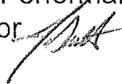




# MIAMIBEACH

BUDGET AND PERFORMANCE IMPROVEMENT  
Internal Audit Division

## INTERNAL AUDIT REPORT

TO: Jorge M. Gonzalez, City Manager  
VIA: Kathie G. Brooks, Budget and Performance Improvement Director   
FROM: James J. Sutter, Internal Auditor 

DATE: August 2, 2010  
AUDIT: Anchor Shops Retail Space Leasing  
PERIOD: October 1, 2007, through December 31, 2009

This report is the result of an audit performed on the Anchor Shops Retail lease agreements in accordance to our Audit Plan.

### INTRODUCTION

The management and leasing for the retail component of the Anchor Shops was initially managed under a Retail Space Master Lease agreement between the Miami Beach Redevelopment Agency (RDA) as landlord, and the MB Redevelopment, Inc. for Loews Hotel Corporation as master tenant. Upon early termination of this agreement on March 20, 2000, the RDA temporarily managed and leased the Anchor Shops retail spaces.

On January 19, 2001, the RDA entered into a Management and Leasing Agreement with the Miami Beach Community Development Corporation, Inc. (MBCDC) in association with Felenstein Koniver Stern Realty Group (FKS). This contractual relationship with the MBCDC and FKS has continued through the present time. The current agreement commenced on May 1, 2007, and ended on April 30, 2010, with one option to renew for another 3-year term. The procurement of this agreement resulted from RDA Resolution No. 548-2007, which approved a waiver of competitive bidding, finding it to be in the best interest of the RDA and authorizing its execution. The three year renewal of this agreement was approved by the RDA through Resolution No. 570-2010 dated 6/9/10 extending the agreement through April 30, 2013. Throughout the duration of this contractual relationship, the Anchor Shops retail spaces have remained occupied; therefore, the part of the agreement that deals with leasing services has been of a very limited nature. MBCDC has not been involved in procuring and negotiating leases for vacant or soon to become available spaces, although it has dealt with lease assignments, renegotiations of terms and lease renewals. In all cases, MBCDC has presented the negotiation details to the RDA for the decision making process of accepting or rejecting the proposed terms and conditions of any new agreement.

As part of their management function, MBCDC receives rent payments from tenants and deposits these into a City's bank account established and controlled by the Finance Department for that purpose. MBCDC sends copies of deposit slips and rent payment checks to Finance for accountability of payments and transaction processing. The Finance Department Revenue section is responsible for making the entries to the appropriate general ledger accounts; bank statement reconciliation and addressing bank related issues, such as returned checks, is segregated to another area of the Finance Department. Monthly rent payment checks are debited to general ledger account # 465-7000-101301 – Suntrust RDA City Ctr. Since these rent payments include a 7% sales taxes, the tax amount is separated and the actual rent amount is credited as an account receivable to general ledger account # 465-7000-115170 (Accounts Rec-Rents RDA). This transaction is offset by a credit entry to recognize the revenue to account # 465-8000-362210

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(Rent/Lease Property – Misc); sales taxes are also entered to general ledger account # 465-7000-208100 (State Sales Tax Payable).

The Anchor Shops retail spaces are all occupied and tenant information is presented below:

Anchor Shops Tenant	Initial Term Years	Term Year	Square Footage	Annual Minimum Rent (1)
1560 Collins Avenue, Inc. d/b/a Absolutely Suitable, Shan	5	2	2,697	\$ 102,486.00
Liquor Lounge Café	12	1	2,371	\$ 88,740.00
Cadiac d/b/a US Vintage	15	11	4,236	\$ 232,980.00
Training Camp of South Beach 06	10	5	2,884	\$ 87,641.04
Vacation Tours of South Beach	15	11	721	\$ 18,024.96
ArtConnection International (2)	11	6	721	\$ 23,992.44
BBQ Beach	10	4	6,217	\$ 143,808.00
(1) Annual rent amounts as of 12/31/2009				
(2) Amount resulted from our calculations based on \$1999.37/month per finding # 1b				\$ 697,672.44

### OVERALL OPINION

As a result of our testing during the audit, we were able to identify some deficiencies in reference to Anchor Shops tenants' compliance with the terms and conditions of their lease agreements, such as insurance coverage, maintaining current business tax receipts, security deposits and being current in their monthly rent payments. Deficiencies were also noted in MBCDC's management and leasing responsibilities, such as calculation of annual rent adjustments for tenants, enforcement of late charge fees for payments received after the due date. Areas identified for corrective action include:

1. Training Camp of South Beach and ArtConnection International had rent increases based on CPI changes that were calculated incorrectly by MBCDC that resulted in incorrect payment adjustments for these tenants.
2. BBQ Beach, Liquor Lounge Café, and Training Camp of South Beach have not renewed their business tax receipt. Two other tenants, Shan and US Vintage, paid their business tax receipts fees after the due date, but were not assessed late penalties.
3. Finance uses a "straight line" method for monthly revenue recognition of rent payments; however, the method does not consider adjustments to rent on some contracts based on CPI increases or rent changes occasionally made based on mutually agreed terms. We also found that the monthly amount currently entered as account receivable and revenue for ArtConnection International was incorrect.
4. BBQ Beach and Liquor Lounge Café were consistently late in their rent payments, respectively 14 and 10 times, during the 15-month period reviewed, but late charges were only assessed approximately 20% of the times. Another tenant, ArtConnection International was late twice during the same period and no late charges were ever assessed.

5. MBCDC does not maintain information regarding the date all payments are received from the tenants, only the date when rent checks are deposited at the bank. This information is necessary to accurately assess late payment charges. In addition, we found several errors on their monthly report to the RDA with details of management fee, reimbursable expenses, and rent payments for a 15-month period reviewed that resulted in a net overpayment of \$290.77 of the management fee paid to MBCDC.
6. Finance is recording late payment charges collected from tenants as account receivable entries to the general ledger rather than as revenue entries, since MBCDC is not identifying check deposit information between rent and late fee payments.
7. There is no evidence for a security deposit of \$10,031 being paid by the Liquor Lounge Café.
8. The Certificate of Liability Insurance for Shan; US Vintage; Training Camp of South Beach; Vacation Tours of South Beach; and ArtConnection International include general liability insurance coverage limits of \$1,000,000 for each occurrence and \$2,000,000 for general aggregate, which is lower than specified in the lease agreement.

Additional details regarding the above mentioned and other areas in need of correction are provided on the Findings, Recommendations, and Management Responses section of this report.

## PURPOSE

To ensure that the management and leasing contractor is adequately performing their functional responsibilities in compliance with their agreement with the RDA, and that tenants of the Anchor Shops are complying with the terms and provisions of their respective lease agreements and making their required rent payments in a timely manner.

## SCOPE

1. Review the Management agreement between the RDA and MBCDC, evaluating the adequacy of the procurement process that led to the execution of the agreement, and confirm that MBCDC is in compliance with the key provisions of this agreement.
2. Review current lease agreements for each retail space tenant at the Anchor Shops to confirm that they are in compliance with the terms and key provisions of the leases.
3. Confirm that all lessees have obtained their required annual business tax receipts and secured the proper insurance coverage.
4. Confirm that the all lease monthly rent payments, and common area maintenance charges are billed in accordance with the terms of the lease, including all the consumer price index increases as specified in the lease agreement.
5. Confirm that all monthly rent payments were timely received and correctly reported in the City's Financial System.

## FINDINGS, RECOMMENDATIONS, AND MANAGEMENT RESPONSES

1. Finding – *Tenants Rent Payment Increases*  
Three Anchor Shops retail space tenants, Training Camp of South Beach, Vacation Tours of South Beach, and ArtConnection International have clauses in their lease agreements that allow increases to rent payments according to the Consumer Price Index (CPI). We reviewed MBCDC notices of rent increases sent to these tenants during their current agreements to

determine the accuracy of the rent adjustments. The following discrepancies for two of these tenants were noted as a result of our testing:

- a. Training Camp of South Beach. On the notice for rent payment changes starting on 10/1/09, MBCDC correctly indicated that the CPI for July 2009 was less than for July 2008 and they informed the tenant that there would be no rent increase since the CPI change was negative. However, this was not in agreement with the terms of the contract, since the rent adjustment should have been based on the greater of 3% or CPI change. Based on the 3% adjustment factor, the tenant's monthly rent should have been increased from \$7,090.70 to \$7,303.42. Consequently, the tenant has underpaid monthly rent by \$212.72 plus tax since the beginning of the current term year. Additionally, in the manner the contract states the adjustment clause, the minimum rent is to be adjusted by 3% regardless of what the CPI change is (the greater of 3% or CPI but to a maximum of 3%), which basically makes the CPI change irrelevant. For the rent change calculations on 2007 and 2008, MBCDC used incorrect CPI indices or the wrong CPI tables (the All Urban Consumers Index instead of the Urban Wage Earners and Clerical Workers Index. However, this did not result in inaccurate adjustment amounts since a 3% increase was to be used regardless of the CPI change.
- b. ArtConnection International. The change notice for 2007 showed an incorrect CPI increase of 5.1%, but indicated that using the maximum increase of 3% allowed by the agreement, the rent would be increased to \$1,945.55. However, based on the correct CPI increase of 2.8%, the rent should have only been adjusted to \$1,941.14. For December 2008, we noted that MBCDC erroneously used the All Urban Consumers index, resulting in a CPI increase of 4.9%, but the increase was capped at 3%. However, since the base rent used from 2007 was incorrect, as described earlier, the resulting increase for 2008 was also incorrect; instead of increasing to \$2,003.92, it should have increased to \$1,999.37. This difference was also carried through the December 2009 rent amount.

#### Recommendation

We recommend that rent increases for these tenants be recalculated for the term years indicated above and rent payments, whether over or short, be adjusted accordingly and properly communicated to the tenants. MBCDC also needs to ensure that the required CPI indices are being used and the appropriate CPI change is applied for rent adjustment. Furthermore, the rent increase conditions on the Training Camp of South Beach agreement need to be reviewed and amended accordingly to ensure accurate adjustments.

#### Management's Response (RDA)

In July 2009, MBCDC informed Training Camp of South Beach that the CPI change between years was negative; therefore, there was no rent increase. Internal Audit is correct in that the actual wording in the lease would have required a 3% increase no matter what the CPI change was between years. It should be noted that the wording pertaining to escalation provisions in the Lease is inconsistent from the others, in that the language should state that that rent will be adjusted by the lesser of 3% or CPI, not the greater of 3% or CPI, which is the way the lease is currently written. All parties agreed that the wording in the Lease is confusing and needs to be clarified. The Legal Department has recommended addressing this change in the form of a Letter Agreement between the Landlord and the Tenant, which can be executed by the Executive Director (City Manager) without formal action by the RDA.

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In December 2007, MBCDC used the wrong CPI Index (All Urban Consumers) which caused Art Connection International to pay .2% more in rent than they should have. They were increased to \$1,945.55 and should have been \$1,941.14 or \$4.41 too much. The 3% increase in December 2008, was applied to the higher amount so \$2,003.92 was paid instead of \$1,999.37 or \$4.55 too much. Through May, 2010 they will have paid \$134.82 too much rent which will be credited to the Tenant.

To ensure that MBCDC is calculating CPI increases correctly, MBCDC provides the RDA with notice via email, reflecting the calculation of the respective rent adjustment(s). MBCDC has agreed that for all future rent escalation calculations, it will include a copy of the actual CPI table for the RDA to cross-reference to verify payments are in fact correct.

The resulting underpayment by Training Camp in the amount of \$212.72 has since been paid and the overpayment by Art Connection in the amount of \$124.82 was credited back to the Tenant in May, 2010.

2. Finding – Tenants Without Current Business Tax Receipts

We reviewed the status of business tax receipts (BTR) for all tenants of the Anchor Shops retail spaces to confirm they are current in the payment of license fees, and only two were found to have current BTRs, and three have pending BTRs and carry penalties for late payment of licensing fees as described below:

- BBQ Beach has two BTR's pending, 9/30/08 and 9/30/09. The Eden system shows a balance due for \$1,421.54, representing a 25% penalty for late payment of the 9/30/08 licensing fees. This tenant also owes payment of the licensing fees for FY 09-10 and the corresponding penalty for non-payment.
- Liquor Lounge Café, has an expired BTR since 9/30/09. This tenant carries a balance of \$488.14 in the Eden system for a late payment penalty that was not included as part of the payment when it was made on 2/2/10. However, this penalty represents only 10% of the licensing fees instead of the 25% that was not assessed when payment was made 4 months late; this penalty is approximately \$1,220.
- Training Camp of South Beach also has an expired BTR since 9/30/09.

We also found two other tenants that paid their BTR renewal fees after the due date, but did not have the late penalties assessed. 1560 Collins Avenue, Inc. d/b/a Shan, paid its license renewal fee on 1/28/10, but a late penalty of 25% (approximately \$434) was not collected when the payment was made. Similarly, Cadiac, Inc. d/b/a US Vintage, paid for its license renewal fee on 12/4/09, but a late penalty of 20% (approximately \$510) was also not collected.

We discussed non-current BTR issues with the Revenue Manager in the Finance Department, who indicated that businesses with pending licenses are referred to Code Compliance for enforcement at least on a monthly basis. He also indicated that current BTRs are sometimes held for issuance even when fees have been paid, as a result of non-payment of other accounts due, such as resort taxes, unpaid code violation fines, etc. We verified that the five tenants without a current BTR were included on the most recent list sent to Code Compliance as of 2/17/10.

Recommendation

We recommend that proper follow up be given for these pending BTRs by Finance and Code Compliance to ensure licenses are renewed promptly and all due fees and late charges are collected. The RDA should also consider participating in this effort, since these tenants

represent commercial entities at the Anchor Shops and they should be properly licensed to operate their business in a City owned property.

Management's Response (RDA)

MBCDC's scope does not include verifying individual tenant's compliance with regulatory and/or taxing authority requirements, including occupational licensing, remittance of business and/or resort tax, etc. The audit makes note that delinquent BTRs are handled between Finance and Code Compliance. However, in an effort to facilitate this process, MBCDC has since issued correspondence to all the tenants, requiring them to provide the Landlord with copies of current receipts licenses/permits.

Management's Response (Finance)

The Finance Department disagrees with aspects of the recommendation. For example, proper follow up is given to BTR renewals, as the Finance Department meets regularly with the Code Compliance Division to review BTRs and businesses that are not compliant. Businesses that are not compliant with their BTR requirements, including those located at the Anchor Shops, are forwarded to the Code Compliance Division for action as mentioned in this same audit. The subject matter was discussed and acknowledged at the March 25, 2010 and April 29, 2010 Finance and Citywide Projects Committee meetings.

The processes involved and the system used for BTR renewals may have a BTR appear as being paid in the system, but this does not mean the BTR is issued, as the Finance Department, per City Code, withholds BTRs when the customer is arrears with any monies due to the City, including but not limited to utility bills, resort taxes, and/or City bills. Once payment for the renewal has been received, City staff review the accounts of each customer to determine if they are current on all obligations to the City in accordance with Article V, Section 102-374 of the City Code. Then if the customer is current, the City mails out the actual BTR document to the customer. If the customer is delinquent on City obligations and payment for a BTR renewal has been received, pursuant to Article V, Section 102-374 of the City Code, the City withholds the BTR document and sends a letter to the customer stating the amount due and that the delinquencies must be resolved before receiving their BTR. This has proven to be a valuable tool in assisting the City with collections of delinquent utility bills, resort tax obligations, special assessments, liens, and other payments due to the City.

3. Finding – *Recognizing revenue from lease rent payments*

Monthly rent payments due from Anchor Shops tenants are entered as account receivable with debits to general ledger account # 465-7000-115170 (Accounts Rec-Rents RDA), and recognized as revenue with offsetting credit entries to general ledger account # 465-8000-362210 (Rent/Lease Property – Misc). These entries are made according to a "straight line" method of revenue recognition used by the Finance Department. This method takes into account the annual based rent for each tenant's contract year, totaled by the number of years and divided by the number of months for the term of the contract. However, the method does not take into account adjustments to rent on some contracts based on CPI increases, or that tenants sometimes do not make payments as required each month and the fact that rent payments are occasionally adjusted based on mutually agreed terms.

During our review of the rent schedule/straight line information provided by Finance, we noted that payment changes for some contract years had not been incorporated into the Cadiac tenant schedule. In addition, we found that the annual/monthly rent amounts \$86,520/\$7,210

currently entered for ArtConnection International as account receivable and revenue are incorrect. This tenant in its 6<sup>th</sup> contract year, started with annual/monthly rent payments of \$21,630/\$1,802.50 that were adjusted beginning on year 2 based on CPI changes to its current monthly rent of \$2,003.92. It should be noted that the current amount is considered incorrect as described on finding #1b.

#### Recommendation

We recommend that the method used for entering accounts receivable amounts and recognizing revenue be re-evaluated to consider a change from the current straight-line method to actual "rent payment due" amounts. This would require timely communication from the RDA/MBCDC to Finance of adjustments and changes to tenants rent payments throughout the year. Considering the fact that there are only seven tenants, this should not require a significant effort. We further recommend that the rent amounts entered as account receivable and revenue for the past several months be adjusted accordingly.

#### Management's Response (RDA)

The RDA will work with Finance to determine how best to address its reflection of CPI increases and/or periodic adjustments to Tenants' rents, given the limitation of the Eden Contracts module in being able to communicate or automatically reflect such adjustments. With regards to the incorrect rent amount entered for Art Connection in its straight line accounting method, Finance had based its entry on an incorrect spreadsheet entry, rather than actual rent amounts being recorded.

#### Management's Response (Finance)

The straight-line method used for recording rental receivables was mandated by the City's external auditors. The method recommended by the Internal Audit office was in use by Finance staff until external auditors requested the change. The Finance Department will arrange a meeting with our external auditors and Internal Auditor to review the best and/or required method for recording these revenues. The Finance Department will also schedule regular meetings with the Redevelopment Agency in order to stream-line communication efforts for the actual accounting of monthly lease payments.

#### 4. Finding – Past due rent payments

All lease agreements require rent payments be made by the 5th day of the month and that for any payments made after the 5 days, a late charge of 5% of the monthly rent amount be assessed. Also, for payments overdue after 15 days an additional late charge of 1.5% will be added for a total of 6.5%. However, MBCDC does not maintain complete records of rent payment receipt dates and thus did not provide this information for us to review and verify whether payments were received by the due date. As an alternative, we used the bank deposit date information included on the MBCDC monthly reports to the RDA for the 15-month payment period reviewed (September 2008 through November 2009). The testing criteria used was based on the assumption that a payment was late if checks were deposited the 11th day of the month or later (allowing an extra 5 days for a grace period). Based on this, some tenants were found to be consistently late as detailed in the following exceptions:

- BBQ Beach: This tenant was late 14 of the 15 months reviewed and only 3 times late charges were assessed and paid.

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- Liquor Lounge Café: Tenant was late 10 of 15 months during the review period, but only 2 late charges were assessed and paid.
- ArtConnection International: Tenant was late twice in 15 months and no late charges were ever assessed.

We were informed by the Redevelopment Coordinator that in July 2009, BBQ Beach advised the RDA that because of the economic environment on Washington Avenue, he could not afford to keep up with the rent payments and requested a temporary deferral of a portion of the rent. A request for a rent reduction from \$11,200 to \$7,400 + tax, subject to repayment once business picked up, was forwarded to the City Manager's Office for further direction, but the item was never taken up according to the RDA. During this time, the tenant assumed its request had or would be approved and started remitting the reduced payments for August 2009. We were also informed that this payment arrangement lasted for a period of 4 months and that the tenant made a commitment to pay for the deferred rent amounts in installments along with the regularly scheduled rent payments.

#### Recommendation

We recommend that MBCDC begin to maintain a complete record of the date a rent payment is received, such as date stamping and/or a payment register. This would allow appropriate late charges to be accurately calculated and assessed for overdue rent payments as stated in the lease agreements, especially for those tenants that consistently make their payments after the due date. In recent periods and due to economic conditions in the area, late payment charge enforcement has been lenient. However, the RDA needs to re-evaluate whether these charges will be collected or deferred to a future date.

#### Management's Response (RDA)

MBCDC's monthly management reports have been changed to reflect the dates on which the rents were actually received.

The Leases provide the Landlord with the discretion of assessing late fees and/or penalties for past due rent, but does not require such. The wording specifically states "may be charged" as opposed to "shall be charged". Historically, late fees have only been assessed for repeat offenders, and in certain instances where tenants have fallen severely behind in rent, negotiated settlements and payment plans have been structured for payment of back-due rent, in lieu of pursuing default proceedings and risking an empty space with no rent. The current prevailing economic downturn, going on two years now, significantly increases this probability and requires such discretionary decisions almost on a monthly basis. It should be noted that in one specific instance identified in the Audit, BBQ Beach requested a temporary deferral of a portion of its rent between August and December, 2009, which the RDA advised in writing could not be granted without formal approval of the Administration. Due to a misunderstanding between the Tenant and MBCDC, the Tenant proceeded to remit reduced rent for the period, even though the Administration had not granted the temporary deferral. Upon realizing this, MBCDC was directed to work with the Tenant to collect the difference in rent due, which has since been paid in full.

In addition, subsequent to the May 7 follow-up meeting with MBCDC, correspondence was issued to all the tenants informing them that going forward; the Landlord shall be enforcing penalty provisions for late rent.

5. Finding – *Monthly report from MBCDC to the RDA*

On a monthly basis the MBCDC submits a report of management fees and reimbursable expenses, which also details rent payments and late fees collected from the tenants. The details of payments received for each tenant include date check is deposited at the bank, gross payment amount (excluding taxes), and check amount which includes the sales tax. However, the report does not include the actual payment date, which prevented us from performing a complete review to determine if late charges were accurately assessed, as detailed in the previous finding. Our review and verification of all rent payments included on this report for a period of 15 months revealed numerous errors for gross rent amounts and the rent + tax amounts; these were found on 6 consecutive reports between October 2008 and March 2009. Gross rent amounts reported incorrectly (over/under) resulted in a net overpayment of \$290.77 for the 4% management fee paid to MBCDC.

Recommendation

As recommended in the prior finding, MBCDC should maintain a record of the payment receipt date and include this information as part of the monthly report prepared for the RDA. Due to the number of errors noted, this report should be verified for accuracy prior to being submitted to the City. We further recommend a more comprehensive review be performed by the RDA to ensure payment information is accurately reflected. MBCDC should also credit the \$290.77 overpayment in their next monthly report detailing management fees due.

Management's Response (RDA)

Pursuant to the Audit report's recommendations, MBCDC has initiated a policy of date-stamping checks received and revising its monthly reporting format, which as noted above reflected the date on which the checks were actually deposited as opposed to the date on which they were received. Additionally, in instances where tenants have failed to remit rent within five days from the due date, MBCDC will communicate such directly the RDA to determine the course of action to take. Historically, by the time the RDA receives MBCDC's monthly reports, tenants have since remitted their rent, making difficult for the RDA to go back and require MBCDC to assess late payments against a tenant.

With regards to overpayment to MBCDC in the amount of \$290.77, MBCDC acknowledges that certain accounting errors were made, primarily by a former a staff person. MBCDC has since gone back and reconciled the reports in question and will credit the RDA for the small difference due. It should be note that since April of 2009, reports are reviewed by a second person for accuracy.

6. Finding – *Recording late fee payments in the Eden System*

We found that payments of late charges made during 2009 were credited as account receivable entries to general ledger account # 465-7000-115170 (Accounts Rec-Rents RDA) instead of as a revenue entry to general ledger account # 465-8000-362210 (Rent/Lease Property – Misc). This was brought to the attention of the Financial Analyst that processes the Anchor Shops rent payment transactions, who indicated that he was not provided with sufficient information by MBCDC to differentiate what is a regular rent payment or a late fee payment.

Recommendation

We recommend that MBCDC establish a method to identify when late charge payments are

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included among the deposits sent to the Finance Department, to ensure that late payment amounts are properly entered to the revenue account instead of the accounts receivable account.

Management's Response (RDA)

The RDA has begun forwarding the monthly management reports to Finance in order to accurately post payments received from the tenants, which should address the issue.

Management's Response (Finance)

The Finance Department will be invited to the next meeting scheduled between the RDA/Asset Management and MBCDC in order to address information given to the City by MBCDC

7. Finding – Security deposits

We reviewed the amount of security deposit required according to the Lease Agreement Summary for each tenant. We traced the security deposits to the general ledger account where these are maintained (account #565-7000-229019 - Miscellaneous Deposits) and to a Finance Department report, Anchor Shops Rent Security Deposits & Parking Access Cards Deposits, as of 12/31/2009. We noted that there is no record of a security deposit of \$10,031 for the Liquor Lounge Café.

Recommendation

This tenant should be informed of the non-compliance with the security deposit requirement of their lease agreement and that payment of this amount should be promptly submitted.

Management's Response (RDA)

Liquor Lounge maintained that it had remitted a security deposit under its previous lease which the Administration cannot find record of. On May 14, 2010, the Tenant was put on 30-day notice that unless such evidence can be substantiated, that it will need to address remitting such deposit amount. Following extensive research by the City and the Tenant, no trace of a deposit could be found stemming back to its previous lease. As such, on July 31, 2010, the Tenant remitted a check for the full amount of the deposit.

Management's Response (Finance)

The Finance Department will be invited to the next meeting scheduled between the RDA/Asset Management and MBCDC in order to address deposit issues.

8. Finding – Tenants Insurance Coverage

All Anchor Shops tenants were found to have mostly the same insurance coverage requirements as part of their lease agreements as detailed in section 6.1: All Risks Property, Comprehensive General Liability, Worker's Compensation & Employer's Liability, and Business Interruption Insurance. However, the lease agreement summaries, which contain the key terms and conditions of the contract, only specify a requirement for Comprehensive General Liability coverage of \$2,000,000 per occurrence. Our review of the Certificates of Liability Insurance for all tenants confirmed that coverage was only for general liability insurance, but with policy limits of \$1,000,000 for "each occurrence" and \$2,000,000 for "general aggregate." The tenants with this policy coverage were: 1560 Collins Avenue, Inc.,

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d/b/a Shan; Cadiac, Inc., d/b/a US Vintage; Training Camp of South Beach 06; Vacation Tours of South Beach; and ArtConnection International. This was brought to the attention of the City's Risk Manager, who indicated that in his opinion a general liability policy is all the coverage needed for this type of contract, and that the City normally requires a \$1,000,000 per occurrence/aggregate.

Recommendation

Insurance coverage for Anchor Shops tenants should be reviewed with the City's Risk Manager to evaluate current requirements as per the agreement and determine if these are reasonable and necessary to protect the City's interests. As a result of this evaluation, the City should consider either a modification of requirements per section 6.1 of the agreement or requiring tenants to increase their general liability insurance coverage to \$2,000,000 per occurrence/aggregate.

Management's Response (RDA)

The wording in the leases pertaining to insurance requirements is misleading, since according to Risk Management, it does not conform to industry standard and would be very difficult, if not impossible to obtain if actually required. All tenants currently carry \$1,000,000 per occurrence and \$2,000,000 in general aggregate, which not only conforms to industry standard but is also acceptable to the City. It should also be noted that the Legal Department has opined that as long as tenant coverages meet the City's requirements, the leases do not need to be amended. With regards to those policies that didn't name the City and/or the RDA as additional insured, they have since been corrected, with updated copies of the respective certificates returned to the City.

**EXIT CONFERENCE**

An exit meeting was held on May 6, 2010, to discuss the audit report and to solicit management responses noted above. Attendees were Anna Parekh, (Director of Real Estate, Housing and Community Development), Kent Bonde, (Redevelopment Coordinator), James Sutter (Internal Auditor) and Luis López (Audit Consultant). A subsequent meeting with the contractor agency (Miami Beach Community Development Corp) was held on May 7, 2010 with Roberto Datorre, (President) and Don Tomlin, (COO). The report was subsequently forwarded to the Finance Department for comments and responses related to their area. Responses received were incorporated in this report.

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Audit performed by Luis López, Internal Audit Contractor

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cc: Hilda Fernández, Assistant City Manager  
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