant hereunder shall not become effective until each of the events described in this Section 2.1(a) irrevocably shall have occurred, at which time, the City shall deliver possession of the Leased Property to Lessee, Lessee shall take possession thereof and the lease provisions of this Lease shall become effective. Until that time, this Lease shall not be in effect or enforceable. The conditions precedent to delivery of possession (collectively, the "**Possession Conditions**") are as follows:

- (i) There exists no uncured Event of Default;

(ii) Lessee shall have entered into, and delivered to the City, a duly executed copy of, the General Construction Contract (and all then existing change orders thereto), in form and substance and with a General Contractor approved pursuant to Subsection 17.3 by the City Manager reflecting the guaranteed maximum price for completion of the Proposed Improvements (as defined in Section 17.1);

(iii) Lessee shall have delivered to City written evidence reasonably satisfactory to the City of the existence and availability of liquid assets to fund the development, design, construction, finance, equipment and operation of the Wellness Center;

(iv) Lessee shall have provided to City, and City Manager shall have approved in its sole discretion, any changes to the budgeted improvement costs, provided that City Manager shall not withhold its approval so long as Lessee has obtained and delivered to the City written evidence of the existence and availability of liquid assets to fund the Wellness Center;

(v) Lessee shall have obtained, and shall have delivered to City, a copy of, all governmental approvals necessary for the Commencement of Construction and necessary for construction of all vertical elements of the Wellness Center;

(vi) Lessee shall have delivered to City, and City Manager shall have approved, the schedule of performance for the Wellness Center (City agrees that it shall not withhold approval thereof so long as the same reflects Completion of Construction by the Outside Completion Date and Lessee has provided reasonable evidence that such schedule is reasonable);

(vii) Lessee shall have presented evidence reasonably acceptable to the City that all required insurance coverages are in place; and

(b) **Pre-Possession Period.** From and after the Effective Date, the Parties shall each use their respective diligent and commercially reasonable efforts to achieve the Possession Date timely.

(c) **Leased Premises Site Inspections.** Commencing on the Effective Date, and thereafter until this Lease is terminated or the Possession Date occurs, the City shall

permit Lessee commercially reasonably access to the Leased Premises site to conduct at Lessee's sole cost and expense, physical inspections, tests and studies of the Site and to the extent necessary to carry out the provisions of this Lease; provided, however, that such access shall not materially interfere with any ongoing use and operations at the Park or the City's construction activity relating to the adjoining accessible park. Lessee, at all times and at its sole cost and expense, shall maintain or shall cause its general contractor or other contractors in privity with Lessee to maintain comprehensive general liability insurance as required in Article 13. Lessee shall restore any damage to the Leased Premises site caused by any such inspections, tests or studies, including any damage in connection with the discovery, exposure or release of hazardous substances or materials in, on or about the Leased Premises site that are not introduced to the Leased Premises site by Lessee, its agents, representatives, contractors, invitees or employees.

(d) **Indemnification.** Whether or not the Possession Date occurs, Lessee shall indemnify, defend and hold City and its respective officers, employees, agents, representatives, consultants, counsel and contractors (of any tier) harmless from and against all claims, actions, suits, charges, complaints, orders, liability, damages, loss, costs and expenses (including any attorneys' fees and costs of litigation) related to, arising from or in connection with the acts or omissions of Lessee, its agents, representatives, contractors or employees, including injury or death to persons or damage to their property, while exercising Lessee's right to access the Leased Premises site and performance of such inspections, tests or studies pursuant hereto, except to the extent resulting from the sole negligence or willful misconduct of City or its officers, employees, agents, representatives, consultants, counsel and contractors. The indemnification obligations of Lessee set forth in this Subsection 2.1(d) shall expressly survive the expiration or termination of this Lease and notwithstanding any provision of this Lease to the contrary, City shall have all rights and remedies available at law or in equity in the enforcement of such indemnification obligations of Lessee or arising from Lessee's failure to perform such indemnification obligations.

(e) **Failure to Satisfy Conditions.** Notwithstanding anything contained in this Lease to the contrary, if: (i) any of the Possession Conditions have not occurred by the Outside Possession Date; (ii) Lessee does not commence construction by the Outside Construction Commencement Date; (iii) Lessee does not Complete Construction by the Outside Completion Date; or (iv) the opening date does not occur by the Outside Opening

Date, then Lessee hereby waives any further right to cure, and the City shall be entitled to immediately terminate this Lease upon written notice to the Lessee; provided that Lessee shall also have the right to immediately terminate this Lease upon written notice to the City on or before the Outside Possession Date and in any such event, the Parties shall thereafter be released from all obligations set forth herein, except any such obligations that expressly survive termination.

(f) **Easements**. The parties agree that this Lease shall be subject to and contingent upon the execution of certain easements, including any applicable access easements. The Parties shall also enter into any easements which may be required by Lessee to connect utilities or in connection with any cantilevered elements, as shown in the Approved Plans. The Parties shall thereafter cause the Easements to be promptly recorded among the public records of Miami-Dade County, Florida. The Easements shall be held in escrow by the City and released therefrom and recorded among the public records of Miami-Dade County, Florida prior to the Commencement of Construction.

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 January of every year during the entire term of the Lease.

ARTICLE IV - USE AND POSSESSION OF WELLNESS CENTER

4.1 The Wellness Center shall be used by the Lessee solely and exclusively as a state of the art public health and wellness center catering exclusively to individuals living with physical and cognitive disabilities, and able bodied individuals with a temporary disability. 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 (C) below. Additionally, the Wellness Center 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) Adaptive Fitness Program;
- (B) Adaptive Gym, including training;
- (C) Healing Room for yoga, meditation, and/or art therapy;
- (D) Physical Therapy;
- (E) Adaptive Aqua-Therapy services;
- (F) Research & Product Testing Room (subject to funding availability);
- (G) Office of the Foundation;
- (H) Conference Room; and
- (I) Library;

4.2 Secondary (ancillary) Use. Subject to approval by the City in its regulatory capacity in accordance with the City's Land Development Regulations, Lessee shall also be authorized to use a portion of the Wellness Center, not to exceed 1,200 square feet, as a Nutrition Café, offering healthy juices and food options ("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 "D".

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 or in connection with this Lease. Lessee shall ensure that all vendors operating in the Wellness Center 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.

4.3 Use by the City. Lessee and the City have agreed that the Proposed Improvements will provide a Wellness Center which has facilities which may also be used by the City. Accordingly, the City shall have the right to use the Wellness Center, or any part thereof, subject to availability, for City-sponsored public meetings, training, and classes, as may be reasonably deemed necessary and appropriate by the City Manager. Any City use of the Wellness Center shall be without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City (including without limitation, reasonable out of pocket expenses incurred by Lessee in order to open and make the Wellness Center available in connection with such City use). Lessee agrees to coordinate and cooperate with the City for public use of the Premises by the City, which coordination and cooperation shall not be unreasonably withheld or delayed, and provided that such City uses(s) does not materially interfere with the operations of the Wellness Center by the Lessee. Such public use of the Wellness Center by the City shall be conducted pursuant to policies and procedures,

which shall be established and mutually agreed upon by the Lessee and the City.

4.4 Joint Use. The parties agree and acknowledge that, in furtherance of, and consistent with the goals and priorities and approved uses, the Lessee and the City may agree to mutually coordinate, sponsor and provide certain additional recreation and leisure activities and/or programs on the Wellness Center. The Lessee and the City shall mutually agree upon and approve any such activities and/or programs in advance of their implementation; the programs and/or activities must be consistent with the operation of the Lessee; and may not materially interfere with the operations of the Lessee. Subject to the preceding criteria, the Lessee and the City hereby agree that each party will be responsible for its respective costs associated with the provision of said activities and/or programs.

4.5 4.5 Amendment to Approved Uses. Any change to the approved uses set forth in Sections 4.1 and 4.2 herein, which are consistent with the operation of the Lessee, shall be approved by the City Manager before implementation, and shall be memorialized in writing through an amendment to the Lease. Any change to the approved uses, which are determined by the City Manager, at his sole and reasonable discretion, to not be consistent with the approved uses, shall be approved by the Mayor and City Commission,

ARTICLE V. OPERATION OF THE WELLNESS CENTER

5.1 Hours of Operation. The Lessor and Lessee herein agree that normal hours of operation for the Wellness Center shall not exceed the timeline between 8:00 AM to 8:00 PM, Monday through Sundays ("Permitted Hours of Operation"), but at all times shall maintain regular operating hours, with a minimum of five days per week and a minimum of forty hours per week ("Minimum Hours of Operation"), not to exceed the Permitted Hours of Operation. Consistent with these parameters, upon opening for business, Lessee and Lessor shall mutually agree upon the initial hours of operation and memorialize them in writing. Any further change in the hours of operation 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.

5.2 Management. Lessee must manage and operate the Wellness Center activities, services and programs, for the purpose of coordinating, implementing and

supervising all approved uses; supervise and direct all Wellness Center employees, officers, agents, contractors, invitees, visitors, and guests on the Wellness Center; and develop and implement programs and activities which support and promote the goals and priorities and approved uses set forth in Subsection 4.1 and 4.2.

5.3 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 Wellness Center as a full service comprehensive health and wellness center, in accordance with the goals and priorities and approved uses set forth in Subsection 4.1 and 4.2.

5.4 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 Wellness Center. There shall be no living quarters nor shall anyone be permitted to live within the Wellness Center. Lessee shall make the Wellness Center available for inspection by the City Manager or his authorized representatives during hours of operation.

5.5 Security. Lessee shall be responsible for and provide reasonable security measures as may be required to protect and secure the Wellness Center 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.

5.6 Fees for Services offered at the Wellness Center. The cost of the services offered at the Wellness Center (including the Nutrition Café) shall be subject to the prior written consent of the City Manager, which consent shall not be unreasonably withheld.

5.7 Operational Priority and Discounts. To the extent permitted by applicable laws and subject to demand, disabled Miami Beach Residents, disabled Military Servicemembers, and disabled seniors shall receive priority for all programs and services ("Priority Categories"), with disabled Miami Beach Residents receiving the first priority, followed by disabled Military Servicemembers, and thereafter followed by disabled seniors ("Priority categories' Hierarchy).

a. Promotion. In order to promote the operational priority, Lessor and Lessee shall promote the opening of the Wellness Center; however, all promotional

materials and advertisements shall be approved, in writing, by the City Manager, prior to publication. Lessee shall provide an exclusive initial registration period of thirty days ("Initial Registration Period") for the Priority Categories, based upon the Priority Categories' Hierarchy. Thereafter, when applicable, and subject to the established Priority Categories' Hierarchy, the registration period for Priority Categories shall take place before registering others. The Priority Categories shall not be denied services or placed on a waitlist unless there is no availability and the individual has attempted to register after any advertised time period.

b. Discounts. Additionally, Lessee shall provide a 15% discount to the individuals in the Priority Categories in connection with the services offered at the Wellness Center.

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

6.1 Revenue from the Wellness Center 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 (such revenue generating uses may include, from time to time, special events on the Wellness Center, fundraising, specialty sales, classes, lectures and providing Food and Beverages). The Lessee herein acknowledges that any and all revenue generating uses conducted on the Wellness Center must be directly related to, consistent with, or used to help fund the Lessee's management, operation, and maintenance of the Wellness Center, and, in the event that annual revenue(s) pertaining to the Wellness Center exceed expenses during a particular budget year, 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 the other charitable, public health, wellness, educational, research or public service programming of the Lessee within the City of Miami Beach, Florida for the benefit of Miami Beach Residents living with a temporary or permanent disability, in the current year and/or future years. Any revenue generating uses conducted on the Wellness Center that are not consistent with the approved uses in Subsection 4.1 or 4.2, or consistent with this Section 6.1, shall first be approved, in writing, by the City Manager (prior to commencement of same). For purposes

herein, "revenues" shall also be deemed to include public/private grant funding and unrestricted donations and contributions received by the Foundation specifically ear-marked toward the operation of the Wellness Center. No portion of the net earnings resulting from the operation of the Wellness Center shall inure to the benefit of any private individual.

6.2 Financial Records and Reports. Lessee shall maintain at the Wellness Center, 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 at the Wellness Center relating specifically to the operations of the Wellness Center, 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 1st – May 31st), 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 Wellness Center for the prior year ("Programmatic Plan Report"), along with audited financial statements. Said statements shall be certified as true, accurate and complete by the Lessee and by its certified public accountant.

6.3 Additionally, in the annual Programmatic Plan Report, Lessee shall include the number of persons participating in the programs and services provided at the Wellness Center, including a breakdown of the disabled Miami Beach Residents, disabled Military Veterans and a third category for visitors with a disability who received services at the Wellness Center for the given year.

ARTICLE VII. BUDGET AND FUNDING FOR THE WELLNESS CENTER

7.1 No Liability to City. The parties acknowledge that the City shall have no responsibility to fund the construction of the Proposed Improvements or the operation, maintenance, or payment of capital improvement costs of the Wellness Center. Throughout the Term of this Lease, the Lessee shall be solely responsible for obtaining public/private grant funding and individual/corporate contributions, to fund Proposed Improvements and to

fund the continued management, operation and maintenance of the Wellness Center, including capital renovations and improvements, as may be approved by the City. The Lessee's lack of funds to construct the Proposed Improvements, to operate, to maintain, or to fund any necessary capital improvement costs shall constitute a default under this Lease. Further, the parties acknowledge, that by the City, in its proprietary capacity, reviewing financial or other materials of the Lessee or providing other approvals contemplated under this Lease, the City does not undertake responsibility or liability whatsoever for such matters, including operational matters, health care compliance matters, budgets, and such approvals shall not obligate the City in any way or relieve the Lessee of its responsibility for the actions or omissions of the Lessee or its agents or representatives.

7.2 Throughout the Term of this Lease, the Lessee shall prepare and present, by May 15th of each year, a proposed, detailed line item annual operating budget for the Wellness Center for the period from the next June 1st to May 30th, 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;
- 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; and
- G. Projected capital improvement costs.

7.3 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 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 Wellness Center, 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 Wellness Center 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 Possession 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 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 Notwithstanding the foregoing, Lessor acknowledges that Lessee is a 501(c)(3) non-profit organization, and therefore may seek exemption from any and all applicable taxes levied or assessed by any and all taxing authorities. 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 Section 9.2 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 Section 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 Section 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 Section 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 Section 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 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 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.

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. The Lessor's protections stipulated in this Section 12.1 shall not extend to or cover any losses or damages resulting out of the sole negligence or willful misconduct of the Lessor or its officers, agents, employees and instrumentalities or any liability of Lessor to third parties.

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, including Lessee's officers, employees, agents, and contractors, 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 this Lease and Lessee's use of the Wellness Center and with the Covenants Running with the Land, 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.

12.3.1 Lessee shall (i) not cause or permit any Hazardous Material to be brought upon, kept or used in or about the 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 Project. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Project results in contamination of the 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 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 Project. Notwithstanding the foregoing, "Hazardous Materials" shall not include chemicals and materials customarily used for property maintenance, which can include, but not limited to, cleaning supplies, pesticides for landscape maintenance and chemicals for aqua therapy pool maintenance, so long as used as intended.

12.3.3 At the Possession Date , 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 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 Project 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 Project 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 Section 12 shall be a material default enabling Lessor to exercise any of the remedies set forth in Article XIX of this Lease ("Default Clause).

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 upon completion of construction and issuance of the certificate of occupancy for the Project:

13.1 Notwithstanding the foregoing, as of the Possession Date, Lessee shall purchase and maintain Commercial General Liability Insurance, on an occurrence form, in the amount of \$1,000,000 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.

13.5 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.

13.8 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.

13.9 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.

13.10 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, or, in the alternative, if the parties agree to execute a Work Letter and Escrow Agreement, the insurance money shall be deposited into Lessee's attorney's escrow account, subject to disbursements pursuant to the agreed upon terms of the Work Letter and Escrow Agreement. As such, said insurance money 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, or from the Lessee's attorney's escrow account, pursuant to the Work Letter and Escrow Agreement, as the case may be, based upon 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 general contractor and construction agreement shall be subject to the prior written approval by the City Manager.

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, or into the Lessee's attorney's escrow account, as the case may be, 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.

13.11 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.

13.12 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 Project herein described, and without prejudice to their rights to the benefit of such insurance money as payment of such rental and other charges.

13.13 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 or Lessee's attorney's escrow account, as the case may be, 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. Notwithstanding the foregoing, in the event the Lessee fails for any reason to: (1) submit a complete building permit application within six (6) months from the date of the damage or destruction occasioned by fire, windstorm or other cause for which insurance money shall be payable; or (2) commence the reconstruction or repair of such building or buildings within twelve (12) months after the submission of the building permit application; or (3) provide, within twelve (12) months from the date of the damage or destruction, and in the manner required by Section 13.10 of this Article XIII, a sufficient sum of money to prosecute the reconstruction and repair work with such dispatch as may be necessary to complete the same within twenty-four (24) 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 Subsection 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, or in Lessee's attorney's escrow 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.

13.14 Construction Insurance Requirements. Any improvements to the Wellness Center shall be approved in writing by Lessor, in advance of commencement of any work. Any contractor approved pursuant to Section 17.3, that the Lessee hires to conduct improvements

to the Wellness Center, (i) shall be a contractor licensed in the State of Florida and (ii) shall maintain the following insurance coverages, subject to the same requirements as in the preceding Section 13.5 through Section 13.9, in connection with the approved work:

13.14.1 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.

13.14.2 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).

13.14.3 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.

13.14.4 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.

13.14.5 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

13.14.6 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.

13.14.7 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 13.14.5, 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 agreement, management agreement, or license agreement with respect to the Wellness Center, 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 transfer of any direct or indirect legal or beneficial interest in Lessee or any transfer conveying all or any portion of Lessee's rights and interest in and to the Lease (an "Assignment"), any such Assignment shall require the prior written consent of the Lessor, at Lessor's sole discretion, which consent, if given at all, at a minimum shall be predicated upon: (i) the transferee or assignee assuming all obligations under the Lease, including all Covenants Running with the Land contained therein; (ii) the transferee or assignee curing any defaults under the Lease; (iii) the transferee or assignee not being a Foreign Instrumentality; (iv) the transferee or assignee having sufficient liquid assets to operate and maintain the Wellness Center; and (iv) the transferee or assignee executing all documents required by the Lessor to effectuate the transfer including, without limitation, an assumption agreement, duly executed by the Assignee of this Lease and in recordable form. 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 and any other information which Lessor, in its sole discretion, may require to evaluate the Assignment, advise the Lessee in writing as to whether or not 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 Operational Subcontracts. Lessee shall not enter into independent contractor's agreements with subcontractors under the supervision of Lessee, in connection with all or any portion of any work and/or service which may be performed relating to any of the approved uses in Section 4.1 or 4.2 (collectively, "Operational Subcontracts") without the prior written consent of the City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Any attempt to enter into such Operational Subcontracts (unless approved) shall be void. At City Manager's request, Lessee shall provide supporting documentation evidencing the fair market value for such transaction or arrangement. Additionally, Lessee shall ensure that any subcontractor will comply with all insurance requirements with respect to payment or reimbursement for health care-related services.

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 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 Project 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 Project 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 - PROPOSED IMPROVEMENTS

17.1 This Lease is made with the understanding and agreement that Lessee will design, develop and construct the proposed improvements, at its sole cost and expense, valued at no less than \$3,500,000 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:

(A) a three (3) story circular building, on the footprint of the Leased Premises, having no more than 19,000 square feet of floor area, and a height not to exceed fifty (50) feet from base flood elevation, which shall be consistent with the conceptual plan presented by Lessee to Lessor, attached as Exhibit "B" to this Lease (the "Concept Plan");

(B) the construction of public restrooms ("Public Restroom Facilities"), comparable in size and constructed to the specifications (equipment, materials and standards) of the restrooms currently in the Park, which will be demolished in connection with the related Parking Lot Expansion Project, The Public Restroom Facilities may be constructed, at the discretion of the Lessee, as part of the first story of the Project, or, in the alternative, at a separate location at the Park, which separate location shall be determined by the City Manager in his or her sole discretion. Upon completion of the construction of the Public Restroom Facilities, as evidence from the issuance of a Certificate of Occupancy from the City, in its regulatory authority, and upon acceptance by the City, shall become the sole property of the City and the City shall be responsible

for its operation, maintenance and repair, as more particularly set forth in Section 23.2; (C) the design and construction of public showers ("Public Shower Facilities"), comparable in size and constructed to the specifications (equipment, materials and standards) of the public showers currently in the Park, which will be demolished in connection with the Proposed Improvements, at a different location within the Park, which location will be subject to the written approval of the City Manager, at his sole discretion. Upon completion of the construction of the Public Shower Facilities, as evidence from the issuance of a Certificate of Occupancy from the City, in its regulatory authority, and upon acceptance by the City, said Public Shower Facilities shall become the sole property of the City and the City shall be responsible for its operation, maintenance and repair, as more particularly set forth in Section 23.3; and (D) any site work, such as grading, and site improvements, such as landscaping, which may be required by the City, in its regulatory capacity, including any City departments or City boards, in connection with the issuance of the full building permit and/or the construction and development of the Project.

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 13.14, plus any additional insurance coverages which the City may reasonably require from the Contractor, subcontractor and/or architect. Following Lessee securing full building permit, and prior to commencement of construction, Lessee shall execute a Work Letter and Escrow Agreement, including a cash deposit, in the amount of the cost of the Proposed Improvements (as set forth in the construction contract between Lessee and the approved contractor), which will be deposited into Lessee's attorney's escrow account to guarantee the diligent and timely prosecution of the construction.

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"). Lessee shall submit the Preliminary Plans and Specifications for review by the City, in its regulatory capacity, at the 30%, 60% and 90% of plan completion stages.

17.6 Lessee shall submit its Preliminary Plans and Specifications to Lessor's City Manager for approval within one year of the Effective 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 ten (10) 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 Effective 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 one year from the Effective 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 Effective 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 Lessor, 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 six months from the date on which the HPB approves the Proposed Improvements, but no later than two years from the Effective 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 ten (10) 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 Section 17.10, 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 provided 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 two years from the Effective 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.

17.13 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.

17.14 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 two years from the Effective 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 "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 personality) 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 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 reasonable discretion, substantiating that the Wellness Center has sufficient funds to operate the Project 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 \$10,000.00 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, as reasonably determined by the City Manager, subject to increases which may be necessary, based upon needed repairs or capital

improvement projects.

**ARTICLE XVIII-COVENANTS RUNNING WITH THE LAND 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 of the State of Florida and shall maintain its exemption from taxation under 501(c)(3) of the Internal Revenue Code;
- (b) That the Lessee shall continuously operate the Project as a public health and wellness center serving members of the general public who have a physical disability;
- (c) That the Lessee shall affirmatively make the Leased Premises, its facilities, and the Lessee's programs and activities open to persons with a physical disability of all races, colors, creeds or national origins, and take reasonable steps to publicize the availability thereof;
- (d) 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;
- (e) 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 City Commission, 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;
- (f) That all fire and extended coverage and flood insurance, maintenance, and other costs for the improvements and the general upkeep of the Project, and all replacements necessary in connection therewith, shall be the sole cost and expense of the Lessee;
- (g) That the Lessee shall provide personnel on the 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.

- (h) That the Lessee shall be obligated to provide, amongst other insurance coverages stipulated in Article XIII, public liability insurance and property damage insurance, at its cost and expense, for the Project during the term of this Lease.
- (i) 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 Section 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 Section 19.3 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 Lessee 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 13.14.

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 not be considered 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 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 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 – CITY’S OBLIGATIONS RELATING TO THE PUBLIC COMPONENTS

23.1 Parking Lot Expansion Project. The City, at its sole discretion, and subject to funding availability and appropriation, may redesign, develop and construct the Parking Lot at the Park (the “Parking Lot Expansion Project”); however, at a minimum, the City shall increase the number of accessible parking spaces at the Park to 17 spaces. The City and Lessee shall cooperate with the other during the development and construction of the Parking Lot Expansion Project and Wellness Center, in an effort to minimize the impact to the public’s use of the existing facilities, including the existing public restrooms, showers, park and beach.

23.2 Public Restroom Facilities. Lessee shall construct, on behalf of the City and as more particularly described in Section 17.1, Public Restroom Facilities. The City shall be responsible for the operation, maintenance and repair of the Public Restroom Facilities, in accordance with the same standards as other City park restroom facilities. The City shall be responsible for all repairs to the Public Restroom Facilities, including, roof, structure, mechanical, plumbing and electrical components, and for any utilities associated with the sole operation of the

Public Restroom Facilities. Notwithstanding the foregoing, if the Public Restroom Facilities are designed and constructed attached to the Wellness Center, Lessee shall be responsible for the cost and expense of maintaining the roof, exterior walls and adjoining structural elements. In such case, the parties agree to cooperate and grant each other access to the Project or Public Restroom Facilities, as applicable, as may be necessary including, without limitation, for any necessary repairs.

23.3 Public Shower Facilities. Lessee shall construct, on behalf of the City and as more particularly described in Section 17.1, Public Shower Facilities. The City shall be responsible for the operation, maintenance and repair of the Public Shower Facilities, in accordance with the same standards as other City park restroom facilities. The City shall be responsible for all repairs, including, roof, if any, structural, mechanical, plumbing and electrical components and for any utilities associated with the operation of the Public Shower Facilities.

ARTICLE XXIV - COVENANT OF QUIET ENJOYMENT

24.1 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 XXV - LESSOR'S RIGHT OF ENTRY

25.1 The Lessor or its agents shall have the right to enter upon the 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 Project; and if the 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 XXVI - NO REPRESENTATIONS BY LESSOR

26.1 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 XXVII - LESSEE TO COMPLY WITH ALL LAWS

27.1 Lessee, and Lessee's officers, employees, agents, and contractors performing any work on the Project, shall at all times comply with all laws, ordinances, regulations and orders of Federal, State, County and municipal authorities pertaining to the Lease, the Project and Lessee's improvements and operations thereon. With respect to the provision or delivery of health care at the Project, Lessee and/or its agents or contractors shall comply with all applicable laws, including the Health Insurance Portability and Accountability Act ("HIPAA") and regulations protecting the confidentiality of patients' records, the Medicare Ethics in Patient Referrals law ("Stark "anti-kickback" law), and all pertinent IRS requirements, including the requirement of "fair market value" for all business transactions with health care providers or others with respect to the Project.

27.2 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.

27.3 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 Project.

ARTICLE XXVIII - SURRENDER OF THE PREMISES

28.1 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 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 XXVIII, 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.

28.2 The Lessee covenants and agrees that it will not enter into any subleases, subtenancies, licenses or concession agreements relating to the Project for a period of time beyond the stated expiration date of this Lease.

ARTICLE XXIX - FORCE MAJEURE

29.1 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 XXX SIGNAGE/NAMING RIGHTS

Interior/Exterior Signage/Sponsorship: All signage and sponsorships, shall be subject to approval by the City, including, without limitation, the names affixed thereon and any sponsorship names. Lessee shall have the right to erect interior and exterior signage and secure sponsorships in connection therewith, subject to approval by the City, 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. Any interior temporary signage, i.e. banners, shall be subject to the prior written approval of the City Manager. Lessee shall be entitled to keep all naming rights revenues derived from any approved signage or sponsorships; provided Lessee dedicates and utilizes such revenues exclusively for the maintenance, management and/or operation of the Wellness Center. In no event may any approved interior or exterior signage include the names of any company selling the following types of products ("Prohibited Names"): firearms, alcohol, tobacco products, sexual products. Additionally, the permissible content of any advertisements shall not be of a sexually offensive nature; promote unlawful or illegal goods, services or activities; contain images or information that demean an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age, disability or sexual orientation; or contain non-alcoholic brands that are competitive to Coca-Cola, so long as the City's exclusive non-alcoholic beverage partnership with Coca-Cola is valid and in force.

ARTICLE XXXI- MISCELLANEOUS PROVISIONS

31.1 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.

31.2 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.

31.3 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.

31.4 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.

31.5 In the event of any default on the part of the Lessee, as determined by Article XIX of this Lease (Default Clause), 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.

31.6 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.

31.7 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.

31.8 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.

31.9 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.

31.10 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.

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

31.12 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, FL 33139**

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

31.13 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.

31.14 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.

31.15 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 subsection 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.

31.16 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.

31.17 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.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

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 WELLNESS CENTER
PROJECT, INC.
a Florida not-for-profit corporation**

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, Mayor, and Rafael E. Granado, City Clerk, 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 _____, 2015.

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 not-for-profit corporation, 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

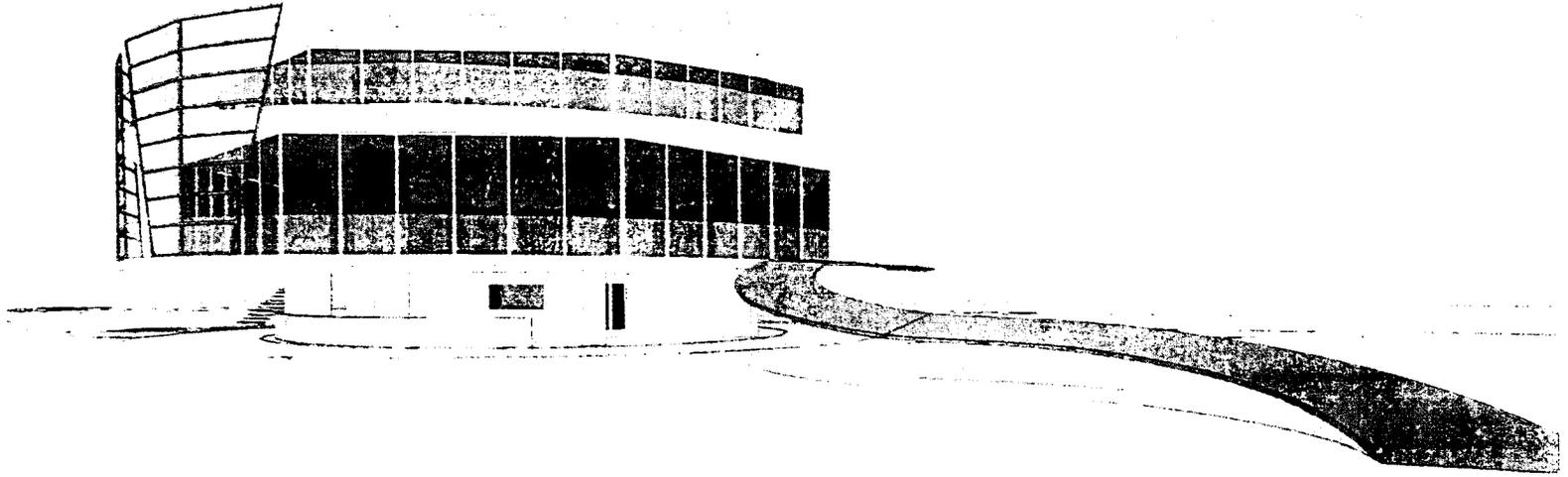


Exhibit "C"

Legal Description of Leased Premises

Exhibit "D"

City Vending Contracts

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 3rd 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 21st 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 1st 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 additional 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 167th 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:

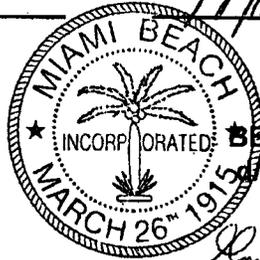
CITY OF MIAMI BEACH, FLORIDA

Roy J. [Signature]

CITY CLERK

Matti H. Bower [Signature]

MAYOR



Attest:

BETTOLI TRADING CORP.
d/b/a BETTOLI VENDING

Mark Milisits [Signature]

Signature / Secretary

Maurizio Bettoli [Signature]

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

[Signature] 4/19/12
City Attorney 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 Min. Guarantee
Machines							
13th Street Garage	1	\$500	0	\$0	0	0	\$500
17th Street Garage	1	\$300	1	\$300	0	0	\$600
42nd Street Garage	1	\$150	0		0	0	\$150
7th Street Garage	1	\$300	0	\$0	0	\$0	300
City Hall Parking Garage	1	\$150	0	\$0	0		150
Sub-total	5	\$1,400	1	\$300	0	\$0	\$1,700
City Structures							
City Hall	2	\$600	1	\$300	1	\$300	\$1,200
City Hall Parking Garage (Ground Office)	1	\$300	0	\$0	0	\$0	300
1701 Meridian Ave	1	\$500	0	\$0	0	\$0	500
Convention Center	2	600	1	300	0	\$0	\$900
Historic City Hall	1	\$300	0	\$0	0	\$0	300
Miami Beach Police Station	2	\$600	1	\$300	1	\$300	\$1,200
Miami Beach Police Station Garage	1	\$150	0	\$0	0	\$0	\$150
Lobby of 833 6th Street	1	\$300	0	\$0	0	\$0	\$300
Public Works Operations Center	1	\$150	0	\$0	0	\$0	\$150
Sub-total	12	\$3,500	3	\$900	2	\$600	\$5,000

EXHIBIT 2.0 (PAGE 2 OF 2)

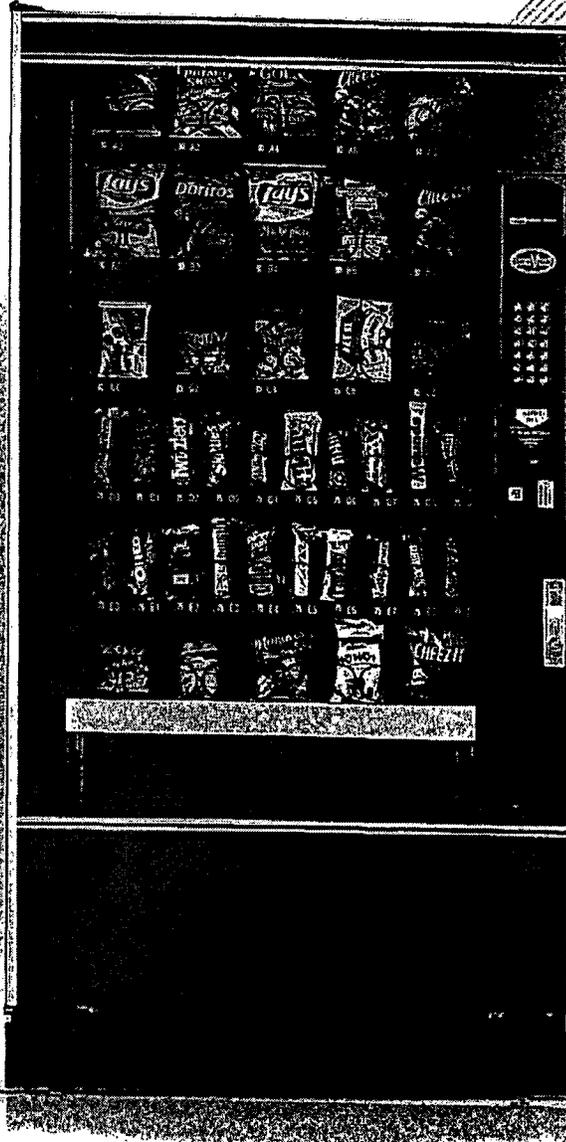
Parks & Recreation									
Normandy Shore Pool	1	\$150	1	\$150	0	\$0	2	\$300	
North Shore Youth Center	2	\$600	1	\$300	0	\$0	3	\$900	
Parks & Recreation (21 & Washington)	1	\$300	1	\$300	0	\$0	2	\$600	
Scott Rakow Youth Center	2	\$1,000	1	\$500	0	\$0	3	\$1,500	
Scott Rakow Youth Center Ice Skating	1	\$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	
Total	28	\$8,000	11	\$3,050	2	\$600	41	\$11,650	

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 JEB

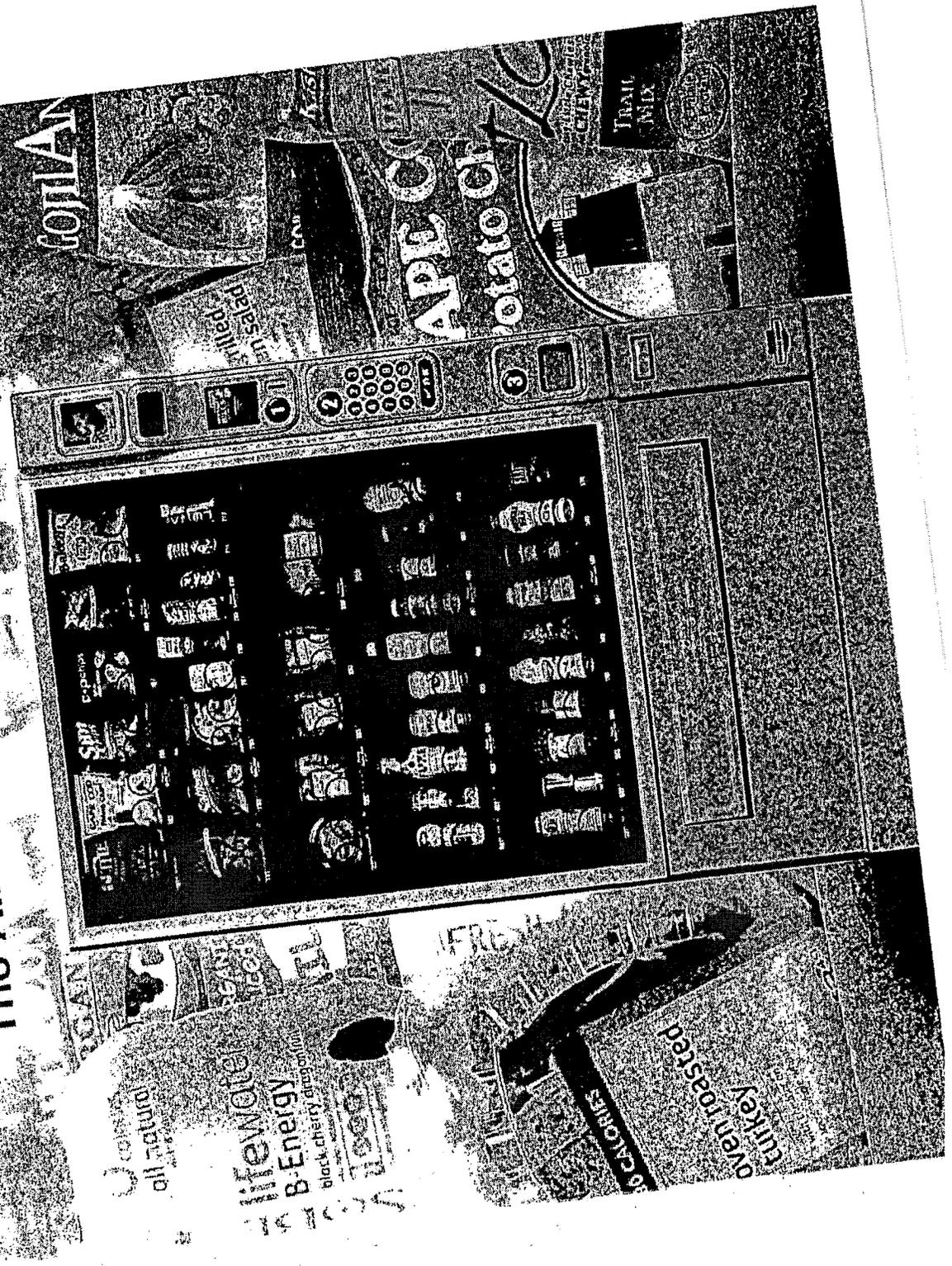


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EXHIBIT 3.2.1.4 (PAGE 2 OF 3)

merchant **SIX COMBO**®

The All-in-One Vending Solution



103

the *key piece*
of a
profitable
vending business

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

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www.fastcorp vending.com

Z-400 Ice Cream Vendor

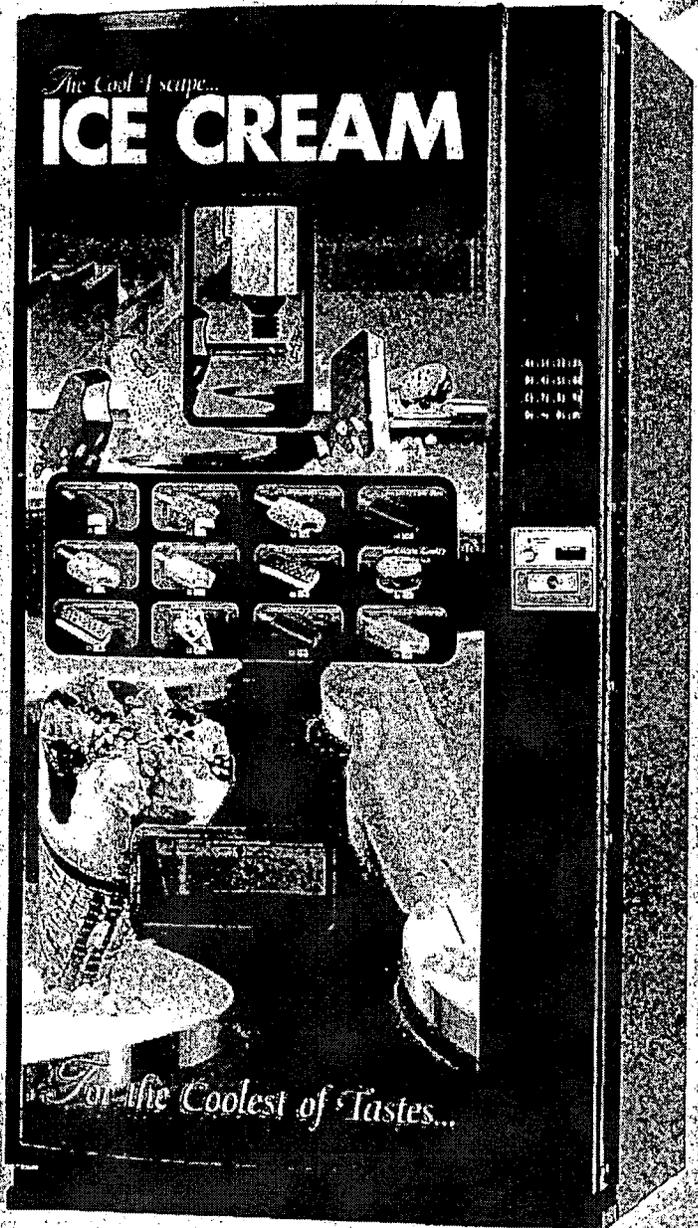


EXHIBIT 3.2.5.1

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

eeb

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: **OKEEHHEELLEE 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

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, CO₂ 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

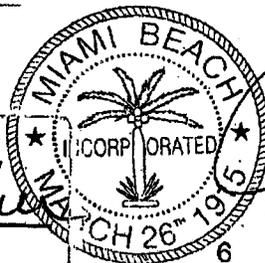
Title: Mayor
3/16/12

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

By: Sally Forsyth
Print Name: Sally Forsyth

Title: REGION CONTROLLER 3/22/12

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION



Robert Pacher
ATTEST

[Signature]
City Attorney
3-15-12
Date

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>1. DEFINITIONS:</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 21st and 46th 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>
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	<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>
2. AGREEMENT TERM:	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.
3. EFFECTIVE DATE:	January 1, 2012
4. EXPIRATION DATE:	December 31, 2021 as to all Facilities
5. SPONSORSHIP FEE:	<p>\$3,725,000 for the Term of the Agreement.</p> <ul style="list-style-type: none"> • 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. • \$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.)
6. COMMISSIONS:	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)
7. COMMUNITY SUPPORT:	Bottler will provide City with a total of \$17,500 in cash for the

<p>COMPLIMENTARY PRODUCT:</p>	<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>
<p>8. ADVERTISING & SPONSORSHIP:</p>	<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>
<p>9. PRODUCT RIGHTS:</p>	<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>
<p>10. EXCEPTIONS:</p>	<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) 21st Street/46th 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.

	<p>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.</p>
11. MARKETING PROGRAM:	<p>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 Exhibit 3.</p>
12. RECYCLING PARTNER:	<p>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 Exhibit 4, with a minimum total value of \$15,000; and up to \$25,000 over the entire Term</p>
13. VENDING PROGRAM/OTHER EQUIPMENT	<p>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 Exhibit 5.</p>
14. CITY SUPPORT:	<p>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.</p>
15. PRICING:	<p>Bottle/Can Pricing: City is entitled to purchase bottle/can Products from Bottler in accordance with the price schedule set forth in Exhibit 6; 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>
16. TERMINATION:	<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>
17. MAINTENANCE & SERVICE:	<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>
18. REPORTS/AUDITING:	<p>Bottler will provide an annual business review report within 90</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.

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 4th 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 4th 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 5th 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 5th 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*

<u>Package</u>	<u>Price per case</u>
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

<u>Post-Mix</u>	<u>Price per gallon</u>
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

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

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

<u>CO2</u>	
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.)

Product	Package (Frac)	Small Filters	Large Filters
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-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 Bottle 24/case
 330 ml 24/case
 16.9oz (1.1L) Bottle 24/case
 12oz Bottles/24 case
 1L 12 per case

Diet Flavors
 Lemon
 Strawberry

Flavor Drops
 1.6oz 6pk
 Strawberry Kiwi
 Mixed Berry
 Pineapple Coconut
 Pink Lemonade
 Grape
 Cherry Pomegranate

20oz Bottle 24/case
 750 ML Sportscap 24/CASE
 1.0 L 12/case
 1.5 L 12/case

1.5L PET HD, Choc, Pineapple 12/case
 11.3oz Tetra Hd 12/case
 1.0 L HD, Choc 12/case

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

1.5L Platform
 Chocolate
 Strawberry Banana
 Soda Platform
 Chocolate
 Vanilla
 Banana

Black Raspberry
 Orange Mango
 Strawberry Kiwi
 Lemon-Lime
 Watermelon Punch

Mountain Blast
 Fruit Punch
 Lemon Lime
 Orange
 Strawberry Lemonade
 Grape

Fruit Punch (Red)
 Grape (purple)
 Mixed Berry (Blue)

16oz 12 per case
 Strawberry Melon
 Peach Mango
 Tropical Punch
 Cranberry Raspberry
 Blue Raspberry
 Acai Berry Pomegranate
 Banana Colada

Black (original)
 Blue Agave
 Red Berry

Original (Orange Mango)
 Grape
 Charged Citrus
 Sugar Free
 Loaded Cherry

Original-Green
 Lo Carb-Blue
 Assault-Red
 Khao-orange
 Absoluta Zero-Blue/Purple
 Absoluta Ultra-White
 Rehab - Half Tea Half Lemonade
 Rehab - Orangeade
 Rehab - Green Tea
 Rehab - Rojo Red Tea

Mean Bean
 Loco Mocha
 Vanilla Light
 Toffee
 Konig Blend
 Irish Blend

Chocolate
 Coffee
 Vanilla

Mountain Berry
 Fruit Punch
 Orange

Zero Cal Lemonade
 Honey Green Tea
 Peach White Tea
 Half n Half Tea

Pomegranate Blue Berry
 Orange Mango
 Superfruit

20oz Bottle 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
 XXX Zero
 Squeezed Zero
 Go Go (Mixed Berry)

16oz 6pk/72/case
 XXX
 Power C.
 Revive

XXX Zero
 Squeezed Zero
 Rise Zero

2oz GLASS Bottles
 Mocha Cappuccino
 Diet Coke
 Sprite

Cappuccino
 Latte Macchiato
 Mocha Cino
 Caffe

20oz Bottle 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
 Sprite
 Sprite 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
 Fanta Orange
 Fanta Strawberry
 Fanta Grape
 Fanta Orange Zero
 Seagram's Ginger Ale
 Seagram's Diet Ginger Ale

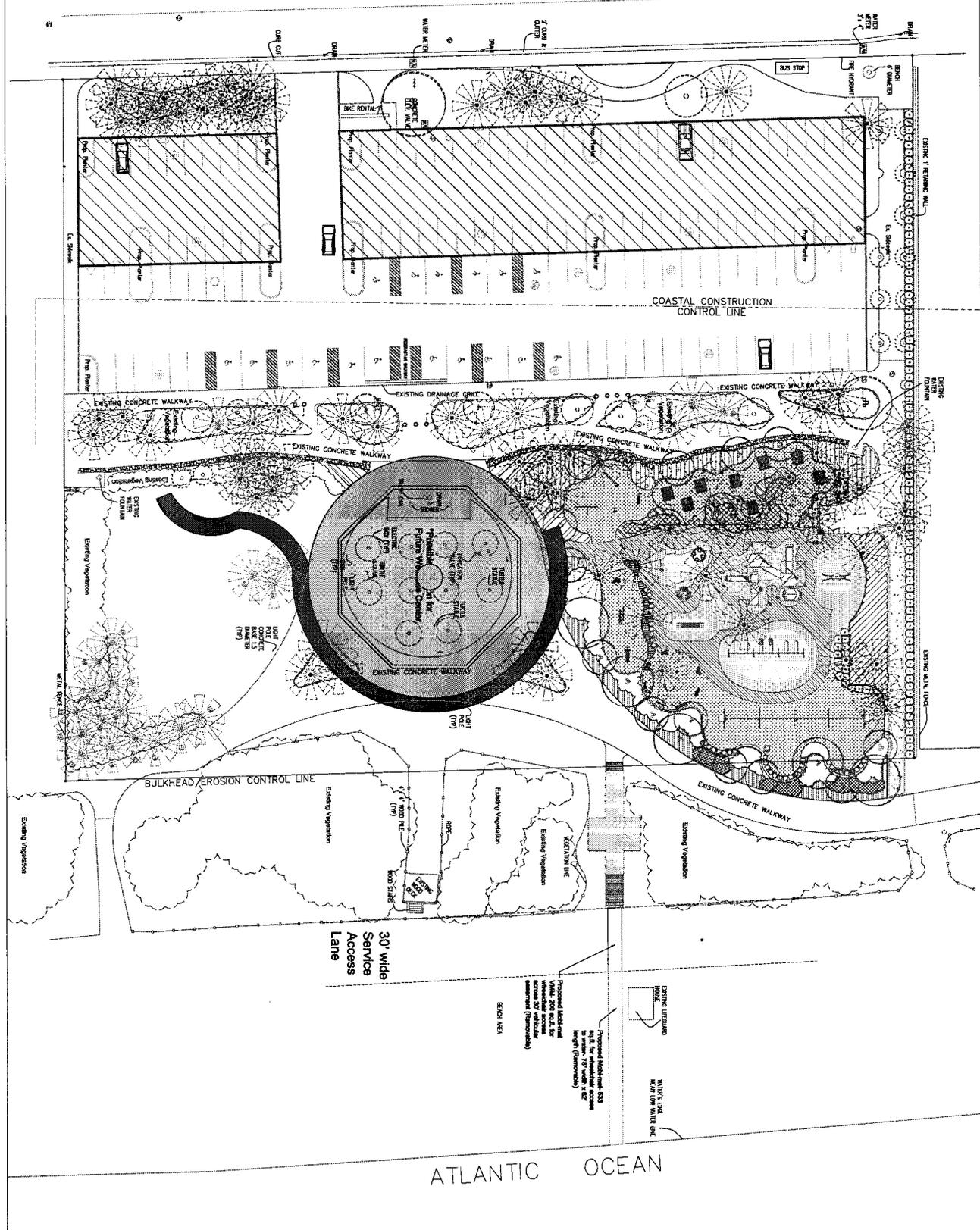
Caddy Shack (half & half)
 Teaza Tea (sweet tea)
 Pink Lemonade
 Razzleberry (raspberry)
 Snowberry (white berry)
 Georgia Peach
 Green Tea
 Sweet Lemon

Sweet
 Lemon
 Diet
 Green
 Unsweet

10.1oz 12/case
 Fruit Punch
 Green Apple
 Orange
 Sour Raspberry
 Very Berry

Coke de Mexico
 Fanta Orange de Mexico
 Sprite de Mexico

COLLINS AVENUE



PROJECT: CITY OF MIAMI BEACH ALLISON PARK SHEET NO: LH-1 DATE: 11-12-2015	DRAWING TITLE: SITE HARDSCAPE LAYOUT PLAN	NORTH	SCALE: 1" = 20' - 0" PROJECT NUMBER: 11-12-2015		PROJECT: CITY OF MIAMI BEACH ALLISON PARK

MIAMI BEACH

CITY OF MIAMI BEACH
NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY given that the following public hearings will be held by the Mayor and City Commissioners of the City of Miami Beach, Florida, in the Commission Chambers, Third Floor, City Hall, 1700 Convention Center Drive, Miami Beach, Florida, on **Wednesday, December 9, 2015**, at the times listed, or as soon thereafter as the matter can be heard:

10:15 a.m.

An Ordinance Amending Chapter 82 Of The Code Of The City Of Miami Beach, Entitled "Public Property," By Amending Article IV, Entitled "Uses In Public Rights-Of-Way," By Amending Division 5, Entitled "Sidewalk Cafes," By Amending Subdivision II, Entitled "Permit," By Amending Section 82-381 Thereof, Entitled "Permitted Areas; Conditional Permit; City Manager's Right To Remove Sidewalk Cafes," By Requiring Display Of Prices For Food And Drink Menu Items Or Any Food And Drink Menu Specials, And Establishing A Notice Provision To Customers Regarding Any Automatic Gratuity Or Service Charge By The Operator Of The Sidewalk Cafes; By Amending Section 82-382 Thereof, Entitled "Application," Mandating That A Sidewalk Cafe Application Be Denied For Failure To Have Food And Drink Menus Which Includes Prices For Food And Drink Menu Items, Food And Drink Menu Specials, Or Notification Of Any Automatic Gratuity Or Service Charge Imposed By The Sidewalk Cafe Operator; By Amending Section 82-385 Thereof, Entitled "Minimum Standards, Criteria, And Conditions For Operation Of Sidewalk Cafes," By Prohibiting A Sidewalk Cafe To Operate Without Food And Drink Menus Which Show The Pricing For Any Food And Drink Menu Item Or Food And Drink Menu Special, And Fail To Notify Customers Of Any Automatic Gratuity Or Service Charge Imposed By The Sidewalk Cafe Operator; And Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:20 a.m.

An Ordinance Amending Chapter 106 Of The Miami Beach City Code, Entitled "Traffic And Vehicles," By Amending Article II, Entitled "Metered Parking," By Amending Division 1, Entitled "Generally," By Amending Section 106-47, Entitled "Freight, Commercial, And Passenger Curb Loading Zones; Hours, Deliveries," By Deleting Subsection (c), (d) And (e); By Amending Subsection (b) To Require Property Owners And Businesses To Confirm Compliance With Subsection (g) For Commercial Motor Vehicles Deliveries And Services; By Prohibiting Deliveries Or Services For Commercial Motor Vehicles That Fail To Comply With Subsections (f) Through (i); By Creating A New Subsection (d) And (e), Which Limits The Authority Of The Special Master; By Amending The Enforcement And Penalty Provisions For Violations Of Subsection (b); Providing For Codification, Repealer, Severability, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:25 a.m.

An Ordinance Amending The Code Of The City Of Miami Beach, Florida By Amending Chapter 142, "Zoning Districts And Regulations," Article II, "District Regulations," Division 5, "CD-2 Commercial Medium Intensity District," At Section 142-305, "Prohibited Uses," By Adding Bars, Dance Halls, And Entertainment Establishments As Prohibited Uses Within The CD-2, Sunset Harbour Neighborhood, Generally Bounded By Purdy Avenue, 20th Street, Alton Road And Dade Boulevard; Providing For Codification, Repealer, Severability, Applicability, And An Effective Date. *Inquiries may be directed to the Planning Department at 305.673.7550.*

10:30 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, "Administration," Article VII, "Standards Of Conduct," Division 5, "Campaign Finance Reform," Encompassing City Code Sections 2-487 "Prohibited Campaign Contributions By Vendors," City Code Section 2-488 "Prohibited Campaign Contributions By Lobbyists On Procurement Issues," City Code Section 2-489 "Prohibited Campaign Contributions By Real Estate Developers," And City Code Section 2-490 "Prohibited Campaign Contributions By Lobbyists On Real Estate Development Issues," By Providing That Commencing January 1, 2016, Members Of The City Commission Or Candidates For Said Offices Shall Be Prohibited From Either Directly Or Indirectly Soliciting, Accepting Or Depositing Any Campaign Contribution Regarding City Elected Office From A Vendor, Lobbyist Or A Procurement Issue, Real Estate Developer, Or Lobbyist On A Real Estate Development Issue; Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:31 a.m.

An Ordinance Amending Miami Beach City Code Chapter 2, Article VII, Division 5 Entitled "Campaign Finance Reform," By Adding Thereto Section 2-491 Entitled "Prohibited Lobbying By Campaign Consultants," Prohibiting Campaign Consultants And Certain Affiliated Persons Or Entities From Lobbying City Commission For 12 Months Subsequent To Swearing In Of Subject Elected Official(s); Establishing Delinitions, And Limited Exemption; Providing For Repealer, Severability, Codification, And An Effective Date. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470.*

10:35 a.m.

A Resolution Accepting The Recommendation Of The City's Finance And Citywide Projects Committee, And Approving, Upon Second And Final Reading Of This Resolution And Following A Duly Noticed Public Hearing, A Ground Lease Agreement In The Form Attached To This Resolution, Between The City (Owner Or Landlord) And The Sabina 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 For The Purpose Of Developing A Wellness Center, And Waiving, By A 5/7th 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, And Further Waiving, By A 5/7th 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. *Inquiries may be directed to the Office of the City Attorney at 305.673.7470; the Parks & Recreation Department at 305.673.7730 and/or the Department of Public Works at 305.673.7080.*

10:40 a.m.

A Resolution Adopting The First Amendment To The Capital Budget For Fiscal Year 2015/16. *Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*

10:45 a.m.

A Resolution Adopting The First Amendment To The General Fund, Enterprise Fund, Internal Service Fund, And Special Revenue Fund Budgets For Fiscal Year 2015/16. *Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*

10:50 a.m.

A Resolution Adopting The Amendment To The City Budget For Fiscal Year 2015/16. *Inquiries may be directed to the Budget & Performance Improvement Department at 305.673.7510.*

11:00 a.m.

A Resolution Approving, Following A Duly Noticed Public Hearing Pursuant To Sections 170.07 And 170.08, Florida Statutes, The Final Assessment Roll For The Special Assessment District Known As The Sunset Islands 3 & 4 Utility Improvement District, And Confirming Such Assessments As Legal, Valid, And Binding First Liens Upon The Property Against Which Such Assessments Are Made Until Paid. *Inquiries may be directed to the Capital Improvement Projects Department at 305.673.7071 and the Office of the City Attorney at 305.673.7470.*

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

Pursuant to Section 206.0105, Fla. Stat., the City hereby advises the public that if a person decides to appeal any decision made by the City Commission with respect to any matter considered at its meeting or its hearing, such person must ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

To request this material in alternate format, sign language interpreter (five-day notice required), information on access for persons with disabilities, and/or any accommodation to review any document or participate in any City-sponsored proceedings, call 305.604.2489 and select 1 for English or 2 for Spanish, then option 6. TTY users may call via 711 (Florida Relay Service).

Rafael E. Granado, City Clerk
City of Miami Beach

AD 1105



1700 Convention Center Drive, Miami Beach, Florida 33139

www.miamibeachfl.gov

OFFICE OF THE CITY ATTORNEY
Tel: 305.673.7470, Fax: 305.673.7002

COMMISSION MEMORANDUM

**TO: MAYOR PHILIP LEVINE
MEMBERS OF THE CITY COMMISSION
CITY MANAGER JIMMY MORALES**

FROM: RAUL J. AGUILA
CITY ATTORNEY 

DATE: DECEMBER 9, 2015

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA CALLING FOR A MARCH 15, 2016 SPECIAL ELECTION, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH, FLORIDA, A QUESTION ASKING WHETHER THE CITY SHOULD LEASE 5,100 SQUARE FEET OF BEACHFRONT PROPERTY AT ALLISON PARK, 6475 COLLINS AVENUE, TO SABRINA COHEN WELLNESS CENTER PROJECT, INC., A NON-PROFIT CORPORATION, FOR 99 YEARS, REQUIRING, PER RESOLUTION 2015 _____, CONSTRUCTION/OPERATION OF PRIVATELY FUNDED WELLNESS CENTER WITH 50 FOOT HEIGHT LIMIT, WHICH MAY INCLUDE ADAPTIVE GYM, POOL, AND PHYSICAL THERAPY FACILITIES EXCLUSIVELY SERVING PERSONS WITH DISABILITIES, LEASE RESTRICTIONS PROHIBITING ASSIGNMENT OR SUBCONTRACTING WITHOUT CITY CONSENT; RENT TO CITY, \$18.00 ANNUALLY.

Ballot Question:

The attached Resolution has been prepared calling for a City of Miami Beach Special Election to be held on December 9, 2015 for the purpose of submitting to the City's voters the following question Pursuant to Section 1.03(b)(1) of the City Charter:

**Referendum Re: Approval of
City's Lease of City Property for Sabrina Cohen Wellness Center Project**

Should City lease 5,100 square feet of beachfront property at Allison Park, 6475 Collins Avenue, to Sabrina Cohen Wellness Center Project, Inc., a non-profit corporation, for 99 years, requiring, per Resolution 2015-_____:

- Construction/operation of privately-funded Wellness Center with 50 foot height limit, which may include adaptive gym, pool, and physical therapy facilities exclusively serving persons with disabilities,
- Lease restrictions prohibiting assignment or subcontracting without City Consent,
- Rent to City, \$18.00 annually?

Background Analysis:

Section 1.03(b)(1) of the City Charter provides in pertinent part:

The only limitation concerning alienability of City-owned park, recreation or waterfront property is the restriction of the sale, exchange, conveyance or lease of ten (10) years or longer (including option periods) of park, recreation, or waterfront property in the City of Miami Beach, unless such sale, exchange, conveyance or lease is approved by a majority vote of the voters in a City-wide referendum. This provision shall be liberally construed in favor of the preservation of all park, recreation and waterfront lands.

The proposed Leased Property is located in a waterfront park, as defined by Section 1.03(b)(1). On September 30, 2015, the City Commission adopted Resolution No. 2015-29150, approving a conceptual plan for the Wellness Center and authorized the City Manager to negotiate a ninety-nine year ground lease (the "Ground 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 to develop, design, construct, finance, equip, operate, and maintain a Wellness Center, including the design and construction of public restrooms; and 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.

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.

On October 21, 2015, the City Commission accepted the recommendation of the City's Finance and Citywide Projects Commission Committee, and approving, on first reading, a draft ninety-nine year lease ("Ground Lease"), in substantial form, between the City and the Foundation for the use of the Leased Premises; waiving, by a 5/7th 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; and

further waiving, by a 5/7th 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.

The proposed Ground Lease is the subject of a companion agenda item being considered at the December 9, 2015 City Commission meeting. The proposed Ground Lease further delineates the conditions for the design, construction, equipping and operation of the Wellness Center, on the Leased Premises, which may include an adaptive gym, pool and physical therapy facilities, with ancillary uses as a café, office, and ADA related research, exclusively serving persons with a temporary or permanent disability, with no City funding or financing therefor; provides for a 99-year term of the leased property once certain conditions are satisfied; contains covenants running with the land, prohibiting any assignments or subcontracting without the consent of the City; and contains operational directives that include a priority for Miami Beach disabled residents, disabled military servicemembers and disabled seniors; and providing rent to City of \$18.00 annually.

Pursuant to directive of the Miami-Dade County Elections Department, the final date by which the City may adopt its Resolution placing a ballot measure on the March 15, 2016 ballot is December 22, 2015. Accordingly, this matter is timely presented to the City Commission and adoption of the attached Resolution may take place at today's meeting.

Recommendation:

The Administration recommends that the Mayor and City Commission adopt the Resolution and place the ballot question on the March 15, 2015 ballot.

T:\AGENDA\2015\Decmeber 9\Wellness Center\City Atty Comm Memo Ballot Question Wellness Center

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA CALLING FOR A MARCH 15, 2016 SPECIAL ELECTION, FOR THE PURPOSE OF SUBMITTING TO THE ELECTORATE OF THE CITY OF MIAMI BEACH, FLORIDA A QUESTION ASKING WHETHER THE CITY SHOULD LEASE 5,100 SQUARE FEET OF BEACHFRONT PROPERTY AT ALLISON PARK, 6475 COLLINS AVENUE, TO SABRINA COHEN WELLNESS CENTER PROJECT, INC., A NON-PROFIT CORPORATION, FOR 99 YEARS, REQUIRING, PER RESOLUTION 2015_____, CONSTRUCTION/OPERATION OF PRIVATELY FUNDED WELLNESS CENTER WITH 50 FOOT HEIGHT LIMIT, WHICH MAY INCLUDE ADAPTIVE GYM, POOL, AND PHYSICAL THERAPY FACILITIES EXCLUSIVELY SERVING PERSONS WITH DISABILITIES, LEASE RESTRICTIONS PROHIBITING ASSIGNMENT OR SUBCONTRACTING WITHOUT CITY CONSENT; RENT TO CITY, \$18.00 ANNUALLY.

WHEREAS, following a duly noticed first reading on October 21, 2015, and a duly noticed second reading/public hearing on December 9, 2015, the Mayor and City Commission of the City of Miami Beach, Florida adopted Resolution No. 2015-_____, a copy of which is attached hereto and incorporated by reference herein as composite Exhibit "1," approving a ground Lease agreement (Lease) with Sabrina Cohen Wellness Center Project, Inc. (Lessee) for the construction and operation, at Lessee's sole cost, of three story circular building consisting of 19,000 square feet and a height of approximately 50 feet from base flood elevation), for an ADA-accessible Wellness Center (which may include an adaptive gym, healing room, pool and physical therapy facilities, with ancillary uses as a café, office, and ADA related research), at Allison Park, 6475 Collins Avenue (Leased Premises) adjacent to ADA accessible park; and

WHEREAS, the Lease, attached hereto as Exhibit "B" to Composite Exhibit "1," delineates the conditions for the design, construction, equipping and operation of the Wellness Center exclusively serving persons with a temporary or permanent disability, with no City funding or financing therefor; provides for a 99-year term of the Leased Property once certain conditions are satisfied; contains covenants running with the land, prohibiting any assignments or subcontracting without the consent of the City; and containing operational directives that include a priority for Miami Beach disabled residents, disabled military servicemembers and disabled seniors; and providing rent to City of \$18.00 annually; and

WHEREAS, pursuant to Section 1.03(b)(1) of the City Charter, the Lease is contingent upon and requires approval by a majority of the voters voting thereon in a City-wide referendum; and

WHEREAS, pursuant to Resolution No. 2015-_____, the accompanying Lease attached as Exhibit "B" to Composite Exhibit "1," has been fully negotiated and is incorporated herein for the purpose of providing the public with full and complete information regarding the proposed Lease, in advance of the voter referendum required thereon.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH:

SECTION 1.

In accordance with provisions of the Charter of the City of Miami Beach, Florida and the general laws of the State of Florida, a Special Election is hereby called and directed to be held in the City of Miami Beach, Florida, from 7:00 a.m. to 7:00 p.m. on Tuesday, March 15, 2016, for the purpose of submitting to the electorate the question as set forth hereinafter.

SECTION 2.

That the appropriate and proper Miami-Dade County election officials shall conduct the said Special Election hereby called, with acceptance of the certification of the results of said Special Election to be performed by the City Commission. The official returns for each precinct shall be furnished to the City Clerk of the City of Miami Beach as soon as the ballots from all precincts have been tabulated.

SECTION 3.

That the said voting precincts in the City of said Special Election shall be as established by the proper and appropriate Miami-Dade County Election Officials. All electors shall vote at the polling places and the voting precincts as determined by the Miami-Dade County Election Officials as set forth in the attached Exhibit "2".

SECTION 4.

Not less than thirty days notice of the adoption of this Resolution and of its provisions calling this Special Election shall be given by publication in the Miami Herald, a newspaper of general circulation in Miami Beach, Miami-Dade County, Florida. Such publication shall be made in accordance with the provisions of Section 100.342, Florida Statutes, and Section 38-3

of the Code of the City of Miami Beach.

SECTION 5.

The Notice of Election shall be substantially in the following form:

THE CITY OF MIAMI BEACH, FLORIDA

NOTICE OF SPECIAL ELECTION

NOTICE IS HEREBY GIVEN THAT A SPECIAL ELECTION HAS BEEN CALLED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AND WILL BE HELD IN SAID CITY FROM 7:00 A.M. UNTIL 7:00 P.M. ON THE 15th DAY OF MARCH, 2016, AT WHICH TIME THERE SHALL BE SUBMITTED TO THE DULY REGISTERED AND QUALIFIED VOTERS OF THE CITY OF MIAMI BEACH THE FOLLOWING QUESTION:

**Referendum Re: Approval of
City's Lease of City Property for Sabrina Cohen Wellness Center Project**

Should City lease 5,100 square feet of beachfront property at Allison Park, 6475 Collins Avenue, to Sabrina Cohen Wellness Center Project, Inc., a non-profit corporation, for 99 years, requiring, per Resolution 2015-_____:

- Construction/operation of privately-funded Wellness Center with 50 foot height limit, which may include adaptive gym, pool, and physical therapy facilities exclusively serving persons with disabilities,
- Lease restrictions prohibiting assignment or subcontracting without City Consent,
- Rent to City, \$18.00 annually?

Said Notice shall further set forth the several polling places in the election precincts as established in accordance with Section 3 hereof, and shall further set forth pertinent information regarding eligibility of electors to participate in said elections.

SECTION 6.

That the official ballot to be used in the Special Election to be held on March 15, 2016, hereby called, shall be in substantially the following form, to-wit:

“OFFICIAL BALLOT”

**Referendum Re: Approval of
City’s Lease of City Property for Wellness Center Project**

Should City lease 5,100 square feet of beachfront property at Allison Park, 6475 Collins Avenue, to Sabrina Cohen Wellness Center Project, Inc., a non-profit corporation, for 99 years, requiring, per Resolution 2015-_____:

- Construction/operation of privately-funded Wellness Center with 50 foot height limit, which may include adaptive gym, pool, and physical therapy facilities exclusively serving persons with disabilities,
- Lease restrictions prohibiting assignment or subcontracting without City Consent,
- Rent to City, \$18.00 annually?

_____ YES
_____ NO

SECTION 7.

The form of the ballots to be used in this Special Election and their preparation shall be in compliance with all statutory requirements relating to the use of mechanical or other approved voting machines or devices.

SECTION 8.

Registration of persons desiring to vote in the Special Election shall be in accordance with the general law of the State of Florida governing voter registration. Qualified persons may obtain registration forms to vote at the Office of the City Clerk, City Hall, 1700 Convention Center Drive, First Floor, Miami Beach, Florida 33139, during normal business hours, and at such other voter registration centers and during such times as may be provided by the Supervisor of Elections of Miami-Dade County. The Miami-Dade County Supervisor of Elections will register voters for this Special Election until 5:00 p.m. on _____, 2016. All persons eligible to vote at this Special Election must be registered before the time and date set forth herein or have registered previously, as provided by law. Each person desiring to become a registered voter shall be responsible for properly filling out the registration form and returning it to the Miami-Dade County Elections Office. All questions concerning voter registration should be directed to the Miami-Dade County Elections Office, 2700 N.W. 87th Avenue, Doral, Florida 33172; Telephone: (305) 499-VOTE (8683).

SECTION 9.

That the absentee voters participating in said Special Election shall be entitled to cast their ballots in accordance with the provisions of the Laws of the State of Florida with respect to absentee voting.

SECTION 10.

That the City of Miami Beach shall pay all expenses for conducting this Special Election and will pay to Miami-Dade County or directly to all persons or firms, upon receipt of invoice or statement approved by the Supervisor of Elections of Miami-Dade County, Florida.

SECTION 11.

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

SECTION 12.

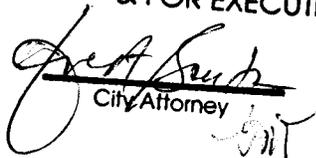
This Resolution shall be effective immediately upon its passage.

PASSED and ADOPTED this _____ day of _____, 2015.

ATTEST:

PHILIP LEVINE
MAYOR

RAFAEL E. GRANADO
CITY CLERK

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney
12/4/15

Date

Condensed Title:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA APPROVING, UPON SECOND AND FINAL READING OF THIS RESOLUTION AND FOLLOWING A DULY NOTICED PUBLIC HEARING, A GROUND LEASE AGREEMENT IN THE FORM ATTACHED TO THIS RESOLUTION, BETWEEN THE CITY (OWNER OR LANDLORD) AND SABRINA COHEN WELLNESS CENTER PROJECT, INC. (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 (LEASED PREMISES), FOR A TERM OF NINETY-NINE (99) YEARS, FOR THE PURPOSE OF CONSTRUCTING AND OPERATING AN ADA ACCESSIBLE WELLNESS CENTER AT THE TENANT'S SOLE EXPENSE.

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 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 adopted Resolution No. 2015-29150, approving Option A, which covers a foot print of 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 concept of expanding the parking lot, increasing the standard parking spaces to 103 plus the Proposed 17 ADA spaces, for a total of 120 parking spaces; by demolishing the existing restrooms, and requiring the Foundation to construct public restrooms on the 1st 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, all 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, 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)(1) of the City's Charter.

On October 5, 2015 the Finance and Citywide Projects Commission Committee 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. On October 21, 2015, the City Commission accepted the recommendation of the FCWPC; waived, by 5/7th vote, the competitive bidding requirement in Section 82-39(a) of the City Code, as being in the best interest of the City; waived, by 5/7th vote, the appraisal requirement in Section 82-39 (b) of the City Code, as being in the best interest of the City; and approved, upon first reading, a draft of the lease agreement in substantial form.

Pursuant to Section 82-38 of the City Code, the City's Planning Department proposed a Planning Analysis, a copy of which is attached hereto as Exhibit "A", was completed and found that the proposed Lease for the construction of a public health and wellness center at the Leased Premises is consistent with the Goals, Objectives, and Policies, and that said use would not have a negative impact upon the surrounding area.

Administration Recommendation:

The Administration recommends approving the proposed lease, a copy of which is attached hereto and incorporated herein by reference as Exhibit "B".

Financial Information:

Source of Funds:		Amount	Account
	1		
OBPI	Total		

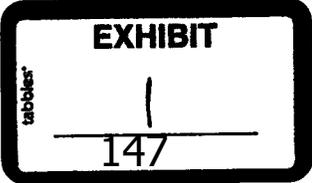
Financial Impact Summary:

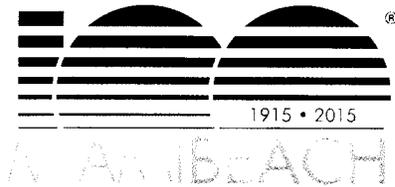
City Clerk's Office Legislative Tracking:

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

Sign-Offs:

Department Director	Assistant City Manager	City Manager
JR		JLM





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: December 9, 2015

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA APPROVING, UPON SECOND AND FINAL READING OF THIS RESOLUTION AND FOLLOWING A DULY NOTICED PUBLIC HEARING, A GROUND LEASE AGREEMENT IN THE FORM ATTACHED TO THIS RESOLUTION, BETWEEN THE CITY (OWNER OR LANDLORD) AND SABRINA COHEN WELLNESS CENTER PROJECT, INC. (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 (LEASED PREMISES), FOR A TERM OF NINETY-NINE (99) YEARS, FOR THE PURPOSE OF CONSTRUCTING AND OPERATING AN ADA ACCESSIBLE WELLNESS CENTER AT THE TENANT'S SOLE EXPENSE.**

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 Commission embraced the idea of implementing an ADA Accessible Beach Program, including an accessible outdoor fitness circuit 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 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 adopted Resolution No. 2015-29150, approving Option A, which covers a foot print of 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 concept of expanding the parking lot, increasing the standard parking spaces to 103 plus the Proposed 17 ADA spaces, for a total of 120 parking spaces; by demolishing the existing restrooms, and requiring the Foundation to construct public restrooms on the 1st 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, all 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, 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)(1) of the City's Charter.

On October 5, 2015 the Finance and Citywide Projects Commission Committee 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.

On October 21, 2015, the City Commission accepted the recommendation of the FCWPC; waived, by 5/7th vote, the competitive bidding requirement in Section 82-39(a) of the City Code, as being in the best interest of the City; waived, by 5/7th vote, the appraisal requirement in Section 82-39 (b) of the City Code, as being in the best interest of the City; and approved, upon first reading, a draft of the lease agreement in substantial form.

Pursuant to Section 82-38 of the City Code, the City's Planning Department proposed a Planning Analysis, a copy of which is attached hereto as Exhibit "A", was completed and found that the proposed Lease for the construction of a public health and wellness center at the Leased Premises is consistent with the Goals, Objectives, and Policies, and that said use would not have a negative impact upon the surrounding area.

ANALYSIS

The Administration recommends approving the proposed lease, a copy of which is attached hereto and incorporated herein by reference as Exhibit "B".

Attachments

- Exhibit "A" – Planning Analysis Memo
- Exhibit "B": - Proposed Lease

JLM/EC/JR

T:\AGENDA\2015\December\Parks and Recreation\MEMO - Sabrina D Cohen foundation Wellness Center (Second and Final Reading).docx

MIAMI BEACH

PLANNING DEPARTMENT

COMMISSION MEMORANDUM

TO: Jimmy L. Morales, City Manager

FROM: Thomas R. Mooney, AICP
Planning Director



DATE: December 9, 2015

SUBJECT: **Planning Analysis of Proposed Lease Agreement between the City of Miami Beach and Sabrina D. Cohen Foundation, Inc. for a Wellness Center, located at 6475 Collins Avenue.**

BACKGROUND

Section 82-38 of the Code of the City of Miami Beach requires that any proposed sale or lease of City-owned land be analyzed from a planning perspective so that the City Commission and the public are fully apprised of all conditions relating to the proposed sale or lease.

The proposal is to execute a lease agreement between the City of Miami Beach (landlord) and Sabrina D. Cohen Foundation, Inc. (tenant). The proposed lease agreement will allow for the construction of a public health and wellness center, to be located at 6475 Collins Avenue.

ANALYSIS

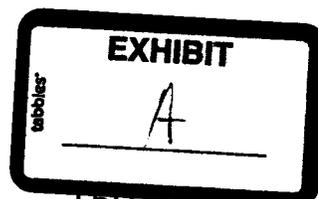
1. **Whether or not the proposed use is in keeping with city goals and objectives and conforms to the city comprehensive plan.**

Consistent – The future land use designation of the site is **Recreation and Open Space including Waterways (ROS)**. The proposed Wellness Center use is consistent with the ROS designation which permits the following:

Recreation and Open Space including Waterways (ROS)

Purpose: to provide development opportunities for existing and new recreation and open space facilities, including waterways. Uses which may be permitted; recreation and open space facilities including waterways.

Intensity Limits: intensity may be limited by such setback, height floor area ratio and/or other restrictions as the City Commission acting in a legislative capacity determines can effectuate the purpose of this lands use category



and otherwise implement complementary policy. However, in no case shall the intensity exceed a floor area ratio on 0.5.

Allison Park consists of four parcels with a total land area of approximately 132,400 square feet. According to the regulations of the Comprehensive Plan, a floor area ratio (FAR) of 0.5 is permitted; which allows for a maximum square footage of 66,200 square feet. The proposed Wellness Center would be 15,400 square feet Wellness Center, which is only 23.3% of the allowable floor area on this site.

- 2. The impact on adjacent property, including the potential positive or negative impacts such as diminution of open space, increased traffic, noise level or enhanced property values, improved development patterns and provision of necessary services. Based on the proposed use of the property, the city shall determine the potential impact of the project on city utilities and other infrastructure needs and the magnitude of costs associated with needed infrastructure improvements. Should it become apparent that further evaluation of traffic impact is needed, the proponent shall be responsible for obtaining a traffic impact analysis from a reputable traffic engineer.**

Consistent – No significant negative impacts are anticipated by the proposal. There will be a slight diminution of open space; however, the use of that area will remain as a recreational use. An initial concurrency review indicates the conversion of 5,100 square feet of open space to a 15,400 square foot Wellness center would generate approximately 34.10 trips during peak hours, so traffic impacts should not be significant; however, this will be further analyzed as part of the certificate of appropriateness and building permit process. The noise produced by the uses inside the building should be contained within structure. The Wellness Center will provide an amenity that will not negatively impact property values. The proposed building will be in the center of Allison Park, so it will be setback away from surrounding residential buildings, further minimizing its impact. Since infrastructure improvements are included in the budget and funding for the Wellness Center under article VI of the lease, the impact will be minimal. In addition, the building will require approval from the Historic Preservation Board, which will further ensure that the building fits with the surrounding context.

- 3. A determination as to whether or not the proposed use is in keeping with a public purpose and community needs, such as expanding the city's revenue base, creating jobs, creating a significant revenue stream, and improving the community's overall quality of life.**

Consistent – This proposed use does keep with the public purpose and community needs. The lease agreement will improve the community's overall quality of life by providing a state of the art public health and wellness center catering primarily to individuals living with physical and cognitive disabilities, seniors, and able-bodied individuals with temporary injuries. The Wellness Center will create jobs necessary for the implementation of activities proposed and jobs related to ancillary uses on

site. The Facility will provide the community preference and discounts to Veterans and Miami Beach Residents for services provided at the Wellness Center.

4. **A determination as to whether or not the development is in keeping with the surrounding neighborhood, will block views or create environmental intrusions, and evaluation of the design and aesthetic considerations of the project.**

Consistent – The surrounding neighborhood will not be negatively affected, as the proposed wellness center will not block view corridors from the adjacent buildings. The new building will be located in the middle of an existing park. The Wellness Center would be 3 stories tall and have a total of 15,400 square feet, designed to fit within the existing sidewalk system on site. The first floor foot print will be 5,100 square feet providing public Restrooms and Showers. The design and aesthetics for the proposed structure will be reviewed by the Historic Preservation Board prior to permit approval. The building will not be located within any environmentally sensitive or dune preservation areas; therefore, no negative environmental impacts are expected. Additionally, all applicable environmental assessments, including any required remediation, will be part of the building permit review process.

5. **The impact on adjacent properties, whether or not there is adequate parking, street and infrastructure needs.**

Consistent – The impact on adjacent properties should be minimal, as the building will be located within a public park. Adequate parking is available to serve the existing park and the new Wellness Center, and a North Beach Trolley stop is located in close proximity. Additionally, the proposal includes an increase in the amount of accessible parking available on-site.

6. **Such other issues as the city manager or his authorized designee, who shall be the city's planning director, may deem appropriate in analysis of the proposed disposition.**

Not applicable – The Planning Department has no other issues it deems appropriate to analyze for this proposal.

CONCLUSION

The proposed use for the site is consistent with the Goals, Objectives, and Policies. The use will generate no negative impacts for the surrounding area. The property would continue to serve the public interest.

TRM/RAM/FAA

T:\AGENDA\2015\December\PLANNING\Sabrina D Cohen foundation Wellness Center - Planning Analysis.docx

CITY OF MIAMI BEACH
a Florida municipal corporation

Lessor

and

SABRINA COHEN WELLNESS CENTER PROJECT, INC.
a Florida not-for-profit corporation

Lessee

LEASE

_____, 2015

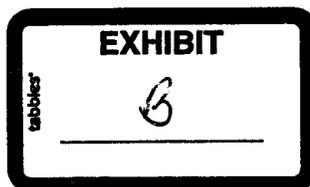


TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
I. DEMISE BY LESSOR, EFFECTIVE DATE AND DEFINITIONS.....	11
Section 1.1 Recitals	
Section 1.2 Demise	
Section 1.3 Effective Date	
Section 1.4 Definitions	
II. DURATION AND TERM	15
Section 2.1 Commencement and Maturity Dates; Possession Period; Pre- Possession Period; Site Inspections; Easements	
III. AMOUNT OF RENT.....	18
Section 3.1 Rent and payment schedule	
IV. USE AND POSSESSION OF WELLNESS CENTER.....	18
Section 4.1 Permitted uses defined	
Section 4.2 Secondary Use as Nutrition Café	
Section 4.3 Use by City	
Section 4.4 Joint Use	
Section 4.5 Amendment to Approved Uses	
V. OPERATION OF THE WELLNESS CENTER	21
Section 5.1 Hours of Operation	
Section 5.2 Management	
Section 5.3 Labor/Personnel/Materials/Equipment/Furnishings	
Section 5.4 Orderly Operation	
Section 5.5 Security	
Section 5.6 Fees for Services offered at the Wellness Center	
Section 5.7 Operational Priority and Discounts	

VI.	REVENUE FROM THE WELLENES CENTER RELATED ACTIVITIES/FINANCIAL RECORDS AND REPORTS.....	23
	Section 6.1 Revenue from Wellness Center Related Activities	
	Section 6.2 Financial Records and Reports	
VII.	BUDGET AND FUNDING FOR THE WELLNESS CENTER	25
VIII.	NET LEASE	26
	Section 8.1 Net lease defined	
IX.	PROVISIONS REGARDING PAYMENT OF TAXES.....	26
	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	
X.	LESSOR'S INTEREST NOT SUBJECT TO MECHANICS' OR MATERIALMEN'S LIENS.....	29
	Section 10.1 Notice to Third-Parties Regarding Liens	
	Section 10.2 Releasing and Discharging Liens	
XI.	LESSOR'S RIGHTS AND REMEDIES	29
	Section 11.1 Landlord-Tenant Relationship	
	Section 11.2 All Rights and Remedies	
	Section 11.3 Rights and Remedies Cumulative	
XII.	INDEMNIFICATION OF LESSOR AGAINST LIABILITY.....	30
	Section 12.1 Indemnification Clause	
	Section 12.2 Indemnification Clause For Lease Challenges	
	Section 12.3 Compliance With All Laws, Etc.	
	Section 12.3.1 Rules On Hazardous Materials	
	Section 12.3.2 Hazardous Materials Defined	

	Section 12.3.3 Further Disclosure of Hazardous Materials	
	Section 12.3.4 Lessor's Right to Inspect	
	Section 12.3.5 Default	
	Section 12.3.6 Lessee Receives Property "As Is"	
XIII.	FIRE AND WINDSTORM, ETC. INSURANCE PROVISIONS.....	33
	Section 13.1 Property All Risk Coverage Policies	
	Section 13.2 Worker's Compensation	
	Section 13.3 Automobile Insurance	
	Section 13.4 Property Insurance	
	Section 13.5 Additional Insured	
	Section 13.6 Waiver of Subrogation	
	Section 13.7 Acceptability of Insurers	
	Section 13.8 Verification of Coverage	
	Section 13.9 Special Risks or Circumstances	
	Section 13.10 Use of Insurance Proceeds	
	Section 13.11 Financing of Premiums	
	Section 13.12 Default after Casualty	
	Section 13.13 Excess Insurance Proceeds	
	Section 13.14 Construction Insurance Requirements	
XIV.	LESSEE'S DUTY TO PAY INSURANCE PREMIUMS	39
	Section 14.1 Obligation and Proof of Payment	
	Section 14.2 Lessor's Option to Pay	
XV.	ASSIGNMENT	39
	Section 15.1 Right and Conditions of Assignments	
	Section 15.2 Notice and Approval	
	Section 15.3 Operational Subcontracts	
XVI.	CONDEMNATION CLAUSE.....	41
	Section 16.1 Division of Condemnation Proceeds	

Section 16.2	Lessee's Improvements	
Section 16.3	Taking Rendering Project Unsuitable for Permitted Uses.....	42
XVII.	ADDITIONAL IMPROVEMENTS.....	42
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	Pre-construction site work	
Section 17.5	Review of Preliminary Plans and Specifications	
Section 17.6	Phasing for Review of Preliminary Plans and Specifications	
Section 17.7	Design Review Board Approval	
Section 17.8	Public Facilities and Concurrency	
Section 17.9	Construction Plans and Specifications	
Section 17.10	Diligence in Construction	
Section 17.11	Conditions Precedent to Construction	
Section 17.12	Lessor's Cooperation in Obtaining Approvals	
Section 17.13	Lessee's Right to Terminate	
Section 17.14	Commencement and Completion of Construction of Proposed Improvements.	
Section 17.15	Unavoidable Delays	
Section 17.16	Completion of Construction	
Section 17.17	Licensed Architects and Engineers	
Section 17.18	Construction Cost Certification	
Section 17.19	Conditions Precedent to Commencement of Operations	
XVIII.	COVENANTS RUNNING WITH THE LAND CONCERNING THE USE OF THE LEASED PREMISES.....	50
Section 18.1	Restrictions:	
	(a) Lessee Remains a Not-For-Profit Corporation	
	(b) Public Health and Wellness Center	
	(c) Open to Public;	
	(d) No Discrimination	

- (e) Lessee's Costs
- (f) Security
- (g) Personnel
- (h) Insurance obligation
- (i) Signs subject to approval by Lessor and pursuant to City Code

Section 18.2 Violation of Restriction is Event of Default

XIX. DEFAULT CLAUSE..... 51

- 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 53

- Section 20.1 Lessee's Covenant Regarding Maintenance and Repair
- Section 20.2 Lessee's Covenant Regarding

XXI. DEMOLITION CLAUSE..... 54

- 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..... 55

- 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. CITY'S OBLIGATIONS RELATING TO THE PUBLIC COMPONENTS 55

- Section 23.1 Parking Lot Expansion Project.

Section 23.2 Public Restroom Facilities.

Section 23.3 Public Shower Facilities.

XXIV. COVENANT OF QUIET ENJOYMENT	56
Section 2.1 Lessee’s Right to Quiet Enjoyment	
XXV. LESSOR’S RIGHT OF ENTRY	56
Section 25.1 Lessor’s Right of Entry	
XXVI. NO REPRESENTATIONS BY LESSOR	57
Section 26.1 Lessor’s Absence of Warranties Regarding Property and Lessee’s Acceptance of Premises	
XXVII. LESSEE TO COMPLY WITH ALL LAWS	58
Section 27.1 Lessee’s Compliance With All Laws	
Section 27.2 Lessee’s Obligation to Pay Fines, Etc.	
Section 27.3 No Discrimination Clause	
XXVIII. SURRENDER OF THE PREMISES	58
Section 28.1 Surrender of the Premises	
Section 28.2 No Subleases, Etc.	
XXIX. FORCE MAJEURE.....	59
Section 29.1 Force Majeure	
XXX. SIGNAGE/NAMING RIGHTS	59
XXXI. MISCELLANEOUS PROVISIONS	60
Section 31.1 Grace Periods Run Concurrently	
Section 31.2 Arrearages	
Section 31.3 Landlord-Tenant Relationship Regarding Collections	
Section 31.4 Lessor’s Remedies Not Otherwise Provided	

- Section 31.5 Receivers**
- Section 31.6 Cooperation**
- Section 31.7 Captions**
- Section 31.8 Index**
- Section 31.9 Laws of Florida Apply**
- Section 31.10 Covenants Running With the Land**
- Section 31.11 Time Is of The Essence**
- Section 31.12 Notice**
- Section 31.13 Attorneys' Fees**
- Section 31.14 Venue**
- Section 31.15 Lessor's Limitation on Liability**
- Section 31.16 Mediation**
- Section 31.17 Recording in the Public Records**

LEASE

THIS INDENTURE (the "Lease"), made and entered into at Miami Beach, Miami-Dade County, Florida, this ____ day of _____, 2015, by and between:

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

And

**SABRINA COHEN WELLNESS CENTER PROJECT, 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, 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 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-designing the existing parking lot to provide seventeen (17) additional ADA accessible parking spaces; and

WHEREAS, at the July 8, 2015 City Commission meeting, 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 one of the first cities 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, or able bodied individuals with a temporary disability, will be able to use the facility to improve their quality of life, while providing disabled Miami Beach Residents, disabled Military Servicemembers, and disabled seniors with a discounted price for the use of said services; and

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 a conceptual plan for the Wellness Center (the “Conceptual Plan”), 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 1.2 (the “Leased Premises”), to develop, design, construct, finance, equip, operate, and maintain a Wellness Center, including the design and construction of public restrooms; and 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, 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, 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 October 21, 2015, the City Commission adopted Resolution No. 2015-_____, accepting the recommendation of the City's Finance and Citywide Projects Commission Committee, and approving, on first reading, a draft ninety-nine year lease ("Ground Lease"), in substantial form, between the City and the Foundation for the use of the Leased Premises; waiving, by a 5/7th 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; and further waiving, by a 5/7th 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; and

WHEREAS, on December 9, 2015, 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, EFFECTIVE DATE AND DEFINITIONS

1.1 The recitals set forth above are true and correct and are incorporated herein by reference.

1.2 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 property, situate, lying and being in Miami-Dade County, Florida, together with all buildings and other improvements located thereon, as more particularly described in the attached Exhibit "C":

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) Planning Director analysis and City Commission determination of waivers of public bidding and appraisals under Miami Beach Code Sections 82-39(a) & 82-39(b)); 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; and the adoption of a resolution by the City Commission accepting the certification of the official results of the March 15, 2016 election with respect to the Referendum. If the Lease is not approved by voters during the March 15, 2016 referendum and the City Commission does not accept the certification of the official results of the March 15, 2015 election, the Lease shall be void ab initio, without the need for further action by any of the parties, and the parties shall have no obligations or liabilities of any kind or nature whatsoever hereunder.

This property is hereinafter referred to as the "Leased Premises". The Leased Premises and Wellness Center shall be collectively referred to herein as the "Project".

1.3 Effective Date. If the Referendum is successful and all requirements of the City Code and applicable law are satisfied, this Lease shall be effective upon the City Commission's adoption of a resolution accepting the certification of the official results of the March 15, 2016 election with respect to the Referendum ("Effective Date").

1.4 Defined Terms. As used herein the term:

"City" shall mean the City of Miami Beach, a Florida municipal corporation, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida 33139. In all respects hereunder, City's obligations and performance is pursuant to City's position as the owner of the Leased Premises acting in its proprietary capacity. In the event City exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and the enforcement of any rules, regulations, laws and ordinances (including through the exercise of the City's building, fire, code enforcement, police department or otherwise) shall be deemed to have occurred pursuant to City's regulatory authority as a governmental body and shall not be attributable in any manner to City as a party to this Lease or in any way be deemed in conflict with, or a default under, the City's obligations hereunder.

"City Code" the Miami Beach City Charter and Code of Ordinances.

"City Commission" shall mean the governing and legislative body of the City.

"City Delays" shall mean the number of days in which the City performs any obligation under Section 17 hereof in excess of the number of days set forth for such performance therein.

"City Manager" shall mean the Chief Administrative Officer of the City. The City Manager shall be construed to include any duly authorized representatives designated in writing with respect to any specific matter(s) concerning this Lease (exclusive of those authorizations reserved to the City Commission or regulatory or administrative bodies having jurisdiction over any matter(s) related to this Lease).

"Commence Construction" or "Commencement of Construction" shall have the meaning as set forth in Section 17.15.

"Complete Construction" or "Completion of Construction" means the date Lessee has completed the Wellness Center substantially in accordance with the requirements of the Approved Plans and all conditions of permits and regulatory agencies have been satisfied, all Governmental Authorities have issued a Certificate of Occupancy, the Wellness Center has been accepted by the City and is ready for occupancy, utilization and continuous operation for the uses and purposes intended by this Lease, without material interference from incomplete or improperly completed Work, and substantially all of the furniture, fixtures and equipment ("FF&E") required for the opening date has been purchased, delivered to and installed in the Wellness Center.

"Disabled" as referred to herein shall refer to an individual with a temporary or permanent physical disability, including, but not limited to: (1) a physiological disorder or condition, disfigurement, or anatomical loss that affects one or more bodily functions; (2) an individual with a physical impairment that substantially limits one or more major life activities such as caring for one's self, performing manual tasks, walking, or working; (3) a mental disability that prevents the person from performing day-to-day physical activities; or (4) a medical condition which may prevent the person from performing day-to-day physical activities including, without limitation, Cerebral Palsy, Developmental Disabilities, Down Syndrome, Lupus, Multiple Sclerosis, Parkinson's Disease, Scoliosis, or Stroke.

"Foreign Instrumentality" means a foreign (i.e., non-United States of America) government or instrumentality thereof or a Person controlled thereby. A Person shall be deemed to be "controlled by" a foreign government or instrumentality if such government or instrumentality,

directly or indirectly, directs or causes the direction of the management and policies of such Person.

"Lease Year" means a year, other than the first and last year of the Term, consisting of twelve (12) consecutive calendar months. The first Lease Year during the term of this Lease shall commence on the Possession Date and end on December 31st of the first full year. The second and following Lease Years shall commence on the 1st day of January each calendar year and end on December 31st of such year, except that the last year shall commence on the 1st day of January and end on the Maturity Date (as defined in Section 2.1).

"Miami Beach Resident" means any person who has resided in the City of Miami Beach for longer than six (6) consecutive months. Proof of residency may be established by presenting two of the following documents: a driver's license, voter's registration, automobile registration, a recorded deed, a lease for place of residence, or a utility bill. Lessee may require annual recertification for Miami Beach Residents.

"Military Servicemember" means any person who is on active duty in, or a veteran of the United States Armed Forces. A veteran of the United States Armed Forces shall mean any person who served honorably on active duty in the armed forces of the United States. The Foundation will accept a Form DD Form 214, Certificate of Release or Discharge from Active Duty (discharge papers marked "General and Under Honorable Conditions" will be deemed sufficient) to substantiate that the person is a military veteran.

"Outside Construction Commencement Date" means two (2) years from the Effective Date, by which date Commencement of Construction must take place, as such date may be reasonably extended for a Force Majeure Event and/or City Delays, if any.

"Outside Completion Date" means two (2) years from obtaining full building permit, by which date Completion of Construction shall have occurred, as such date may be reasonably extended by (i) the number of days by which the Outside Construction Commencement Date was extended, and thereafter for (ii) a Force Majeure Event and/or City Delays.

"Outside Opening Date" means two (2) years from obtaining full building permit, the date by which the opening date must have occurred, as such date may be reasonably extended by (i) the number of days by which the Outside Construction Commencement Date was extended, and thereafter for (ii) a Force Majeure Event in accordance with this Lease, or (iii) City Delays.

"Outside Possession Date" means May 1, 2018 or the Outside Construction Commencement Date, whichever occurs first, by which date the Possession Conditions must be satisfied, as such date may be reasonably extended for (i) a Force Majeure Event or (ii) City Delays.

"Parties" means City and Lessee, and "Party" is a reference to either City or Lessee, as the context may indicate or require.

"Senior" means a person who is 62 years of age or older.

"Sublease" means any lease, sublease, license or other agreement by which Lessee demises, leases, or licenses the use and occupancy by another Person of a portion or all of the Wellness Center.

"Subtenant" means any person using and occupying or intending to use and occupy the Wellness Center, or any part thereof, pursuant to a Sublease.

"Transfer" means any sale, assignment or conveyance or any other transaction or series of transactions in the nature of a sale, assignment or conveyance of:

- (a) the Wellness Center or any part thereof;
- (b) any legal or beneficial interest in the Wellness Center, or any part thereof;
- (c) any direct or indirect legal or beneficial interest in Lessee (including the syndication of tax benefits); or

any series of such Transfers that have the cumulative effect of a sale, transfer or conveyance of any of the foregoing (a), (b), or (c).

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 Possession Date, as such term is defined in Section 2.1(a) hereof, with the last day of the lease term being the Maturity Date ("Term").

(a) **Possession Date; Conditions Precedent to Possession**. The Parties recognize that, as of the Effective Date, there remain various items and matters to be satisfied, obtained and approved in order that the Wellness Center may proceed as intended by the Parties. The date that the City delivers possession of the Leased Property to Lessee according to this Section 2.1(a), as designated by the City to Lessee in writing, is referred to herein as, the "**Possession Date**." The City shall not be obligated to deliver possession of the Leased Property and Lessee's rights as tenant hereunder shall not become effective until each of the events described in this Section 2.1(a) irrevocably shall have occurred, at which time, the City shall deliver possession of the Leased Property to Lessee, Lessee shall take possession thereof and the lease provisions of this Lease shall become effective. Until that time, this Lease shall not be in effect or enforceable. The conditions precedent to delivery of possession (collectively, the "**Possession Conditions**") are as follows:

- (i) There exists no uncured Event of Default;

(ii) Lessee shall have entered into, and delivered to the City, a duly executed copy of, the General Construction Contract (and all then existing change orders thereto), in form and substance and with a General Contractor approved pursuant to Subsection 17.3 by the City Manager reflecting the guaranteed maximum price for completion of the Proposed Improvements (as defined in Section 17.1);

(iii) Lessee shall have delivered to City written evidence reasonably satisfactory to the City of the existence and availability of liquid assets to fund the development, design, construction, finance, equipment and operation of the Wellness Center;

(iv) Lessee shall have provided to City, and City Manager shall have approved in its sole discretion, any changes to the budgeted improvement costs, provided that City Manager shall not withhold its approval so long as Lessee has obtained and delivered to the City written evidence of the existence and availability of liquid assets to fund the Wellness Center;

(v) Lessee shall have obtained, and shall have delivered to City, a copy of, all governmental approvals necessary for the Commencement of Construction and necessary for construction of all vertical elements of the Wellness Center;

(vi) Lessee shall have delivered to City, and City Manager shall have approved, the schedule of performance for the Wellness Center (City agrees that it shall not withhold approval thereof so long as the same reflects Completion of Construction by the Outside Completion Date and Lessee has provided reasonable evidence that such schedule is reasonable);

(vii) Lessee shall have presented evidence reasonably acceptable to the City that all required insurance coverages are in place; and

(b) **Pre-Possession Period**. From and after the Effective Date, the Parties shall each use their respective diligent and commercially reasonable efforts to achieve the Possession Date timely.

(c) **Leased Premises Site Inspections**. Commencing on the Effective Date, and thereafter until this Lease is terminated or the Possession Date occurs, the City shall

permit Lessee commercially reasonably access to the Leased Premises site to conduct at Lessee's sole cost and expense, physical inspections, tests and studies of the Site and to the extent necessary to carry out the provisions of this Lease; provided, however, that such access shall not materially interfere with any ongoing use and operations at the Park or the City's construction activity relating to the adjoining accessible park. Lessee, at all times and at its sole cost and expense, shall maintain or shall cause its general contractor or other contractors in privity with Lessee to maintain comprehensive general liability insurance as required in Article 13. Lessee shall restore any damage to the Leased Premises site caused by any such inspections, tests or studies, including any damage in connection with the discovery, exposure or release of hazardous substances or materials in, on or about the Leased Premises site that are not introduced to the Leased Premises site by Lessee, its agents, representatives, contractors, invitees or employees.

(d) **Indemnification.** Whether or not the Possession Date occurs, Lessee shall indemnify, defend and hold City and its respective officers, employees, agents, representatives, consultants, counsel and contractors (of any tier) harmless from and against all claims, actions, suits, charges, complaints, orders, liability, damages, loss, costs and expenses (including any attorneys' fees and costs of litigation) related to, arising from or in connection with the acts or omissions of Lessee, its agents, representatives, contractors or employees, including injury or death to persons or damage to their property, while exercising Lessee's right to access the Leased Premises site and performance of such inspections, tests or studies pursuant hereto, except to the extent resulting from the sole negligence or willful misconduct of City or its officers, employees, agents, representatives, consultants, counsel and contractors. The indemnification obligations of Lessee set forth in this Subsection 2.1(d) shall expressly survive the expiration or termination of this Lease and notwithstanding any provision of this Lease to the contrary, City shall have all rights and remedies available at law or in equity in the enforcement of such indemnification obligations of Lessee or arising from Lessee's failure to perform such indemnification obligations.

(e) **Failure to Satisfy Conditions.** Notwithstanding anything contained in this Lease to the contrary, if: (i) any of the Possession Conditions have not occurred by the Outside Possession Date; (ii) Lessee does not commence construction by the Outside Construction Commencement Date; (iii) Lessee does not Complete Construction by the Outside Completion Date; or (iv) the opening date does not occur by the Outside Opening

Date, then Lessee hereby waives any further right to cure, and the City shall be entitled to immediately terminate this Lease upon written notice to the Lessee; provided that Lessee shall also have the right to immediately terminate this Lease upon written notice to the City on or before the Outside Possession Date and in any such event, the Parties shall thereafter be released from all obligations set forth herein, except any such obligations that expressly survive termination.

(f) **Easements**. The parties agree that this Lease shall be subject to and contingent upon the execution of certain easements, including any applicable access easements. The Parties shall also enter into any easements which may be required by Lessee to connect utilities or in connection with any cantilevered elements, as shown in the Approved Plans. The Parties shall thereafter cause the Easements to be promptly recorded among the public records of Miami-Dade County, Florida. The Easements shall be held in escrow by the City and released therefrom and recorded among the public records of Miami-Dade County, Florida prior to the Commencement of Construction.

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 January of every year during the entire term of the Lease.

ARTICLE IV - USE AND POSSESSION OF WELLNESS CENTER

4.1 The Wellness Center shall be used by the Lessee solely and exclusively as a state of the art public health and wellness center catering exclusively to individuals living with physical and cognitive disabilities, and able bodied individuals with a temporary disability. 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 (C) below. Additionally, the Wellness Center 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) Adaptive Fitness Program;
- (B) Adaptive Gym, including training;
- (C) Healing Room for yoga, meditation, and/or art therapy;
- (D) Physical Therapy;
- (E) Adaptive Aqua-Therapy services;
- (F) Research & Product Testing Room (subject to funding availability);
- (G) Office of the Foundation;
- (H) Conference Room; and
- (I) Library;

4.2 Secondary (ancillary) Use. Subject to approval by the City in its regulatory capacity in accordance with the City's Land Development Regulations, Lessee shall also be authorized to use a portion of the Wellness Center, not to exceed 1,200 square feet, as a Nutrition Café, offering healthy juices and food options ("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 "D".

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 or in connection with this Lease. Lessee shall ensure that all vendors operating in the Wellness Center 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.

4.3 Use by the City. Lessee and the City have agreed that the Proposed Improvements will provide a Wellness Center which has facilities which may also be used by the City. Accordingly, the City shall have the right to use the Wellness Center, or any part thereof, subject to availability, for City-sponsored public meetings, training, and classes, as may be reasonably deemed necessary and appropriate by the City Manager. Any City use of the Wellness Center shall be without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the City (including without limitation, reasonable out of pocket expenses incurred by Lessee in order to open and make the Wellness Center available in connection with such City use). Lessee agrees to coordinate and cooperate with the City for public use of the Premises by the City, which coordination and cooperation shall not be unreasonably withheld or delayed, and provided that such City uses(s) does not materially interfere with the operations of the Wellness Center by the Lessee. Such public use of the Wellness Center by the City shall be conducted pursuant to policies and procedures,

which shall be established and mutually agreed upon by the Lessee and the City.

4.4 Joint Use. The parties agree and acknowledge that, in furtherance of, and consistent with the goals and priorities and approved uses, the Lessee and the City may agree to mutually coordinate, sponsor and provide certain additional recreation and leisure activities and/or programs on the Wellness Center. The Lessee and the City shall mutually agree upon and approve any such activities and/or programs in advance of their implementation; the programs and/or activities must be consistent with the operation of the Lessee; and may not materially interfere with the operations of the Lessee. Subject to the preceding criteria, the Lessee and the City hereby agree that each party will be responsible for its respective costs associated with the provision of said activities and/or programs.

4.5 4.5 Amendment to Approved Uses. Any change to the approved uses set forth in Sections 4.1 and 4.2 herein, which are consistent with the operation of the Lessee, shall be approved by the City Manager before implementation, and shall be memorialized in writing through an amendment to the Lease. Any change to the approved uses, which are determined by the City Manager, at his sole and reasonable discretion, to not be consistent with the approved uses, shall be approved by the Mayor and City Commission,

ARTICLE V. OPERATION OF THE WELLNESS CENTER

5.1 Hours of Operation. The Lessor and Lessee herein agree that normal hours of operation for the Wellness Center shall not exceed the timeline between 8:00 AM to 8:00 PM, Monday through Sundays ("Permitted Hours of Operation"), but at all times shall maintain regular operating hours, with a minimum of five days per week and a minimum of forty hours per week ("Minimum Hours of Operation"), not to exceed the Permitted Hours of Operation. Consistent with these parameters, upon opening for business, Lessee and Lessor shall mutually agree upon the initial hours of operation and memorialize them in writing. Any further change in the hours of operation 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.

5.2 Management. Lessee must manage and operate the Wellness Center activities, services and programs, for the purpose of coordinating, implementing and

supervising all approved uses; supervise and direct all Wellness Center employees, officers, agents, contractors, invitees, visitors, and guests on the Wellness Center; and develop and implement programs and activities which support and promote the goals and priorities and approved uses set forth in Subsection 4.1 and 4.2.

5.3 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 Wellness Center as a full service comprehensive health and wellness center, in accordance with the goals and priorities and approved uses set forth in Subsection 4.1 and 4.2.

5.4 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 Wellness Center. There shall be no living quarters nor shall anyone be permitted to live within the Wellness Center. Lessee shall make the Wellness Center available for inspection by the City Manager or his authorized representatives during hours of operation.

5.5 Security. Lessee shall be responsible for and provide reasonable security measures as may be required to protect and secure the Wellness Center 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.

5.6 Fees for Services offered at the Wellness Center. The cost of the services offered at the Wellness Center (including the Nutrition Café) shall be subject to the prior written consent of the City Manager, which consent shall not be unreasonably withheld.

5.7 Operational Priority and Discounts. To the extent permitted by applicable laws and subject to demand, disabled Miami Beach Residents, disabled Military Servicemembers, and disabled seniors shall receive priority for all programs and services ("Priority Categories"), with disabled Miami Beach Residents receiving the first priority, followed by disabled Military Servicemembers, and thereafter followed by disabled seniors ("Priority categories' Hierarchy).

a. Promotion. In order to promote the operational priority, Lessor and Lessee shall promote the opening of the Wellness Center; however, all promotional

materials and advertisements shall be approved, in writing, by the City Manager, prior to publication. Lessee shall provide an exclusive initial registration period of thirty days ("Initial Registration Period") for the Priority Categories, based upon the Priority Categories' Hierarchy. Thereafter, when applicable, and subject to the established Priority Categories' Hierarchy, the registration period for Priority Categories shall take place before registering others. The Priority Categories shall not be denied services or placed on a waitlist unless there is no availability and the individual has attempted to register after any advertised time period.

b. Discounts. Additionally, Lessee shall provide a 15% discount to the individuals in the Priority Categories in connection with the services offered at the Wellness Center.

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

6.1 Revenue from the Wellness Center 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 (such revenue generating uses may include, from time to time, special events on the Wellness Center, fundraising, specialty sales, classes, lectures and providing Food and Beverages). The Lessee herein acknowledges that any and all revenue generating uses conducted on the Wellness Center must be directly related to, consistent with, or used to help fund the Lessee's management, operation, and maintenance of the Wellness Center, and, in the event that annual revenue(s) pertaining to the Wellness Center exceed expenses during a particular budget year, 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 the other charitable, public health, wellness, educational, research or public service programming of the Lessee within the City of Miami Beach, Florida for the benefit of Miami Beach Residents living with a temporary or permanent disability, in the current year and/or future years. Any revenue generating uses conducted on the Wellness Center that are not consistent with the approved uses in Subsection 4.1 or 4.2, or consistent with this Section 6.1, shall first be approved, in writing, by the City Manager (prior to commencement of same). For purposes

herein, “revenues” shall also be deemed to include public/private grant funding and unrestricted donations and contributions received by the Foundation specifically ear-marked toward the operation of the Wellness Center. No portion of the net earnings resulting from the operation of the Wellness Center shall inure to the benefit of any private individual.

6.2 Financial Records and Reports. Lessee shall maintain at the Wellness Center, 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 at the Wellness Center relating specifically to the operations of the Wellness Center, 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 1st – May 31st), 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 Wellness Center for the prior year (“Programmatic Plan Report”), along with audited financial statements. Said statements shall be certified as true, accurate and complete by the Lessee and by its certified public accountant.

6.3 Additionally, in the annual Programmatic Plan Report, Lessee shall include the number of persons participating in the programs and services provided at the Wellness Center, including a breakdown of the disabled Miami Beach Residents, disabled Military Veterans and a third category for visitors with a disability who received services at the Wellness Center for the given year.

ARTICLE VII. BUDGET AND FUNDING FOR THE WELLNESS CENTER

7.1 No Liability to City. The parties acknowledge that the City shall have no responsibility to fund the construction of the Proposed Improvements or the operation, maintenance, or payment of capital improvement costs of the Wellness Center. Throughout the Term of this Lease, the Lessee shall be solely responsible for obtaining public/private grant funding and individual/corporate contributions, to fund Proposed Improvements and to

fund the continued management, operation and maintenance of the Wellness Center, including capital renovations and improvements, as may be approved by the City. The Lessee's lack of funds to construct the Proposed Improvements, to operate, to maintain, or to fund any necessary capital improvement costs shall constitute a default under this Lease. Further, the parties acknowledge, that by the City, in its proprietary capacity, reviewing financial or other materials of the Lessee or providing other approvals contemplated under this Lease, the City does not undertake responsibility or liability whatsoever for such matters, including operational matters, health care compliance matters, budgets, and such approvals shall not obligate the City in any way or relieve the Lessee of its responsibility for the actions or omissions of the Lessee or its agents or representatives.

7.2 Throughout the Term of this Lease, the Lessee shall prepare and present, by May 15th of each year, a proposed, detailed line item annual operating budget for the Wellness Center for the period from the next June 1st to May 30th, 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;
- 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; and
- G. Projected capital improvement costs.

7.3 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 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 Wellness Center, 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 Wellness Center 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 Possession 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 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 Notwithstanding the foregoing, Lessor acknowledges that Lessee is a 501(c)(3) non-profit organization, and therefore may seek exemption from any and all applicable taxes levied or assessed by any and all taxing authorities. 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 Section 9.2 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 Section 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 Section 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 Section 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 Section 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 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 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.

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. The Lessor's protections stipulated in this Section 12.1 shall not extend to or cover any losses or damages resulting out of the sole negligence or willful misconduct of the Lessor or its officers, agents, employees and instrumentalities or any liability of Lessor to third parties.

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, including Lessee's officers, employees, agents, and contractors, 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 this Lease and Lessee's use of the Wellness Center and with the Covenants Running with the Land, 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.

12.3.1 Lessee shall (i) not cause or permit any Hazardous Material to be brought upon, kept or used in or about the 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 Project. If Lessee breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Project results in contamination of the 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 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 Project. Notwithstanding the foregoing, "Hazardous Materials" shall not include chemicals and materials customarily used for property maintenance, which can include, but not limited to, cleaning supplies, pesticides for landscape maintenance and chemicals for aqua therapy pool maintenance, so long as used as intended.

12.3.3 At the Possession Date , 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 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 Project 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 Project 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 Section 12 shall be a material default enabling Lessor to exercise any of the remedies set forth in Article XIX of this Lease ("Default Clause).

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 upon completion of construction and issuance of the certificate of occupancy for the Project:

13.1 Notwithstanding the foregoing, as of the Possession Date, Lessee shall purchase and maintain Commercial General Liability Insurance, on an occurrence form, in the amount of \$1,000,000 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.

13.5 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.

13.8 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.

13.9 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.

13.10 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, or, in the alternative, if the parties agree to execute a Work Letter and Escrow Agreement, the insurance money shall be deposited into Lessee's attorney's escrow account, subject to disbursements pursuant to the agreed upon terms of the Work Letter and Escrow Agreement. As such, said insurance money 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, or from the Lessee's attorney's escrow account, pursuant to the Work Letter and Escrow Agreement, as the case may be, based upon 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 general contractor and construction agreement shall be subject to the prior written approval by the City Manager.

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, or into the Lessee's attorney's escrow account, as the case may be, 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.

13.11 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.

13.12 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 Project herein described, and without prejudice to their rights to the benefit of such insurance money as payment of such rental and other charges.

13.13 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 or Lessee's attorney's escrow account, as the case may be, 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. Notwithstanding the foregoing, in the event the Lessee fails for any reason to: (1) submit a complete building permit application within six (6) months from the date of the damage or destruction occasioned by fire, windstorm or other cause for which insurance money shall be payable; or (2) commence the reconstruction or repair of such building or buildings within twelve (12) months after the submission of the building permit application; or (3) provide, within twelve (12) months from the date of the damage or destruction, and in the manner required by Section 13.10 of this Article XIII, a sufficient sum of money to prosecute the reconstruction and repair work with such dispatch as may be necessary to complete the same within twenty-four (24) 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 Subsection 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, or in Lessee's attorney's escrow 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.

13.14 Construction Insurance Requirements. Any improvements to the Wellness Center shall be approved in writing by Lessor, in advance of commencement of any work. Any contractor approved pursuant to Section 17.3, that the Lessee hires to conduct improvements

to the Wellness Center, (i) shall be a contractor licensed in the State of Florida and (ii) shall maintain the following insurance coverages, subject to the same requirements as in the preceding Section 13.5 through Section 13.9, in connection with the approved work:

13.14.1 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.

13.14.2 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).

13.14.3 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.

13.14.4 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.

13.14.5 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

13.14.6 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.

13.14.7 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 13.14.5, 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 agreement, management agreement, or license agreement with respect to the Wellness Center, 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 transfer of any direct or indirect legal or beneficial interest in Lessee or any transfer conveying all or any portion of Lessee's rights and interest in and to the Lease (an "Assignment"), any such Assignment shall require the prior written consent of the Lessor, at Lessor's sole discretion, which consent, if given at all, at a minimum shall be predicated upon: (i) the transferee or assignee assuming all obligations under the Lease, including all Covenants Running with the Land contained therein; (ii) the transferee or assignee curing any defaults under the Lease; (iii) the transferee or assignee not being a Foreign Instrumentality; (iv) the transferee or assignee having sufficient liquid assets to operate and maintain the Wellness Center; and (v) the transferee or assignee executing all documents required by the Lessor to effectuate the transfer including, without limitation, an assumption agreement, duly executed by the Assignee of this Lease and in recordable form. 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 and any other information which Lessor, in its sole discretion, may require to evaluate the Assignment, advise the Lessee in writing as to whether or not 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 Operational Subcontracts. Lessee shall not enter into independent contractor's agreements with subcontractors under the supervision of Lessee, in connection with all or any portion of any work and/or service which may be performed relating to any of the approved uses in Section 4.1 or 4.2 (collectively, "Operational Subcontracts") without the prior written consent of the City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Any attempt to enter into such Operational Subcontracts (unless approved) shall be void. At City Manager's request, Lessee shall provide supporting documentation evidencing the fair market value for such transaction or arrangement. Additionally, Lessee shall ensure that any subcontractor will comply with all insurance requirements with respect to payment or reimbursement for health care-related services.

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 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 Project 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 Project 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 - PROPOSED IMPROVEMENTS

17.1 This Lease is made with the understanding and agreement that Lessee will design, develop and construct the proposed improvements, at its sole cost and expense, valued at no less than \$3,500,000 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:

(A) a three (3) story circular building, on the footprint of the Leased Premises, having no more than 19,000 square feet of floor area, and a height not to exceed fifty (50) feet from base flood elevation, which shall be consistent with the conceptual plan presented by Lessee to Lessor, attached as Exhibit "B" to this Lease (the "Concept Plan");

(B) the construction of public restrooms ("Public Restroom Facilities"), comparable in size and constructed to the specifications (equipment, materials and standards) of the restrooms currently in the Park, which will be demolished in connection with the related Parking Lot Expansion Project, The Public Restroom Facilities may be constructed, at the discretion of the Lessee, as part of the first story of the Project, or, in the alternative, at a separate location at the Park, which separate location shall be determined by the City Manager in his or her sole discretion. Upon completion of the construction of the Public Restroom Facilities, as evidence from the issuance of a Certificate of Occupancy from the City, in its regulatory authority, and upon acceptance by the City, shall become the sole property of the City and the City shall be responsible

for its operation, maintenance and repair, as more particularly set forth in Section 23.2; (C) the design and construction of public showers ("Public Shower Facilities"), comparable in size and constructed to the specifications (equipment, materials and standards) of the public showers currently in the Park, which will be demolished in connection with the Proposed Improvements, at a different location within the Park, which location will be subject to the written approval of the City Manager, at his sole discretion. Upon completion of the construction of the Public Shower Facilities, as evidence from the issuance of a Certificate of Occupancy from the City, in its regulatory authority, and upon acceptance by the City, said Public Shower Facilities shall become the sole property of the City and the City shall be responsible for its operation, maintenance and repair, as more particularly set forth in Section 23.3; and (D) any site work, such as grading, and site improvements, such as landscaping, which may be required by the City, in its regulatory capacity, including any City departments or City boards, in connection with the issuance of the full building permit and/or the construction and development of the Project.

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 13.14, plus any additional insurance coverages which the City may reasonably require from the Contractor, subcontractor and/or architect. Following Lessee securing full building permit, and prior to commencement of construction, Lessee shall execute a Work Letter and Escrow Agreement, including a cash deposit, in the amount of the cost of the Proposed Improvements (as set forth in the construction contract between Lessee and the approved contractor), which will be deposited into Lessee's attorney's escrow account to guarantee the diligent and timely prosecution of the construction.

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"). Lessee shall submit the Preliminary Plans and Specifications for review by the City, in its regulatory capacity, at the 30%, 60% and 90% of plan completion stages.

17.6 Lessee shall submit its Preliminary Plans and Specifications to Lessor's City Manager for approval within one year of the Effective 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 ten (10) 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 Effective 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 one year from the Effective 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 Effective 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 Lessor, 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 six months from the date on which the HPB approves the Proposed Improvements, but no later than two years from the Effective 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 ten (10) 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 Section 17.10, 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 provided 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 two years from the Effective 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.

17.13 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.

17.14 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 two years from the Effective 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 "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 personality) 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 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 reasonable discretion, substantiating that the Wellness Center has sufficient funds to operate the Project 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 \$10,000.00 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, as reasonably determined by the City Manager, subject to increases which may be necessary, based upon needed repairs or capital

improvement projects.

**ARTICLE XVIII-COVENANTS RUNNING WITH THE LAND 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 of the State of Florida and shall maintain its exemption from taxation under 501(c)(3) of the Internal Revenue Code;
- (b) That the Lessee shall continuously operate the Project as a public health and wellness center serving members of the general public who have a physical disability;
- (c) That the Lessee shall affirmatively make the Leased Premises, its facilities, and the Lessee's programs and activities open to persons with a physical disability of all races, colors, creeds or national origins, and take reasonable steps to publicize the availability thereof;
- (d) 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;
- (e) 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 City Commission, 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;
- (f) That all fire and extended coverage and flood insurance, maintenance, and other costs for the improvements and the general upkeep of the Project, and all replacements necessary in connection therewith, shall be the sole cost and expense of the Lessee;
- (g) That the Lessee shall provide personnel on the 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.

- (h) That the Lessee shall be obligated to provide, amongst other insurance coverages stipulated in Article XIII, public liability insurance and property damage insurance, at its cost and expense, for the Project during the term of this Lease.
- (i) 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 Section 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 Section 19.3 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 Lessee 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 13.14.

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 not be considered 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 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 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 – CITY’S OBLIGATIONS RELATING TO THE PUBLIC COMPONENTS

23.1 Parking Lot Expansion Project. The City, at its sole discretion, and subject to funding availability and appropriation, may redesign, develop and construct the Parking Lot at the Park (the “Parking Lot Expansion Project”); however, at a minimum, the City shall increase the number of accessible parking spaces at the Park to 17 spaces. The City and Lessee shall cooperate with the other during the development and construction of the Parking Lot Expansion Project and Wellness Center, in an effort to minimize the impact to the public’s use of the existing facilities, including the existing public restrooms, showers, park and beach.

23.2 Public Restroom Facilities. Lessee shall construct, on behalf of the City and as more particularly described in Section 17.1, Public Restroom Facilities. The City shall be responsible for the operation, maintenance and repair of the Public Restroom Facilities, in accordance with the same standards as other City park restroom facilities. The City shall be responsible for all repairs to the Public Restroom Facilities, including, roof, structure, mechanical, plumbing and electrical components, and for any utilities associated with the sole operation of the

Public Restroom Facilities. Notwithstanding the foregoing, if the Public Restroom Facilities are designed and constructed attached to the Wellness Center, Lessee shall be responsible for the cost and expense of maintaining the roof, exterior walls and adjoining structural elements. In such case, the parties agree to cooperate and grant each other access to the Project or Public Restroom Facilities, as applicable, as may be necessary including, without limitation, for any necessary repairs.

23.3 Public Shower Facilities. Lessee shall construct, on behalf of the City and as more particularly described in Section 17.1, Public Shower Facilities. The City shall be responsible for the operation, maintenance and repair of the Public Shower Facilities, in accordance with the same standards as other City park restroom facilities. The City shall be responsible for all repairs, including, roof, if any, structural, mechanical, plumbing and electrical components and for any utilities associated with the operation of the Public Shower Facilities.

ARTICLE XXIV - COVENANT OF QUIET ENJOYMENT

24.1 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 XXV - LESSOR'S RIGHT OF ENTRY

25.1 The Lessor or its agents shall have the right to enter upon the 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 Project; and if the 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 XXVI - NO REPRESENTATIONS BY LESSOR

26.1 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 XXVII - LESSEE TO COMPLY WITH ALL LAWS

27.1 Lessee, and Lessee's officers, employees, agents, and contractors performing any work on the Project, shall at all times comply with all laws, ordinances, regulations and orders of Federal, State, County and municipal authorities pertaining to the Lease, the Project and Lessee's improvements and operations thereon. With respect to the provision or delivery of health care at the Project, Lessee and/or its agents or contractors shall comply with all applicable laws, including the Health Insurance Portability and Accountability Act ("HIPAA") and regulations protecting the confidentiality of patients' records, the Medicare Ethics in Patient Referrals law ("Stark "anti-kickback" law), and all pertinent IRS requirements, including the requirement of "fair market value" for all business transactions with health care providers or others with respect to the Project.

27.2 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.

27.3 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 Project.

ARTICLE XXVIII - SURRENDER OF THE PREMISES

28.1 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 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 XXVIII, 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.

28.2 The Lessee covenants and agrees that it will not enter into any subleases, subtenancies, licenses or concession agreements relating to the Project for a period of time beyond the stated expiration date of this Lease.

ARTICLE XXIX - FORCE MAJEURE

29.1 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 XXX SIGNAGE/NAMING RIGHTS

Interior/Exterior Signage/Sponsorship: All signage and sponsorships, shall be subject to approval by the City, including, without limitation, the names affixed thereon and any sponsorship names. Lessee shall have the right to erect interior and exterior signage and secure sponsorships in connection therewith, subject to approval by the City, 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. Any interior temporary signage, i.e. banners, shall be subject to the prior written approval of the City Manager. Lessee shall be entitled to keep all naming rights revenues derived from any approved signage or sponsorships; provided Lessee dedicates and utilizes such revenues exclusively for the maintenance, management and/or operation of the Wellness Center. In no event may any approved interior or exterior signage include the names of any company selling the following types of products ("Prohibited Names"): firearms, alcohol, tobacco products, sexual products. Additionally, the permissible content of any advertisements shall not be of a sexually offensive nature; promote unlawful or illegal goods, services or activities; contain images or information that demean an individual or group of individuals on account of race, color, religion, national origin, ancestry, gender, age, disability or sexual orientation; or contain non-alcoholic brands that are competitive to Coca-Cola, so long as the City's exclusive non-alcoholic beverage partnership with Coca-Cola is valid and in force.

ARTICLE XXXI- MISCELLANEOUS PROVISIONS

31.1 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.

31.2 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.

31.3 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.

31.4 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.

31.5 In the event of any default on the part of the Lessee, as determined by Article XIX of this Lease (Default Clause), 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.

31.6 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.

31.7 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.

31.8 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.

31.9 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.

31.10 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.

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

31.12 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, FL 33139**

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

31.13 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.

31.14 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.

31.15 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 subsection 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.

31.16 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.

31.17 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.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK.

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 WELLNESS CENTER
PROJECT, INC.
a Florida not-for-profit corporation**

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, Mayor, and Rafael E. Granado, City Clerk, 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 _____, 2015.

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 not-for-profit corporation, 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

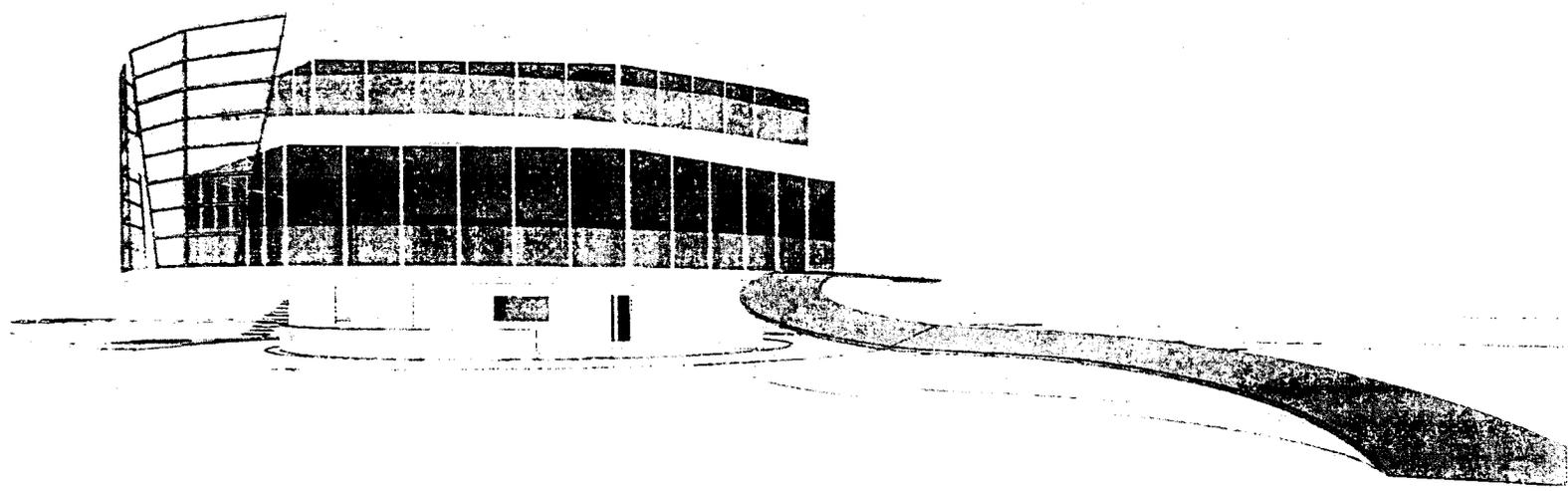


Exhibit "C"

Legal Description of Leased Premises

Exhibit "D"

City Vending Contracts

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 3rd 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 21st 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 1st 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 additional 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 167th 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:

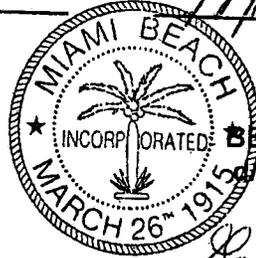
CITY OF MIAMI BEACH, FLORIDA

[Handwritten Signature]

CITY CLERK

[Handwritten Signature]

MAYOR



Attest:

BETTOLI TRADING CORP.
d/b/a BETTOLI VENDING

[Handwritten Signature]

Signature / Secretary

[Handwritten Signature]

Signature / President
Director

MARK MILISITS

Print Name

Maurizio Bettoli

Print Name

F:\RHCD\5ALL\CON\5ALL\ASSETVENDING\Bettoli Vending Contract (For Form Approval 4-6-12).doc

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Handwritten Signature]
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 Min. Guarantee
13th Street Garage	1	\$500	0	\$0	0	\$0	\$500
17th Street Garage	1	\$300	1	\$300	0	\$0	\$600
42nd Street Garage	1	\$150	0	\$0	0	\$0	\$150
7th Street Garage	1	\$300	0	\$0	0	\$0	\$300
City Hall Parking Garage	1	\$150	0	\$0	0	\$0	\$150
Sub-total	5	\$1,400	1	\$300	0	\$0	\$1,700
City Structures							
City Hall	2	\$600	1	\$300	1	\$300	\$1,200
City Hall Parking Garage (Ground Office)	1	\$300	0	\$0	0	\$0	\$300
1701 Meridian Ave	1	\$500	0	\$0	0	\$0	\$500
Convention Center	2	600	1	300	0	\$0	\$900
Historic City Hall	1	\$300	0	\$0	0	\$0	\$300
Miami Beach Police Station	2	\$600	1	\$300	1	\$300	\$1,200
Miami Beach Police Station Garage	1	\$150	0	\$0	0	\$0	\$150
Lobby of 833 6th Street	1	\$300	0	\$0	0	\$0	\$300
Public Works Operations Center	1	\$150	0	\$0	0	\$0	\$150
Sub-total	12	\$3,500	3	\$900	2	\$600	\$5,000

JPB

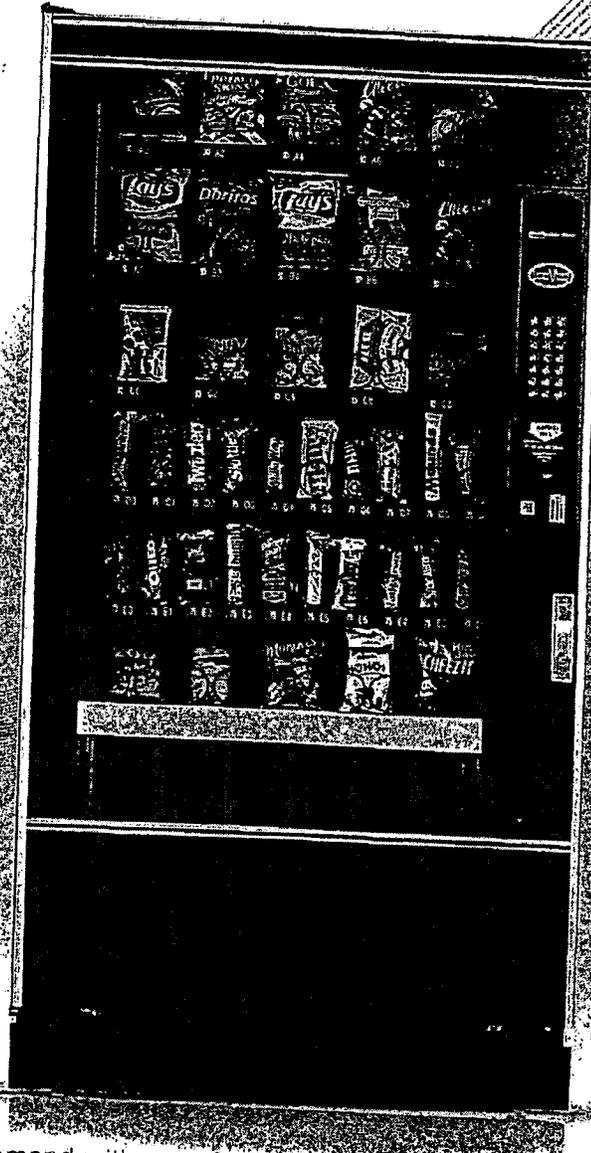
Parks & Recreation									
Normandy Shore Pool	1	\$150	1	\$150	0	\$0	2	\$300	
North Shore Youth Center	2	\$600	1	\$300	0	\$0	3	\$900	
Parks & Recreation (21 & Washington)	1	\$300	1	\$300	0	\$0	2	\$600	
Scott Rakow Youth Center	2	\$1,000	1	\$500	0	\$0	3	\$1,500	
Scott Rakow Youth Center Ice Skating	1	\$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	
Total	28	\$8,000	11	\$3,050	2	\$600	41	\$11,650	

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 JLB



llb

EXHIBIT 3.2.1.4 (PAGE 2 OF 3)

merchant **six** COMBO

The All-in-One Vending Solution



the *key piece*
of a
profitable
vending business

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

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Sales: 973.448.3636 • Fax: 973.448.6767
www.fastcorpvending.com

Z-400 Ice Cream Vendor



For the Coolest of Tastes...

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

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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: OKEEHOLEE 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

1/13/11

2011-27704

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.

1

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, CO₂ 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

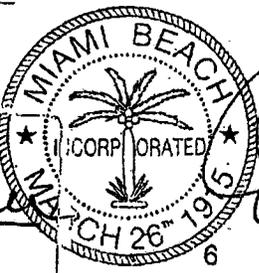
Coca-Cola Refreshments USA, Inc. d/b/a Florida Coca-Cola Bottling Company

By: Sally Forsyth

Print Name: SALLY FORSYTH

Title: REGION CONTROLLER 3/22/12

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION



Robert Pacheco
ATTEST

[Signature]
City Attorney

3-15-12
Date

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>1. DEFINITIONS:</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 21st and 46th 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>
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	<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>
2. AGREEMENT TERM:	<p>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.</p>
3. EFFECTIVE DATE:	January 1, 2012
4. EXPIRATION DATE:	December 31, 2021 as to all Facilities
5. SPONSORSHIP FEE:	<p>\$3,725,000 for the Term of the Agreement.</p> <ul style="list-style-type: none"> • 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. • \$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.)
6. COMMISSIONS:	<p>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)</p>
7. COMMUNITY SUPPORT/	<p>Bottler will provide City with a total of \$17,500 in cash for the</p>

<p>COMPLIMENTARY PRODUCT:</p>	<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>
<p>8. ADVERTISING & SPONSORSHIP:</p>	<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>
<p>9. PRODUCT RIGHTS:</p>	<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>
<p>10. EXCEPTIONS:</p>	<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) 21st Street/46th 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.
11. MARKETING PROGRAM:	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 Exhibit 3 .
12. RECYCLING PARTNER:	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 Exhibit 4 , with a minimum total value of \$15,000; and up to \$25,000 over the entire Term
13. VENDING PROGRAM/OTHER EQUIPMENT	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 Exhibit 5 .
14. CITY SUPPORT:	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.
15. PRICING:	<p>Bottle/Can Pricing: City is entitled to purchase bottle/can Products from Bottler in accordance with the price schedule set forth in Exhibit 6; 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>
16. TERMINATION:	<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>
17. MAINTENANCE & SERVICE:	<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>
18. REPORTS/AUDITING:	<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>
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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 4th 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 4th 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 5th 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 5th 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*

<u>Package</u>	<u>Price per case</u>
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

<u>Post-Mix</u>	<u>Price per gallon</u>
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

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

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

<u>CO2</u>	
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.)

Product	Package (Frac)	Small Filters	Large Filters
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



Coca-Cola Classic
Coke Zero
Vanilla Coke
Cherry Coke
Cherry Coke Zero
Diet Coke
Caffeine Free Diet Coke
Diet Coke w/ Lime
Sprits
Sprite Zero
Mello Yello
Barq's 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
18.5oz (.5L) Bottles 24/case
12oz Bottles 24/case
1L 12 per case

Dasani Flavors
Lemon
Strawberry

Dasani Drops
1.5L 1pk
Strawberry Kiwi
Mixed Berry
Pineapple Coconut
Pink Lemonade
Grape
Cherry Pomegranate

20oz Coconut Water
16oz PET Mt, Choc, Pineapple 12/case
11.3oz Tetra Mt 12/case
1.0 L 12/case
1.5 L 12/case

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

Life Platform
Chocolate
Strawberry Banana
Cox Platform
Chocolate
Vanilla
Banana

Black Raspberry
Orange Mango
Strawberry Kiwi
Lemon-Lime
Watermelon Punch

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

18.5oz (.5L) per Case
Strawberry Melon
Peach Mango
Tropical Punch
Cranberry Raspberry
Blue Raspberry
Acai Berry Pomegranate
Banana Colada

18.5oz (.5L) per Case
Full Throttle
Black (original)
Blue Agave
Red Berry

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

MONSTER
16oz Case 24/case
Original-Green
Lo Carb-Blue
Assault-Red
Khaos-orange
Absolute Zero- Blue/Purple
Absolute Ultra-White
16.9oz Case 24/case
Rehab - Half Tea Half Lemonade
Rehab - Orangeade
Rehab - Green Tea
Rehab - Rojo Red Tea

Monster Java
16oz Case 12/case
Mean Bean
Loca Moca
Vanilla Light
Toffee
Kona Blend
Irish Blend

Monster Mocha
16oz Case 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

16.9oz (.5L) per Case
Pomegranate Blue Berry
Orange Mango
Superfruit

16.9oz (.5L) per 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
16.9oz (.5L) per Case
Squeezed (Lemonade)
XXX (Blueberry Pomegranate)
Go Go (Mixed Berry)
Glow
Mega-C (Grape/strawberry)
Rise (Orange)
16.9oz (.5L) per Case
XXX
Power C.
Revive
XXX Zero
Squeezed Zero
Rise Zero

16oz GLASS Bottles
24 per Case
Coca-Cola Classic
Diet Coke
Sprite
Cappuccino
Latte Macchiato
Mochaccino
Cafe

16oz Case 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
Sprite
Sprite 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
Fanta Orange
Fanta Strawberry
Fanta Grape
Fanta Orange Zero
Seagram's Ginger Ale
Seagram's Diet Ginger Ale

16oz Case 12/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 16.9oz Bottle 12/case
Sweet
Lemon
Diet
Green
Unsweet

16.9oz (.5L) per Case
Fruit Punch
Green Apple
Orange
Sour Raspberry
Very Berry

Mexican Coke 355ml 24pk
Coke de Mexico
Fanta Orange de Mexico
Sprite de Mexico

MIAMI BEACH

MIAMI BEACH RUN-OFF ELECTION NOVEMBER 17, 2015

MIAMI BEACH PRECINCTS LIST

PCT	Place Name	Location		PCT	Place Name	Location
011	Biscayne Elementary School	800 77 Street		030	Miami Beach Botanical Garden	2000 Convention Center Drive
013	North Shore Branch Library	7501 Collins Avenue		031	Miami City Ballet	2200 Liberty Avenue
014	North Shore Park Youth Center	501 72 Street		032	Miami Beach Regional Library	227 22 Street
015	Normandy Shores Golf Club	2401 Biarritz Drive		033	Miami Beach Senior High School	2231 Prairie Avenue
018	Indian Creek Fire Station #4	6860 Indian Creek Drive		036	Miami Beach Police Athletic League	999 11 Street
019	Normandy Park & Pool	7030 Trouville Esplanade		037	Miami Beach City Hall	1700 Convention Center Drive
020	Ronald W. Shane Center	6500 Indian Creek Drive		038	Veterans Foreign War Post #3559	650 West Avenue
023	Miami Beach Fire Station #3	5303 Collins Avenue		040	South Pointe Elementary School	1050 4 Street
024	Nautilus Middle School	4301 N. Michigan Avenue		041	South Shore Community Center	833 6 Street # 2
025 T	Nautilus Middle School	4301 N. Michigan Avenue		042	Feinberg Fisher K-8 Center School	601 14 Place
028	Temple Beth Shalom	4144 Chase Avenue		043	Miami Beach Police Department	1100 Washington Avenue
029	North Beach Elementary School	4100 Prairie Avenue		048	Rebecca Towers	200 Alton Road

T = Temporary Polling Place Change

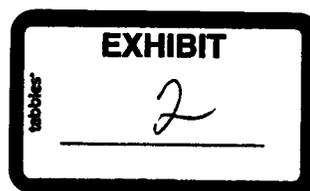
Please note that the above list is subject to change, if needed.

The voting precincts for the November 17, 2015 City of Miami Beach Run-Off Election shall be as established by the Miami-Dade County election officials. On Election Day, all electors shall vote at the voting locations and the voting precincts in which the official registration books show that the electors reside. All questions concerning voting locations and voting precincts should be directed to the Miami-Dade County Elections Department, 2700 NW 87 Avenue, Doral, Florida 33172; Telephone: 305.499.VOTE (8683) or TTY: 305.499.8480.

Rafael E. Granado
City Clerk

AD 1067

Publish in The Miami Herald on November 8, 12 and 15, 2015.



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MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: December 9, 2015

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDER NO. 3 TO THE CONSTRUCTION CONTRACT BETWEEN THE CITY OF MIAMI BEACH, FLORIDA, AND LANZO CONSTRUCTION CO., FLORIDA, FOR THE CONSTRUCTION OF THE CITY OF MIAMI BEACH RIGHT-OF-WAY INFRASTRUCTURE IMPROVEMENT PROGRAM, VENETIAN ISLANDS BID PACKAGE 13C (PROJECT), DATED MARCH 13, 2013 (THE CONTRACT); THE CHANGE ORDER INCLUDES: 1) CONSTRUCTION WORK ASSOCIATED WITH SIX (6) NEW STORMWATER PUMP STATIONS THAT MEET THE ENHANCED STORMWATER CRITERIA IN THE NOT-TO-EXCEED AMOUNT OF \$12,257,864 PLUS TIME EXTENSION OF 365 CALENDAR DAYS REQUIRED TO COMPLETE THIS WORK WITHIN SAN MARINO, DILIDO AND RIVO ALTO ISLANDS; AND 2) INCREASING THE OWNER'S CONTINGENCY IN THE AMOUNT OF \$1,225,787; THE RESULTING AMOUNT OF \$13,483,651 WILL BE ADDED TO THE CONSTRUCTION CONTRACT.**

ADMINISTRATION RECOMMENDATION

The Administration recommends adopting the Resolution.

KEY INTENDED OUTCOME

Build and maintain priority infrastructure with full accountability.

FUNDING

\$ 1,950,366	Stormwater Bonds Reso No. 2015-28988
\$ 11,533,285	Stormwater Master Plan Program
<u>\$ 13,483,651</u>	Total

BACKGROUND

On March 13th, 2013, pursuant to Invitation to Bid (ITB) No. 49-11/12, for the Right-of-Way Infrastructure Improvement Program – Venetian Islands Bid Package 13C, the City Commission approved Resolution No. 2013-28163, recommending the award of a construction contract to Lanzo Construction Co. Florida, (Lanzo) in the amount of \$11,373,491 including contingency.

On February 12, 2014, the City Commission approved Resolution 2014-28491, recommending Change Order No. 1 to the construction contract with Lanzo, for a total of \$215,085 including contingency.

On February 12, 2014, as recommended by the Mayor's Blue Ribbon Panel on Flooding and Sea Level Rise and the Flooding Mitigation Committee, the City Commission approved Resolution 2014-28499 to amend the City's Storm Water Management Master Plan. The Public Works Department (PWD) requested that staff implement the enhanced stormwater system criteria. The new criteria required the Engineer of Record, Schwebke-Shiskin & Associates (SS&A) to revise the design. SS&A completed their redesign and negotiations began taking place with Lanzo.

The City retained AECOM to assist in the implementation of a citywide comprehensive flood management plan and to review stormwater improvement plans prepared by the City's Consultants. Based on the comments issued by the City Engineer and AECOM, SS&A was directed to again revise the stormwater drainage plans to meet the new criteria implemented by the City Engineer.

On February 18, 2015, SS&A responded to additional comments issued by AECOM and finalized the enhanced stormwater drainage design modifications and on February 23, 2015, they submitted the 100% documents to PWD for final review.

Once the redesign was completed, the Office of Capital Improvement Projects (CIP) contacted the twelve property owners that reside adjacent to the six easements where the stormwater pump stations are proposed to be located. The meetings with residents took place from February through March 2015. The residents expressed great concern on the visual impacts from the proposed structures and equipment components associated with the pump station installations.

As a result, on April 1, 2015, a meeting was held with the concerned residents, their legal counsel, and staff from CIP, PWD, the City Attorney's Office and the City Manager's Office. It was determined that the City administration would explore alternatives attempting to minimize the visual impact of the stormwater pump stations and related components.

On May 6, 2015, the City Commission adopted Resolution No. 2015-29022 approving Change Order No. 2 to the construction contract with Lanzo, for the drainage conveyance construction work associated with the enhanced stormwater criteria in the not-to-exceed amount of \$4,499,103 including contingency and a time extension of 422 calendar days.

ANALYSIS

In order to enable the project to achieve full completion and to minimize potential cost impacts on the project, this change order will capture all the necessary infrastructure components to fully complete the stormwater drainage system on the Venetian Islands

Neighborhood. The scope of work, for this change order includes; six pump stations with all associated pipes, structures and electrical control panels to each pump station.

On September 16, 2015, the City met with residents and their representatives that reside adjacent to the proposed pump stations to demonstrate the key improvements to the design in order to address the noted concerns brought to the City on April 1, 2015. SS&A enumerated each item where improvements were made to the current design showing reduction of overall panel height, removal of all raised platforms and separation of electrical panels from adjoining property, to allow a buffer for landscape screening. The residents in attendance requested that the City of Miami Beach attempt to relocate the proposed pump stations to the Venetian Causeway Right-Of-Way. The Causeway is under the jurisdiction of the Miami-Dade Public Works Department.

On October 8, 2015, the City and members of the Venetian Neighborhood met with Miami-Dade County Public Works staff to determine if installing the stormwater pumps along the Venetian Causeway would be a viable solution. The City and Miami-Dade Public Works staff discussed various options and concluded that the placement of several pump stations and related appurtenances and piping on the Venetian Causeway would require extensive due diligence, relocation of a multitude of utilities and could have significant structural impact on the bridge abutments.

At the City's direction, SS&A analyzed four alternative solutions for the placement of the pump systems along with equipment and components to discharge the stormwater to the bay and a fifth alternative to maintain the stormwater drainage system as a gravity discharge (if none of the four alternatives were chosen). Description of each alternative is as follows:

Alternative No. 1

Install six Pump Stations at the existing street end easements, as per plans submitted to PWD on August 2015; at a cost of \$12,257,864, plus 10% contingency \$1,225,787, for a total price of \$13,483,651, including a construction time extension of twelve months beyond the current project completion date of March 1, 2016.

Alternative No. 2

Install six Pump Stations within the ROW at the Terraces nearest the street-ends and discharge the stormwater runoff to the Bay at the current outfall locations, i.e. at the street-ends. The width of the ROW for both San Marino and Dilido Drives (Terraces) is 55', with roadway widths of 22' and 26' respectively. The width of the ROW for Rivo Alto Drive (Terrace) is 75'. The roadway consists of a 13' center median strip and two 15' roadways. SS&A has estimated an Order of Magnitude Cost of \$14,959,000, plus 10% contingency \$1,496,000, for a total price of \$16,455,000. The estimate includes construction, re-design and construction administration (6 months for design and permitting and 2 additional months of construction time). The overall impact on the contract schedule will be extended by twenty months beyond March 1, 2016.

Alternative No. 3

Install six Pump Stations within the ROW at the Terraces nearest the street-ends and discharge the stormwater runoff to the Bay at the Venetian Causeway and maintain the gravity overflow at the street-ends, although we do not believe there is currently a viable alignment for the proposed improvements on the Venetian Causeway. SS&A has estimated an Order of Magnitude Cost of \$18,047,000, plus 10% contingency

\$1,805,000, for a total price of \$19,852,000. The estimate includes construction, re-design and construction administration (8 months for design and permitting and 3 additional months of construction time). The overall impact on the contract schedule will be twenty-three (23) months beyond March 1, 2016.

Alternative No. 4

Install three large pump stations (one per island) on the Venetian Causeway ROW and discharge to the bay, although we do not believe there is currently a viable alignment for the proposed improvements on the Venetian Causeway. SS&A has estimated an Order of Magnitude Cost of \$19,469,000, plus 10% contingency \$1,947,000, for a total price of \$21,416,000. The estimate includes construction, re-design and construction administration (6 months for design and permitting and 8 additional months of construction time).

The overall impact on the contract schedule will be twenty- six months beyond March 1, 2016.

Alternative No. 5

If none of the alternatives above are plausible in the immediate future, and in order to complete the project with the current contractor, this would require eliminating the Pump Stations' scope from the current project, and modifying the current stormwater conveyance system to a gravity discharge through new outfalls located on the street-ends. This will avoid potential cost impacts for demobilizing and remobilizing due to delays on the approval of the pump stations. However, this conversion will not meet the City's enhanced storm water management criteria. The gravity discharge system will allow the pump stations to be interconnected to the system in the future once a resolution on their location is achieved.

SS&A has estimated an Order of Magnitude Cost of \$1,443,000, plus 10% contingency \$144,300, for a total price of \$1,587,300. Price includes construction, re-design and construction administration (3 months for design and permitting and 6 additional months of construction time). The project time extension for this alternative is nine months beyond March 1, 2016.

In light of the presented analyses, Alternative No. 1 (current design) remains the most viable, because it is the most cost effective, it is the current design, it would take the shortest time for completion, it is best engineering practice to locate the pump station as close to the discharge point as possible, and it meets the enhanced stormwater criteria. As such, Lanzo has presented a proposal for change order No.3, (Attachment A) that addresses the following:

- Additional scope relating to six new storm water pump station installations to comply with the City's enhanced storm water criteria. This includes allowances to provide adequate pre-treatment to each pump station. The selected pump manufacturer will be Flygt, which is the preferred supplier of PWD-Operations.
- Exercising the provision of Article 38.1.1 of their contract with the City of Miami Beach that allows for the adjustment of unit prices from the original contract wherever the unit quantities are adjusted in excess of 20% of the original amount.

- Effects of recently imposed weight restrictions on the Venetian Causeway bridges.
- Time extension of 365 days.

The resulting costs are as follows:

• Pump Stations	\$ 12,125,260
• Bridge Weight Restriction Cost Impact	\$ 82,977
• Unit quantities greater than 20%	\$ 49,627
Sub-Total	<u>\$ 12,257,864</u>
• Contingency at 10%	\$ 1,225,787
Grand Total	<u>\$ 13,483,651</u>

Based on the numerous cost reviews and negotiation sessions throughout the development of the design of these revised storm water improvements, over the last several months and the examination of supporting documentation presented by Lanzo, SS&A and the administration has found the proposal acceptable and recommends approval of the change order (Attachment B). Currently the project is scheduled for final completion on March 1, 2016. Adding the necessary time for pump manufacturing and installation of the remaining related appurtenances, the revised final project completion will be March 2017.

During the adoption of the FY 2015/16 Capital Budget, a new programmatic approach for managing bond proceeds for capital projects in the Stormwater and Water & Sewer funds was instituted. The new approach creates a system-wide master program for each fund. The overall budget control for these funds will be in the master programs. Whenever a contract is awarded for a project during the fiscal year, an administrative budget amendment will be processed to move the necessary amount of funding from the master program to the individual project budget. The necessary budget amendments will not need to be approved by Commission, but will reflect any contracts awarded by Commission for these funds. This approach will maintain maximum flexibility while facilitating the timely spending of bond funds.

This \$13,483,651 change order is being funded by \$1,950,366 from previously appropriated funding and \$11,533,285 from the Stormwater Master Plan Program. The acceptance of this \$11,533,285 for the Venetian Island project reduces the available stormwater bond funds from \$60,266,296 to \$48,733,011.

The total amount of the contract with Lanzo, should this change order No.3 be approved, would be \$29,571,330.

CONCLUSION

The Administration recommends approval of the Resolution.

ATTACHMENTS:

Attachment A - Lanzo Construction change order proposal

Attachment B - SS&A – Redesign proposal analysis letter

JLMMT/DM 

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Condensed Title:

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Accepting The Written Recommendation Of The City Manager Regarding The Existence Of A Public Emergency And, Accordingly, Waiving, By 5/7th Vote, The Competitive Bidding Requirement, Finding Further That The Best Interest Of The City Would Be Served By Such Waiver; Authorizing The City Manager Or His Designee To Negotiate Amendment No. 4 To The Design-Build Agreement Between The City And Lanzo Construction Co., Approved Pursuant To Resolution No. 2014-28765, For The Sunset Harbour Pump Station Retrofit And Drainage Improvements Project; Said Amendment, In The Not To Exceed Amount Of \$2,721,607, To Bring Sunset Drive To A 3.7 Feet NAVD Elevation, Including Associated Water, Sewer, Stormwater Improvements, Landscaping, Lighting And Irrigation; Further Authorizing The Mayor And City Clerk To Execute The Amendment, Upon Completion Of Successful Negotiations.

Key Intended Outcome Supported:

Ensure value and timely delivery of quality Capital Projects.

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

Item Summary/Recommendation:

Lanzo has submitted the costs to complete Sunset Drive, Landscape and Irrigation. The construction work includes raising the roadway elevation, harmonizing the sidewalk and driveways with abutting properties, landscape, irrigation, water/sewer improvements and street lighting.

The proposals provided for the Sunset Drive Improvements include roadway design and construction, converting Sunset Drive to a one-way street and adding diagonal parking on both sides of the road, also the replacement of the existing cast iron 20-inch water main (constructed 1964–1973) along Sunset Drive and a segment of the existing cast iron 12-inch water main (constructed 1964–1973) along 20 Street. The proposal for this work is \$2,001,832 (Attachment A).

The proposal provided for additional Landscape includes irrigation, medjool/sylvester palms, and Silver and Green Buttonwood trees. The proposal for this work is \$472,356 (Attachment B). Therefore, the total cost to complete the pending construction work in the Sunset Harbour Neighborhood is in the amount of \$2,474,188.

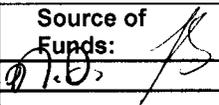
The amount of the work for the recommended proposals (Attachment A & B) is \$2,474,188 and the Public Works Department is recommending a ten percent (10%) construction contingency of \$247,419. The grand total for the project is in the amount of \$2,721,607.

THE ADMINISTRATION RECOMMENDS ADOPTING THE RESOLUTION

Advisory Board Recommendation:

N/A

Financial Information:

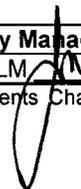
Source of Funds:		Amount	Account
	1	\$2,645,023	Stormwater Bond Series 2015
	2		
		\$ 76,584	420-2300-069357
OBPI	Total	\$2,721,607	

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Eric T. Carpenter, ext. 6012

Sign-Offs:

Department Director	Assistant City Manager	City Manager
JJF	ETC 	JLM 

T:\AGENDA\2015\September\September 30 Meeting\PUBLIC WORKS\Sunset Harbour Pump Stations Improvements Change Order No 4 . Summary.docx



MIAMI BEACH

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: December 09, 2015

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE WRITTEN RECOMMENDATION OF THE CITY MANAGER REGARDING THE EXISTENCE OF A PUBLIC EMERGENCY AND, ACCORDINGLY, WAIVING, BY 5/7TH VOTE, THE COMPETITIVE BIDDING REQUIREMENT, FINDING FURTHER THAT THE BEST INTEREST OF THE CITY WOULD BE SERVED BY SUCH WAIVER; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO NEGOTIATE AMENDMENT NO. 4 TO THE DESIGN-BUILD AGREEMENT BETWEEN THE CITY AND LANZO CONSTRUCTION CO., APPROVED PURSUANT TO RESOLUTION NO. 2014-28765, FOR THE SUNSET HARBOUR PUMP STATION RETROFIT AND DRAINAGE IMPROVEMENTS PROJECT; SAID AMENDMENT, IN THE NOT TO EXCEED AMOUNT OF \$2,721,607, TO BRING SUNSET DRIVE TO A 3.7 FEET NAVD ELEVATION, INCLUDING ASSOCIATED WATER, SEWER, STORMWATER IMPROVEMENTS, LANDSCAPING, LIGHTING AND IRRIGATION; FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AMENDMENT, UPON COMPLETION OF SUCCESSFUL NEGOTIATIONS.**

ADMINISTRATION RECOMMENDATION

The Administration recommends adopting the Resolution

FUNDING

<u>Amount</u>	<u>Account Number</u>
\$2,645,023	Stormwater Bond Series 2015
\$ 76,584	420-2300-069357
\$2,721,607	

BACKGROUND

The City has a Design/Build contract agreement with Lanzo Construction Co. (Lanzo) for work associated with the neighborhood improvements to be completed within the Sunset Harbour Neighborhood including landscaping, lighting, water, sewer, drainage and paving, and the retrofit of the three pump stations. As part of the Design/Build contract, Lanzo is currently performing roadway work within Purdy Avenue and West Avenue, as well as 18th Street.

At the Commission meeting held on September 2nd, Commissioner Grieco requested a discussion item on what it would cost to complete all of the construction in Sunset Harbour. A cost proposal had been received from Lanzo in May 2015 which was the basis of the discussion of needing an additional \$7.5 million inclusive of a contingency to complete the remaining work in Sunset Harbour. At that meeting, Lanzo was requested to provide a value engineered detailed cost proposal.

Public Works received from Lanzo the revised cost proposal in the amount of \$6,437,131.04 to raise the roads to 3.70 feet NAVD for the remaining street improvement. After extensive negotiations with Lanzo, Public Works has reviewed and deemed the revised cost proposal acceptable for the work included, and has recommended adding a ten percent (10%) for construction contingency.

On September 30th the City Commission approved the revised cost proposals totaling \$7,080,844. They also directed the contractor to perform the necessary engineering to develop accurate costs for the remainder of Sunset Drive.

Also, as part of the whole Sunset Harbour Neighborhood Renovation, the Residents have requested to provide additional landscaping that will encompass what has already been planted in the area. These additional trees will also require an irrigation system to support them.

The above recommended change in scope would significantly shorten the delivery of the remaining work, keep the Contractor mobilized on-site; and only extend the construction schedule four (4) months bringing the new anticipated Project completion date to November 2016.

COST ANALYSIS

Lanzo has submitted the costs to complete Sunset Drive, Parking Lot P46, as well as Landscape and Irrigation enhancements. The construction work includes raising the roadway elevation, harmonizing the sidewalk and driveways with abutting properties, landscape, irrigation, water/sewer main improvements and street lighting.

The proposals provided for the Sunset Drive Improvements include roadway design and construction, converting Sunset Drive to a one-way street and adding diagonal parking on both sides of the road, also the replacement of the existing cast iron 20-inch water main (constructed 1964–1973) along Sunset Drive and a segment of the existing cast iron 12-inch water main (constructed 1964–1973) along 20 Street. The proposal for this work is \$2,001,832 (Attachment A).

The proposal provided for additional Landscape includes irrigation, medjool/sylvestre palms, and Silver and Green Buttonwood trees. The proposal for this work is \$472,356 (Attachment B).

The Public Works Department recommends proceeding with work proposed to complete the remaining improvements associated with Sunset Drive, additional landscaping and irrigation, in the amount of \$2,474,188.

After negotiations with Lanzo, it is the opinion of Public Works that going out to bid for this construction would not necessarily yield a much lower price. The field of typical bidders to past solicitations is small. The procurement process will also take several months and possibly delay the overall neighborhood completion beyond the next King Tide cycle.

The amount of the work for the recommended proposals (Attachment A & B) is \$2,474,188 and the Public Works Department is recommending a ten percent (10%) construction contingency of \$247,419. The grand total for the project is in the amount of \$2,721,607.

CONCLUSION

The cost proposals were requested and received at the request of the Commission due to the demand of the neighborhood to complete all of the pending construction. The most expeditious method to complete all of the pending construction would be to add it to the existing contract with Lanzo.

The Administration recommends adopting the resolution following the recommendation of the Public Works Department.

Attachment A – Lanzo cost proposals Sunset Drive Improvements.

Attachment B – Lanzo cost proposals Landscape and Irrigation.


JLM/ETC/JJF/BAM/WRB/JJR

T_Drive\AGENDA\2015\December\PUBLIC WORKS\Sunset Harbour Pump Stations Improvements Amendment 3. Memo.doc



Delivering sustainable infrastructure solutions
for tomorrow's communities

November 24, 2015

Bruce Mowry, Ph. D, P.E.
City Engineer
Public Works Department - Engineering Division
1700 Convention Center Drive
Miami Beach, FL 33139

Reference: Sunset Harbour Pump Station Retrofit – ITB No. 60-2013TC
Sunset Harbour Elevation 3.7 Design and Build Proposal
Design and Construction of Sunset Drive

The following with attachments summarize Lanzo’s proposal to construct Sunset Drive & 20th Street. The limits of construction are as presented in the attached WTrim Plans of November 20th and the watermain noted sheet. This presentation is a Lump Sum Cost Proposal. For water main improvements along this area, there is an additive proposal below and justified in the attached documents.

Scope of work is as reflected in the attached drawing and unit breakdown sheet. All work per City Standard Details and as summarized below. Note: Private Property Concrete Harmonization is defined as harmonization up to the City ROW and limerock to existing grade transition for harmonizing driveways into private property.

- Sunset Drive & 20th Street, Roadways (Detail Attached) \$1,638,512.13
 - **ADDITIVE:** Sunset Drive & 20th Street, Water (Detail Attached) \$ 363,320.00
- Sunset Dr. & 20th, to Alton \$2,001,832

Total Cost Proposal (Road & Water Mains) \$2,001,832

Please note that Viton Gaskets (contaminated soils) are not included in this cost proposal. Proposal assumes cut in connections (City can isolate existing for connection).

The expected Design and Construction duration is 12 weeks after City approval and obtaining any required permits.

Sincerely,

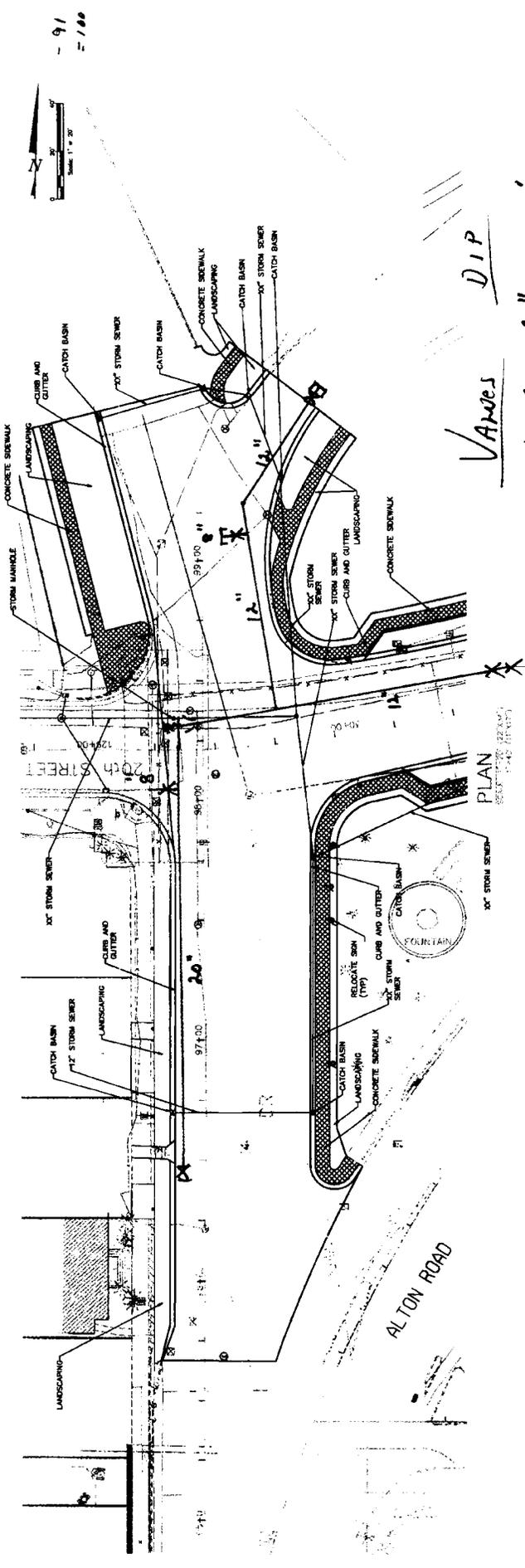
Daniel Mesquita, PM
Lanzo Construction Company

Attachment(s)
CC: LCC/File

				Proposed	Proposed
ITEM	DESCRIPTION	QTY	UNIT	UNITS	TOTAL
ROAD BUILDING PAVING AND HARD SCAPE ALL BUT 20TH ST					
1	General Conditions	1.00	LS	141,000.00	141,000.00
2	Engineering / Design	1.00	LS	140,000.00	140,000.00
3	Asphalt 2" Thick S-III	3,594	SY	20.00	71,880.00
4	Lime Rock Base 8"	3,594	SY	18.00	64,692.00
5	Stabilize Subbase 12" No Geofabric Stablization	4,073	SY	14.00	57,022.00
6	Import and Grade Fill Material In Place	4,185	CY	21.00	87,888.89
7	Parking Stopes	20	EA	130.00	2,600.00
8	Private Property Concrete Harmonization	318	SF	16.00	5,088.00
9	Drive Way Aprons	255	SF	14.00	3,570.00
10	Curb any Type, Valley Gutter - Gray Concrete	1,077	LF	25.00	26,925.00
11	Sidewalk - Gray Concrete	6,880	SF	10.00	68,800.00
12	ADA Cross Walk Ramps	12	EA	2,000.00	24,000.00
13	Thermo Striping 6"	2,133	LF	2.50	5,332.50
14	Thermo Striping 18"	189	LF	8.00	1,512.00
15	Thermo Striping 12"	705	LF	5.00	3,525.00
16	MOT / Detour and Barrier Wall	1	LS	130,000.00	130,000.00
17	Demo Existing Hard Scapes	1	LS	80,000.00	80,000.00
18	Sod Landscape Areas (No Irrigation, Bahia Sod)	5,786	SF	1.00	5,786.00
19	Remove Existing Trees in Conflict with Improvements	1	LS	8,000.00	8,000.00
DRAINAGE MODIFICATIONS					
20	Install New Catch Basins	8	EA	4,500.00	36,000.00
21	Install New Manholes	2	EA	4,500.00	9,000.00
22	Drainage Pipe 18" A2000 Pipe	605	LF	400.00	242,000.00
23	Adjust Rim, Valve Box, Service Box & FH Elevations to Match Proposed	1	LS	43,000.00	43,000.00
24	De-Muck Pipe Line	784	CY	26.00	20,390.74
25	Install Yard Drains in Landscape Areas	4	EA	4,000.00	16,000.00
26	Tie Into Existing Structure with New Pipe	1	EA	5,000.00	5,000.00
TOTAL				1,299,012.13	1,299,012.13
ALTERNATE LINE ITEMS				Proposed	Proposed
ITEM	DESCRIPTION	QTY	UNIT	UNITS	TOTAL
	Lighting for Sunset, Allowance	850	LF	370.00	314,500.00
	Landscaping Allowance	1	LS	25,000.00	25,000.00
TOTAL				339,500.00	339,500.00
					1,638,512.13

MATERIAL		BOTTOM LINE	363,320.00
		GOAL	625,000.00
		Proposed	Proposed
ITEM	DESCRIPTION	UNIT	TOTAL
NEW WATER MAIN ALONG SUNSET DRIVE			
1	General Conditions	LS	30,000.00
2	Engineering / Design	LS	50,000.00
3	Exploratory Excavations to Identify Existing Utilities	LS	27,000.00
4	20" DIP WM Restrained Including Fittings	LF	300.00
5	12" DIP WM Restrained Including Fittings	LF	250.00
6	8" DIP WM Restrained Including Fittings	LF	100.00
7	De-Muck Pipe Line	CY	26.00
8	Tie into Existing 20" DIP on 20th St	EA	7,600.00
9	Tie into Existing 20" on Sunset	EA	7,600.00
10	Tie into Existing 8"	EA	6,000.00
11	Tie into Existing 12" with Double Valve	EA	7,000.00
12	20" BV	EA	7,500.00
13	12" GV	EA	3,400.00
14	8" GV	EA	2,500.00
15	2" Water Service w/Box & Meter	EA	4,500.00
16	Abandon in place of existing 20" WM	LF	48.00
17	Abandon in place of existing 12" WM	LF	9.00
18	Sample Points	EA	1,500.00
19	Fill & Flush Assembly	EA	2,600.00
20	MOT / Detour and Barrier Wall	LS	2,000.00
TOTAL			363,320.00



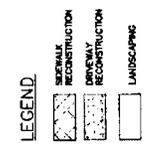


VALUES DIP

20" = 2BA 20" = 210'
 12" = 3EA 12" = 320'
 8" = 2BA 8" = 20'

Fittings

20 x 20 Tee = 1
 12 x 12 Tee = 1
 20 x 8 Tee = 1
 12 x 8 Tee = 1
 20 x 12 Red = 3
 12" 45 = 2BA
 20" 45 = 2BA



1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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Fittings

20" Tee = 1
 12" Tee = 1
 8" Tee = 1
 12" Tee = 1
 20" Tee = 1

MIAMI BEACH
 PUBLIC WORKS DEPARTMENT

WADSWORTH

PROJECT: **ALTON ROAD**
 SUBJECT: **STORM SEWER**

DATE: **10/15/2014**

SCALE: **AS SHOWN**

CITY MANAGER: **JAMES J. LAMARCA**
 DIRECTOR: **ERIC CHRISTOPHER**
 ENGINEER: **DAVID J. MOONEY, PE**

DESIGNED BY: **DAVID J. MOONEY, PE**
 CHECKED BY: **DAVID J. MOONEY, PE**
 SCALE: **AS SHOWN**

NUMBER OF REVISIONS: **0**

DATE: **10/15/2014**

SCALE: **AS SHOWN**

DATE: **10/15/2014**

SCALE: **AS SHOWN**



November 23th, 2015

Jose Rivas
Public Works Department
City of Miami Beach
1700 Convention Center Drive, 4th Floor
Miami Beach, FL 33139

Reference: Sunset Harbour Pump Stations Retrofit – ITB No. 60-2013TC
Landscaping Allowance Estimate for Phase II Sunset Harbour

Jose,

Per City request, we have devised an estimate for Landscaping Allowance for the remaining Sunset Harbour Neighbourhood. This estimate was based on discussions with the City and Residents on what type of plants are being requested. The prices are based on what we have typically seen, although, please understand, this is purely used as a rough idea for building an Allowance budget since there is no landscaping or irrigation design. The Landscape Allowance would be for a total of \$ 472,355.88, backup for obtaining this number is attached.

Please feel free to call me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Mesquita".

Daniel Mesquita
Project Manager
Lanzo Construction Co., FL

Landscaping Sunset Harbour Allowance Estimate				
Description	Quantity	Units	Unit Price	Extended Price
Irrigation Sleeves	1	LS	\$ 40,000.00	\$ 40,000.00
Irrigation	1	LS	\$ 35,000.00	\$ 35,000.00
Water Service Installation for Irrigation	1	LS	\$ 25,000.00	\$ 25,000.00
Power to Irrigation Controler	1	LS	\$ 40,000.00	\$ 40,000.00
F&I Green Buttonwood	20	EA	\$ 914.25	\$ 18,285.00
F&I Medjool Palm	25	EA	\$ 9,200.00	\$ 230,000.00
F&I Pigeon Plums	20	EA	\$ 1,063.75	\$ 21,275.00
F&I Silver Buttonwood	20	EA	\$ 1,063.75	\$ 21,275.00
Top Soil	1	LS	\$ 10,000.00	\$ 10,000.00
Ground Cover (Granite Rocks)	1	LS	\$ 20,000.00	\$ 20,000.00
Ground Cover (Shrubs)	1	LS	\$ 10,000.00	\$ 10,000.00
Sub-Total				\$ 470,835.00
Landscape Allowance Currently Remaining in Contingency (Approx.)				\$ 10,000.00
Allowance Amount				\$ 460,835.00
Bonds & Insurance (2.5%)				\$ 11,520.88
Total				\$ 472,355.88

Condensed Title:

The Mayor And City Commission Of The City Of Miami Beach, Florida, Accepting The Recommendation Of The City Manager To Enter Into Further Negotiations With Lanzo Construction Co., Florida, For Phase 2 Construction Services, And Further Authorizing The Mayor and City Clerk to Execute A GMP Amendment No. 3 In The Not-To-Exceed Amount Of \$35 Million, To The Design-Build Agreement With Lanzo For Neighborhood No. 13: Palm And Hibiscus Islands Right-Of-Way Infrastructure Improvements, Dated September 18, 2014, Upon Conclusion Of Successful Negotiations, Plus Ten Percent Owner's Contingency For A Grand Total of \$38,500,000, With Previously Appropriated Funding And Additional Funding Request Subject To The 1st Amendment To The FY 15/16 Capital Budget.

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:

On July 17, 2013, the City Commission approved the negotiations with Lanzo Construction Co., Florida (Lanzo) pursuant to Request for Qualifications (RFQ) No. 251-2013TC, for Design-Build Services for Neighborhood No. 13: Palm and Hibiscus Islands Right-of-Way Infrastructure Improvement Project.

On February 12, 2014, the City Commission approved the recommendation by the Mayor's Blue Ribbon Panel on Flooding and Sea Rise and the Flooding Mitigation Committee to amend the City's Stormwater Management Master Plan by modifying the design criteria for the tailwater elevation and adopted an elevation of 2.7 ft-NAVD for all tidal boundary conditions.

On November 19, 2014, the City Commission adopted Resolution No. 2015-28852 approving Amendment No.1 in the amount of \$251,016, which included additional design services associated with the adopted enhanced storm water criteria, which brought the total contract amount to \$850,480.

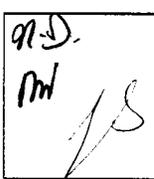
On October 14, 2015, Amendment No.2 was adopted, per Resolution 2015-29178, in the amount of \$73,240, incorporating additional design services required to meet the revised City Landscape Ordinance, comments from Home Owners Association, the Fire Department and the Public Works Department (PWD) change in criteria relating to the placement of Florida Power and Light (FPL) transformers within City's Right-of-Way.

Lanzo has submitted draft of the GMP proposal at 60% and 90% plan stages for review by the City and Stantec with a GMP Proposal submitted on November 9, 2015. Following several negotiation meetings, Lanzo submitted their GMP Proposal in the amount of \$43,719,011.

The final GMP Proposal has been reviewed by Stantec and in their opinion, the GMP for this project shall not exceed \$34.5 million. In order to obtain further assurance that the best value for this project has been negotiated, the City also contracted US Cost Inc. to perform an independent construction cost estimate. US Cost's estimated construction cost plus design-builder's fee and the additional cost associated to raising the road and other miscellaneous fees is approximately \$34,907,238.

The Administration's recommendation is to enter into further negotiations with Lanzo for Phase 2 Construction Services in the not-to-exceed amount of \$35 million within 30 days, and if this negotiation fails, to exercise the "off-ramp" contract provision.

The Administration recommends approval of the resolution.

Financial Information:		Amount	Account
Funds:	1	9,381	384-2338 (Above Ground)
	2	3,288,290	304-2338 (Above Ground)
	3	937,329	350-2338 (Undergrounding) Encumbrance Line of Credit subject to reimbursement from MDC
	4	2,322,132	420-2338 (Water)
	5	2,738,389	423-2338 (Water)
	6	131,470	424-2338 (Water)
	7	70,000	425-2338 (Water)
	8	3,963,009	419-2338 (Water) Encumbrance Line of Credit
	9	25,040,000	432-2338 (Stormwater)
OBPI	Total	\$38,500,000	

Financial Impact Summary: N/A

City Clerk's Office Legislative Tracking:

Sign-Offs:

Department Director	Assistant City Manager	City Manager
DM 	ETC 	JLM 

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MIAMI BEACH

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

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: December 9, 2015

Subject: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE CITY MANAGER TO ENTER INTO FURTHER NEGOTIATIONS WITH LANZO CONSTRUCTION CO., FLORIDA, FOR PHASE 2 CONSTRUCTION SERVICES AND FURTHER AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A GMP AMENDMENT NO. 3, IN THE NOT-TO-EXCEED AMOUNT OF \$35 MILLION, TO THE DESIGN-BUILD AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND LANZO CONSTRUCTION CO., FLORIDA, FOR DESIGN-BUILD SERVICES FOR NEIGHBORHOOD NO. 13: PALM AND HIBISCUS ISLANDS RIGHT-OF-WAY INFRASTRUCTURE IMPROVEMENTS (THE PROJECT), DATED SEPTEMBER 18, 2014 (THE CONTRACT), UPON CONCLUSION OF SUCCESSFUL NEGOTIATIONS, PLUS A TEN PERCENT OWNER'S PROJECT CONTINGENCY FOR A GRAND TOTAL OF \$38,500,000, WITH PREVIOUSLY APPROPRIATED FUNDING AND ADDITIONAL FUNDING REQUEST SUBJECT TO THE 1ST AMENDMENT TO THE FY 15/16 CAPITAL BUDGET.**

ADMINISTRATION RECOMMENDATION

The Administration recommends adopting the Resolution.

KEY INTENDED OUTCOME

Build and maintain priority infrastructure with full accountability.

FUNDING

Stormwater	\$25,040,000
Water and Sewer	\$ 9,225,000
Above Ground	\$ 4,235,000
Total	\$38,500,000

BACKGROUND

On February 8, 2012, the Mayor and City Commission adopted Resolution No. 2012-27832 approving an agreement with Stantec Consulting Services Inc. (Stantec) (formerly Corzo Castella Carballo Thompson Salman, PA) for Design Criteria Professional Services for Palm and Hibiscus Islands Neighborhood Improvement Project.

On July 17, 2013, the City Commission approved the negotiations for design and pre-construction services (Phase 1) with Lanzo Construction Co., Florida (Lanzo) pursuant to Request for Qualifications (RFQ) No. 251-2013TC, for Design-Build Services for

Neighborhood No. 13: Palm and Hibiscus Islands Right-of-Way Infrastructure Improvement Project.

On February 12, 2014, the City Commission approved the recommendation by the Mayor's Blue Ribbon Panel on Flooding and Sea Rise and the Flooding Mitigation Committee to amend the City's Stormwater Management Master Plan by modifying the design criteria for the tailwater elevation and adopted an elevation of 2.7 ft-NAVD for all tidal boundary conditions. The City's Public Works Department (PWD) has requested that staff implement the enhanced stormwater design criteria.

The Design Criteria Package (DCP) that was originally included in the RFQ was revised to incorporate the new enhanced stormwater criteria, which required additional negotiations with the Design-Build Firm.

On September 18, 2014, the City negotiated Design and Pre-Construction Services (Phase 1) with Lanzo Construction Co., in the lump sum amount of \$599,464, based on the DCP included in the original solicitation.

On November 19, 2014, the City Commission adopted Resolution No. 2015-28852 approving Amendment No.1 in the amount of \$251,016, which included additional design services associated with the adopted enhanced storm water criteria, which brought the total contract amount to \$850,480.

On October 14, 2015, the City Commission adopted Resolution No. 2015-29178 approving Amendment No. 2 in the amount of \$73,240, incorporating additional design services required to meet the revised City Landscape Ordinance, comments from the Home Owners' Association, the Fire Department and the Public Works Department (PWD) change in criteria relating to the placement of Florida Power and Light (FPL) transformers within City's Right-of-Way.

ANALYSIS

This project uses a Progressive Design-Build procurement model to ensure City's participation during design and the ability to control the final price. In addition, this contract contains an "off-ramp" provision which allows the City to terminate the Design-Builder's services at the end of the Phase 1 (Pre-Construction and Design Services) if the parties are unable to reach an agreement on Design-Builder's Guaranteed Maximum Price (GMP) for Phase 2 Services (Construction Services). The City may exercise other options to finalize the design and construction with parties other than the Design-Builder. Further, this agreement allows for the City to contract directly with the Design-Builder's lead design professional and/or any other design sub-consultants for design-related services on this Project, and Design-Builder shall promptly take such any and all steps as are reasonably necessary to enable City to implement such relationship(s).

Once the Design-Builder has advanced the design to a sufficient level of detail to produce a reliable estimate with well-understood risks and contingencies, a cost of construction and other fees (GMP Proposal, as defined herein) is submitted by Design-Builder to the City for its approval

The scope of work for the Project includes streetscape improvements, sanitary sewer lining, water main, storm water system upgrades and undergrounding of overhead utilities within Hibiscus Island. This project implements the enhanced stormwater criteria, which warrants a total of three pump stations in lieu of one, redundant pumping systems,

extensive stormwater pre-treatment and flow control, backflow prevention devices and manatee grates.

Also, in light of the recent King Tide flooding events on October 12, 2015, the City Engineer re-evaluated the proposed roadway elevation and directed further adjustments of roadway elevation to be at least 2.7' NAVD, which will require significant raising of the road and related harmonization. This directive required redesign of North and South Coconut Lane, and the western portions of Palm Ave and Hibiscus Drive.

Lanzo has submitted draft proposals at the 60% and 90% plan stages for review by the City and Stantec with a GMP submitted on November 9, 2015 in the amount of \$43,719,011. Following several negotiation meetings and in-depth reviews, Lanzo submitted their final GMP Proposal on November 20, 2015 in the amount of \$37,325,583 with a construction duration of 18 months to substantial completion (Exhibit A).

The final GMP Proposal submitted by Lanzo has been reviewed by Stantec and documented in the attached letter dated November 25, 2015 (Exhibit B). In Stantec's opinion and considering the construction marketplace, the GMP for this project shall not exceed \$34.5 million. In order to obtain further assurance that the best value for this project has been negotiated, the City also contracted US Cost Inc., a nationally recognized firm providing professional construction cost estimating for over 30-years, to perform an independent construction cost estimate. US Cost's opinion of construction cost indicates an estimated cost of \$31,008,940 (Exhibit C) based on the 90% Design Plans. This estimate only includes the cost of the work and excludes design-builder's fee, design-builder's project management fees, professional services during construction and the additional cost associated to raising of the road and other miscellaneous fees (Exhibit D). The estimated cost for these additional activities is approximately \$3,898,298, bringing the total construction estimate to \$34,907,238.

Staff and Stantec do not agree with the final GMP Proposal presented by Lanzo. Some of the reasons include pricing that appears higher than local industry standards, discrepancies with respect to calculations of overhead and application of design builder's fee as prescribed by the agreement.

In light of Stantec's, US Cost's, and City's staff reviews of the final submitted GMP, the administration cannot support at this time a GMP greater than \$35 million. It is therefore, the administration's recommendation to enter into further negotiations with Lanzo for Phase 2 Construction Services and further authorizing the Mayor and City Clerk to execute GMP Amendment No. 3 to Lanzo upon successful negotiations of a GMP in the not-to-exceed amount of \$35 million plus a ten percent owner's project contingency, within 30-days, and if this negotiation fails, to exercise the "off-ramp" contract provision.

CONCLUSION:

The Administration recommends approval of the Resolution.

ATTACHMENTS:

- Exhibit A - Lanzo Construction Co., Florida Proposal
- Exhibit B – Stantec Letter Referencing GMP Proposal Review
- Exhibit C – US Cost 90% Construction Cost Estimate - Executive Cost Summary
- Exhibit D - US Cost Letter - Clarification of 90% Cost Estimate

JLM/EC/DM

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*Delivering sustainable infrastructure solutions
for tomorrow's communities*

November 20, 2015

City of Miami Beach, Office of Capital Improvement
1700 Convention Center Drive
Miami Beach, Florida 33139

Attn: Mark E. Tomczyk, P.E.
Senior Capital Projects Coordinator

Ref: Neighborhood No. 13, Palm and Hibiscus Islands
F-430, Final Guaranteed Maximum Price Proposal
Task 2.4.1, 90% Completion Stage – Final GMP
Revised to reflect our meeting of November 19, Revised

The attached provides Lanzo's Final Guaranteed Maximum Price (GMP) Proposal as defined by Contract Task 2.4.1. This Lump Sum GMP proposal consists of;

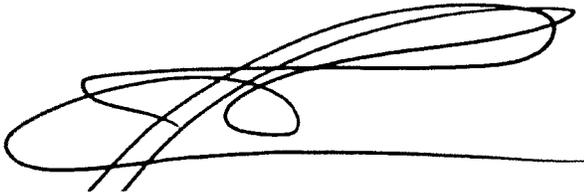
1. Article 4 Compensation for Design-Builder's Services and Work.
 - a. Confirmation of Compliance.
 - b. Discussion of Supporting Documents.
 - c. Attachment "A"
 - i. Detailed in accordance with Article 4
 1. Utilizes Item Numbers with cost elaboration within the Direct Cost Report (attached).
 - a. Subcontractors in Direct Contract with Lanzo without handling costs.
 - b. Materials purchased directly by Lanzo without handling costs.
 - c. Lanzo Labor & Equipment to perform work includes 20% margin on Labor & Equipment to equate self-performance with that of a Subcontractor.
 - d. Attachment "B".
 - i. Provides list of Assumptions, Exceptions, and Clarifications

This submittal revises Lanzo's submittal of November 18th as follows:

1. Article 4 Presentation has been added to reorganize GMP Presentation
 - a. Complimented by Attachment "A".
2. Equipment Costs have been reduced to 8 hours daily (80% of 10 hour rate).
 - a. Pick-up FOG reduced to 5 hours daily (50% of 10 hour rate).
 - b. Support Equipment FOG reduced to 5 hours daily (50% of 10 hour rate).
 - c. Excavators & Loaders FOG maintained at 10 hours daily.
3. Supervisory Labor (Project Manager, Engineer, & Superintendent) reduced to 8 hour days.
4. Item 1012, 92050 (Full Time Site Safety Officer) deleted. Work definition has been reallocated to Site Superintendent.
5. Petty cash cut 50%.

We look forward to successful price negotiations and the start of construction in early 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Beaty", with a horizontal line underneath.

Bob Beaty, PE, Project Manager
Lanzo Construction Co., FL.

Cc: Olga Sanchez, Capital Project Coordinator
Daniel Garcia, PE-WadeTrim

Article 4

COMPENSATION FOR DESIGN-BUILDER'S SERVICES AND WORK

4.1	The City will pay Design-Builder a Fee on the Cost of the Work of 7.5 %, inclusive of all profit and overhead, to be applied to the Cost of the Work, as stated in the GMP Proposal.	
4.3.1	GMP Proposal. Design-Builder shall submit a GMP Proposal to the City, which shall, at a minimum, include the following to establish the GMP	\$ 37,325,582.44
4.3.1.1	A proposed GMP, which shall be the sum of:	
	1 Design Builder's Fee	\$ 2,482,235.83
	2 The estimated Cost of the Work, inclusive of any General Allowance, if applicable;	\$ 33,096,477.74
	3 Specific Allowances, if any;	\$ -
	4 General Conditions Lump Sum Cost:	\$ 1,746,868.87
4.3.1.2	A list of the drawings and specifications (including all addendums) used as the basis for the GMP Proposal;	
	1 90% Drawings as submitted on October 26, 2015.	
	2 This submittal is "Final" with the understanding that Lanzo's 100% submittal will include confirmation of Lanzo's Final GMP	
	3 Volumes 1 – 3 of the Design Criteria Package dated November 4, 2014, including Hibiscus undergrounding plans for ABB, ATT, & FPL.	
	4 City Directive of October 12, 2015 (2.7'NAVD-Minimum) including work definition referenced in RFI-034 (Private Property Harmonization) & RFI-035 (Private Drainage Accommodation).	
4.3.1.3	A list of the assumptions, exceptions, and clarifications made by DesignBuilder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;	
	1 Assumption, Exception, Clarification List attached (attachment B)	
4.3.1.4	A detailed Primavera (latest version) CPM Project Schedule, in a format as specified by the Contract Administrator, showing the scheduled Substantial Completion and Final Completion dates upon which the proposed GMP is based;	
	1 Schedule attached details a 24 month Construction Duration	
	2 Negotiations resulted in additional Work Zones (Assumption # 20) and reduction of Construction Duration to 19 Month.	
4.3.1.5	If applicable, a list of allowance items, allowance values, and a statement of their basis;	
	1 Not Applicable	
4.3.1.6	If applicable, a schedule of alternate prices;	
	1 Not Applicable	
4.3.1.7	If applicable, a schedule of unit prices;	
	1 GMP Proposal is Lump Sum. Unit Price Cost presentation has been utilized to facilitate review.	
4.3.1.8	If applicable, a statement of Additional Services;	
	1 Not Applicable	

Article 4

COMPENSATION FOR DESIGN-BUILDER'S SERVICES AND WORK

4.3.1.9 Submission of a detailed construction estimate providing sufficient detail to assess labor rates, equipment rental, and subcontracts as provided under the definition of Cost of Work. Back-up shall be provided to verify that competitive market quotes were received for all equipment and subcontracted work

- 1 Material & Subcontractor quotations were included in Lanzo's November 4th Submittal. Updates associated with specific discussions (Task 4, Construction Management Services) were included in GMP Revisions.
- 2 Lanzo's November 4th submittal included typical Labor rates (Miami Dade 2015) and Equipment Rates (Blue Book).

4.3.1.10 The time limit for acceptance of the GMP Proposal; provided, however, that in no event shall such time limit be less than 180 days from DesignBuilder's submission of the GMP Proposal to the City.

- 1 The time limit for acceptance of the GMP Proposal is 180 days from date of submittal.

4.4 The Cost of the Work shall mean costs reasonably and actually incurred by Design-Builder in the proper performance of the Work and Services. The Cost of the Work shall include only the following :

4.4.1 Payments properly made by Design-Builder to subcontractors, suppliers, and design consultants for performance of portions of the Work and Services, including any insurance and bond premiums incurred by subcontractors, suppliers, and design consultants.

- 1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

4.4.2 Costs, including transportation, inspection, testing, storage and handling of materials, equipment and supplies incorporated or reasonably used in completing the Work.

- 1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

4.4.3 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

- 1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

4.4.4 Costs of removal of debris and waste from the Site.

- 1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

4.4.5 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design- Builder or others, and incurred in the performance of the Work. A list of all equipment to be used must be approved by the Contract Administrator, in writing , prior to commencement of a Work Order or Change Order.

- 1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

4.4.6 Premiums for insurance and bonds required by this Agreement or the performance of the Work. No fee mark-up shall be allowed on bonds or insurance.

- 1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

Article 4

COMPENSATION FOR DESIGN-BUILDER'S SERVICES AND WORK

4.4.7 All fuel and utility costs incurred in the performance of the Work.
1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

4.4.8 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.
1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

4.4.9 Costs for permits, royalties, licenses, tests and inspections incurred by DesignBuilder as a requirement of the Contract Documents. Costs for permits may be included as a Specific Allowance.
1 "Attachment A" & the associated Direct Cost Report includes this cost detail.
2 Testing & Permit Costs defined by Contract as Owner costs are not included.

4.4.10 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by the Contract Administrator, except General Condition labor costs and reoccurring consumables and operating costs, which shall be included in the General Conditions Lump Sum Cost.
1 "Attachment A" & the associated Direct Cost Report includes this cost detail.
2 20 Percent Cost on Labor & Equipment has been included in the Cost of Work. This cost is consistent with the attached Independent Auditors' Report of March 23, 2015 (Benitez & Company, CPA) and CIP's E-Mail ('Percentage of work completed as depicted on the negotiated GMP') of September 3, 2014 (attached).

4.6 General Conditions shall include the necessary management labor and site based construction supervision labor, site services, and office materials/consumables to manage and control all construction work for the period of time from execution of the GMP Amendment (if accepted and approved by the City Commission), through Final Completion and demobilization. This lump sum amount shall be included as a line item under the GMP Proposal. The General Conditions Lump Sum Cost is inclusive of all fees and no fee shall be earned on the lump sum price.
1 "Attachment A" & the associated Direct Cost Report includes this cost detail.

**"Attachment A" City of Miami Beach Palm and Hibiscus Islands
Final Guaranteed Maximum Price (GMP) (Phase 2 Services)**

PROJECT:	Neighborhood 13, Palm Island & Hibiscus Island
COMPANY NAME:	Lanzo Construction Co. Inc., Florida

Summary

General Conditions (Art. 4.6) & Bond Costs	\$1,746,868.87
Cost of Work (Art. 4.1)	
Construction Management Services, (Art. 4.4.1)	\$875,000.00
Burden Reduction on Overtime Labor	-\$46,402.74
Division 2 - Sitework	\$27,409,361.95
Stormwater	\$16,028,293.82
Water & Sewer	\$6,159,621.82
Streetscape	\$5,221,446.31
Division 3 - Landscaping	\$889,579.84
Division 16 - Lighting/Electrical	\$3,880,318.69
Division - Maintenance of Traffic	\$88,620.00
Total Cost of Work (Art. 4.4)	\$33,096,477.74
7.5 % Design-Builders Fee on Cost of Work (Art 4.1)	\$2,482,235.83

Total Guaranteed Maximum Price

\$37,325,582.44

Item No.	Description	QUANTITY	UNIT	UNIT PRICE	Extension	SUBTOTAL
Division 1 - General Conditions & Bond Costs						
1000	GENERAL CONDITIONS	1	LS			1,537,982.63
1010	MOBILIZATION	1	LS	10,530.61	10,530.61	
1011	SITE SERVICES	1	LS	59,111.55	59,111.55	
1012	CONSTRUCTION ADMINISTRATION	1	LS	1,363,208.72	1,363,208.72	
1013	CPM SCHEDULING	1	LS	-	-	
1014	CONSTRUCTION QUALITY CONTROL	1	LS	-	-	
1015	FIELD OFFICE	1	LS	105,106.75	105,106.75	
1016	INDEMNIFICATION	1	LS	25.00	25.00	
1017	BONDS & INSURANCE	1	LS	208,886.24	208,886.24	208,886.24
Division 1 - General Conditions Total:						1,746,868.87
Construction Management Services						
1008	Construction Management Services	1	LS	875,000.00	875,000.00	875,000.00
Division 2 - Sitework						
Stormwater						
1026	P.I. / ST / TEMPORARY ASP, 1" S-III	11,062	SY	10.54	116,588.21	
1030	P.I. / ST / TYPE B STABILIZATION(LBR40:12" THICK)	22,123	SY	4.75	105,084.25	
1040	P.I. / ST / LIMEROCK BASE (8-IN COURSE PRIMED)	22,123	SY	13.37	295,784.51	
1050	P.I. / ST / R & D UNSUITABLE MATERIAL	21,453	CY	11.12	238,557.36	
1060	P.I. / ST / F & I SUITABLE BACKFILL MATERIAL	21,453	CY	10.40	223,111.20	
1070	P.I. / ST / DEWATERING	1	LS	483,074.68	483,074.68	
Existing Utilities						
1090	REMOVE EXISTING DRAINAGE STRUCTURE	59	EA	652.10	38,473.90	
1100	REMOVE EXISTING DRAINAGE PIPE	7,824	LF	15.99	125,105.76	
1110	GROUT IN PLACE, EXISTING DRAINAGE PIPE	500	LF	19.56	9,780.00	

Item No.	Description	QUANTITY	UNIT	UNIT PRICE	Extension	SUBTOTAL
Drainage Structures						
1130	P.I. / ST / INLET (TYPE "P" 48" DIA), USF4105-622	33	EA	3,796.01	125,268.33	
1133	P.I. / ST / INLET (TYPE P 48" DIA), USF5100-6147	22	EA	3,989.81	87,775.82	
1136	P.I. / ST / INLET (TYPE P 48" DIA), USF5129-6176	13	EA	4,225.92	54,936.96	
1140	P.I. / ST / INLET (TYPE J 60" DIA), USF5100-6147	5	EA	8,598.27	42,991.35	
1143	P.I. / ST / INLET (TYPE J 60" DIA), USF5129-6176	3	EA	9,016.74	27,050.22	
1210	P.I. / ST / MANHOLE (TYPE "P" 48" DIA), USF-385	9	EA	4,080.78	36,727.02	
1220	P.I. / ST / MANHOLE (TYPE "J" 60" DIA), USF-385	12	EA	8,757.05	105,084.60	
1230	P.I. / ST / MANHOLE (TYPE "J" 60" SQR), USF-385	2	EA	10,070.69	20,141.38	
1250	P.I. / ST / MANHOLE (TYPE "J" 72" SQR), USF-385	9	EA	18,011.77	162,105.93	
1252	P.I. / ST / 6' x 4' MH, Seated Lid	1	EA	11,400.74	11,400.74	
1256	P.I. / ST / 9' x 6' MH, USF-385	1	EA	20,321.96	20,321.96	
1258	P.I. / ST / 6' x 4' MH, USF-385	2	EA	10,158.62	20,317.24	
1260	P.I. / ST / MANHOLE (84X84" SQ MH)	2	EA	19,552.30	39,104.60	
1262	P.I. / ST / MANHOLE (84" DIA), USF-385	1	EA	19,081.19	19,081.19	
1264	P.I. / ST / CONFL. MH (TYPE "P" 48" DIA), USF-385	3	EA	8,427.69	25,283.07	
1270	P.I. / ST / Confl. MH (TYPE "P" 60" DIA), USF-385	1	EA	8,808.38	8,808.38	
1280	P.I. / ST / Confl. MH (TYPE "P" 72" DIA), USF-385	1	EA	15,749.74	15,749.74	
1290	P.I. / ST / MH REHABILITATION	5	EA	1,800.00	9,000.00	
1300	P.I. / ST / PVC Tees (36" x 18")	11	EA	8,657.40	95,231.40	
1305	P.I. / ST / PVC Tees (30" x 18")	15	EA	8,657.40	129,861.00	
1310	P.I. / ST / PVC Tees (24" x 18")	143	EA	1,913.32	273,604.76	
1320	P.I. / ST / PVC Tees (18" x 18")	102	EA	962.02	98,126.04	
1330	P.I. / ST / 18" PVC Yard Drain	280	EA	2,318.83	649,272.40	
1340	P.I. / ST / 24" TIDEFLEX	1	EA	8,568.67	8,568.67	
Pump Station						
1458	P.I. / ST / WEST PUMP STATION, STRUCTURES, & onsite Electrical. Note that Offsite Electrical is to be provided by Others to within 50' of the Control Panel.	1	EA	2,134,806.00	2,134,806.00	
1460	P.I. / ST / EAST PUMP STATION, STRUCTURES, & onsite Electrical. Note that Offsite Electrical is to be provided by Others to within 50' of the Control Panel.	1	EA	1,648,873.00	1,648,873.00	
Drainage Outfalls						
1461	P.I. / ST / 16-IN FORCEMAIN PIPE WITH FITTINGS	24	LF	305.45	7,330.80	
1480	P.I. / ST / CORE DRILL EXISTING SEA WALL	2	EA	3,677.83	7,355.66	
1490	P.I. / ST / INSTALL MANATEE GRATES, 42" & 4'x4'	2	EA	3,702.16	7,404.32	
Drainage Piping						
1520	P.I. / ST / 18-IN A2000 PIPE CULVERT WITH FITTING	7,794	LF	104.72	816,187.68	
1530	P.I. / ST / 24-IN A2000 PIPE CULVERT WITH FITTING	3,300	LF	128.54	424,182.00	
1540	P.I. / ST / 30-IN A2000 PIPE CULVERT WITH FITTING	1,180	LF	150.77	177,908.60	
1550	P.I. / ST / 36-IN A2000 PIPE CULVERT WITH FITTING	1,340	LF	175.98	235,813.20	
1555	P.I. / ST / 23" x 14"-IN RCP PIPE CULVERT	139	LF	327.57	45,532.23	
1560	P.I. / ST / 42-IN RCP PIPE CULVERT WITH FITTINGS	60	LF	327.57	19,654.20	
1570	P.I. / ST / 48-IN RCP PIPE CULVERT WITH FITTINGS	1,880	LF	346.06	650,592.80	
1575	P.I. / ST / 54-IN RCP PIPE CULVERT WITH FITTING	170	LF	431.37	73,332.90	
1580	P.I. / ST / 72-IN RCP PIPE CULVERT WITH FITTING	8	LF	479.51	3,836.08	
1590	P.I. / ST / 4' x 4' BOX CULVERT	8	LF	1,278.40	10,227.20	
1600	P.I. / ST / 14' x 4' BOX CULVERT	8	LF	3,027.14	24,217.12	
1620	P.I. / ST / 15-IN CIPP REHAB EXISTING	225	LF	75.92	17,082.00	
1630	P.I. / ST / SS LATERAL CONFLICT OR REPAIR q	10	EA	1,399.50	13,995.00	
1640	P.I. / ST / SS MAIN REPAIRS (ALL SIZES) q	100	LF	158.82	15,882.00	
Subtotal Stormwater						10,055,585.46

Item No.	Description	QUANTITY	UNIT	UNIT PRICE	Extension	SUBTOTAL
Utility Work - Water and Sewer						
Pavement Associated with Utilities						
1650	P.I. / W / TEMPORARY ASP, 1" S-III	8,544	SY	10.55	90,139.20	
1660	P.I. / W / TYPE B STABILIZATION(LBR40:12" THICK)	8,544	SY	4.75	40,584.00	
1670	P.I. / W / LIMEROCK BASE (8-IN COURSE PRIMED)	8,544	SY	13.16	112,439.04	
1680	P.I. / W / R & D UNSUITABLE MATERIAL	9,493	CY	11.12	105,562.16	
1690	P.I. / W / F & I SUITABLE BACKFILL	9,493	CY	10.40	98,727.20	
Water Improvements						
1700	P.I. / W / 6-IN (DIP CL 53) W/ FITTINGS	400	LF	112.76	45,104.00	
1710	P.I. / W / 8-IN (DIP CL 53) W/ FITTINGS	6,840	LF	103.75	709,650.00	
1720	P.I. / W / 12-IN (DIP CL 53) W/ FITTINGS	100	LF	199.90	19,990.00	
1725	P.I. / W / 6-IN VALVES INCLUDING NO. 2 COVER, FH	25	EA	1,402.93	35,073.25	
1728	P.I. / W / 8-IN VALVES INCLUDING NO. 2 COVER	19	EA	1,720.20	32,683.80	
1730	P.I. / W / 12-IN VALVES INCLUDING NO. 2 COVER	1	EA	2,674.68	2,674.68	
1732	P.I. / W / 12X8-IN TAPPING SLV & VALVE NO.2, BOX	2	EA	4,291.80	8,583.60	
1733	P.I. / W / INSTALL 2" POLLY FOR SERVICE	7,000	LF	8.41	58,870.00	
1735	P.I. / W / INSTALL 5/8" SERVICE	43	EA	1,865.25	80,205.75	
1737	P.I. / W / INSTALL 1" SERVICE	106	EA	1,865.25	197,716.50	
1738	P.I. / W / INSTALL 1-1/2" SERVICE	42	EA	2,330.04	97,861.68	
1740	P.I. / W / INSTALL 2" SERVICE	33	EA	2,716.30	89,637.90	
1750	P.I. / W / REMOVE EXISTING FIRE HYDRANT q	21	EA	722.84	15,179.64	
1760	P.I. / W / F & I FIRE HYDRANT ASSEMBLY	25	EA	3,260.96	81,524.00	
1780	P.I. / W / CONNECT TO EXISTING WATER MAIN	2	EA	5,409.52	10,819.04	
1785	P.I. / W / F&I CONCRETE SLAB FOR COVER	116	CY	176.08	20,425.28	
1790	P.I. / W / BACTERIOLOGICAL SAMPLE POINTS q	20	EA	818.82	16,376.40	
1791	P.I. / S / PRECLEAN & CCTV INSPECTION	3,230	LF	5.43	17,538.90	
1792	P.I. / S / CIPP 8" 6MM LINING	3,230	LF	40.49	130,782.70	
1793	P.I. / S / LATERAL REINSTATEMENT (WITH GROUT)	79	EA	551.66	43,581.14	
1794	P.I. / S / HEAVY LATER CLEANING (ROOTS/ DESCALING)	3,511	LF	30.83	108,244.13	
1795	P.I. / S / LATERAL LINING (INC LIGHT CLEANING)	117	EA	5,250.00	614,250.00	
1796	P.I. / S / SS MH REHAB	38	EA	2,400.00	91,200.00	
1797	P.I. / S / LATERAL LINING (BEYOND 30' ESTIMATED)	700	LF	150.00	105,000.00	
Subtotal Water & Sewer						3,080,423.99
Sitework (Streetscape Improvements)						
Demolition						
1800	P.I. / AG / EROSION AND SEDIMENTATION CONTROL	1	LS	39,414.93	39,414.93	
1810	P.I. / AG / CLEAR AND GRADE RIGHT OF WAY AREA	10,177	SY	5.71	58,110.67	
1820	P.I. / AG / R & D ASP PAVEMENT	500	SY	6.13	3,065.00	
1830	P.I. / AG / MILLING OF EXISTING PAVEMENT (1" AVG)	26,172	SY	5.00	130,860.00	
1840	P.I. / AG / TYPE S-III ASP PAVEMENT 1st LIFT (1")	26,172	SY	11.66	305,165.52	
Roadway						
1870	P.I. / AG / REMOVE CONCRETE CURB & GUTTER	22,054	LF	4.93	108,726.22	
1880	P.I. / AG / REWORK EXISTING LIMEROCK BASE, COMPACT	26,172	SY	9.15	239,473.80	
1890	P.I. / AG / S-III ASP CONCRETE PAVEMENT 2", 2 LFT	22,054	SY	15.00	330,810.00	
1900	P.I. / AG / ADDITIONAL TYPE B STABILIZATION	16,301	SY	4.75	77,429.75	
1910	P.I. / AG / ADDITIONAL 8" BASE RELATED TO REWORKED	16,301	SY	13.16	214,521.16	
1920	P.I. / AG / REINSTALL CONCRETE DRIVEWAY	651	SY	59.64	38,825.64	
1925	P.I. / AG / 4-INCH CONCRETE SIDEWALK	1,799	SY	41.73	75,072.27	
1930	P.I. / AG / DRIVEWAY REMOVE BRICK/PAVERS AND PAVE	683	SY	76.42	52,194.86	
1950	P.I. / AG / DRIVEWAY AND RECONSTRUCT 3/4" ASPHALT	412	SY	24.99	10,295.88	
1960	P.I. / AG / ADD FILL TO CHANGE ELEVATIONS	17,500	CY	19.90	348,250.00	
Curb and Gutter						
1980	P.I. / AG / GRAVITY WALL	1,010	LF	245.48	247,934.80	
2010	P.I. / AG / CONCRETE VALLEY GUTTER AND CURB	7,156	LF	26.98	193,068.88	
2012	P.I. / AG / CONCRETE "D" CURB	7,742	LF	25.91	200,595.22	
2014	P.I. / AG / CONCRETE "F" CURB	7,156	LF	28.23	202,013.88	
2020	P.I. / AG / SPEED TABLE WITH PAVERS	6	EA	12,000.00	72,000.00	

Item No.	Description	QUANTITY	UNIT	UNIT PRICE	Extension	SUBTOTAL
	Misc. - Signage and Pavement Markings (Itemize by Type)					
2040	P.I. / AG / FURNISH AND INSTALL NEW STREET SIGN	28	EA	300.00	8,400.00	
2050	P.I. / AG / REMOVE & DISPOSE EXISTING SIGN	28	EA	50.00	1,400.00	
2060	P.I. / AG / F & I 6" DOUBLE THERMO (SOLID) q	20,698	LF	1.80	37,256.40	
2080	P.I. / AG / F & I 18" THERMO (SOLID)	400	LF	2.70	1,080.00	
2090	P.I. / AG / F & I 24" THERMO (STOP BAR) q	400	LF	3.60	1,440.00	
2100	P.I. / AG / F & I RPM q	150	EA	5.00	750.00	
2110	P.I. / AG / IRRIGATION SYSTEM REPAIRS (PER LOT) q	117	EA	400.00	46,800.00	
2120	P.I. / AG / R & D ROCKS > THEN 100 LBS OR 12" DIA q	10	EA	25.00	250.00	
Subtotal Streetscape						3,045,204.88
Division 2 - Palm, Sitework Total:						16,181,214.33
Division 3 - Landscape						
	Landscape - Demolition					
2130	P.I. / AG / REMOVE EXISTING TREES	385	EA	250.00	96,250.00	
2140	P.I. / AG / REMOVE EXISTING PALMS	18	EA	250.00	4,500.00	
2145	P.I. / AG / PROTECT PRESERVED TREES	1	LS	96,172.53	96,172.53	
2150	P.I. / AG / REMOVE EXISTING HEDGES q	500	LF	12.04	6,020.00	
2160	P.I. / AG / REMOVE EXISTING SHRUBS q	100	EA	134.27	13,427.00	
2170	P.I. / AG / TREE TRIMMING/PRUNING	1	LS	9,000.00	9,000.00	
2180	P.I. / AG / ST. AUGUSTINE 'FLORATAM' PALLETES	85,045	SF	0.43	36,569.35	
2190	P.I. / AG / SOIL TO BACKFILL TREE REMOVAL VOIDS	1	LS	5,000.00	5,000.00	
2200	P.I. / AG / LARGE TREES	265	EA	495.00	131,175.00	
2210	P.I. / AG / SMALL TREES	167	EA	325.00	54,275.00	
2215	P.I. / AG / CERTIFIED ARBORIST FOR JOBSITE	216	HR	250.00	54,000.00	
Division 3 - Palm, Landscaping Total:						506,388.88
Division 16 - Lighting / Electrical						
2220	P.I. / AG / STREET LIGHTING	1	LS	1,673,270.00	1,673,270.00	
Division 16 - Palm, Lighting / Electrical						1,673,270.00
2227	P.I. / MAINTENANCE OF TRAFFIC	1	LS	\$44,310.00	44,310.00	
Division - Maintenance of Traffic						\$44,310.00

Item No.	Description	QUANTITY	UNIT	UNIT PRICE	Extension	SUBTOTAL
Division 2 - Sitework						
Stormwater						
2230	H.I. / ST / TEMPORARY ASP	-	SY	10.77	-	
2240	H.I. / ST / TYPE B STABILIZATION(LBR40:12" THICK)	19,380	SY	4.75	92,055.00	
2250	H.I. / ST / LIMEROCK BASE (8-IN COURSE PRIMED)	19,380	SY	13.16	255,040.80	
2260	H.I. / ST / R & D UNSUITABLE MATERIAL	25,839	CY	11.12	287,329.68	
2270	H.I. / ST / F & I SUITABLE BACKFILL MATERIAL	25,839	CY	10.40	268,725.60	
2280	H.I. / ST / DEWATERING	1	LS	357,342.88	357,342.88	
Existing Utilities						
2300	H.I. / ST / REMOVE EXISTING DRAINAGE STRUCTURE	69	EA	652.10	44,994.90	
2310	H.I. / ST / REMOVE EXISTING DRAINAGE PIPE	5,816	LF	15.99	92,997.84	
2320	H.I. / ST / GROUT IN PLACE EXIST DRAINAGE PIPE	500	LF	19.56	9,780.00	
Drainage Structures						
2328	H.I. / ST / PVC DRAIN BASIN W/GRATE (36" DIA)	53	EA	3,227.26	171,044.78	
2335	H.I. / ST / PVC TEES 24"x18"	53	EA	1,912.18	101,345.54	
2340	H.I. / ST / INLET (TYPE J 48" RND CB)	65	EA	3,989.83	259,338.95	
2350	H.I. / ST / INLET (TYPE J 60" RND CB)	3	EA	8,598.27	25,794.81	
2360	H.I. / ST / INLET (60" SQUARE)	2	EA	9,016.74	18,033.48	
2380	H.I. / ST / MANHOLE (TYPE P 48" RND MH)	37	EA	4,080.78	150,988.86	
2390	H.I. / ST / MANHOLE (TYPE J 60" RND MH)	9	EA	8,757.05	78,813.45	
2393	H.I. / ST / MH (60" SQUARE)	4	EA	10,070.68	40,282.72	
2395	H.I. / ST / MH (TYPE "J" 72" DIA)	6	EA	15,892.08	95,352.48	
2398	H.I. / ST / MH (72" SQUARE)	1	EA	11,569.23	11,569.23	
2400	H.I. / ST / MANHOLE (TYPE J 84X84" SQ MH)	1	EA	19,528.28	19,528.28	
2405	H.I. / ST / MH (84" DIA)	3	EA	12,614.57	37,843.71	
2410	H.I. / ST / CONFL. MH (TYPE "P" 48" DIA), USF-385	6	EA	8,403.63	50,421.78	
2420	H.I. / ST / CONFL. MH (TYPE "P" 72" DIA), USF-385	10	EA	1,572.57	15,725.70	
Pump Station						
2670	H.I. / ST / PUMP STATION, STRUCTURES, & onsite Electrical. Note that Offsite Electrical is to be provided by Others to within 50' of the Control Panel.	1	EA	2,189,722.00	2,189,722.00	
Drainage Outfalls						
2672	H.I. / ST / 16-IN FORCEMAIN PIPE WITH FITTINGS	24	LF	305.57	7,333.68	
2700	H.I. / ST / CORE DRILL EXISTING SEA WALL	1	EA	3,677.87	3,677.87	
2710	H.I. / ST / INSTALL MANATEE GRATES	1	EA	2,113.19	2,113.19	
Drainage Piping						
2740	H.I. / ST / 18-IN A2000 PIPE CULVERT WITH FITTINGS	1,020	LF	104.72	106,814.40	
2750	H.I. / ST / 24-IN A2000 PIPE CULVERT WITH FITTINGS	4,476	LF	124.45	557,038.20	
2760	H.I. / ST / 30-IN A2000 PIPE CULVERT WITH FITTINGS	1,780	LF	145.39	258,794.20	
2770	H.I. / ST / 36-IN A2000 PIPE CULVERT WITH FITTINGS	431	LF	166.86	71,916.66	
2772	H.I. / ST / 42-IN RCP PIPE CULVERT WITH FITTINGS	140	LF	325.57	45,579.80	
2775	H.I. / ST / 48-IN RCP PIPE CULVERT WITH FITTING	372	LF	400.27	148,900.44	
2780	H.I. / ST / 54-IN RCP PIPE CULVERT WITH FITTINGS	85	LF	428.73	36,442.05	
2785	H.I. / ST / 72-IN RCP PIPE CULVERT WITH FITTING	8	LF	476.54	3,812.32	
2790	H.I. / ST / 15' x 5' BOX CULVERT	8	LF	3,194.76	25,558.08	
2850	H.I. / ST / SS LATERAL CONFLICT OR REPAIR q	10	EA	1,399.50	13,995.00	
2860	H.I. / ST / SS MAIN REPAIRS (ALL SIZES) q	100	LF	166.60	16,660.00	
Subtotal Stormwater						5,972,708.36
Utility Work - Water and Sewer						
Pavement Associated with Utilities						
2870	H.I. / W TEMPORARY ASP	8,872	SY	10.58	93,865.76	
2880	H.I. / W TYPE B STABILIZATION(LBR40:12" THICK)	8,872	SY	4.75	42,142.00	
2890	H.I. / W LIMEROCK BASE (8-IN COURSE PRIMED)	8,872	SY	13.16	116,755.52	
2900	H.I. / W R & D UNSUITABLE MATERIAL	11,829	CY	11.12	131,538.48	
2910	H.I. / W F & I SUITABLE BACKFILL	11,829	CY	10.40	123,021.60	

Item No.	Description	QUANTITY	UNIT	UNIT PRICE	Extension	SUBTOTAL
Water Improvements						
2922	H.I. / W 6-IN (DIP CL 53) W/ FITTINGS	320	LF	112.76	36,083.20	
2940	H.I. / W 8-IN (DIP CL 53) W/ FITTINGS	6,560	LF	103.75	680,600.00	
2942	H.I. / W 6-IN VALVES INCLUDING NO. 2 VALVE COVER	14	EA	1,402.93	19,641.02	
2950	H.I. / W 8-IN VALVES INCLUDING NO. 2 VALVE COVER	14	EA	1,720.20	24,082.80	
2952	H.I. / W 12X8-IN TAPPING SLEEVE & VALVE NO. 2 BOX	4	EA	4,504.31	18,017.24	
2960	H.I. / W INSTALL 2" POLY	7,000	LF	8.41	58,870.00	
2962	H.I. / W / INSTALL 5/8" SERVICE	43	EA	1,865.25	80,205.75	
2964	H.I. / W / INSTALL 1" SERVICE	154	EA	1,865.25	287,248.50	
2966	H.I. / W / INSTALL 1-1/2" SERVICE	55	EA	2,330.04	128,152.20	
2968	H.I. / W / INSTALL 2" SERVICE	15	EA	2,716.30	40,744.50	
2970	H.I. / W HDD BACKYARD	51	EA	1,200.00	61,200.00	
2980	H.I. / W REMOVE EXISTING FIRE HYDRANT	7	EA	722.85	5,059.95	
2990	H.I. / W F & I FIRE HYDRANT ASSEMBLY	14	EA	3,260.96	45,653.44	
3020	H.I. / W CONNECT TO EXISTING WATER MAIN	3	EA	5,397.52	16,192.56	
3022	H.I. / W F&I CONCRETE SLAB FOR COVER	104	CY	176.08	18,312.32	
3030	H.I. / W BACTERIOLOGICAL SAMPLE POINTS q	10	EA	818.81	8,188.10	
3032	H.I. / S SS MH REHAB	36	EA	2,400.00	86,400.00	
3039	H.I. / S LATERAL LINING (BEYOND 30', ESTIMATED)	300	LF	150.00	45,000.00	
3040	H.I. / S PRECLEANING & CCTV INSPECTION	6,750	LF	5.43	36,652.50	
3041	H.I. / S CIPP 8" 6MM LINING	6,750	LF	40.49	273,307.50	
3042	H.I. / S LATERAL REINSTATEMENT (W/ GROUT)	62	EA	551.66	34,202.92	
3043	H.I. / S HEAVY LATERAL CLEANING (ROOT / DESCALING)	2,759	LF	30.83	85,059.97	
3044	H.I. / S LATERAL LINING (INC LIGHT CLEANING)	92	EA	5,250.00	483,000.00	
Subtotal Water & Sewer						3,079,197.83
Sitework (Streetscape Improvements)						
Demolition						
3050	H.I. / AG / EROSION AND SEDIMENTATION CONTROL	1	LS	39,414.93	39,414.93	
3060	H.I. / AG / CLEAR AND GRADE RIGHT OF WAY AREA	35,647	SY	5.72	203,900.84	
3070	H.I. / AG / R & D ASP PAVEMENT	500	SY	5.98	2,990.00	
3080	H.I. / AG / MILLING OF EXISTING PAVEMENT (1" AVG)	17,269	SY	5.00	86,345.00	
3090	H.I. / AG / TYPE S-III ASP PAVEMENT 1st LIFT (1")	17,269	SY	11.67	201,529.23	
3120	H.I. / AG / REMOVE CONCRETE CURB & GUTTER	18,183	LF	5.39	98,006.37	
Roadway						
3130	H.I. / AG / REWORK EXISTING LIMEROCK BASE, COMPACT	17,269	SY	9.16	158,184.04	
3140	H.I. / AG / S-III ASP CONCRETE PAVEMENT 2", 2nd LFT (1")	17,269	SY	15.00	259,035.00	
3150	H.I. / AG / ADDITIONAL TYPE B STABILIZATION		SY		-	
3160	H.I. / AG / ADDITIONAL 8" BASE RELATED TO REWORKED		SY		-	
3170	H.I. / AG / REINSTALL CONCRETE DRIVEWAY	956	SY	59.64	57,015.84	
3180	H.I. / AG / DRIVEWAY REMOVE BRICK/PAVERS AND PAVE	3,657	SY	76.42	279,467.94	
3190	H.I. / AG / DRIVEWAY AND RECONSTRUCT 3/4" ASPHALT	3,740	SY	24.80	92,752.00	
3210	H.I. / AG / ADD FILL TO CHANGE ELEVATIONS	2,400	CY	17.50	42,000.00	
Curb and Gutter						
3260	H.I. / AG / CONCRETE VALLEY GUTTER	18,183	LF	26.88	488,759.04	
3270	H.I. / AG / SPEED TABLE PAVER WITH CONCRETE	6	EA	12,000.00	72,000.00	
Misc. - Signage and Pavement Markings (Itemize by Type)						
3290	H.I. / AG / FURNISH AND INSTALL NEW STREET SIGN	58	EA	300.00	17,400.00	
3300	H.I. / AG / REMOVE & DISPOSE EXISTING SIGN	58	EA	50.00	2,900.00	
3310	H.I. / AG / F & I 6" DOUBLE THERMO (SOLID) q	19,624	LF	1.80	35,323.20	
3320	H.I. / AG / F & I 12" THERMO (SOLID) q	20	LF	1.60	32.00	
3330	H.I. / AG / F & I 18" THERMO (SOLID) q	220	LF	2.70	594.00	
3340	H.I. / AG / F & I 24" THERMO (SOLID) q	220	LF	3.60	792.00	
3350	H.I. / AG / F & I RPM q	150	EA	5.00	750.00	
3360	H.I. / AG / IRRIGATION SYSTEM REPAIRS (PER LOT) q	92	EA	400.00	36,800.00	
3370	H.I. / AG / R & D ROCKS > THEN 100 LBS OR 12" DIA q	10	EA	25.00	250.00	
Subtotal Streetscape						2,176,241.43
Division 2 - Hibiscus, Sitework Total:						\$11,228,147.62

Item No.	Description	QUANTITY	UNIT	UNIT PRICE	Extension	SUBTOTAL
Division 3 - Landscape						
Landscape - Demolition						
3380	H.I. / AG / REMOVE EXISTING TREES	195	EA	250.00	48,750.00	
3390	H.I. / AG / REMOVE EXISTING PALMS	48	EA	250.00	12,000.00	
3400	H.I. / AG / REMOVE EXISTING HEDGES	1,000	LF	12.04	12,040.00	
3410	H.I. / AG / REMOVE EXISTING SHRUBS q	50	EA	25.61	1,280.50	
3415	P.I. / AG / PROTECT PRESERVED TREES	1	LS	85,157.66	85,157.66	
3420	H.I. / AG / TREE TRIMMING/PRUNING q	1	LS	9,000.00	9,000.00	
3430	H.I. / AG / ST. AUGUSTINE 'FLORATAM' PALLETES	129,960	SF	0.43	55,882.80	
3440	H.I. / AG / SOIL TO BACKFILL TREE REMOVAL VOIDS	1	LS	5,000.00	5,000.00	
3450	H.I. / AG / LARGE TREES	84	EA	495.00	41,580.00	
3460	H.I. / AG / SMALL TREES	180	EA	325.00	58,500.00	
3465	H.I. / AG / CERTIFIED ARBORIST FOR JOBSITE	216	HR	250.00	54,000.00	
Division 3 - Hibiscus, Landscaping Total:						383,190.96
Division 16 - Lighting / Electrical						
3470	H.I. / AG / STREET LIGHTING	1	LS	1,269,719.00	1,269,719.00	
FPL						
3480	H.I. / UG / REWORK EXISTING LIMEROCK BASE, COMPACT	5,968	SY	6.79	40,522.72	
3490	H.I. / UG / ADDITIONAL TYPE B STABILIZATION	5,968	SY	4.75	28,348.00	
3500	H.I. / UG / ADDITIONAL 8" BASE RELATED TO REWORKED	5,968	SY	13.16	78,538.88	
3510	H.I. / UG / REINSTALL CONCRETE DRIVEWAY q	1,000	SY	66.16	66,160.00	
3520	H.I. / UG / DRIVEWAY REMOVE BRICK/PAVERS AND PAVE	100	SY	76.12	7,612.00	
3540	H.I. / UG / DRIVEWAY AND RECONSTRUCT 3/4" ASP q	1,000	SY	24.81	24,810.00	
3560	H.I. / UG / 24" HH	126	EA	760.61	95,836.86	
3570	H.I. / UG / 30" HH	24	EA	942.72	22,625.28	
3580	H.I. / UG / 48" HH	3	EA	2,033.42	6,100.26	
3590	H.I. / UG / TRANSFORMER PADS	47	EA	280.81	13,198.07	
3600	H.I. / UG / MANHOLE	1	EA	13,148.31	13,148.31	
3610	H.I. / UG / PVC CONDUIT TRENCH	13,252	LF	7.48	99,124.96	
ATTSE						
3640	H.I. / UG / ATTSE 2-4" CONDUIT	3,401	LF	12.51	42,546.51	
3650	H.I. / UG / ATTSE 1-2" CONDUIT	589	LF	8.45	4,977.05	
3652	H.I. / UG / ATT 42"x60" HANDHOLE	11	EA	9,171.67	100,888.37	
3658	H.I. / UG / ATT 30"x48" HANDHOLE	11	EA	8,929.17	98,220.87	
ABB						
3680	H.I. / UG / ABB 1-2" CONDUIT	2,020	LF	9.12	18,422.40	
3690	H.I. / UG / ABB 1-3" PVC	12,653	LF	9.97	126,150.41	
3700	H.I. / UG / ABB 1-4" PVC	745	LF	10.70	7,971.50	
3710	H.I. / UG / ABB 2-4" CONDUIT	3,401	LF	10.70	36,390.70	
3740	H.I. / UG / ABB VAULT	1	EA	5,736.54	5,736.54	
Division 16 - Hibiscus, Lighting / Electrical						\$2,207,048.69
3758	H.I. / MAINTENANCE OF TRAFFIC	1	LS	44,310.00	44,310.00	
Division - Maintenance of Traffic						\$44,310.00

Bid Summary Totals Report

Standard Markup Instructions

	Cost Basis	Markup %	Markup
Labor:	4,900,443	20.00	980,089
Burden:	1,960,177	20.00	392,035
Perm Matl:	5,326,985	0.00	0
Const Matl:	137,881	0.00	0
Sub:	16,149,660	0.00	0
Eq. Op. Exp:	1,179,346	20.00	235,869
Co. Equip:	2,848,834	20.00	569,767
Rented Eq.:	0	0.00	0
Misc1:	0	0.00	0
Misc2:	0	0.00	0
Misc3:	0	0.00	0
Overrides:	0		0
Total:	32,503,326	6.70	2,177,760

Selected Bond Table: 02

Previous Run

Summary: 11/20/2015 11:35 AM
 Spread: 11/20/2015 11:35 AM

Summary run on Takeoff Quan and Adjusted to Bid Quan.

Standard Spreads

	Total
Indirect Spread:	Total
Markup Spread:	Total less Sub
Addon/Bond Spread:	Total

Totals as of Last Spread

	Cost:	Markup:	Total:
Direct:	32,503,326	2,177,760	34,681,086
Indirect:	0	0	0
Addons:	0	0	0
Bond:	208,886		208,886
SubTotal:	32,712,212	2,177,760	34,889,972
Pass Through:	0		0
Total:	32,712,212	2,177,760	34,889,972

Key Indicators

Balanced Markup 2,177,760.12	/	Total Labor 6,860,620.07	=	Balanced Markup/Total Labor 31.74%
Indirect Cost 0.00	/	Direct Cost 32,503,326.13	=	Indirect Cost/Direct Cost 0.00%

Reduce Burden on Overtime Labor

$$\begin{aligned} \text{Overtime Labor} &= 4,900,443 / 11 \text{ hrs} = 445,494.82 \\ &\times \text{W.C. Rate} = 8.68\% \\ &\quad \underline{\quad \quad \quad} \\ &\quad \quad \quad \$38,668.95 \\ &\quad \quad \quad + 20\% \\ &\quad \quad \quad \underline{\quad \quad \quad} \\ &\quad \quad \quad 7,733.79 \\ &\text{Burden Reduction } 46,402.74 \end{aligned}$$

Lanzo Construction Co FI
Burden Rates 2013

2013		
FICA	As Published	7.65%
State Unemployment	As Published	5.40%
Federal Unemployment	As Published	0.80%
<u>Health/Dental/Life Insurance</u>		
2012 Premiums	\$ 414,750.00	
Divide by Job Payroll FY 2012	\$ 5,018,860.00	
Health Insurance		8.27%
<u>Workers Comp</u>		
WC Rate Bridgefield 2013		8.68%
<u>401K Matching</u>		
401K Match		3.00%
<u>Vacation/Holiday/Sick Pay</u>		
2 Weeks Vacation/52 weeks (80 Hours)		3.85%
6 Paid Holidays(48 hrs)		2.31%
<u>General Liability/Umbrella/Inland Marine/Auto/Crime</u>		
Premium Billings 10/01/12-9/30/13	\$ 289,755.00	
Divide by Job Payroll FY 2012	\$ 5,018,860.00	
General Liability/Umbrella/Inland Marine		5.38%
Grand Total Job Overhead rate		<u>45.33%</u>

*BASED ON
HOURS NOT
\$*

**"Attachment B" City of Miami Beach Palm and Hibiscus Islands
Draft Guaranteed Maximum Price (GMP) (Phase 2)**

Assumptions, Exceptions, and Clarifications

PROJECT:	Neighborhood 13, Palm Island & Hibiscus Island
COMPANY NAME:	Lanzo Construction Co. Inc., Florida

1	200-LF Work Zone will be waived to enable "Train Construction".
2	Bypass Maintenance of Traffic (MOT), RFI-15.
3	Pump Station Sites & Round-a-Bout areas to be utilized for Staging.
4	Material Testing (Soil Densities, Concrete Compressive Strength, etc.) by Owner.
5	PIO Services by the City
6	Existing Outfalls abandoned by "Plug & Grout".
7	Existing Seawalls can be breached by "Core & Seal". No money is in this GMP for rebuilding the Seawall if necessary. Includes work necessary to comply with DCP.
8	Onsite Pump Station Electrical Service will be provided by others. Any interim electrical service necessary for Start-up, Testing, and Temporary Service will be provided by Public Works Generators. No FPL Service costs to Pump Station Sites is included in this GMP. Note that Silfredo Trujillo of FPL has provided typical Service Drawings (attached) and noted Ballpark pricing at \$338,430 (Palm) and \$ Minimal (Hibiscus). These costs are not included in Lanzo's GMP.
9	No fabric is necessary under Limerock Roadbase. Removal & Replacement of Unsuitables will enable establishment of Stabilized Subgrade of LBR-40, thereby making the PSI recommendation for fabric unnecessary
10	Landscape Planting within swale areas consists of Sod & Trees only.
11	Arborist Definition is sufficient for City needs at 4 hours per week.
12	Existing Landscape will be removed as necessary to accommodate construction of Swales.
13	Utility Undergrounding complete upon As-Built Submittal to the Owner Utilities. Service turnover & Pole removal by the Utility Owner, Cost & Time associated with service transitions are not included in Lanzo's Cost Presentation. Lanzo has been told that 3 utilities (FPL, ATT, & ABB) are on the poles. Pole removal will be by the last utility on the pole. Resident agreements do not exist (could take a couple of years).
14	Boxes & Pedestals by ABB (not in GMP Cost presentation). Manufacturer will only sell to end User. ATT will install Pedestals as part of service transfer (Andres Hernandez, 305.222-0932). FPL pricing is Labor & Equipment only to install FPL supplied Materials.
15	Driveway transition harmonization extending onto private property will be at a 7:1 grade transition and constructed in accordance with the Miami Beach Restoration Policy. The limit of construction will be determined by the 7:1 grade transition.
16	Work is in City Right-of-Way only with the exception of Driveway Transitions and "Back-to-Front" water service installations. All Private Property access agreements will be negotiated through the City.
17	With the lowest grate elevation at 2.7 NAVD, no Black Base is expected or included in GMP.
18	The Work Definition associated with CIP's October 12, 2015 directive is complete with concepts presented in Lanzo's RFI-034 (Private Property Harmonization), RFI-035 (Private Drainage Accommodation), & Savino-Miller's November 3 E-Mail (Remove / Replace 225 Trees).
19	Restoration approach between Stormwater Installation Phase and Roadway Construction from "Temporary Asphalt" to "Limerock Base" only (Maximum 60 Days). Temporary access on Roadbase. West Palm Island is the exception.

**"Attachment B" City of Miami Beach Palm and Hibiscus Islands
Draft Guaranteed Maximum Price (GMP) (Phase 2)**

Assumptions, Exceptions, and Clarifications

PROJECT:	Neighborhood 13, Palm Island & Hibiscus Island
COMPANY NAME:	Lanzo Construction Co. Inc., Florida

20	Modified Work Zone Phasing to enable work concurrently on both sides of each island (opposite sides of Fountain Street). Allows 4 work zones in each work definition (i.e., Water installation on Palm Island - Zones 1 & 3, Hibiscus Island – Zones 1 & 3).
21	19 Month Work Schedule. 18 month work to Substantial, 30-Days to Final

Michael Bone

From: Tomczyk, Mark <MarkTomczyk@miamibeachfl.gov>
Sent: Wednesday, September 03, 2014 5:47 PM
To: Michael Bone
Cc: Cema, Maria; Sanchez, Olga
Subject: RE: Palm and Hibiscus Contract Review

Mike,
See our responses in red..

1. Article 4 Compensation, paragraph 4.1. "Design Builders Fee" 5% of cost of the work. Where was this fee amount derived from? The RFQ documents had this space blank and it was reasonable to expect the fee to be negotiated. *It is our position this fee is not adequate compensation for a project with the risk involved and it would not be prudent to negotiate this until other parts of the Contract have been clarified.*

See responses below for requested clarifications

2. Article 5, Payment. It is unclear as to whether payment will be made from an approved schedule of values, that reflect the approved GMP or by submitted backup for reimbursement plus a fee. 5.3.3, uses the term "actual GMP" and GMP in the same paragraph. 5.3.5, states, "3) back-up documentation for each pay item billed". 5.6.2, states, "a final accounting for the GMP". 4.4, Cost of the Work, states "The Cost of the work shall mean costs reasonably and actually incurred by the Design Builder in the proper performance of the Work and Services." 4.10, Refers to audit of actual costs. Please clarify the procedure for payment.

Payments will be processed from schedule of values, as presented in the negotiated GMP as determined from actual sub-contractor and supplier bidding.

3. 5.4.2, Does not allow payment for stored material. 4.5.3, Does not reimburse us for cost of capital used in the performance of the work. Is it the intent of this contract for the cost of capital used to be part of the Contractor's fee?

The City will not pay for stored materials or equipment.

4. 6.1, For Design Services Contemplated in Phase I, 150 calendar days are in line with the original DCP, but does not reflect changes for additional review times for the City as requested for the original base DCP.

We have determined the City does not need additional review time therefore the 150 calendar days will be acceptable.

5. 7.5.16.7, "Design Builder Participation", requires the Design Builder to perform not less than 25% of the work with its own organization. How is the cost determined for this work? Does the Contractor perform this work at current unit prices as established by recent work in the area, negotiated labor, material and equipment plus a fee, or cost of the work, as identified

elsewhere in the Contract? How is the fee determined for this work?

Percentage of work completed as depicted on the negotiated GMP

6.4.7, "Out of Scope Services, 7.21.12, "Notice of Potential Claim", 7.5.1, "Unforeseen Conditions" and 7.19, Changed or Additional Work,, contemplate the possibility of additional work. This contract doesn't have a section that outlines how to cost additional work and the definitions for what is allowed and the determination of the Contractors Fee, and what amount is applicable to different situations. Is the Contractor's Fee, as identified elsewhere in this Contract, meant to be the same for Additional Work? We think that a section should be added to cover this situation.

The City does not anticipate any change orders or additional work. If additional work is requested by the City a separate amendment that specifically covers the scope will be negotiated.

From: Michael Bone [mailto:MichaelB@Lanzo.org]
Sent: Tuesday, September 02, 2014 8:55 AM
To: Tomczyk, Mark
Subject: Palm and Hibiscus Contract Review

Mark,
Here are my comments.
Mike

To the Board of Directors
Lanzo Group
Deerfield Beach, Florida

Report on the Combined Financial Statements

We have audited the accompanying combined financial statements of Lanzo Group (the "Group"), which comprise the combined balance sheet as of December 31, 2014, and the related combined statements of income, equity, and cash flows for the year then ended, and the related notes to the combined financial statements.

Management's Responsibility for the Combined Financial Statements

Management is responsible for the preparation and fair presentation of these combined financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of combined financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

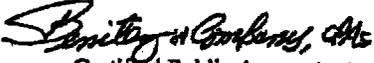
Our responsibility is to express an opinion on these combined financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the combined financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the combined financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the combined financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the combined financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the combined financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the combined financial position of Lanzo Group as of December 31, 2014, and the results of its combined operations and its combined cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.


Certified Public Accountants

Miami, Florida
March 23, 2015

LANZO GROUP
 COMBINED STATEMENT OF INCOME
 Year Ended December 31, 2014
 (Expressed in United States Dollars)

Revenues:		
Contract revenues earned	\$ 55,314,966	
Sales and rental income	991,234	
Total revenues:	<u>56,306,200</u>	- REVENUE
Cost of revenues:		
Cost of revenues earned	42,659,480	
Cost of goods sold	633,781	
Total cost of revenues:	<u>43,293,261</u>	- COST
Gross profit before indirect costs	13,012,939	
Indirect costs not allocated to contracts	<u>861,933</u>	
Gross profit	12,151,006	/ COST = 28.1%
General and administrative expenses	<u>7,409,169</u>	
Income from operations	4,741,837	
Other (expenses) income:		
Other income	15,123	
Interest and dividend income	109,673	
Provision for bad debt (Note - 3)	(1,792,650)	
Interest expense	<u>(921,044)</u>	
Total other expenses	<u>(2,588,898)</u>	
Income before income taxes	2,152,939	
Provision for income taxes (Note - 16)	<u>(304,838)</u>	
Net income	<u>\$ 1,848,101</u>	
Less: Net income attributable to noncontrolling interests (Note - 24)	<u>(86,648)</u>	
Net income attributable to the Group	<u>\$ 1,761,453</u>	
Other comprehensive income:		
Cash flow hedges:		
Gain on swap contracts	<u>19,884</u>	
Other comprehensive income:	<u>19,884</u>	
Comprehensive income	<u>\$ 1,781,337</u>	

The accompanying notes are an integral part of these combined financial statements.

Activity ID	Activity Name	Original Duration	Remaining Duration	Total Float	Start	Finish	Activity Code	Layout	F-430 Progress	06-Nov-15	14-06
Total		169	63		12-Jan-15 A	03-Jan-16					
Design Engineering											
DEP0001	Notice to Proceed One	347	0	0	12-Jan-15 A	27-Mar-15 A					
DEP0003	Re-Establish 30% Design Drawings	75	0	0	12-Jan-15 A	27-Apr-15 A					
DEP0011	Locate Existing For Design, Survey	75	0	0	12-Jan-15 A	26-Feb-15 A					
DEP0002	Review DCP Reports and Update Existing Base Sheets	45	0	0	13-Jan-15 A	17-Jan-15 A					
DEP0034	Pre-Permit Meetings, SFWMD & DRER	5	0	0	05-Mar-15 A	05-Mar-15 A					
DEP0012	Coordination Meeting FPL	1	0	0	05-Mar-15 A	05-Mar-15 A					
DEP0014	Coordination Meeting AT & T	1	0	0	05-Mar-15 A	05-Mar-15 A					
DEP0016	Coordination Meeting ABB	1	0	0	30-Mar-15 A	16-Apr-15 A					
DEP0010.5	City Review 30% Drawings	10	0	0	01-Apr-15 A	01-Apr-15 A					
DEP0010.1	Community Design Review Meeting 30%	0	0	0	16-Apr-15 A	16-Apr-15 A					
DEP0010	30% City Design Meeting	0	0	0	17-Apr-15 A	01-Jun-15 A					
DEP0019	Develop Drawings to 60%	45	0	0	17-Apr-15 A	01-Jun-15 A					
DEP0024	Develop Draft GMP 60%	45	0	0	01-Jun-15 A	17-Jun-15 A					
DEP0022	City Design Review 60%	10	0	0	01-Jun-15 A	17-Jun-15 A					
DEP0026	Develop Drawing 90%	45	5	5	15-Jun-15 A	04-Nov-15					
DEP0032	Develop Final GMP 90%	45	10	10	04-Nov-15	04-Nov-15					
DEP0040.01	Miami Beach Building Department	30	30	30	04-Nov-15	04-Nov-15					
DEP0040.10	SFWMD Consumptive Use Permit	30	30	30	04-Nov-15	04-Nov-15					
DEP0040.11	Florida Dept of Environ. Prot.	30	30	30	04-Nov-15	04-Nov-15					
DEP0040.06	DERM Class II Surface Water Management Permit	45	45	45	04-Nov-15	04-Nov-15					
DEP0040.12	U.S. Army/Corps of Engineers	60	60	60	04-Nov-15	04-Nov-15					
DEP0040.02	Miami Beach Design Review Board	30	30	30	04-Nov-15	04-Nov-15					
DEP0040.03	Miami Beach Historical Preservation Board	30	30	30	04-Nov-15	04-Nov-15					
DEP0040.04	Miami Beach Planning Department	30	30	30	04-Nov-15	04-Nov-15					
DEP0040.08	Miami Beach Public Works Department	30	30	30	04-Nov-15	04-Nov-15					
DEP0040.09	Miami-Dade Health & Rehabilitative Dept	30	30	30	04-Nov-15	04-Nov-15					
DEP0040.13	U.S. Environmental Protection Agency	60	60	60	04-Nov-15	04-Nov-15					
DEP0023	Design and Constructability Review 60%	10	0	0	01-Jun-15 A	17-Jun-15 A					
DEP0025	Design Builder QACCC Review 60%	10	0	0	01-Jun-15 A	17-Jun-15 A					
DEP0020	Community Design Review 60%	1	0	0	11-Jun-15 A	11-Jun-15 A					
DEP0021	City Review Meeting 60%	1	0	0	11-Jun-15 A	11-Jun-15 A					
DEP0300	Pause Design-Build pending HOA Input on 60% Drawings	70	0	0	19-Jun-15 A	22-Jul-15 A					
DEP0310	Fire Input on 60% Drawings, 20-Foot Roadways	70	0	0	14-Jul-15 A	20-Aug-15 A					
DEP0011.1	Utility Locate Existing For Design, Soft-Dig	45	0	0	03-Aug-15 A	26-Oct-15 A					
DEP0020	Directive, Minimum Grade Elevation = 2.7	1	60	60	26-Oct-15 A	26-Oct-15 A					
DEP0027	Precon Meeting (Residents) 90% Review	1	1	1	05-Nov-15	05-Nov-15					
DEP0028	City Review Meeting 90%	1	1	1	05-Nov-15	05-Nov-15					

Activity ID	Activity Name	Original Duration	Remaining Duration	Total Float	Start	Finish
Zone: HBZ3						
Z3DR0020	Erosion Control	3	0	3	05-Sep-16	14-Nov-16
Z3DR0010	Site Survey	2	2	17	05-Sep-16	08-Sep-16
Z3DR0040	Locate Conflicts	5	5	16	06-Sep-16	08-Sep-16
Z3DR0030	Install Temporary Drainage	5	5	16	07-Sep-16	14-Sep-16
Z3DR0060	Install Drainage Pipe	33	33	3	26-Sep-16	03-Oct-16
Z3DR0070	Temporary Paving	33	33	3	27-Sep-16	11-Nov-16
Zone: HBZ4						
Z4DR0020	Erosion Control	3	0	3	24-Oct-16	09-Feb-17
Z4DR0010	Site Survey	3	3	17	24-Oct-16	27-Oct-16
Z4DR0040	Locate Conflicts	5	5	20	26-Oct-16	02-Nov-16
Z4DR0030	Install Temporary Drainage	5	5	3	14-Nov-16	21-Nov-16
Z4DR0060	Install Drainage Pipe	57	57	3	21-Nov-16	08-Feb-17
Z4DR0070	Temporary Paving	57	57	3	22-Nov-16	09-Feb-17
Zone: HBZ5						
Z5HDR1010	Site Survey	1	1	146	18-Dec-16	11-Jul-17
Z5HDR1020	Erosion Control	1	1	175	19-Dec-16	20-Dec-16
Z5HDR1021	Sheeting	5	5	175	20-Dec-16	21-Dec-16
Z5HDR1022	Dewater	5	5	168	30-Dec-16	06-Jan-17
Z5HDR1023	Excavate	5	5	168	06-Jan-17	13-Jan-17
Z5DR0020	Erosion Control	3	3	17	19-Jan-17	20-Jan-17
Z5DR0010	Site Survey	2	2	16	20-Jan-17	24-Jan-17
Z5DR0040	Locate Conflicts	5	5	20	23-Jan-17	30-Jan-17
Z5DR0030	Install Temporary Drainage	5	5	3	09-Feb-17	16-Feb-17
Z5DR0060	Install Drainage Pipe	26	26	3	16-Feb-17	24-Mar-17
Z5DR0070	Temporary Paving	26	26	3	17-Feb-17	27-Mar-17
Z5HDR1030	Install Concrete Pump Station	15	15	108	14-Apr-17	05-May-17
Z5HDR1040	Install Concrete Valve Vault	5	5	108	05-May-17	12-May-17
Z5HDR1055	Install Discharge Disappater	5	5	108	12-May-17	19-May-17
Z5HDR1060	Install Weir Box	5	5	108	19-May-17	26-May-17
Z5HDR1065	Install Trash Separator	5	5	108	26-May-17	02-Jun-17
Z5HDR1070	Backfill	5	5	106	02-Jun-17	09-Jun-17
Z5HDR1080	Install Pump	2	2	108	02-Jun-17	13-Jun-17
Z5HDR1090	Install Electrical	10	10	108	09-Jun-17	27-Jun-17
Z5HDR1100	Start Up and Test	5	5	108	13-Jun-17	04-Jul-17
Roadway						
Z1SR0020	Miscellaneous Stenwork	5	5	108	04-Jul-17	11-Jul-17
Zone: HBZ1						
Z1SR0010	Site Survey	2	2	44	23-Mar-17	03-Oct-17
Z1SR0020	Erosion Control	2	2	4	23-Mar-17	27-Mar-17
Z1SR0030	Curb and Gutter	29	29	3	23-Mar-17	27-Mar-17
Z1SR0040	Sidewalks and Driveways	29	29	4	24-Mar-17	04-May-17
Z1SR0050	Underground Utility and Lighting Conduits	29	29	3	24-Mar-17	04-May-17
Z1SR0060	Reconstruct Roadway Base	29	29	3	27-Mar-17	05-May-17
Z1SR0070	Paving First Lift	29	29	3	29-Mar-17	08-May-17
Z1SR0080	Lighting	9	9	140	31-Mar-17	11-May-17

Printed 06-Nov-15 Finish Date 03-Jan-18 Data Date 26-Oct-15

Page 6 of 11

Remaining Level of Effort Actual Work Critical Remaining Work Remaining Work Milestone

Activity ID	Activity Name	Original Duration	Remaining Duration	Total Float	Start	Finish
Aerial Utility Removal						
UTUG0010	As-Built Utility Undergirding to FFL, ATT, & ABB	60	60	3	12-Sep-17	05-Dec-17
Palm Island Watermain & Sanitary Sewer						
Zone: PZ1						
Z1PVM0010	Site Survey	2	2	70	21-Jan-16	14-Nov-17
Z1PVM0020	Erosion Control	2	2	93	21-Jan-16	25-Jan-16
Z1PVM0030	Locate Existing	3	3	18	21-Jan-16	26-Jan-16
Z1PVM0040	Insite MOT	1	1	18	21-Jan-16	22-Jan-16
Z1PVM0050	Clear Right of Way	3	3	18	21-Jan-16	26-Jan-16
Z1PVM0060	Install Watermain and Services	14	14	18	22-Jan-16	11-Feb-16
Z1PVM0070	Temporary Paving	14	14	18	25-Jan-16	12-Feb-16
Zone: PZ2						
Z2PVM0010	Site Survey	16	16	65	11-Feb-16	04-Mar-16
Z2PVM0020	Erosion Control	1	1	80	11-Feb-16	12-Feb-16
Z2PVM0030	Locate Existing	2	2	18	11-Feb-16	12-Feb-16
Z2PVM0040	Insite MOT	1	1	18	11-Feb-16	15-Feb-16
Z2PVM0050	Clear Right of Way	2	2	18	11-Feb-16	15-Feb-16
Z2PVM0060	Install Watermain and Services	14	14	18	12-Feb-16	03-Mar-16
Z2PVM0070	Temporary Paving	14	14	18	15-Feb-16	04-Mar-16
Zone: PZ3						
Z3PVM0010	Site Survey	29	29	35	03-Mar-16	13-Apr-16
Z3PVM0020	Erosion Control	2	2	66	03-Mar-16	07-Mar-16
Z3PVM0030	Locate Existing	3	3	18	03-Mar-16	07-Mar-16
Z3PVM0040	Insite MOT	1	1	18	03-Mar-16	08-Mar-16
Z3PVM0050	Clear Right of Way	3	3	18	03-Mar-16	04-Mar-16
Z3PVM0060	Install Watermain and Services	27	27	18	04-Mar-16	12-Apr-16
Z3PVM0070	Temporary Paving	27	27	18	07-Mar-16	13-Apr-16
Zone: PZ4						
Z4PVM0010	Site Survey	25	25	84	12-Apr-16	17-May-16
Z4PVM0020	Erosion Control	2	2	40	12-Apr-16	14-Apr-16
Z4PVM0030	Locate Existing	4	4	18	12-Apr-16	15-Apr-16
Z4PVM0040	Insite MOT	1	1	18	12-Apr-16	18-Apr-16
Z4PVM0050	Clear Right of Way	7	7	18	12-Apr-16	13-Apr-16
Z4PVM0060	Install Watermain and Services	23	23	18	13-Apr-16	21-Apr-16
Z4PVM0070	Temporary Paving	23	23	18	14-Apr-16	16-May-16
Zone: PZ5						
Z5PVM0010	Site Survey	16	16	84	16-May-16	16-Jun-16
Z5PVM0020	Erosion Control	1	1	18	16-May-16	17-May-16
Z5PVM0030	Locate Existing	1	1	84	16-May-16	17-May-16
Z5PVM0040	Insite MOT	1	1	84	16-May-16	17-May-16
Z5PVM0050	Clear Right of Way	2	2	84	16-May-16	16-May-16
Z5PVM0060	Install Watermain and Services	17	17	84	17-May-16	09-Jun-16
Z5PVM0070	Temporary Paving	17	17	84	18-May-16	10-Jun-16
Zone: TSTP						
TSTP0010	Test and Disinfect Watermain and Services, PH-1 & 2	91	91	56	03-Mar-16	06-Jul-16
		20	20	33	03-Mar-16	31-Mar-16

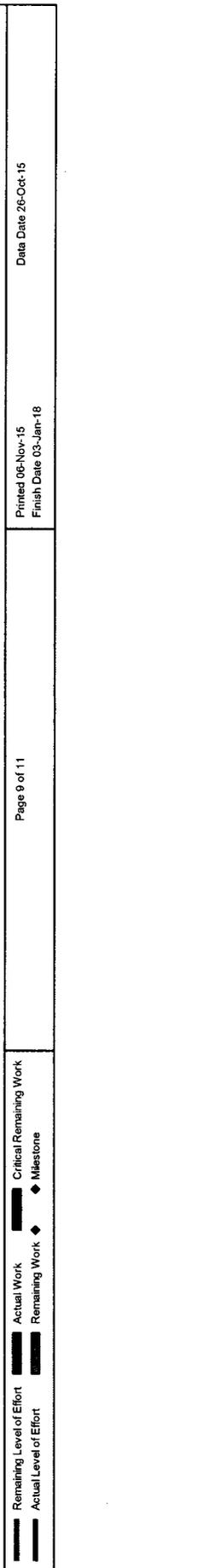
Activity Code Layout, F-430 Progress

Printed 06-Nov-15
Finish Date 03-Jan-18

Page 8 of 11
Data Date 26-Oct-15

Legend:
 ■ Actual Level of Effort
 ■ Remaining Level of Effort
 ■ Actual Work
 ■ Remaining Work
 ◆ Critical Remaining Work
 ◆ Milestone

Activity ID	Activity Name	Original Duration	Remaining Duration	Total Float	Start	Finish
TSTP0020	Connect Services, Ph-1 & 2	20	20	33	31-Mar-16	28-Apr-16
TSTP0015	Test and Disinfect Watermain and Services, PH-3 - 5	20	20	59	10-Jun-16	10-Jun-16
TSTP0025	Connect Services, Ph-3 - 5	20	20	59	10-Jun-16	08-Jul-16
No Zone		42	42	435	10-Feb-16	08-Apr-16
SSP0010	Site Survey	2	2	445	10-Feb-16	12-Feb-16
SSP0020	Sanitary Sewer Main Rehabilitation	10	10	435	25-Feb-16	11-Mar-16
SSP0030	Sanitary Sewer Lateral Rehabilitation	10	10	435	11-Mar-16	25-Mar-16
SSP0040	Sanitary Sewer Manhole Rehabilitation	10	10	435	25-Mar-16	08-Apr-16
Drainage		278	278	130	17-May-16	08-Jun-17
Zone: PZ1		42	42	18	17-May-16	14-Jul-16
Z1PDR0010	Site Survey	2	2	18	17-May-16	19-May-16
Z1PDR0020	Erosion Control	2	2	18	17-May-16	19-May-16
Z1PDR0030	Install Temporary Drainage	4	4	18	19-May-16	25-May-16
Z1PDR0040	Locate Conflicts	4	4	18	19-May-16	25-May-16
Z1PDR0060	Install Drainage Pipe	38	38	18	20-May-16	13-Jul-16
Z1PDR0070	Temporary Paving	38	38	18	23-May-16	14-Jul-16
Zone: PZ2		66	66	18	24-Jun-16	12-Sep-16
Z2PDR0010	Site Survey	2	2	31	24-Jun-16	28-Jun-16
Z2PDR0020	Erosion Control	2	2	31	24-Jun-16	28-Jun-16
Z2PDR0040	Locate Conflicts	3	3	33	27-Jun-16	30-Jun-16
Z2PDR0030	Install Temporary Drainage	3	3	19	14-Jul-16	19-Jul-16
Z2PDR0050	Abandon Existing Outfall Lines	3	3	18	15-Jul-16	20-Jul-16
Z2PDR0060	Install Drainage Pipe	38	38	18	19-Jul-16	09-Sep-16
Z2PDR0070	Temporary Paving	38	38	18	20-Jul-16	12-Sep-16
Zone: PZ3		95	95	18	22-Aug-16	02-Jan-17
Z3PDR0020	Erosion Control	3	3	32	22-Aug-16	25-Aug-16
Z3PDR0010	Site Survey	2	2	31	23-Aug-16	25-Aug-16
Z3PDR0040	Locate Conflicts	4	4	33	24-Aug-16	30-Aug-16
Z3PDR0030	Install Temporary Drainage	4	4	18	12-Sep-16	16-Sep-16
Z3PDR0050	Abandon Existing Outfall Lines	3	3	18	13-Sep-16	16-Sep-16
Z3PDR0060	Install Drainage Pipe	76	76	18	15-Sep-16	30-Dec-16
Z3PDR0070	Temporary Paving	76	76	18	16-Sep-16	02-Jan-17
Zone: PZ4		82	82	18	12-Dec-16	05-Apr-17
Z4PDR0020	Erosion Control	3	3	32	12-Dec-16	15-Dec-16
Z4PDR0010	Site Survey	2	2	31	13-Dec-16	15-Dec-16
Z4PDR0040	Locate Conflicts	5	5	33	14-Dec-16	21-Dec-16
Z4PDR0030	Install Temporary Drainage	5	5	18	02-Jan-17	09-Jan-17
Z4PDR0050	Abandon Existing Outfall Lines	3	3	18	03-Jan-17	06-Jan-17
Z4PDR0060	Install Drainage Pipe	63	63	18	05-Jan-17	04-Apr-17
Z4PDR0070	Temporary Paving	63	63	18	06-Jan-17	05-Apr-17
Zone: PZ5		125	125	157	16-Dec-16	09-Jun-17
Z5PDR1010	Site Survey	1	1	157	16-Dec-16	19-Dec-16
Z5PDR1020	Erosion Control	1	1	142	16-Dec-16	19-Dec-16
Z5PDR1021	Sheeting	5	5	138	23-Dec-16	30-Dec-16
Z5PDR1022	Dewater	5	5	138	30-Dec-16	06-Jan-17
Z5PDR1023	Excavate	5	5	138	06-Jan-17	13-Jan-17



Activity ID	Activity Name	Original Duration	Remaining Duration	Total Float	Start	Finish	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
Z5PDR1030	Install Concrete Pump Station	15	15	108	24-Feb-17	17-Mar-17																			
Z5PDR0020	Erosion Control	3	3	32	15-Mar-17	20-Mar-17																			
Z5PDR0010	Site Survey	2	2	31	16-Mar-17	20-Mar-17																			
Z5PDR0040	Locate Conduits	2	2	31	17-Mar-17	21-Mar-17																			
Z5PDR1040	Install Concrete Valve Vault	5	5	108	17-Mar-17	24-Mar-17																			
Z5PDR1050	Install Discharge Dissipater	5	5	108	24-Mar-17	31-Mar-17																			
Z5PDR1055	Install Weir Box	5	5	108	31-Mar-17	07-Apr-17																			
Z5PDR0030	Install Temporary Drainage	2	2	18	05-Apr-17	07-Apr-17																			
Z5PDR0060	Install Drainage Pipe	45	45	18	06-Apr-17	08-Jun-17																			
Z5PDR0070	Temporary Paving	45	45	18	07-Apr-17	08-Jun-17																			
Z5PDR1060	Install Trash Separator	5	5	108	07-Apr-17	09-Jun-17																			
Z5PDR1065	Backfill	5	5	143	14-Apr-17	21-Apr-17																			
Z5PDR1070	Install Pump	2	2	143	21-Apr-17	25-Apr-17																			
Z5PDR1080	Install Electrical	10	10	143	25-Apr-17	09-May-17																			
Z5PDR1090	Start Up and Test	5	5	143	09-May-17	16-May-17																			
Z5PDR1100	Miscellaneous Stework	5	5	143	16-May-17	23-May-17																			
Zone: PZ8		126	126	130	15-Dec-16	09-Jun-17																			
Z6PDR0010	Site Survey	1	1	123	15-Dec-16	16-Dec-16																			
Z6PDR0020	Erosion Control	1	1	108	15-Dec-16	16-Dec-16																			
Z6PDR0021	Sheeting	5	5	108	16-Dec-16	23-Dec-16																			
Z6PDR0022	Dewater	5	5	108	23-Dec-16	30-Dec-16																			
Z6PDR0023	Excavate	5	5	108	30-Dec-16	06-Jan-17																			
Z6PDR0030	Install Concrete Pump Station	15	15	108	06-Jan-17	27-Jan-17																			
Z6PDR0040	Install Concrete Valve Vault	5	5	108	27-Jan-17	03-Feb-17																			
Z6PDR0050	Install Discharge Dissipater	5	5	108	03-Feb-17	10-Feb-17																			
Z6PDR0055	Install Weir Box	5	5	108	10-Feb-17	17-Feb-17																			
Z6PDR0060	Install Trash Separator	5	5	108	17-Feb-17	24-Feb-17																			
Z6PDR0065	Backfill	5	5	183	24-Feb-17	03-Mar-17																			
Z6PDR0070	Install Pump	2	2	183	03-Mar-17	07-Mar-17																			
Z6PDR0080	Install Electrical	10	10	183	07-Mar-17	21-Mar-17																			
Z6PDR0090	Start Up and Test	5	5	183	21-Mar-17	28-Mar-17																			
Z6PDR0100	Miscellaneous Stework	5	5	130	02-Jun-17	09-Jun-17																			
Zone: PZ1		113	113	18	07-Jun-17	12-Nov-17																			
Z1PSR0010	Site Survey	2	2	18	07-Jun-17	12-Nov-17																			
Z1PSR0020	Erosion Control	2	2	18	07-Jun-17	09-Jun-17																			
Z1PSR0030	Curb and Gutter	15	15	18	08-Jun-17	29-Jun-17																			
Z1PSR0040	Sidewalks and Driveways	15	15	106	08-Jun-17	29-Jun-17																			
Z1PSR0050	Underground Utility and Lighting Conduits	15	15	106	08-Jun-17	29-Jun-17																			
Z1PSR0060	Reconstruct Roadway Base	15	15	18	12-Jun-17	03-Jul-17																			
Z1PSR0070	Paving First Lift	2	2	18	03-Jul-17	05-Jul-17																			
Z1PSR0080	Lighting	8	8	102	05-Jul-17	17-Jul-17																			
Z1PSR0090	Landscape	6	6	104	05-Jul-17	19-Jul-17																			
Z1PSR0100	Paving Final Lift	2	2	18	09-Nov-17	13-Nov-17																			
Zone: PZ2		95	95	19	03-Jul-17	13-Nov-17																			
Z2PSR0010	Site Survey	2	2	18	03-Jul-17	05-Jul-17																			

Printed 08-Nov-15 Finish Date 03-Jan-18

Page 10 of 11

Data Date 26-Oct-15

Remaining Level of Effort Actual Work Critical Remaining Work Remaining Work Milestone

Palm and Hibiscus Islands		Activity Code Layout, F-430 Progress												08-Nov-15 14:06											
Activity ID	Activity Name	Original Duration	Remaining Duration	Total Float	Start	Finish	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M
Z2PSR0020	Erosion Control	2	2	18	03-Jul-17	05-Jul-17																			
Z2PSR0030	Curb and Gutter	15	15	18	04-Jul-17	25-Jul-17																			
Z2PSR0040	Sidewalks and Driveways	15	15	87	04-Jul-17	25-Jul-17																			
Z2PSR0050	Underground Utility and Lighting Conduits	15	15	87	04-Jul-17	25-Jul-17																			
Z2PSR0060	Reconstruct Roadway Base	15	15	18	06-Jul-17	27-Jul-17																			
Z2PSR0070	Paving First Lift	2	2	18	27-Jul-17	31-Jul-17																			
Z2PSR0080	Lighting	9	9	83	31-Jul-17	11-Aug-17																			
Z2PSR0090	Landscape	6	6	86	31-Jul-17	08-Aug-17																			
Z2PSR0100	Paving Final Lift	2	2	19	09-Nov-17	13-Nov-17																			
Zone: PZ3		77	77	19	27-Jul-17	13-Nov-17																			
Z3PSR0010	Site Survey	2	2	18	27-Jul-17	31-Jul-17																			
Z3PSR0020	Erosion Control	2	2	18	27-Jul-17	31-Jul-17																			
Z3PSR0030	Curb and Gutter	20	20	18	28-Jul-17	25-Aug-17																			
Z3PSR0040	Sidewalks and Driveways	20	20	63	28-Jul-17	25-Aug-17																			
Z3PSR0050	Underground Utility and Lighting Conduits	20	20	63	28-Jul-17	25-Aug-17																			
Z3PSR0060	Reconstruct Roadway Base	20	20	18	01-Aug-17	29-Aug-17																			
Z3PSR0070	Paving First Lift	4	4	18	29-Aug-17	04-Sep-17																			
Z3PSR0080	Lighting	10	10	57	04-Sep-17	18-Sep-17																			
Z3PSR0090	Landscape	15	15	52	04-Sep-17	25-Sep-17																			
Z3PSR0100	Paving Final Lift	2	2	19	09-Nov-17	13-Nov-17																			
Zone: PZ4		52	52	19	31-Aug-17	13-Nov-17																			
Z4PSR0010	Site Survey	2	2	18	31-Aug-17	04-Sep-17																			
Z4PSR0020	Erosion Control	2	2	18	31-Aug-17	04-Sep-17																			
Z4PSR0030	Curb and Gutter	20	20	18	01-Sep-17	29-Sep-17																			
Z4PSR0050	Underground Utility and Lighting Conduits	20	20	38	01-Sep-17	29-Sep-17																			
Z4PSR0060	Reconstruct Roadway Base	20	20	18	05-Sep-17	03-Oct-17																			
Z4PSR0040	Sidewalks and Driveways	3	3	38	28-Sep-17	29-Sep-17																			
Z4PSR0070	Paving First Lift	4	4	18	03-Oct-17	09-Oct-17																			
Z4PSR0080	Lighting	10	10	32	09-Oct-17	23-Oct-17																			
Z4PSR0090	Landscape	10	10	32	09-Oct-17	23-Oct-17																			
Z4PSR0100	Paving Final Lift	2	2	19	09-Nov-17	13-Nov-17																			
Zone: PZ5		28	28	16	05-Oct-17	14-Nov-17																			
Z5PSR0010	Site Survey	2	2	18	05-Oct-17	09-Oct-17																			
Z5PSR0020	Erosion Control	2	2	18	05-Oct-17	09-Oct-17																			
Z5PSR0030	Curb and Gutter	15	15	18	05-Oct-17	27-Oct-17																			
Z5PSR0040	Sidewalks and Driveways	15	15	22	06-Oct-17	27-Oct-17																			
Z5PSR0050	Underground Utility and Lighting Conduits	15	15	22	06-Oct-17	27-Oct-17																			
Z5PSR0060	Reconstruct Roadway Base	15	15	18	10-Oct-17	31-Oct-17																			
Z5PSR0070	Paving First Lift	2	2	18	31-Oct-17	02-Nov-17																			
Z5PSR0080	Lighting	6	6	18	02-Nov-17	10-Nov-17																			
Z5PSR0090	Landscape	5	5	19	02-Nov-17	09-Nov-17																			
Z5PSR0100	Paving Final Lift	2	2	18	10-Nov-17	14-Nov-17																			

Printed 08-Nov-15
Finish Date 03-Jan-18

Page 11 of 11

Data Date 26-Oct-15

Remaining Level of Effort Actual Work Critical Remaining Work
 Remaining Work Milestone



21301 Powerline Road, Suite 311
Boca Raton, FL 33433
Tel: (561) 487-3379
Fax: (561) 487-3466

November 25, 2015

Olga Sanchez, E.I., LEED AP
Capital Projects Coordinator
CAPITAL IMPROVEMENT PROJECTS OFFICE
1700 Convention Center Drive
Miami Beach, FL 33139

**Re: Palm and Hibiscus Neighborhood Improvements
City of Miami Beach, Florida
90% GMP Proposal**

Dear Ms. Sanchez:

Please note that Stantec Consulting has worked closely with staff to review and negotiate the GMP Proposal documentation from Lanzo Construction in our capacity as the Design Criteria Professional. The most recent proposal is dated November 20th, 2015 with a gross bottom line price of \$37,325,582.44. Please accept this letter as an evaluation of the GMP and recommendation to the City for further action.

In evaluating the cost proposal, our primary focus of attention is on the unit rates applied to the elements being constructed. In our experience, the unit rates developed on this project are generally higher than typical in the South Florida market. We understand that the sensitive nature of working in the island neighborhoods and the tight confines of the right-of-way will result in a cost premium above and beyond the unit rates applied to projects in a more typical environment. Even so, the unit prices seem higher than warranted.

The Contractor has provided a substantial amount of backup to substantiate these unit rates. The backup provides a complex combination of personnel salary, burden, overtime and crew configurations combined with equipment and operating expenses. All of this cost is applied at production rates developed for each bid item. While this information provides the reasoning behind the unit rates, it ultimately is based on what the Contractor inputs into the program. Whether the items can be performed in less time or with smaller crews or less equipment is ultimately an arbitrary determination of the Contractor. At the end of it all, this information is helpful in understanding the Contractor's approach but it is actually immaterial to the City. The unit rates are the ultimate determination of whether the pricing is reasonable.

In an open and competitive environment, we feel that the City could get a more cost effective project. However, the City of Miami Beach is in a challenging market for bidding projects. In recent history, projects of this nature have not attracted a substantial number of bidders with the most recent projects only receiving two bids. Since Lanzo Construction has been one of the bidders in some of those cases, the concern is that the City may not get enough bids to ensure a competitive outcome.

Stantec

November 25, 2015
Page 2 of 2

It is our opinion that the City should continue to negotiate with Lanzo Construction in order to lower the currently tendered GMP. Considering the construction marketplace that the City is facing, we recommend that the negotiation should proceed with a target goal GMP of \$34.5 million dollars.

If you have any questions, please feel free to contact me at any time.

Sincerely,

STANTEC CONSULTING SERVICES INC.

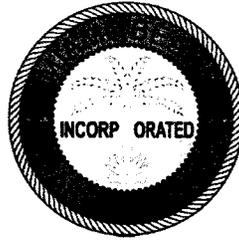


Jeffrey Crews, P.E., LEED AP
Senior Associate

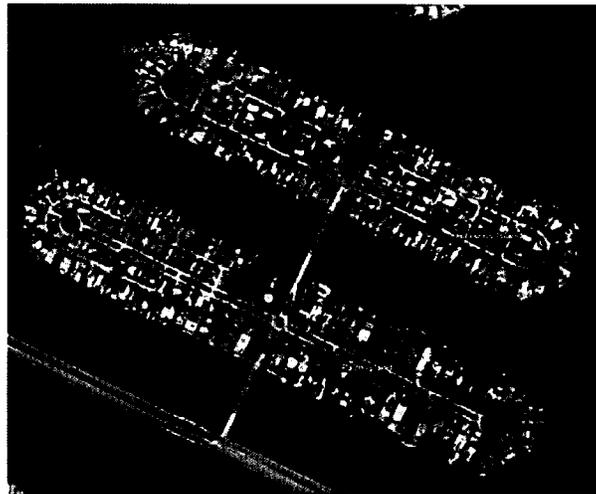
\\2156\active\215612258\correspondence\GMP Recommend Draft.docx

90% CONSTRUCTION COST ESTIMATE

OWNER:



PALM ISLAND & HIBISCUS ISLAND NEIGHBORHOOD IMPROVEMENT PROJECTS MIAMI BEACH, FLORIDA



PREPARED FOR:



Capital Projects Coordinator to
the City Manager
777 17th Street, Suite 300
Miami Beach, Florida 33139

PREPARED BY:



RIB U.S.COST
11900 Biscayne Boulevard
Suite 620
North Miami, Florida 33181

NOVEMBER 25, 2015



TABLE OF CONTENTS

- I Executive Summary**
- II Basis of Estimate**
- III Palm & Hibiscus Islands Summary & Markup Report**
- IV Estimate Detail Report**

I. EXECUTIVE SUMMARY



RIB U.S. Cost was tasked with providing a 90% construction cost estimate, utilizing the 90% plans and specifications, provided by the City Of Miami Beach.

This project includes the construction of new water distribution and storm drainage systems, roadway paving and curbs, driveway restoration and demolition of the existing. Florida Power & Light, Atlantic Broadband s, AT&T systems will be modified on Hibiscus Island. The street lighting systems will be modified on both Palm and Hibiscus Islands.

Work is assumed to be performed in 8 hour shifts, during normal business hours, Monday thru Friday. The estimate also assumes that special care will have to be given for maintaining the residents access to their properties at all times.

The estimate assumes the project will be constructed under a single general contract, with concurrent construction occurring on both islands. The cost estimate has been priced for construction by a site work contractor utilizing subcontractors.

Executive Cost Summary

Base Bid:

Palm & Hibiscus Islands Neighborhood Improvement Project

<i>General Conditions</i> -----	\$ 2,048,652
<i>Palm Island</i> -----	\$ 14,943,692
<i>Hibiscus Island</i> -----	\$ 14,016,596
<i>Total</i> -----	\$ 31,008,940

II. BASIS OF ESTIMATE



PROJECT INFORMATION

Designer	TBD
Estimator	RIB U.S. Cost
Owner	City of Miami Beach
Project Location	Palm & Hibiscus Islands, Miami Beach, Florida
Date of Report	November 25, 2015
Estimate Class/Methodology	Class 3/Concept
Processing Software	Success Estimator®
Work Breakdown Structure (WBS)	CSI Unifomat
Project Number	4999.001
Basis of Pricing	Local material and installed quotes, RIB US COST, Historical Data and Estimator Judgment
Method of Measurement	Imperial (US Standard)
Currency	United States Dollar

PROJECT SCOPE

Design Mission	Improve existing paving and utility systems within the public right of way.
Building Type	N/A
Roof Type	N/A
Building Utilization	N/A
Number of Buildings	N/A
Demolition	Pavement, curbs, storm drainage system, landscape plants.
Hazardous Materials	No
Site Work	Not Applicable

DATA

Drawings	90% Plan
Design Analysis	N/A
Site Visits Attended	No
Meetings Attended	No
Discussions	No
Previous Estimating Comments	N/A

INCLUSIONS

Trench shoring	Temporary dewatering
Traffic controls	The design build contractor's quantities were utilized for water service connections, unsuitable soil removal and replacement, fill quantities and landscaping quantities, as these items were not

II. BASIS OF ESTIMATE



clearly identified.

EXCLUSIONS

Land/Real Estate Costs	Permanent Utility Consumption Charges
Design Fees	Permits and Testing
Legal and Accounting Fees	Hazardous Waste Removal and Disposal
Project Management Activities	Change Order Contingency
Owners Contingency	7.5% design-build fee
Additional storm drainage requirements not defined on the drawings	

ESTIMATING TEAM

Estimating Team Lead/Project Manager	Howard Campbell
Architectural Estimator	Not Applicable
Structural Estimator	Not Applicable
Civil Estimator	Howard Campbell
Mechanical Estimator	Not Applicable
Electrical Estimator	Dennis Longarzo

ESTIMATE BASIS

General Conditions/Onsite Field Personnel	6.00%
Security and Access	0.00%
General Contractor Home Office Overhead	2.50%
Bonds and Insurance	2.00%
General Contractors Risk/Profit	6.00%
General Contractor Quality Control	Included in General Conditions
Subcontractor Markup	Varies from 15.76% to 20.20%
Estimate Date	November 25, 2013
Construction Start Date	January 2016
Estimated Construction Midpoint	July 2016
Estimated Construction Duration	14 Months
Escalation for Current Market Conditions	0.00%
Design /Estimating Contingency	0.00%
Labor Premium	Not Applicable
Sales Tax	7.00%
Labor Rates	Local prevailing wage rate, Miami Beach, Florida
Labor Burdens	Included in Labor Rates
Contracting Methodology	Design / Build

II. BASIS OF ESTIMATE



The basis of the 90% Cost Estimate was established as follows:

A quantity survey was performed as detailed as possible relative to the levels of design and documentation available. Where quantities are not available, assumptions have been made based on the historical information from similar type or other projects recently estimated by RIB U.S. Cost.

The basis of the pricing used reflects the probable construction costs which can be obtained in the **Miami Beach, Florida** area for the schedule time period of the Project. This estimate assumes a competitive bid situation, and is an opinion of probable costs based on fair market value, and is not a prediction of the anticipated low bid. RIB U.S. Cost has no control over the cost of labor and materials, the General Contractor's or any subcontractor's method of determining price or competitive bidding and market conditions. This opinion of probable costs of construction is made on the basis of the experience, qualifications and best judgment of the Cost Estimator. RIB U.S. Cost cannot and does not guarantee that proposals, bid or actual construction costs will not vary from this or subsequent estimates RIB U.S. Cost has prepared this estimate in accordance with generally accepted cost estimating and practices and standards.

III. PALM & HIBISCUS ISLANDS SUMMARY MARKUP REPORT

90% Estimate

FOR

City of Miami Beach

Palm & Hibiscus Islands Neighborhood Improvement Project



SUMMARY REPORT

Total Cost

PALM ISLAND

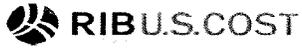
LEVEL DESCRIPTION	TOTAL	QUANTITY	UNIT	UNIT COST
- US ISLANDS NEIGHBORHOOD IMPROVEMENT PROJECT	\$31,008,940	1	LS	\$31,008,939.74
- GENERAL CONDITIONS & BOND COSTS	\$2,048,652	1	LS	\$2,048,652.21
1000 GENERAL CONDITIONS	\$102,660	1	LS	\$102,660.15
1010 MOBILIZATION	\$90,001	1	LS	\$90,001.01
1011 SITE SERVICES	\$33,528	1	LS	\$33,528.38
1012 CONSTRUCTION ADMINISTRATION	\$609,466	1	LS	\$609,465.84
1013 CPM SCHEDULING	\$24,508	1	LS	\$24,508.28
1014 CONSTRUCTION QUALITY CONTROL	\$451,654	1	LS	\$451,654.07
1015 FIELD OFFICE	\$38,890	1	LS	\$38,890.44
1016 INDEMNIFICATION	\$204,116	1	LS	\$204,115.71
1017 BONDS	\$493,828	1	LS	\$493,828.34
- PALM ISLAND NEIGHBORHOOD IMPROVEMENT	\$14,943,692	1	LS	\$14,943,691.70
- DIVISION 2 - SITEWORK	\$11,938,134	1	LS	\$11,938,134.17
- DIVISION 3 - LANDSCAPING	\$802,611	1	LS	\$802,611.35
- DIVISION 16 - LIGHTING / ELECTRICAL	\$2,107,801	1	LS	\$2,107,800.54
- MAINTENANCE OF TRAFFIC	\$95,146	1	LS	\$95,145.63
- HIBISCUS ISLAND NEIGHBORHOOD IMPROVEMENT	\$14,016,596	1	LS	\$14,016,595.84
- DIVISION 2 - SITEWORK	\$9,041,382	1	LS	\$9,041,382.20
- DIVISION 3 - LANDSCAPING	\$625,234	1	LS	\$625,234.29
- DIVISION 16 - LIGHTING / ELECTRICAL	\$4,254,834	1	LS	\$4,254,833.73
- MAINTENANCE OF TRAFFIC	\$95,146	1	LS	\$95,145.63

90% Estimate

FOR

City of Miami Beach

Palm & Hibiscus Islands Neighborhood Improvement Project



PROJECT MARK-UP REPORT

PALM ISLAND

	Estimate Cost To Prime	\$28,540,211
	<u>Mark-up %</u>	
<u>Mark-ups For</u>		
4. Home Office Overhead	2.50%	\$713,505
6. Contractor Profit	6.00%	\$1,755,223
	Total Project Cost	\$31,008,939 (Including all Mark ups)

90% Estimate

FOR

City of Miami Beach

Palm & Hibiscus Islands Neighborhood Improvement Project



SUMMARY REPORT - LEVEL 1

Cost To Prime Only

PALM ISLAND

LEVEL DESCRIPTION	TOTAL	QUANTITY	UNIT	UNIT COST
- US ISLANDS NEIGHBORHOOD IMPROVEMENT PROJECT	\$28,540,211	1	LS	\$28,540,211.45
- GENERAL CONDITIONS & BOND COSTS	\$1,885,552	1	LS	\$1,885,551.96
1000 GENERAL CONDITIONS	\$94,487	1	LS	\$94,487.02
1010 MOBILIZATION	\$82,836	1	LS	\$82,835.72
1011 SITE SERVICES	\$30,859	1	LS	\$30,859.07
1012 CONSTRUCTION ADMINISTRATION	\$560,944	1	LS	\$560,944.17
1013 CPM SCHEDULING	\$22,557	1	LS	\$22,557.09
1014 CONSTRUCTION QUALITY CONTROL	\$415,696	1	LS	\$415,696.34
1015 FIELD OFFICE	\$35,794	1	LS	\$35,794.24
1016 INDEMNIFICATION	\$187,865	1	LS	\$187,865.36
1017 BONDS	\$454,513	1	LS	\$454,512.97
- PALM ISLAND NEIGHBORHOOD IMPROVEMENT	\$13,753,973	1	LS	\$13,753,973.03
- DIVISION 2 - SITEWORK	\$10,987,698	1	LS	\$10,987,698.27
- STORMWATER	\$6,557,281	1	LS	\$6,557,280.81
- UTILITY WORK - WATER & SEWER	\$1,996,963	1	LS	\$1,996,963.06
- SITEWORK (STREESCAPE IMPROVEMENTS)	\$2,433,454	1	LS	\$2,433,454.39
- DIVISION 3 - LANDSCAPING	\$738,713	1	LS	\$738,712.70
- LANDSCAPE DEMOLITION	\$132,430	1	LS	\$132,430.16
- NEW LANDSCAPING	\$606,283	1	LS	\$606,282.54
- DIVISION 16 - LIGHTING / ELECTRICAL	\$1,939,991	1	LS	\$1,939,991.30
2220 P.I. / AG / STREET LIGHTING	\$1,939,991	242	Ea	\$8,016.49
- MAINTENANCE OF TRAFFIC	\$87,571	1	LS	\$87,570.76
2227 P.I. / MAINTENANCE OF TRAFFIC	\$87,571	1	LS	\$87,570.76
- HIBISCUS ISLAND NEIGHBORHOOD IMPROVEMENT	\$12,900,686	1	LS	\$12,900,686.46
- DIVISION 2 - SITEWORK	\$8,321,567	1	LS	\$8,321,566.69
- STORMWATER	\$4,765,798	1	LS	\$4,765,798.17
- UTILITY WORK - WATER & SEWER	\$1,802,666	1	LS	\$1,802,666.26
- SITEWORK (STREESCAPE IMPROVEMENTS)	\$1,753,102	1	LS	\$1,753,102.26
- DIVISION 3 - LANDSCAPING	\$575,457	1	LS	\$575,457.24
- LANDSCAPE DEMOLITION	\$102,163	1	LS	\$102,162.86

90% Estimate

FOR

City of Miami Beach

Palm & Hibiscus Islands Neighborhood Improvement Project



SUMMARY REPORT - LEVEL 1

Cost To Prime Only

PALM ISLAND

<u>LEVEL DESCRIPTION</u>	<u>TOTAL</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>
- NEW LANDSCAPING	\$473,294	1	LS	\$473,294.38
- DIVISION 16 - LIGHTING / ELECTRICAL	\$3,916,092	1	LS	\$3,916,091.79
3470 H.I. / AG / STREET LIGHTING	\$2,178,140	260	Ea	\$8,377.46
- FPL	\$1,045,857	1	LS	\$1,045,857.41
- ATTSE	\$174,615	1	LS	\$174,615.30
- ABB	\$517,479	1	LS	\$517,479.38
- MAINTENANCE OF TRAFFIC	\$87,571	1	LS	\$87,570.76
3758 P.I. / MAINTENANCE OF TRAFFIC	\$87,571	1	LS	\$87,570.76



RIB U.S.COST
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November 30, 2015

Mark Tomczyk, P.E.
Sr. Capital Projects Coordinator
CAPITAL IMPROVEMENT PROJECTS OFFICE
City of Miami Beach
777 17 Street Suite 300,
Miami Beach, FL 33139

Re: Palm & Hibiscus Islands Right-Of-Way Improvements 90% Estimate

Mark Tomczyk,

RIB US Cost Estimated Construction Cost is \$ 31,008,940. The 90% Cost estimate was produced utilizing in-progress drawings received on November 9, 2015. A quantity survey was performed as detailed as possible on these documents however some scope was not clearly defined. Based on a preliminary review of the documents, contractor's bid tabulation sheet and discussion with you and your staff, the design build contractor's quantities were utilized for water service connections, unsuitable soil removal and replacement, fill quantities and landscaping quantities. For example the sanitary sewer system rehabilitation were not identified on the drawings, however we have included cost in our estimate using the quantities provided on the contractor's bid tabulation sheet. We have included a market conditions adjustment in the burdened labor cost for Miami Beach, local material prices were obtained where possible.

This estimate does not include land or real estate costs; relocation/moving Costs; Design Fees; 7.5% design-build fee; design permits; after hours work; legal and accounting fees; owner's contingencies of owner cost; escalation. Also excluded are any additional storm drainage requirements not defined on the drawings. As an example, per the Palm Island Documents, we measured 11,064 LF of storm drain piping and 158 EA storm structures verses the contractor's 16,112 LF of storm drain piping and 405 EA storm structures.

Sincerely,

A handwritten signature in black ink, appearing to read 'Howard Campbell', is written over a light blue horizontal line.

Howard Campbell
Sr. Estimator
(770)481-1618

CC: Glenn Wilcox, Patrick Pedigo, Russell McElreath, File

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